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| <i>For CSM Use Only</i> | |
| Filing Date: | RECEIVED July 22, 2022 <i>Commission on State Mandates</i> |
| TC #: | 22-TC-01 |

TEST CLAIM FORM AND TEST CLAIM AMENDMENT FORM (Pursuant to Government Code section 17500 et seq. and Title 2, California Code of Regulations, section 1181.1 et seq.)

Section 1

Proposed Test Claim Title:

California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2021-0105

Section 2

Local Government (Local Agency/School District) Name:

County of Los Angeles

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

Arlene Barrera, Auditor-Controller

Street Address, City, State, and Zip:

500 West Temple Street, Room 525, Los Angeles, CA 90012

Telephone Number

(213) 974-8302

Email Address

abarrera@auditor.lacounty.gov

Section 3 – Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be sent to this representative. Any change in representation must be authorized by the claimant in writing, and e-filed with the Commission on State Mandates. ([CCR, tit.2, § 1183.1\(b\)\(1-5\)](#))

Name and Title of Claimant Representative:

Howard Gest

Organization: Burhenn & Gest LLP

Street Address, City, State, Zip:

624 South Grand Avenue, Suite 2200, Los Angeles, CA 90017

Telephone Number

(213) 629-8787

Email Address

hgest@burhenngest.com

Section 4 – 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 check for amendments to the section or regulations adopted to implement it (refer to completed WORKSHEET on page 5):

Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105 (effective September 11, 2021): (1) Parts IV.A.2 and B and Attachments J through S (except Attachments K, L and N); (2) Part VII and Attachment E; (3) Parts III.A.1, A.3.a, A.3.b, A.5.a, A.5.b, A.5.c, A.6, VIII.I.5, I.6, I.8; (4) Parts VIII.D.1, D.3, D.4; (5) Parts VIII.F.3.c.i, F.3.c.ii, F.3.c.iii; (6) Parts VIII.G.4.a, G.5.a, G.5.b.i, G.5.b.ii; and (7) Parts VIII.H.2 and H.5.b.

- Test Claim is Timely Filed on [Insert Filing Date] [select either A or B]: 7 / 22 / 22
 - A: Which is not later than 12 months (365 days) following [insert effective date] 9 / 11 / 2021, the effective date of the statute(s) or executive order(s) pled; or
 - B: Which is within 12 months (365 days) 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 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 completed WORKSHEET on page 5):
- 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;

Following FY: 2022 - 2023 Total Costs: App. \$112,844,000 (all permittees)

Identifies all dedicated funding sources for this program;

State: None

Federal: None

Local agency's general purpose funds: No dedicated funding source. (General funds to cover costs are used.)

Other nonlocal agency funds: None

Fee authority to offset costs: None

Identifies prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate:

In re Test Claim on: Los Angeles Regional Quality Control Board Order No. 01-192, 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 Board Order No. R9-2007-0001, Case No. 07-TC-09.

Identifies any legislatively determined mandates that are on, or that may be related to, the same statute or executive order:

None

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 5 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).

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 5 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 61 to 880.

Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate. Pages 1461 to 1569.

- 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 1570 to 1971.
- 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 44 to 1460, 1972-75.

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.](#))

Arlene Barrera

Name of Authorized Local Government Official
 pursuant to [Cal. Code Regs., tit.2, § 1183.1\(a\)\(1-5\)](#)

Auditor-Controller

Print or Type Title

Arlene Barrera
Arlene Barrera (Oct 3, 2022 16:18 PDT)

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

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:
Worksheets submitted separately herewith

Activity: Worksheets submitted separately herewith

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: _____

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: _____

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: _____

INSTRUCTIONS

- **Statute of limitations for filing test claims and test claim amendments.** Local governments may file test claims with the Commission, which shall be filed not later than 12 months (365 days) following the effective date of a statute or executive order, or within 12 months (365 days) of *first* incurring increased costs as a result of a statute or executive order, whichever is later. ([Gov. Code §§ 17551\(c\)](#); [Cal. Code Regs., tit. 2, § 1183.1\(c\)](#), emphasis added.) If the test claim is filed based on the date of first incurring increased costs, evidence of the date of first incurring costs, which would be admissible over an objection in a civil proceeding, must be filed with the test claim or test claim amendment. ([Cal. Code Regs., tit. 2, §§ 1183.1\(c\), 1187.5.](#)) Test claim amendments that add a statute or executive order to an existing test claim shall also be filed within this statute of limitations. ([Cal. Code Regs., tit. 2, §§ 1183.1\(c\).](#))

The statute of limitations for filing a test claim may be tolled when local government and the Department of Finance initiate a joint request for a legislatively determined mandate pursuant to Government Code sections 17573 and 17574. ([See Gov. Code, §§ 17573\(b\), 17574\(c\).](#)) A test claim filed on the same statute or executive order as a legislatively determined mandate pursuant to Government Code section [17574\(c\)](#) shall be filed within six months of the date an event described Government Code section [17574\(c\)\(1\)](#) occurs.

Failure to timely file a test claim will result in the dismissal of the test claim for lack of jurisdiction. ([Gov. Code, § 17551\(c\)](#); [Cal. Code Regs., tit. 2, § 1183.1\(f\),\(g\).](#))

- Complete sections 1 through 8 of the Test Claim Form, including the Worksheet for Sections 4-7, as indicated and note that the first page of the test claim form is the first page of the filing. Do not attach a cover letter, but include all background and arguments in Section 5. Written Narrative. Type all responses. *Failure to complete any of these sections will result in this test claim being returned as incomplete. Pursuant to [Government Code section 17553](#) and [California Code of Regulations, title 2, section 1183.1](#), the Commission will not exercise jurisdiction over statutes and executive orders which are not properly pled. Proper pleading requires that all code sections (including the relevant statute, chapter and bill number), regulations (including the register number and effective date), and executive orders (including the effective date) that impose the alleged mandate are listed in section 4 of the test claim form. Please carefully review your pleading before filing. Test claims may not be amended after the draft proposed decision is issued and the matter is set for hearing, or if the statute of limitations on the statute or executive order being added has expired. ([Gov. Code, § 17557\(e\)](#); [Cal. Code Regs., tit. 2, §§ 1183.1\(c\), 1183.6.](#))*
- Please file the entire test claim, including the Worksheet for Sections 4-7, consistent with the Commission’s regulations ([Cal. Code Regs., tit.2, § 1181.3](#)) by either of the following methods:

E-filing. All new test claim filings and supporting written materials shall be filed via the Commission’s e-filing system, available on the Commission’s website (<http://www.csm.ca.gov>). Documents e-filed with the Commission shall be in a legible and searchable format using a “true PDF” (i.e., documents digitally created in PDF, converted to PDF or printed to PDF) or optical character recognition (OCR) function, as necessary. Test claims shall be filed on this form prescribed by the Commission and shall be digitally signed by the claimant, using the digital signature technology and authentication process contained herein. The completed test claim form shall be e-filed separately from any accompanying documents. Accompanying documents shall be e-filed together in a single file in accordance with section 1181.3(c)(1). The filer is responsible for maintaining the signed original new filing or written

material for the duration of the test claim process, including any period of appeal (this may be an electronic document, depending on how the filer creates and maintains its records). ***No additional copies are required when e-filing the request.***

Hard Copy Filing Cases of Undue Hardship or Significant Prejudice. If e-filing legible and searchable PDF documents, as described in section 1181.3(c)(1) of the Commission’s regulations, would cause the filer undue hardship or significant prejudice, the filer may submit a written request to the executive director to file in hard copy and may file the request by first class mail, overnight delivery, or personal service. Only upon prior approval by the executive director of a written request for a significant hardship or prejudice exception to the e-filing requirement, may a filing be made via hard copy.

Within 10 days of the filing of a test claim, or its amendment, Commission staff will notify the claimant or claimant representative whether the submission is complete or incomplete. Test claims will be considered incomplete if any of the required sections are not included or are illegible. If a completed test claim is not received within thirty 30 calendar days from the date the incomplete test claim was returned, the executive director may disallow the original test claim filing date. A new test claim may then be accepted on the same statute or executive order alleged to impose a mandate. ([Cal. Code Regs., tit.2, § 1183.1.](#))

You may download this form from our website at www.csm.ca.gov. If you have questions, please contact us: Email: csminfo@csm.ca.gov; Telephone: (916) 323-3562; or Website: www.csm.ca.gov












CSM Test Claim Form


Final Audit Report


2022-10-03


| | |
|-----------------|--|
| Created: | 2022-09-28 |
| By: | CSM Sign (csmsign@csm.ca.gov) |
| Status: | Signed |
| Transaction ID: | CBJCHBCAABAavje_nP1zmnokbDca6JLc6W4Uma7grLfy |


"CSM Test Claim Form" History


-  Document created by CSM Sign (csmsign@csm.ca.gov)
2022-09-28 - 4:23:56 PM GMT
-  Document emailed to hgest@burhenngest.com for filling
2022-09-28 - 4:25:07 PM GMT
-  Email viewed by hgest@burhenngest.com
2022-09-28 - 5:58:42 PM GMT
-  Signer hgest@burhenngest.com entered name at signing as Howard Gest
2022-09-28 - 6:36:05 PM GMT
-  Form filled by Howard Gest (hgest@burhenngest.com)
Form filling Date: 2022-09-28 - 6:36:06 PM GMT - Time Source: server
-  Document emailed to flemus@auditor.lacounty.gov for filling
2022-09-28 - 6:36:09 PM GMT
-  Email viewed by flemus@auditor.lacounty.gov
2022-09-28 - 9:29:34 PM GMT
-  Signer flemus@auditor.lacounty.gov entered name at signing as Fernando Lemus
2022-09-28 - 9:38:47 PM GMT
-  Form filled by Fernando Lemus (flemus@auditor.lacounty.gov)
Form filling Date: 2022-09-28 - 9:38:49 PM GMT - Time Source: server
-  Document emailed to ewu@auditor.lacounty.gov for filling
2022-09-28 - 9:38:51 PM GMT
-  Email viewed by ewu@auditor.lacounty.gov
2022-09-29 - 0:29:24 AM GMT


 Signer ewu@auditor.lacounty.gov entered name at signing as Elaine Wu
2022-10-03 - 10:04:43 PM GMT

 Form filled by Elaine Wu (ewu@auditor.lacounty.gov)
Form filling Date: 2022-10-03 - 10:04:44 PM GMT - Time Source: server

 Document emailed to Arlene Barrera (abarrera@auditor.lacounty.gov) for signature
2022-10-03 - 10:04:47 PM GMT

 Email viewed by Arlene Barrera (abarrera@auditor.lacounty.gov)
2022-10-03 - 11:16:44 PM GMT

 Document e-signed by Arlene Barrera (abarrera@auditor.lacounty.gov)
Signature Date: 2022-10-03 - 11:18:07 PM GMT - Time Source: server

 Agreement completed.
2022-10-03 - 11:18:07 PM GMT



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|-------------------------|---|
| <i>For CSM Use Only</i> | |
| Filing Date: | RECEIVED July 22, 2022 <i>Commission on State Mandates</i> |
| TC #: | 22-TC-01 |

TEST CLAIM FORM AND TEST CLAIM AMENDMENT FORM (Pursuant to Government Code section 17500 et seq. and Title 2, California Code of Regulations, section 1181.1 et seq.)

Section 1

Proposed Test Claim Title:

California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2021-0105

Section 2

Local Government (Local Agency/School District) Name:

Los Angeles County Flood Control District

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

Arlene Barrera, Auditor-Controller

Street Address, City, State, and Zip:

500 West Temple Street, Room 525, Los Angeles, CA 90012

Telephone Number

(213) 974-8302

Email Address

abarrera@auditor.lacounty.gov

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Howard Gest

Organization: Burhenn & Gest LLP

Street Address, City, State, Zip:

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Section 4 – 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 check for amendments to the section or regulations adopted to implement it (refer to completed WORKSHEET on page 5):

Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105 (effective September 11, 2021): (1) Parts IV.A.2 and B and Attachments J through S (except Attachments K, L and N); (2) Part VII and Attachment E; (3) Parts III.A.1, A.3.a, A3.b, A.5.a, A.5.b, A.5.c, A.6, VIII.I.5; I.6, I.8; (4) Parts VIII.D.1, D.3, D.4; (5) Parts VIII.H.2 and H.5.b.

- Test Claim is Timely Filed on [Insert Filing Date] [select either A or B]: 7 / 22 / 22
 - A: Which is not later than 12 months (365 days) following [insert effective date] 9 / 11 / 2021, the effective date of the statute(s) or executive order(s) pled; or
 - B: Which is within 12 months (365 days) 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 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 completed WORKSHEET on page 5):**
- 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;
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Pages 61 to 880.

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- 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 1570 to 1971.
- 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 42 to 1460, 1972-75.

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- 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.

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Arlene Barrera

Name of Authorized Local Government Official
 pursuant to [Cal. Code Regs., tit.2, § 1183.1\(a\)\(1-5\)](#)

Arlene Barrera
Arlene Barrera (Oct 6, 2022 09:59 PDT)

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

Auditor-Controller

Print or Type Title

10/6/2022

Date

Test Claim Form Sections 4-7 WORKSHEET

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Worksheets submitted separately herewith

Activity: Worksheets submitted separately herewith

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: _____

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

Activity: _____

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

Evidence (if required): _____

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Fee authority to offset costs: _____

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

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

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INSTRUCTIONS

- **Statute of limitations for filing test claims and test claim amendments.** Local governments may file test claims with the Commission, which shall be filed not later than 12 months (365 days) following the effective date of a statute or executive order, or within 12 months (365 days) of *first* incurring increased costs as a result of a statute or executive order, whichever is later. ([Gov. Code §§ 17551\(c\)](#); [Cal. Code Regs., tit. 2, § 1183.1\(c\)](#), emphasis added.) If the test claim is filed based on the date of first incurring increased costs, evidence of the date of first incurring costs, which would be admissible over an objection in a civil proceeding, must be filed with the test claim or test claim amendment. ([Cal. Code Regs., tit. 2, §§ 1183.1\(c\), 1187.5.](#)) Test claim amendments that add a statute or executive order to an existing test claim shall also be filed within this statute of limitations. ([Cal. Code Regs., tit. 2, §§ 1183.1\(c\).](#))

The statute of limitations for filing a test claim may be tolled when local government and the Department of Finance initiate a joint request for a legislatively determined mandate pursuant to Government Code sections 17573 and 17574. ([See Gov. Code, §§ 17573\(b\), 17574\(c\).](#)) A test claim filed on the same statute or executive order as a legislatively determined mandate pursuant to Government Code section [17574\(c\)](#) shall be filed within six months of the date an event described Government Code section [17574\(c\)\(1\)](#) occurs.

Failure to timely file a test claim will result in the dismissal of the test claim for lack of jurisdiction. ([Gov. Code, § 17551\(c\)](#); [Cal. Code Regs., tit. 2, § 1183.1\(f\),\(g\).](#))

- Complete sections 1 through 8 of the Test Claim Form, including the Worksheet for Sections 4-7, as indicated and note that the first page of the test claim form is the first page of the filing. Do not attach a cover letter, but include all background and arguments in Section 5. Written Narrative. Type all responses. *Failure to complete any of these sections will result in this test claim being returned as incomplete. Pursuant to [Government Code section 17553](#) and [California Code of Regulations, title 2, section 1183.1](#), the Commission will not exercise jurisdiction over statutes and executive orders which are not properly pled. Proper pleading requires that all code sections (including the relevant statute, chapter and bill number), regulations (including the register number and effective date), and executive orders (including the effective date) that impose the alleged mandate are listed in section 4 of the test claim form. Please carefully review your pleading before filing. Test claims may not be amended after the draft proposed decision is issued and the matter is set for hearing, or if the statute of limitations on the statute or executive order being added has expired. ([Gov. Code, § 17557\(e\)](#); [Cal. Code Regs., tit. 2, §§ 1183.1\(c\), 1183.6.](#))*
- Please file the entire test claim, including the Worksheet for Sections 4-7, consistent with the Commission’s regulations ([Cal. Code Regs., tit.2, § 1181.3](#)) by either of the following methods:

E-filing. All new test claim filings and supporting written materials shall be filed via the Commission’s e-filing system, available on the Commission’s website (<http://www.csm.ca.gov>). Documents e-filed with the Commission shall be in a legible and searchable format using a “true PDF” (i.e., documents digitally created in PDF, converted to PDF or printed to PDF) or optical character recognition (OCR) function, as necessary. Test claims shall be filed on this form prescribed by the Commission and shall be digitally signed by the claimant, using the digital signature technology and authentication process contained herein. The completed test claim form shall be e-filed separately from any accompanying documents. Accompanying documents shall be e-filed together in a single file in accordance with section 1181.3(c)(1). The filer is responsible for maintaining the signed original new filing or written

material for the duration of the test claim process, including any period of appeal (this may be an electronic document, depending on how the filer creates and maintains its records). ***No additional copies are required when e-filing the request.***

Hard Copy Filing Cases of Undue Hardship or Significant Prejudice. If e-filing legible and searchable PDF documents, as described in section 1181.3(c)(1) of the Commission's regulations, would cause the filer undue hardship or significant prejudice, the filer may submit a written request to the executive director to file in hard copy and may file the request by first class mail, overnight delivery, or personal service. Only upon prior approval by the executive director of a written request for a significant hardship or prejudice exception to the e-filing requirement, may a filing be made via hard copy.

Within 10 days of the filing of a test claim, or its amendment, Commission staff will notify the claimant or claimant representative whether the submission is complete or incomplete. Test claims will be considered incomplete if any of the required sections are not included or are illegible. If a completed test claim is not received within thirty 30 calendar days from the date the incomplete test claim was returned, the executive director may disallow the original test claim filing date. A new test claim may then be accepted on the same statute or executive order alleged to impose a mandate. ([Cal. Code Regs., tit.2, § 1183.1.](#))

You may download this form from our website at www.csm.ca.gov. If you have questions, please contact us: Email: csminfo@csm.ca.gov; Telephone: (916) 323-3562; or Website: www.csm.ca.gov












CSM Test Claim Form


Final Audit Report


2022-10-06


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| Created: | 2022-10-04 |
| By: | CSM Sign (csmsign@csm.ca.gov) |
| Status: | Signed |
| Transaction ID: | CBJCHBCAABAAm1xJCOTKm_P8SDp_redJGiLpXFVGaw0 |


"CSM Test Claim Form" History


-  Document created by CSM Sign (csmsign@csm.ca.gov)
2022-10-04 - 11:27:57 PM GMT
-  Document emailed to hgest@burhenngest.com for filling
2022-10-04 - 11:28:53 PM GMT
-  Email viewed by hgest@burhenngest.com
2022-10-04 - 11:29:18 PM GMT
-  Signer hgest@burhenngest.com entered name at signing as Howard Gest
2022-10-04 - 11:51:12 PM GMT
-  Form filled by Howard Gest (hgest@burhenngest.com)
Form filling Date: 2022-10-04 - 11:51:14 PM GMT - Time Source: server
-  Document emailed to flemus@auditor.lacounty.gov for filling
2022-10-04 - 11:51:17 PM GMT
-  Email viewed by flemus@auditor.lacounty.gov
2022-10-05 - 1:42:36 AM GMT
-  Signer flemus@auditor.lacounty.gov entered name at signing as Fernando Lemus
2022-10-05 - 7:13:47 PM GMT
-  Form filled by Fernando Lemus (flemus@auditor.lacounty.gov)
Form filling Date: 2022-10-05 - 7:13:49 PM GMT - Time Source: server
-  Document emailed to ewu@auditor.lacounty.gov for filling
2022-10-05 - 7:13:52 PM GMT
-  Email viewed by ewu@auditor.lacounty.gov
2022-10-05 - 7:21:53 PM GMT


 Signer ewu@auditor.lacounty.gov entered name at signing as Elaine Wu
2022-10-05 - 10:07:47 PM GMT

 Form filled by Elaine Wu (ewu@auditor.lacounty.gov)
Form filling Date: 2022-10-05 - 10:07:49 PM GMT - Time Source: server

 Document emailed to Arlene Barrera (abarrera@auditor.lacounty.gov) for signature
2022-10-05 - 10:07:51 PM GMT

 Email viewed by Arlene Barrera (abarrera@auditor.lacounty.gov)
2022-10-06 - 4:59:21 PM GMT

 Document e-signed by Arlene Barrera (abarrera@auditor.lacounty.gov)
Signature Date: 2022-10-06 - 4:59:50 PM GMT - Time Source: server

 Agreement completed.
2022-10-06 - 4:59:50 PM GMT

WORKSHEETS

In Support of Joint Test Claim of Los Angeles County and the
Los Angeles County Flood Control District Concerning
Los Angeles RWQCB Order No. R4-2021-0105

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.

Note: "Permit" refers to Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: Permit, Parts IV.A.2 and B, and Attachments J through S (except Attachments K, L and N).

Activity: Compliance with water-quality based effluent limitations

Initial FY: 2021-2022 **Cost:** Approximately \$13,994,000

Following FY: 2022-2023 **Cost:** Approximately \$35,859,000 (projected)

Evidence (if required): See Lombos County Declaration, ¶¶ 9(d) and (e), and Test Claim Attachments filed herewith

Dedicated funding sources: **State:** None **Federal:** None

Local agency's general purpose funds: The County uses local funds to implement the mandate. In addition the County receives funds pursuant to the Safe Clean Water Program (Los Angeles County Measure W). Revenues from the Safe, Clean Water Program are generated from a special parcel tax on private properties in the Los Angeles County Flood Control District.

Other nonlocal agency funds: None

Fee authority to offset costs: None available

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.

Note: "Permit" refers to Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: Permit, Part VII and Attachment E.

Activity: Monitoring associated with compliance with water-quality based effluent limitations

Initial FY: 2021-2022 Cost: Approximately \$3,758,000

Following FY: 2022-2023 Cost: Approximately \$5,010,000 (projected)

Evidence (if required): See Lombos County Declaration, ¶¶ 10(e) and (f), and Test Claim Attachments filed herewith.

Dedicated funding sources: State: None Federal: None

Local agency's general purpose funds: The County uses local funds to implement the mandate. In addition the County receives funds pursuant to the Safe Clean Water Program (Los Angeles County Measure W). Revenues from the Safe, Clean Water Program are generated from a special parcel tax on private properties in the Los Angeles County Flood Control District.

Other nonlocal agency funds: None

Fee authority to offset costs: None available

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.

Note: "Permit" refers to Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: Permit, Parts III A.1; A.3.a; A.3.b; A.5.a; A.5.b, A.5.c; A.6, VIII.I.5; I.6, and I.8

Activity: Regulate "conditionally exempt non-stormwater discharges," including the development of procedures to ensure that non-stormwater dischargers comply with certain conditions and implement designated best management practices (BMPs), and the evaluation of monitoring data to determine if a conditionally exempt non-stormwater discharges are a source of pollutants that are contributing to an exceedance of applicable limitations, including an exceedance of applicable limitations in receiving waters. Address non-stormwater discharges if they are found to be a source of pollutants, have and implement a spill response plan, and publicize and provide a means for public reporting of illicit discharges and other water quality impacts from stormwater and non-stormwater discharges.

Initial FY: 2021-2022 Cost: Approximately \$249,000

Following FY: 2022-2023 Cost: Approximately \$332,000 (projected)

Evidence (if required): See Lombos County Declaration, ¶¶11(k) and (l) and Test Claim Attachments filed herewith.

Dedicated funding sources: State: None Federal: None

Local agency's general purpose funds: The County uses local funds to implement the mandate.

Other nonlocal agency funds: None

Fee authority to offset costs: None available.

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.

Note: "Permit" refers to Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: Permit, Parts VIII.D.1; D.3; and D.4

Activity: Develop and implement a public information and participation program, individually or collaboratively, to facilitate stormwater and non-stormwater pollution prevention; create opportunities for public engagement in stormwater planning and program implementation and conduct educational activities; and develop metrics for measuring the effectiveness of the program.

Initial FY: 2021-2022 Cost: Approximately \$3,795,000.

Following FY: 2022-2023 Cost: Approximately \$5,060,000 (projected).

Evidence (if required): See Lombos County Declaration ¶¶ 12(d) and (e) and Test Claim Attachments filed herewith.

Dedicated funding sources: State: None Federal: None

Local agency's general purpose funds: The County uses local funds to implement the mandate.

Other nonlocal agency funds: None

Fee authority to offset costs: None available.

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.

Note: "Permit" refers to Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: Permit, Parts VIII.F.3.c.i; F.3.c.ii; and F.3.c.iii.

Activity: Develop and implement a program to track, inspect and enforce implementation of post-construction Best Management Practices.

Initial FY: 2021-2022 Cost: Approximately \$1,016,000.

Following FY: 2022-2023 Cost: Approximately \$1,355,000 (projected).

Evidence (if required): See Lombos County Declaration, ¶¶ 13(d) and (e) and Test Claim Attachments filed herewith.

Dedicated funding sources: State: None Federal: None

Local agency's general purpose funds: The County uses local funds to implement this mandate.

Other nonlocal agency funds: None

Fee authority to offset costs: None available.

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.

Note: "Permit" refers to Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: Permit, Parts VIII.G.4.a; G.5.a, G.5.b.i; and G.5.b.ii.

Activity: Develop, implement and enforce a program to assure the implementation of Best Management Practices at construction sites including maintenance of a database of sites, coverage under the state-issued General Construction Activities Stormwater Permit if required, enforcement of certain erosion and sediment standards and Best Management Practices, and requirements for approval of construction plans and permits.

Initial FY: 2021-2022 Cost: Approximately \$81,000

Following FY: 2022-2023 Cost: Approximately \$109,000 (projected)

Evidence (if required): See Lombos County Declaration, ¶¶ 14(e) and (f) and Test Claim Attachments filed herewith.

Dedicated funding sources: State: None Federal: None

Local agency's general purpose funds: The County uses local funds to implement the mandate.

Other nonlocal agency funds: None

Fee authority to offset costs: None available

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.

Note: "Permit" refers to Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: Permit, Parts VIII.H.2 and H. 5.b

Activity: Maintain an inventory of public facilities that are potential pollutant sources to the municipal separate storm sewer system and implement an Integrated Pesticide Management Program

Initial FY: 2021-2022 Cost: Approximately \$716,000

Following FY: 2022-2023 Cost: Approximately \$955,000 (projected).

Evidence (if required): See Lombos County Declaration ¶¶ 15(c) and(d) and Test Claim Attachments filed herewith.

Dedicated funding sources: State: None Federal: None

Local agency's general purpose funds: The County uses local funds to implement the mandate.

Other nonlocal agency funds: None

Fee authority to offset costs: None available

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.

Note: "Permit" refers to Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: Permit, Parts IV.A.2 and B, and Attachments J through S (except Attachments K, L and N).

Activity: Compliance with water-quality based effluent limitations

Initial FY: 2021-2022 Cost: Approximately \$481,000

Following FY: 2022-2023 Cost: Approximately \$642,000 (projected)

Evidence (if required): See Lombos District Declaration, ¶¶ 9(d) and (e), and Test Claim Attachments filed herewith

Dedicated funding sources: State: None Federal: None

Local agency's general purpose funds: The Flood Control District uses local funds to implement the mandate. In addition the Flood Control District receives funds pursuant to the Safe Clean Water Program (Los Angeles County Measure W). Revenues from the Safe, Clean Water Program are generated from a special parcel tax on private properties in the Los Angeles County Flood Control District.

Other nonlocal agency funds: None

Fee authority to offset costs: None available

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.

Note: "Permit" refers to Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: Permit, Part VII and Attachment E.

Activity: Monitoring associated with compliance with water-quality based effluent limitations

Initial FY: 2021-2022 Cost: Approximately \$2,662,000

Following FY: 2022-2023 Cost: Approximately \$3,549,000 (projected)

Evidence (if required): See Lombos District Declaration, ¶¶ 10(e) and (f), and Test Claim Attachments filed herewith.

Dedicated funding sources: State: None Federal: None

Local agency's general purpose funds: The Flood Control District uses local funds to implement the mandate. In addition the Flood Control District receives funds pursuant to the Safe Clean Water Program (Los Angeles County Measure W). Revenues from the Safe, Clean Water Program are generated from a special parcel tax on private properties in the Los Angeles County Flood Control District.

Other nonlocal agency funds: None

Fee authority to offset costs: None available

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.

Note: "Permit" refers to Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: Permit, Parts III A.1; A.3.a; A.3.b; A.5.a; A.5.b; A.5.c; A.6, VIII.I.5, I.6 and I.8

Activity: Regulate "conditionally exempt non-stormwater discharges," including the development of procedures to ensure that non-stormwater dischargers comply with certain conditions and implement designated best management practices (BMPs), and the evaluation of monitoring data to determine if a conditionally exempt non-stormwater discharges are a source of pollutants that are contributing to an exceedance of applicable limitations, including an exceedance of applicable limitations in receiving waters. Address non-stormwater discharges if they are found to be a source of pollutants, have and implement a spill response plan, and publicize and provide a means for public reporting of illicit discharges and other water quality impacts from stormwater and non-stormwater discharges.

Initial FY: 2021-2022 Cost: Approximately \$515,000

Following FY: 2022-2023 Cost: Approximately \$687,000 (projected)

Evidence (if required): See Lombos District Declaration ¶¶ 11(k) and (l) and Test Claim Attachments filed herewith

Dedicated funding sources: State: None Federal: None

Local agency's general purpose funds: The Flood Control District uses local funds to implement the mandate.

Other nonlocal agency funds: None

Fee authority to offset costs: None available.

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.

Note: "Permit" refers to Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: Permit, Parts VIII.D.1; D.3; and D.4

Activity: Develop and implement a public information and participation program, individually or collaboratively, to facilitate stormwater and non-stormwater pollution prevention; create opportunities for public engagement in stormwater planning and program implementation and conduct educational activities; and develop metrics for measuring the effectiveness of the program.

Initial FY: 2021-2022 Cost: Approximately \$1,632,000.

Following FY: 2022-2023 Cost: Approximately \$2,177,000 (projected).

Evidence (if required): See Lombos District Declaration ¶¶ 12(d) and (e) and Test Claim Attachments filed herewith.

Dedicated funding sources: State: None Federal: None

Local agency's general purpose funds: The Flood Control District uses local funds to implement the mandate.

Other nonlocal agency funds: None

Fee authority to offset costs: None available.

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.

Note: “Permit” refers to Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: Permit, Parts VIII.H.2 and H. 5.b

Activity: Maintain an inventory of public facilities that are potential pollutant sources to the municipal separate storm sewer system and implement an Integrated Pesticide Management Program

Initial FY: 2021-2022 Cost: Approximately \$516,000

Following FY: 2022-2023 Cost: Approximately \$687,000 (projected).

Evidence (if required): See Lombos District Declaration ¶¶ 13(c) and(d) and Test Claim Attachments filed herewith.

Dedicated funding sources: State: None Federal: None

Local agency’s general purpose funds: The Flood Control District uses local funds to implement the mandate.

Other nonlocal agency funds: None

Fee authority to offset costs: None available

SECTION FIVE

NARRATIVE STATEMENT

**In Support of Joint Test Claim of Los Angeles County and the
Los Angeles County Flood Control District Concerning
Los Angeles RWQCB Order No. R4-2021-0105**

**NARRATIVE STATEMENT IN SUPPORT OF JOINT TEST CLAIM OF THE COUNTY
OF LOS ANGELES AND THE LOS ANGELES COUNTY FLOOD CONTROL
DISTRICT**

I. INTRODUCTION

The County of Los Angeles (“County”) and the Los Angeles County Flood Control District (“District”) (collectively, the “Claimants”) bring this Joint Test Claim with respect to various requirements in a stormwater permit issued by the California Regional Water Quality Control Board, Los Angeles Region (“Regional Board”). Such requirements are unfunded State mandates for which a subvention of funds is required.

A. Adoption of Executive Order

On July 23, 2021, the Regional Board adopted a new stormwater permit, Order No. R4-2021-0105 (“Permit” or “2021 Permit”), regulating discharges from the municipal separate storm sewer system (“MS4”) operated by a number of municipal entities in portions of Los Angeles and Ventura Counties.¹

The County and the District are dedicated to fully implementing the Permit requirements. The Regional Board, however, went well beyond what is required by federal law and its prescriptive terms preclude the County and District from designing their own programs. Therefore, as contemplated by article XIII B, section 6, of the California Constitution, Claimants hereby request reimbursement for the numerous new provisions of the Permit that exceed the requirements of federal law, which either were not included in the previous MS4 permit issued by the Regional Board on November 8, 2012, Order No. R4-2012-0175 (“2012 Permit”), and thus constitute a new program or higher level of service, or already have been considered to be State mandates by the Commission on State Mandates (“Commission”).²

This Section 5 of the Test Claim, which is filed on behalf of the County and the District, identifies the activities that are unfunded mandates and sets forth the basis for reimbursement for such activities. The County and the District seek a subvention of funds for the following mandates:

1. Requirements to comply with Water Quality-Based Effluent Limitations (“WQBELs”) set forth in 2021 Permit Part IV.A.2 and Attachments J through S (except Attachments K, L and N);
2. Requirements to comply with monitoring requirements for WQBELs set forth in 2021 Permit Part VII and Attachment E.

¹ A copy of the Permit and all attachments are included as Exhibit A in Section 7, filed herewith.

² A copy of the 2012 Permit is included as Exhibit B in Section 7.

Section 5: Narrative Statement In Support of Joint Test Claim of Los Angeles County and the Los Angeles County Flood Control District Concerning Los Angeles RWQCB Order No. R4-2021-0105

3. Requirements relating to the prohibition of non-stormwater discharges through the permittees' MS4s and an Illicit Discharge Detection and Elimination Program, set forth in 2021 Permit Parts III and VIII.I.5, 6, and 8;

4. Requirements relating to public information and participation programs set forth in 2021 Permit Parts VIII.D.1, 3 and 4;

5. Requirements relating to tracking, inspecting, and enforcing post-construction Best Management Practices ("BMPs") as set forth in 2021 Permit Parts VIII.F.3.c.i, ii, and iii;

6. Requirements relating to construction sites set forth in 2021 Permit Parts VIII.G.4.a, 5.a, 5.b.i and ii; and

7. Public Agency requirements, including maintaining an updated database of permittee-owned or operated facilities and an Integrated Pesticide Management Program as set forth in 2021 Permit Parts VIII.H.2 and H.5.

Claimants are committed to achieving clean water and working together with the Regional Board and other stakeholders to achieve the goals set forth in the Permit. Claimants submit this Test Claim solely for the purpose of obtaining the funds necessary to reach those goals.

B. Statement of Interest of Claimants

Claimants file this test claim jointly and, pursuant to 2 Cal. Code Reg. § 1183.1(b), attest to the following:

1. The County and District allege State-mandated costs resulting from the same Executive Order, *i.e.*, the Permit;

2. The County and District agree on all issues of the Joint Test Claim; and

3. The County and District have designated one person to act as the sole representative for all Claimants. That person is Howard Gest of Burhenn & Gest LLP.³

C. Statement of Actual and/or Estimated Costs Exceeding \$1,000

The Claimants further state that, as set forth below and in the attached Section 6 Declarations in support, the actual and/or estimated costs from the State mandates set forth in this Joint Test Claim exceed \$1,000 for each of them. This Narrative Statement sets forth specific and estimated amounts expended by the County and District as determined from the review of pertinent records and as disclosed in the Section 6 Declarations filed herewith. Such amounts reflect, in some cases, costs associated with the development of programs and not their later implementation by the County and District. Claimants respectfully reserve the right to modify such amounts when or if additional information is received and to adduce additional evidence of costs if required in the course of the Joint Test Claim.

³ See Section 6 Declarations of Claimants, filed herewith.

D. The Joint Test Claim is Timely Filed

A test claim must be filed with the Commission “not later than 12 months (365 days) following the effective date of a statute or executive order, or within 12 months (365 days) of first incurring increased costs as a result of a statute or executive order, whichever is later.” 2 Cal. Code. Reg § 1183.1(c).

Here, the Permit became effective on September 11, 2021. Permit, p. 7. Claimants first incurred costs to implement the Permit in or around September 2021, upon the 2021 Permit becoming effective, or shortly thereafter. See Lombos Declarations, ¶ 8. This Test Claim is filed within 12 months thereafter and is, therefore, timely.

II. THE STATUTORY AND REGULATORY FRAMEWORK

The Permit was issued as both a “waste discharge requirement” under the Porter-Cologne Water Quality Control Act, Water Code § 13000 *et seq.*, and as a National Pollutant Discharge Elimination System (“NPDES”) permit under the federal Clean Water Act (“CWA”), 33 U.S.C. § 1342. *See* 2021 Permit Part II.A. In 1969, three years before Congress enacted the CWA, the California Legislature enacted the Porter-Cologne Act, which established the State Board and nine regional control boards as the agencies responsible for the coordination and control of water quality in California. Water Code § 13001.⁴ Under Porter-Cologne, any person who discharges or proposes to discharge “waste” that could affect the quality of the “waters of the state” is required to obtain a waste discharge requirement permit. Water Code §§ 13260 and 13263.

In 1972, Congress adopted what later became known as the CWA. In so doing, Congress expressly preserved the right of any State to adopt or enforce standards or limitations respecting discharges of pollutants or the control or abatement of pollutants, so long as such provisions were not “less stringent” than federal law. 33 U.S.C. § 1370. *See also* 40 C.F.R. § 123.1(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.”).

Under the CWA, the discharge of a pollutant to a navigable water of the United States is prohibited unless the discharge is in accordance with one of the statutory provisions of the Act. 33 U.S.C. § 1311(a).⁵ One of those provisions is the NPDES permit program. 33 U.S.C. § 1342. The CWA provides that States may administer their own NPDES permit programs in lieu of the federal program. 33 U.S.C. § 1342(b); 40 C.F.R. § 123.22. A State’s decision to do so is entirely voluntary, and if the State chooses not to administer this program, NPDES permits for that State are issued by the United States Environmental Protection Agency. *See* 33 U.S.C. § 1342(a).

To effectuate California’s issuance of NPDES permits, the Legislature in 1972 added Chapter 5.5 to the Porter-Cologne Act, Water Code §§ 13370-13389. *Building Industry Ass’n of San Diego County v. State Water Resources Control Board* (2004) 124 Cal.App.4th 866, 875.⁶ In

⁴ Copies of relevant California statutes are contained in Section 7, Exhibit D.

⁵ Copies of federal statutes and regulations are contained in Section 7, Exhibit C.

⁶ Copies of cited federal and State cases are contained in Section 7, Exhibit E.

Section 5: Narrative Statement In Support of Joint Test Claim of Los Angeles County and the Los Angeles County Flood Control District Concerning Los Angeles RWQCB Order No. R4-2021-0105

so doing, the Legislature ensured that California law would mirror the CWA's savings clause by authorizing the State Board and regional boards to not only issue permits that complied with the CWA's requirements, but also to include in them "any more stringent effluent standards or limitations necessary to implement water quality control plans, or the protection of beneficial uses, or to prevent nuisance." Water Code § 13377.

In California, NPDES permits are issued by the State Board and the nine regional boards. Water Code § 13377. Such permits can include both federal requirements and any other State provisions that are more stringent than the federal requirements. *Id.* As the California Supreme Court held in *City of Burbank v. State Water Resources Control Board* (2005) 35 Cal. 4th 613, 627-28, the latter requirements are State-imposed and subject to the requirements of State law.

The CWA was amended in 1987 to regulate discharges of stormwater from both industrial and municipal sources. 33 U.S.C. § 1342(p). Permits for discharges from municipal separate storm sewer systems:

- (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.

33 U.S.C. § 1342(p)(3)(B).

The CWA requirements imposed on municipal stormwater dischargers are less stringent than those imposed on industrial dischargers. Industrial dischargers, including industrial stormwater dischargers, must assure that their discharges meet "water quality standards." 33 U.S.C. §§ 1342(a), 1311(b)(1)(C) and 1342(p)(3)(A). The CWA does not impose this requirement on municipal stormwater dischargers. 33 U.S.C. § 1342(p)(3)(B); *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, 1164-65. In *Defenders*, the Ninth Circuit specifically held that MS4 permits were not required to include requirements to meet water quality standards. The court found that EPA or a State may have the *discretion* to include such requirements in a MS4 permit, but such inclusion was solely discretionary. It is not required by the CWA. *Id.* at 1166.

Under the CWA, a State administers "*its own permit program* for discharges into navigable waters," which program is established and administered "*under State law.*" 33 U.S.C. § 1342(b) (emphasis added.) *See also* 40 C.F.R. §123.22 ("Any State that seeks to administer a program . . . shall submit a description of the program it proposes to administer in lieu of the Federal program *under State law.* . . .") (emphasis added).

When administering an NPDES program, the State is not acting as an arm of the United States Environmental Protection Agency ("EPA"), but is acting *in lieu* of the federal program. 40 C.F.R. § 123.22; *State of California v. United States Department of the Navy* (9th Cir. 1988) 845

F.2d 222, 225 (CWA legislative history “clearly states that the state permit programs are ‘not a delegation of Federal Authority’ but instead are state programs which ‘function . . . in lieu of the Federal program.’”); *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, 522 (“It is true, as these parties observe, that the Clean Water Act does not directly delegate a state agency the authority to administer the federal clean water program; instead, it allows the EPA director to ‘suspend’ operation of the federal permit program in individual states in favor of EPA-approved permit systems that operate under those state’s own laws in lieu of the federal framework.”).

The Permit is a “Phase I” permit issued to MS4s serving large urban populations. In 1990, EPA issued regulations to implement Phase I of the MS4 permit program. 55 Fed. Reg. 47990 (November 16, 1990). The requirements of those regulations, as they apply to the provisions of the Permit relevant to this Test Claim, are discussed in further depth below.

This Commission previously has found, in a test claim brought regarding the 2001 Los Angeles MS4 permit (“2001 Permit”) and in a test claim brought regarding a 2007 San Diego MS4 permit, that those permits contained requirements that exceeded federal law and constituted unfunded State mandates. *In re Test Claim on: Los Angeles Regional Quality Control Board Order No. 01-192*, Case Nos.: 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21 (“Los Angeles County Test Claim”); *In re Test Claim on: San Diego Regional Water Quality Control Board Order No. R9-2007-0001*, Case No. 07-TC-09 (“San Diego County Test Claim”). The Supreme Court affirmed the Commission’s findings with respect to the Los Angeles County Test Claim in *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal. 5th 749 (“*Dept. of Finance*”), a case which is discussed in detail in Section III.B below. Review of the Commission’s decision in the San Diego County Test Claim is currently pending in the California Court of Appeal.

III. STATE MANDATE LAW

A. Introduction

Article XIII B, section 6, of the California Constitution requires that the Legislature provide a subvention of funds to reimburse local agencies any time that the Legislature or a State agency “mandates a new program or higher level of service on any local government.” 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. The Legislature implemented section 6 by enacting a comprehensive administrative scheme to establish and pay mandate claims. Govt. Code § 17500 *et seq.*; *Kinlaw v. State of California* (1991) 54 Cal. 3d 326, 331, 333 (statute establishes “procedure by which to implement and enforce section 6”).

“Costs mandated by the state” include “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.” Govt. Code § 17514.

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Govt. Code § 17516 defines “executive order” to mean “any order, plan, requirement, rule or regulation issued by the Governor, any officer or official serving at the pleasure of the Governor, or any agency, department, board, or commission of state government.”

Govt. Code § 17556 identifies seven exceptions to the reimbursement requirement 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 program specified in the statute, and that statute imposes costs upon that local agency or school district 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, reasonably within the scope of, 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.

B. The Supreme Court’s Holdings in *Dept. of Finance Control this Case*

In *Dept. of Finance*, the Supreme Court addressed a challenge to the Commission’s finding that the inspection and trash receptacle provisions of the 2001 Permit constituted State, as opposed to federal, mandates. Three holdings from that case are pertinent here:

1. The first sets forth the test to determine if a mandate is federal versus State: “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

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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.” 1 Cal. 5th at 765.

2. The second pertinent holding addresses the lack of deference to Regional Board findings: In determining whether a mandate is State or federal, the Commission does not defer to the Regional Board. Instead, the Commission makes its own, independent finding. *Id.* at 768-769.

3. The third pertinent holding places on the State the burden of proving that one of Government Code section 17756 exceptions applies, including that a mandate is federal as opposed to State or that 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. *Id.* at 769.

The manner in which the Supreme Court reached its conclusion that the 2001 Permit mandates were State mandates is also pertinent here. The Supreme Court analyzed (a) federal and State statutory and regulatory authority, (b) evidence from the permit development process, and (c) evidence of other permits issued by the federal and State governments. *Id.* at 770-772. In affirming the Commission’s decision, the Court explicitly rejected the State’s argument that the inspection and trash requirements merely implemented the maximum extent practicable (“MEP”) standard required of stormwater permittees by 33 U.S.C. § 1342(p)(3)(B)(iii), and that the existence of this MEP provision alone was sufficient to establish that federal law compelled these requirements. 1 Cal. 5th at 759-760, 767-768. Instead, the Court undertook an analysis of whether federal law specifically compelled the inspection and trash receptacle requirements at issue. 1 Cal. 5th at 770-772. As noted above, the Court also rejected the State’s argument that the Commission should defer to Regional Board findings that the permit requirements were federal versus State. 1 Cal. 5th at 768-769.

The Supreme Court’s holdings were based on the public policies underlying article XIII B, section 6, and the reasoning in four principal cases: *City of Sacramento v. State of California* (1990) 50 Cal. 3d 51, *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal. App. 4th 805, *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, and *Division of Occupational Safety & Health v. State Bd. Of Control* (1987) 189 Cal.App.3^d 794. *See Dept. of Finance*, 1 Cal. 5th at 762-769.

These public policies, the holdings in *Dept. of Finance*, and the holdings in the four cases the Supreme Court relied on, all apply here. As set forth below, the mandates at issue in this Test Claim carry out the governmental function of providing services to the public and impose unique requirements on Claimants. The mandates are new or impose a higher level of service or are a continuation of the new program or higher level of service first imposed by the 2012 Permit. Each requirement is the result of a “true choice” by the Regional Board to impose the conditions at issue or to specify the means of compliance. No requirement is imposed by federal law. And nowhere in the Permit is there any case-specific Regional Board finding that the requirements at issue are the *only* way in which the MEP standard could be achieved. Finally, Claimants do not have the authority to levy service charges, fees, or assessments sufficient to pay for these mandates.

IV. THE MANDATES IN THIS TEST CLAIM ARE STATE MANDATES FOR WHICH CLAIMANTS ARE ENTITLED TO A SUBVENTION OF FUNDS

A. Compliance with Water Quality-Based Effluent Limitations

1. Mandate Requirement in the Permit

2021 Permit Part IV.A.2 requires the permittees, including the Claimants, to “comply with applicable water quality-based effluent limitations (WQBELs) as set forth in Attachments K through S of this Order, pursuant to applicable compliance schedules.”

Attachment J to the 2021 Permit is a matrix that summarizes by watershed management area the water quality-based effluent limitations with which the Claimants must comply.

Attachments M and O through S of the 2021 Permit set forth the specific water quality-based effluent limitations with which the Claimants must comply.

2. The Permit’s Obligation to Comply with Water Quality-Based Effluent Limitations is a State Mandate

The Permit’s imposition of the obligation to comply with water quality-based effluent limitations is a State mandate. The Regional Board was not compelled to include this provision in the Permit, but instead included it as a matter of discretion. As such, the obligation is a State mandate within the meaning of article XIII B, section 6. *Dept. of Finance*, 1 Cal. 5th at 765.

The Supreme Court in *Dept. of Finance* set forth the test for determining whether a mandate is a State or federal mandate. The Supreme Court held:

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.

1 Cal. 5th at 765.

Here, there is no question that federal law did not impose a requirement that Claimants comply with water quality-based effluent limitations. This requirement was imposed as a matter of discretion.

The Permit defines water quality-based effluent limitations as “any restriction imposed on quantities, discharge rates, and concentrations of pollutants, which are discharged from point sources to water of the U.S. *necessary to achieve a water quality standard.*” 2021 Permit, Attachment A - Definitions, page A-20 (emphasis added).⁷ Thus, the obligation to comply with

⁷ Water quality standards consist of the designated uses of a navigable water and the water quality criteria required to support such uses. 33 U.S.C. § 1313(c)(2)(A).

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water quality-based effluent limitations is an obligation to comply with restrictions “on quantities, discharge rates and concentrations of pollutants” in order to “achieve a water quality standard.”

It is well established, however, that the federal Clean Water Act does not require municipal stormwater permittees to comply with water quality standards. While Congress imposed this obligation on industrial stormwater dischargers, it specifically exempted municipal stormwater dischargers. *See Defenders of Wildlife v. Browner* 191 F.3d 1159, 1164-1165 (9th Cir 1999) (“*Defenders*”). As the court said in *Defenders*:

Industrial storm-water discharges shall achieve any more stringent limitation, including those necessary to meet 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 or the State determines appropriate for the control of such pollutants. 33 U.S.C. § 1342(p)(3)(B)(iii).

See also Building Industry Assn. of San Diego v. State Water Resources Control Board (2004) (“*BIA*”) 124 Cal.App.4th 866, 886.

This does not mean that the Regional Board cannot require municipal stormwater discharges to meet water quality standards through the requirement to comply with water quality-based effluent limitations. *It means, however, that this requirement is not federally required, but instead is imposed as a matter of the Regional Board’s discretion. See BIA*, 124 Cal. App.4th at 883, 886; *Defenders*, 191 F.3d at 1166-1167.

Thus, under the test articulated in *Dept. of Finance*, the requirement to comply with water quality-based effluent limitations is a State, not federal, mandate. It is not imposed or compelled by federal law, but instead is imposed by the Regional Board as a matter of its discretion. As the Supreme Court held, “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.” *Dept. of Finance*, 1 Cal. 5th at 765.

As the Supreme Court further held, the issue before the Commission is not whether the Regional Board has the authority to impose the obligation to comply with water quality-based effluent limitations. The question is whether that obligation is a State mandate. *Id.*, 1 Cal.5th at 769. Under *Dept. of Finance*, the Permit’s requirement to comply with water quality-based effluent limitations in the Permit, because it was imposed as a matter of discretion, is a State mandate. *Id.* at 765.

3. Even if the Requirement to Comply with Water Quality-Based Effluent Limitations is a Federal Mandate, the Requirement to Comply with Numeric Effluent Limitations is a State Mandate

Even if the obligation to comply with water quality-based effluent limitations could be considered a federal mandate, the federal CWA does not require permittees comply with numeric effluent limitations. As set forth above, 33 U.S.C. § 1342(p)(3)(B)(iii) provides that municipal stormwater permits “shall require controls to reduce the pollutants to the maximum extent practicable . . . and such other provisions as the Administrator or the state determines appropriate for the control of such pollutants.” The court in *Defenders* specially held that this provision did not require the inclusion of numeric effluent limits to meet water quality standards in MS4 permits, but that EPA or a State had the discretion to include them. 191 F.3d at 1165-66. *See also BIA, supra*, 124 Cal.App.4th at 874 (“With respect to municipal stormwater discharges, Congress clarified that the EPA has the authority to fashion NPDES permit requirements to meet water quality standards without specific numeric effluent limits and instead to impose ‘controls to reduce a discharge of pollutants to the maximum extent practicable.’”)

On November 22, 2002, EPA issued a guidance memorandum on “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements based on Those WLAs.” In this memorandum,⁸ EPA noted that because stormwater discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare cases will it be feasible or appropriate to establish numeric limits for municipal stormwater discharges. *Id.* p. 4. EPA concluded that, in light of the language in 33 U.S.C. § 1342(p)(3)(B)(iii), “for NPDES-regulated municipal and small construction discharges effluent limits should be expressed as best management practices (BMPs) or other similar requirements, rather than as numeric effluent limits.” *Id.*

On November 12, 2010, EPA updated its November 22, 2002, memorandum. In its 2010 memorandum, EPA recommended that, “where feasible, the NPDES permitting authority exercise its discretion to include numeric effluent limitations to meet water quality standards.” Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs,” p. 2. In doing so, EPA reiterated that such inclusion would be as a result of the permitting agency, here the Regional Board “*exercis[ing] its discretion.*” *Id.* (emphasis added).

On November 26, 2014, EPA issued a second revision to its November 22, 2002, memorandum, replacing the 2010 memorandum. Again, EPA noted that in including requirements to meet water quality standards, the permitting agency is exercising its discretion. Revisions to the November 22, 2002, Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs,” November 26, 2014, p. 4.

What is noteworthy about these memorandums is not that EPA said that, in some circumstances, the permitting agency can require compliance with numeric effluent limitations.

⁸ See Section 7, Exhibit C.

What is noteworthy is the EPA did not say that in MS4 permits the federal Clean Water Act *requires* numeric effluent limitations. Instead, EPA said that, if they are contained in an MS4 permit, *it would be as a result of the permitting agency exercising its discretion.*

The Regional Board, therefore, was not compelled by the federal CWA to require Claimants to comply with numeric effluent limitations, as the Regional Board did in 2021 Permit Part IV.A.2 and Attachments J and M through S. Instead, the Regional Board did it as a matter of discretion. This requirement is, therefore, a State mandate. *Dept. of Finance*, 1 Cal.5th at 765.

4. The Requirement to Comply with Water Quality-Based Effluent Limitations is a New Program or Higher Level of Service

The requirement to comply with water quality-based effluent limitations is a new program or higher level of service within the meaning of article XIII B, section 6.

First, there is no question these Permit requirements fall within the definition of a program. A “program” within the meaning of article XIII B, section 6, 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 California* 43 Cal.3d 46, 56. The two parts of this definition are alternatives, meeting either will trigger the subvention requirement unless an exception applies. *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 557 (“*Dept. of Finance II*”); *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

Here the Permit’s requirement that Claimants’ municipal storm sewer system comply with water quality-based effluent limitations meets both prongs of the definition. First, the municipal storm sewer system is a governmental function that provides services to the public. As the Court of Appeal for the Second Appellate District found in reviewing the 2001 Los Angeles County Municipal Storm Water Permit *and the same storm sewer system at issue here*, the provision of stormwater drainage and flood control is a governmental function that provides services to the public and are thus a program. The Regional Board’s requirements are then just added to that program. They do not change its nature. *Dept of Finance II*, 59 Cal.App.5th at 558.

In *Dept. of Finance II*, the court further held that the obligation to reduce trash and other pollutants falls within the definition of a program because the reduction of pollutants itself is a governmental function that provides services to the public. 59 Cal.App.5th at 558-559. That holding also applies here. The obligation to comply with water quality-based effluent limitations is also imposed to reduce the pollutants in Claimants’ stormwater discharge. Like in *Dept. of Finance II*, therefore, the obligation to comply with water quality-based effluent limitations is a governmental function that provides service to the public. *Id.*

The Permit’s requirement for Claimants to comply with water quality-based effluent limitations also meets the second prong of the definition of a program by imposing a unique requirement on local governments. The 2021 Permit, by its terms, applies only to the local

governmental entities identified in the permit. 2021 Permit, pp. 1, 11. *See Dept. of Finance II*, 59 Cal.App.5th at 559-560.

Finally, the requirement is also a new program or higher level of service. “Whether a program is ‘new’ or provides a ‘higher level of service’ is determined by comparing the legal requirements before and after the issuance of the executive order or the change in law.” *Dept. of Finance II*, 59 Cal.App.5th at 557. Preliminarily, the obligation to comply with water quality-based effluent limitations is a partial subject of the test claim the Claimants filed with respect to the 2012 Los Angeles County municipal stormwater permit. *See* Narrative Statement in Support of Joint Test Claim of the County of Los Angeles and the Los Angeles County Flood Control District, Section IV.A.1, pages 11-12; 2012 Permit, Part VI.E.1.c. Thus, because this is a continuation of that requirement, through the renewal of that permit, any finding that this obligation is a new program or higher level of service under the 2012 Permit applies equally to the 2021 Permit.

In any event, the imposition of this obligation under the 2021 Permit is a higher level of service. “Higher level of service” refers to “state mandated increases in the services provided by local agencies.” *Dept. of Finance II*, 59 Cal.App.5th at 556. The obligations imposed under the 2012 Permit ceased with the termination of that permit. Thus, under the 2012 Permit, there is no obligation to comply with water quality-based effluent limitations after September 2021, when the 2012 Permit terminated. The 2021 Permit, however, extended that obligation for the life of the 2021 Permit, *i.e.*, it increased the services the Claimants must provide from September 2021 until the end of the 2021 permit, a “state mandated increase in the services provided by the local agencies.” *Id.*

5. Increased Costs of Mandate

In order to comply with this provision permittees, including Claimants, must adopt programs that will reduce the pollutants in stormwater to the limitations set forth in the Permit. A permittee is in compliance with interim WQBELs and receiving water limitations if the permittee is implementing the requirements, including compliance schedules, outlined in Part IV.B and Attachments K through S of the Permit. 2021 Permit Part X.B.1.a. (The permittee can also demonstrate that there are no WQBEL exceedances in its discharges or that the permittee is not responsible for the exceedances. 2021 Permit Part X.B.1.a.ii and 2.a.)

A permittee can also be deemed in compliance with interim WQBELs and receiving water limitations if it is implementing an approved Watershed Management Program, consistent with the actions and schedules contained therein. 2021 Permit Part X.B.1.b.i.

As set forth in the Declarations in Section 6, the County incurred approximately \$13,994,000 in Fiscal Year (FY) 2021-2022 in increased costs with respect to the above requirements. The County is projected to incur approximately \$35,859,000 in increased costs in FY 2022-2023. The District incurred \$481,000 in increased costs in FY 2021-2022. The District is projected to incur approximately \$642,000 in increased costs in FY 2022-2023. *See* County Declaration, ¶ 9(d) and (e); District Declaration ¶ 9(d) and (e).

B. Compliance with Monitoring Requirements for Water Quality-Based Effluent Limitations

1. Mandate Requirement in the Permit

In conjunction with the requirement to comply with water quality-based effluent limitations, the 2021 Permit imposes the obligation to monitor, *i.e.*, sample and analyze the water, to determine compliance with that obligation.

Specifically, 2021 Permit Part VII requires the permittees, including the Claimants, “to comply with the [Monitoring and Reporting Program] and future revisions thereto, in Attachment E of this Order and Standard Provisions relating to monitoring, reporting, and record keeping in Attachment D of this Order.” Permit, p. 40.

2021 Permit Attachment E, Part III.C.2.a, requires this monitoring to “align with the requirements in Attachments K through S of the Order,” which set forth the water quality-based effluent limitations with which the permittees, including the Claimants, must comply. *See* 2021 Permit, Part IV.A.2

To that end, Attachment E, Sections VI.A.3.b and VII.E.2.b specifically require to be monitored “[p]ollutants assigned a [water quality-based effluent limitation] . . . and parameters to determine compliance with water quality-based effluent limitations.”⁹

2. The Permit’s Obligation to Monitor for Compliance with Water Quality-Based Effluent Limitations is a State Mandate

Like the obligation to comply with water quality-based effluent limitations, the obligation to monitor for compliance with that obligation is a State mandate. No federal law or regulation compelled this monitoring.

The federal CWA, in 33 U.S.C. §§ 1318(a) and 1342(a)(2), authorizes the inclusion of monitoring programs into NPDES permits. The CWA regulations, in 40 C.F.R. § 122.26(d)(2)(iii)(D), require the application for a municipal stormwater permit to include a proposed monitoring program “for representative data collection” during the term of the permit. In addition, 40 C.F.R. § 122.44(i) provides that NPDES permits in general should include monitoring requirements to assure compliance with permit limitations.

None of these statutes or regulations, however, specifically require that monitoring for compliance with water quality-based effluent limitations be included in stormwater permits. Instead, the Permit’s obligation to monitor for compliance with water quality-based effluent

⁹ Attachment E to the Permit also requires the monitoring program, whether an Integrated Monitoring Program or a Coordinated Integrated Monitoring Program, to address “all [Total Maximum Daily Load (TMDL)]” monitoring requirements. 2021 Permit, Attachment E, Parts III.A.4 and B.5.

limitations is included pursuant to the Regional Board's discretion to measure compliance with those effluent limitations.

This makes this monitoring a State mandate. Because the obligation to comply with water quality-based effluent limitations is not required by federal law but instead is imposed as a matter of discretion, the monitoring obligation tied to that obligation is also not required by federal law but instead is also imposed as a matter of discretion. If the Regional Board had not exercised its discretion to include compliance with water quality-based effluent limitations, the Permit would not have included a monitoring program to assess that compliance. The monitoring is thus not compelled by federal law or regulation, but is the result of the Regional Board's exercise of its discretion and is, therefore, a State mandate. *Dept. of Finance*, 1 Cal.5th at 765. *See also Id. at 760, 770* (where federal regulations required inspections but did not specifically require the type and extent of inspections at issue, inspections required by permit were imposed as a matter of discretion and thus were State, not federal, mandates).

3. The Requirement to Monitor Compliance with Water Quality-Based Effluent Limitations is a New Program or Higher Level of Service

Just as the obligation to comply with water quality-based effluent limitations is a new program or higher level of service, the monitoring to assess compliance with that obligation is also a new program or higher level of service.

The monitoring is a program in that it is part of the Claimants' stormwater drainage and flood control systems, a governmental function that provides services to the public. *Dept. of Finance II*, 59 Cal.App.5th at 558. The monitoring is also a program in that it supports efforts to reduce pollutants by supporting the obligation to comply with water quality-based effluent limitations, thus providing a service to the public. *Id.* at 559-560. Finally, the 2021 Permit, by its terms, applies only to the local governmental entities identified in the permit. *Id.* at 559. *See also* discussion in Section IV.A.4, above.

The requirement is also a new program or higher level of service. Like compliance with water quality-based effluent limitations, monitoring to support that compliance is a partial subject of the test claim the Claimants filed with respect to the 2012 Permit. *See* Narrative Statement in Support of Joint Test Claim of the County of Los Angeles and the Los Angeles County Flood Control District, Section IV.A.1, pages 11-12; 2012 Permit, Attachment E, Parts II.A.2, II.E.2.b, VIII.B.1.c.ii and IX.G.1.b. Because this monitoring is a continuation of that requirement, through the renewal of that permit, any finding that this obligation is a new program or higher level of service under the 2012 Permit applies equally to the 2021 Permit.

It is likewise a higher level of service. Under the 2012 Permit, there is no obligation to monitor compliance with water quality-based effluent limitations after September 2021, when the 2012 Permit terminated. The 2021 Permit, however, extended that obligation for the life of the 2021 Permit, *i.e.*, it increased the services the Claimants must provide from September 2021 until the end of the 2021 permit, a "state mandated increase in the services provided by the local agencies." The extension of this monitoring obligation is thus a higher level of service. *Dept. of Finance II*, 59 Cal.App.5th at 556.

4. Increased Costs of Mandate

Compliance with this requirement requires, *inter alia*, sampling equipment, laboratory analyses and staff time. As set forth in the Declarations in Section 6, the County incurred approximately \$3,758,000 in FY 2021-2022 in increased costs to comply with this requirement. The County is projected to incur approximately \$5,010,000 in increased costs in FY 2022-2023. The District incurred \$2,662,000 in increased costs in FY 2021-2022. The District is projected to incur approximately \$3,549,000 in increased costs in FY 2022-2023. See County Declaration, ¶ 10(e) and (f); District Declaration ¶ 10(e) and (f).

C. Requirements Related to Non-Stormwater Discharge Prohibitions and Illicit Discharge Detection and Elimination Program

1. Mandate Requirements in the Permit

2021 Permit Part III.A.1 prohibits certain non-stormwater discharges through the municipal separate storm sewer system (“MS4”) to receiving waters.

2021 Permit Part III.A.3.a conditionally exempts from this non-stormwater prohibition discharges from essential non-emergency firefighting activities and certain discharges by drinking water suppliers.

2021 Permit Part III.A.3.b conditionally exempts certain non-essential non-stormwater discharges.

2021 Permit Part III.A.5.a requires the Claimants to develop and implement procedures to require conditionally exempt dischargers of non-stormwater to the Claimants’ MS4 to comply with the requirements of Part III.A.5.a.i-vi, and Table 5 of the Permit.

2021 Permit Part III.A.5.b requires the Claimants to keep records of all conditionally exempt non-stormwater discharges greater than 100,000 gallons in an electronic database.

2021 Permit Part III.A.5.c requires the Claimants to evaluate monitoring data collected pursuant to the Permit’s Monitoring and Reporting Program (Permit Attachment E) and other associated data and information to determine, among other things, if authorized or conditionally authorized non-stormwater discharges are a source of pollutants that may be causing or contributing to an exceedance of receiving water limitations and/or water quality based effluent limitations.

2021 Permit Part III.A.6 requires the Claimants to take action to address such non-stormwater discharges if they are found to be such a source of pollutants, through effective prohibition, conditions, diversions or treatment. These tasks involve, among other things, meeting with non-stormwater dischargers, identifying and analyzing the nature of non-stormwater discharges, developing and implementing discharge procedures, conducting public education efforts, and evaluating monitoring data.

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2021 Permit Part VIII.I.5 requires the Claimants to have a spill response plan that includes procedures that prevent, contain, and respond to all sewage and other spills that may discharge into the storm sewer system.

2021 Permit Part VIII.I.6 requires the Claimants to publicize and provide a means for public reporting of illicit discharges and other water quality impacts from stormwater and non-stormwater discharges into or from the storm sewer system.

2012 Permit Part VIII.I.8 requires the County to document all public reports of illicit discharges, the dates and results of illicit discharge investigations, any corrective actions taken, any follow-up inspections, and the date the investigation was closed.

2. These Non-Stormwater Discharge and Illicit Discharge, Detection and Elimination Programs are State Mandates.

The Permit's non-stormwater discharge and illicit discharge, detection, and elimination requirements set forth above are State, not federal, mandates. No federal law or regulation compelled the Regional Board to include these provisions in the Permit. Instead, the Regional Board did so as a matter of discretion.

The CWA requires MS4 NPDES permits to "include a requirement to effectively prohibit non-stormwater discharges into the storm sewers." 33 U.S.C. § 1342(p)(3)(B)(ii). The implementing federal regulation, 40 CFR 122.26(d)(2)(iv)(B)(1), provides in pertinent part that an MS4 permittee should have (1) a program to prevent illicit discharges (with the exception of certain specified discharges unless they are identified as sources of pollutants); (2) procedures to screen portions of the MS4 during the lifetime of the permit to identify potential illicit discharges; (3), procedures to investigate portions of the MS4 that have a reasonable potential based on that screening to contain illicit discharges; (4) procedures to respond to spills; (5) a program to promote, publicize and facilitate public reporting of illicit discharges; (6) an educational and public information program to facilitate the proper management and disposal of used oil and toxic materials; and (7) controls to limit infiltration of seepage from municipal sanitary sewers.

Here, the non-stormwater Permit requirements go beyond the requirements set forth in the federal CWA regulations, which do not mandate these particular implementing requirements. *Dept. of Finance*, 1 Cal. 5th at 765. Nor do the federal regulations require their scope and detail. *Id.* at 771. Additionally, by specifying the steps to be taken by the Claimants with regard to the evaluation of non-stormwater discharges, including the development and implementation of procedures, the evaluation of monitoring data, reporting to the Regional Board, and coordination with local water purveyors and other requirements, the Regional Board in the Permit has specified the means of compliance with the non-stormwater discharge requirements. *Long Beach Unified School Dist. v State of California* (1990) 225 Cal.App.3d 155, 172-73. Thus, even if these requirements were federal in origin, the Regional Board's specification of compliance, usurping the County and District's ability to design their own program, renders these Permit provisions State mandates. *Id.*; *Dept. of Finance*, 1 Cal. 5th at 771.

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Specifically:

(1) 2021 Permit Part III.A.5.a requires Claimants to develop procedures to require conditionally exempt non-stormwater dischargers to notify the Claimants, obtain pertinent permits, conduct monitoring, implement BMPs in accordance with Table 5 of the Permit, and maintain records. The federal CWA regulations, however, do not require MS4 dischargers to police exempt or conditionally exempt non-stormwater dischargers. The Regional Board designed and imposed these requirements as a matter of its discretion.

(2) 2021 Permit Part III.A.5.b requires Claimants to maintain records of all conditionally exempt non-stormwater discharges in an electronic database. Nothing in the federal regulations require MS4 operators to create such a database.

(3) 2021 Permit Part III.A.5.c requires Claimants to evaluate monitoring data collected pursuant to the Permit's Monitoring and Reporting Program (Permit Attachment E) and other associated data and information to determine, among other things, if authorized or conditionally authorized non-stormwater discharges are a source of pollutants that may be causing or contributing to an exceedance of receiving water limitations and/or water quality based effluent limitations. Nothing in the federal regulations requires MS4 operators to analyze monitoring data to determine if another entity is causing such exceedances. Moreover, as discussed below, the Regional Board has in fact shifted this responsibility from itself onto the permittees, including the Claimants.

(4) 2021 Permit Part III.A.6 requires Claimants to address non-stormwater discharges if they are found to be such a source of pollutants, through effective prohibition, conditions, diversions, or treatment. These tasks involve, among other things, meeting with non-stormwater dischargers, identifying and analyzing the nature of non-stormwater discharges, the development and implementation of discharge procedures, conducting public education efforts, and evaluating monitoring data. Like the evaluation tasks set forth above, nothing in the federal regulations imposes an obligation on MS4 operators to perform these activities or otherwise police third-party dischargers. This also is a Regional Board responsibility that has been shifted onto the Claimants.

(5) 2012 Permit Part VIII.I.5 requires the County to have a spill response plan and Parts VIII.I.6 and 8 require the County to document all public reports of illicit discharges, the dates and results of illicit discharge investigations, any corrective actions taken, any follow-up inspections, and the date the investigation was closed. These tasks are also not included in the federal regulation. Instead, the Regional Board chose to specify how Claimants are to implement their public reporting program. This requirement is also one that is not compelled by the federal regulation but imposed by the Regional Board as a matter of discretion.

Finally, under the California Water Code, it is the Regional Board's duty, not the Claimants', to regulate discharges from these non-stormwater dischargers. Water Code §§ 13260 and 13263. *Dept. of Finance*, 1 Cal.5th at 770. To the extent that these activities were previously performed by the Regional Board, such as the responsibility to evaluate monitoring data and police non-stormwater dischargers, the Regional Board in the Permit freely chose to impose these

requirements on Claimants rather than perform them itself. As such, a State mandate was imposed. *Id.* at 770-771; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593-94.

3. These Permit Requirements are a New Program or Higher Level of Service

The Permit's non-stormwater discharge prohibitions and illicit discharge and detection and elimination program are a new program or higher level of service.

The obligations imposed on permittees, including Claimants, to monitor and police conditionally exempt discharges, to monitor data and take action if non-stormwater discharges are a source of pollutants, and to address illicit discharges are a program in that they are part of the Claimants' stormwater drainage and flood control systems, a governmental function that provides services to the public. *Dept. of Finance II*, 59 Cal.App.5th at 558. These obligations are also a program in that they result in the reduction of pollutants, thus providing a service to the public. *Id.* at 559-560. Finally, the 2021 Permit, by its terms, applies only to the local governmental entities identified in the permit. *Id.* at 559.

These requirements are also a new program or higher level of service. Some of these requirements are the partial subject of the test claim the Claimants filed with respect to the 2012 Permit, such as the requirements for conditionally exempt non-emergency firefighting activities and analysis of non-stormwater discharges. *See* Narrative Statement in Support of Joint Test Claim of the County of Los Angeles and the Los Angeles County Flood Control District, Section IV.B.1, page 16; 2012 Permit, Part III.A.2 and 4. Because these activities are a continuation of those requirements, through the renewal of that permit, any finding that these obligations are a new program or higher level of service under the 2012 Permit applies equally to the 2021 Permit. To the extent that these obligations were not present in the 2012 Permit, then they are new programs in their own right.

These requirements are also a higher level of service. To the extent these obligations existed under the 2012 Permit, that permit did not require that they continue after the termination of the 2012 Permit. The 2021 Permit, however, extended those obligations for the life of the 2021 Permit, *i.e.*, it increased the services the Claimants must provide from September 2021 until the end of the 2021 permit. This is a "state mandated increase in the services provided by the local agencies." The 2021 Permit's extension of these obligations is thus a higher level of service. *Dept. of Finance II*, 59 Cal.App.5th at 556. To the extent that these obligations are newly imposed by the 2021 Permit, the obligations are likewise a higher level of service. *Id.*

4. Increased Costs of Mandate

As set forth in the Declarations in Section 6, the County incurred approximately \$249,000 in FY 2021-2022 in increased costs to comply with this requirement. The County is projected to incur approximately \$332,000 in increased costs in FY 2022-2023. The District incurred \$515,000 in increased costs in FY 2021-2022. The District is projected to incur approximately \$687,000 in increased costs in FY 2022-2023. *See* County Declaration, ¶ 11(k) and (l); District Declaration ¶ 11(k) and (l).

D. Compliance with Public Information Program Requirements

1. Mandate Requirements in the Permit

2021 Permit Part VIII.D.1 requires the Claimants to continue its public information and participation program, either collaboratively, in partnership with stormwater member agencies, or individually.

2021 Permit Part VIII.D.3 requires the Claimants to create opportunities for public engagement in stormwater planning and program implementation, and to conduct educational activities and public information focusing on certain wastes and materials identified in that part.

2021 Permit Part VIII.D.4 requires the Claimants to develop metrics for measuring the effectiveness of its program in reaching the general public and the socioeconomic and ethnic groups in the Los Angeles region, increasing the understanding of the importance of stormwater management, increasing support for stormwater management programs, facilitating pollution prevention and educating and involving residents.

2. These Public Information Requirements are State Mandates

The Permit's public information requirements are State mandates. No federal law or regulation compelled the Regional Board to include these specific provisions in the Permit.

The federal stormwater regulations require that a permittee must include in its management program “[a] description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers” and a “description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials.” 40 C.F.R. § 122.26(d)(2)(iv)(B)(5) and 6).

Additionally, 40 C.F.R. § 122.26(d)(2)(iv)(A)(6) requires that the management program include a “description of a program to reduce to the maximum extent practicable, pollutants in discharges from MS4s associated with the application of pesticides, herbicides, and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications, and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.”

The requirements set forth in Part VIII.D.1, 3 and 4 of the Permit go beyond the requirements of the federal regulations, rendering those requirements a State, not federal, mandate. *Dept. of Finance*, 1 Cal. 5th at 765, 771; *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d at 172-73. The Permit requirements exceed the federal requirements in several ways, including the requirements related to public information activities relating to materials other than used oil, toxic materials, pesticides, herbicides and fertilizer, requirements to target educational and public information programs at ethnic communities (2021 Permit Part VIII.d.2.a) and to organize events targeted to residents and population subgroups (2021 Permit Part VIII.d.2.c). These requirements exceed the federal regulatory requirements and were imposed by the Regional Board as a matter of discretion. As such, they are State mandates. *Dept. of Finance*, 1 Cal. 5th at 771.

3. These Permit Requirements are a New Program or Higher Level of Service

The Permit’s public information requirements are a new program or higher level of service.

The public information requirements are a program in that they are part of Claimants’ stormwater drainage and flood control program, provide a service to the public by causing the reduction of pollutants, and are uniquely imposed only on the local governmental entities identified in the permit. *Dept. of Finance II*, 59 Cal.App.5th at 558-560.

These requirements are also a new program or higher level of service. Like some of the other requirements at issue in this test claim, some of these requirements are the partial subject of the test claim the Claimants filed with respect to the 2012 Permit. *See* Narrative Statement in Support of Joint Test Claim of the County of Los Angeles and the Los Angeles County Flood Control District, Section IV.E, pages 24-25; 2012 Permit, Part VI.D.5. Because these activities are a continuation of those requirements, through the renewal of that permit, any finding that these obligations are a new program or higher level of service under the 2012 Permit applies equally to the 2021 Permit. To the extent that these obligations were not present in the 2012 Permit, then they are new programs in their own right.

These requirements are also a higher level of service. Again, to the extent these obligations existed under the 2012 Permit, that permit did not require that they continue after the termination of the 2012 Permit. The 2021 Permit, however, extended those obligations for the life of the 2021 Permit, *i.e.*, it increased the services the Claimants must provide from September 2021 until the end of the 2021 permit. This is a “state mandated increase in the services provided by the local agencies.” The 2021 Permit’s extension of these obligations is thus a higher level of service. *Dept. of Finance II*, 59 Cal.App.5th at 556. To the extent that these obligations are newly imposed by the 2021 Permit, the obligations are likewise a higher level of service. *Id.*

4. Increased Costs of Mandate

As set forth in the Declarations in Section 6, the County incurred approximately \$3,795,000 in FY 2021-2022 in increased costs to comply with this requirement. The County is projected to incur approximately \$5,060,000 in increased costs in FY 2022-2023. The District incurred approximately \$1,632,000 in increased costs in FY 2021-2022. The District is projected to incur approximately \$2,177,000 in increased costs in FY 2022-2023. *See* County Declaration, ¶ 12(d) and (e); District Declaration ¶ 12(d) and (e).

E. Requirements Relating to Post-Construction BMPs

1. Mandate Requirements in the Permit

These requirements are applicable to all permittees except the District and the Ventura County Watershed Protection District. 2021 Permit Part VIII.F.

2021 Permit Part VIII.F.3.c.i requires that the County implement a GIS or other electronic system to track projects that are required to have post-construction Best Management Practices

(BMPs), including project identification, acreage, BMP type and description, BMP locations, dates of acceptance and maintenance agreements, inspection dates and summaries, and corrective action.

2021 Permit Part VIII.F.3.c.ii requires the County to inspect all development sites upon completion of construction and before issuance of an occupancy certificate to ensure proper installation of Low Impact Development (“LID”) measures, structural BMPs, treatment control BMPs and hydromodification control BMPs.

2021 Permit Part VI.F.3.c.iii requires the County to develop a post-construction BMP checklist and to inspect at an interval of at least once every two years County-operated post-construction BMPs to assess operations and condition.

2. These Post-Construction Requirements are State Mandates

The above-described requirements are not required by either the CWA or its regulations. Additionally, even were the requirements considered to be required under federal law, the Regional Board’s specification, through these Permit provisions, of how to comply with such requirements itself constitutes a State mandate.

The federal CWA regulations require that MS4 permits include a:

description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant new redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed.

40 CFR § 122.26(d)(2)(iv)(A)(2). Nothing in this regulation requires that permittees develop a tracking system for post-construction BMPs or to inspect construction site BMPs for compliance with stormwater requirements. Similarly, nothing in the regulation requires routine inspections of post-construction BMPs operated by the permittees. Both in the exceedance of federal requirements, and in the specification of compliance set forth in the Permit that goes beyond federal requirements, State mandates have been created. *Dept. of Finance*, 1 Cal. 5th at 765, 771; *Long Beach Unified School Dist., supra*, 225 Cal.App.3d at 172-73.

3. These Permit Requirements are a New Program or Higher Level of Service

The Permit’s requirements relating to post-construction BMPs are a new program or higher level of service.

The requirements are a program in that they provide a service to the public by causing the reduction of pollutants and are uniquely imposed only on the local governmental entities identified in the permit. *Dept. of Finance II*, 59 Cal.App.5th at 558-560.

These requirements are also a new program or higher level of service. Like some of the other requirements at issue in this test claim, these requirements are the partial subject of the test

claim the Claimants filed with respect to the 2012 Permit. *See* Narrative Statement in Support of Joint Test Claim of the County of Los Angeles and the Los Angeles County Flood Control District, Section IV.G, pages 29-30; 2012 Permit, Parts VI.D.7(d)(1)(a), (b) and (c). Because these activities are a continuation of those requirements, through the renewal of that permit, any finding that these obligations are a new program or higher level of service under the 2012 Permit applies equally to the 2021 Permit.

These requirements are also a higher level of service. Again, to the extent these obligations existed under the 2012 Permit, that permit did not require that they continue after the termination of the 2012 Permit. The 2021 Permit, however, extended those obligations for the life of the 2021 Permit, *i.e.*, it increased the services the County must provide from September 2021 until the end of the 2021 permit. This is a “state mandated increase in the services provided by the local agencies.” The 2021 Permit’s extension of these obligations is thus a higher level of service. *Dept. of Finance II*, 59 Cal.App.5th at 556.

4. Increased Costs of Mandate

As set forth in the Declarations in Section 6, the County incurred approximately \$1,016,000 in FY 2021-2022 in increased costs to comply with this requirement. The County is projected to incur approximately \$1,355,000 in increased costs in FY 2022-2023. *See* County Declaration, ¶ 13(d) and (e).

F. Construction Site Requirements

1. Mandate Requirements in the Permit

2021 Permit Part VIII.G.4.a requires the County to require the implementation of effective erosion and sediment control BMPs, including a minimum set of BMPs at all construction sites and roadway paving or repair operations (public and private projects). This includes specific BMPs set forth in the Permit’s Tables 7 and 8.

2021 Permit Part VIII.G.5.a requires the County to have a procedure to verify that construction sites one acre or greater have existing coverage under applicable permits, including the State-issued General Construction Activities Stormwater Permit and State or Regional Water Board 401 Water Quality Certification if needed, and has submitted a post-construction plan that complies with the 2021 Permit’s post-construction requirements (2021 Permit Part VIII.F).

2021 Permit Part VIII.G.5.b.i requires the County to have an electronic system to inventory grading, encroachment, demolition, building or construction permits (and any other municipal authorization to move soil and/or conduct construction or destruction that involves land disturbance).

2021 Permit Part VIII.G.5.b.ii requires the County to update the inventory and requires the inventory to contain, among other items, contact information for a project, the latitude and longitude of the project, basic site information, the site’s risk level, current construction phase where feasible, inspection dates, start and anticipated completion dates, whether the project has

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submitted a Notice of Intent and obtained coverage under the State Board-issued General Construction Activities Stormwater Permit, a description of post-construction BMPs, and a comparison of pre-construction stormwater runoff volume versus post-construction stormwater runoff volume.

The Claimants are not seeking reimbursement for inspection of construction sites to the extent the court in *Dept. of Finance II* found that mandate to be non-reimbursable. *Dept. of Finance II*, 59 Cal.App.5th at 562-563.

2. The Requirements Relating to Construction Sites are State Mandates

The 2021 Permit's requirements relating to construction sites are not required by federal law. With respect to construction sites, 40 CFR 122.26 §122.26(d)(2)(iv)(D) provides that a permittee's stormwater management program should include a description of a program:

[t]o implement and maintain structural best management practices to reduce pollutants in storm water runoff from construction sites . . . which shall include:

- (1) A description of procedures for site planning which incorporate consideration of potential water quality impacts;
- (2) A description of requirements for nonstructural and structural best management practices;
- (3) 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; and
- (4) A description of appropriate educational and training measures for construction site operators.”

40 C.F.R. §122.26(d)(2)(iv)(D)(1-4).

Nothing in this regulation specifies the requirements set forth in 2021 Permit Parts VIII.G.4.a, 5.a, 5.b.i. and 5.b.ii. Instead, the Regional Board, as a matter of discretion, required these specific, detailed actions by the permittees, the “scope and detail” of which are not compelled by federal regulations. *Dept. of Finance*, 1 Cal. 5th at 771.

Additionally, the Permit requires the development and maintenance of an inventory of construction sites, which is not required by the regulations. As such, the requirements of Parts VIII.G.5.b.i. and ii both exceed the requirements of the federal regulations and specify the means for permittees to comply with those regulations. The requirements, therefore, constitute State mandates. *Dept. of Finance*, 1 Cal. 5th at 771; *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d at 172-73.

3. These Permit Requirements are a New Program or Higher Level of Service

The Permit’s requirements relating to construction sites are a new program or higher level of service.

The requirements are a program in that they provide a service to the public by causing the reduction of pollutants and are uniquely imposed only on the local governmental entities identified in the permit. *Dept. of Finance II*, 59 Cal.App.5th at 558-560.

These requirements are also a new program or higher level of service. Similar to other requirements at issue in this test claim, these requirements are the partial subject of the test claim the Claimants filed with respect to the 2012 Permit. *See* Narrative Statement in Support of Joint Test Claim of the County of Los Angeles and the Los Angeles County Flood Control District, Section IV.H, page 31; 2012 Permit, Parts VI.D.8(g)(ii) and 8(i). Because these activities are a continuation of those requirements, through the renewal of that permit, any finding that these obligations are a new program or higher level of service under the 2012 Permit applies equally to the 2021 Permit.

These requirements are also a higher level of service. Again, to the extent these obligations existed under the 2012 Permit, that permit did not require that they continue after the termination of the 2012 Permit. The 2021 Permit, however, extended those obligations for the life of the 2021 Permit, *i.e.*, it increased the services the County must provide from September 2021 until the end of the 2021 permit. This is a “state mandated increase in the services provided by the local agencies.” The 2021 Permit’s extension of these obligations is thus a higher level of service. *Dept. of Finance II*, 59 Cal.App.5th at 556.

4. Increased Costs of Mandate

As set forth in the Declarations in Section 6, the County incurred approximately \$81,000 in FY 2021-2022 in increased costs to comply with this requirement. The County is projected to incur approximately \$109,000 in increased costs in FY 2022-2023. *See* County Declaration, ¶ 14(e) and (f).

G. Public Agency Requirements

1. Mandate Requirements in the Permit

2021 Permit Part VIII.H.2 requires the Claimants to maintain an updated inventory or database of all permittee-owned or operated facilities that are potential sources of stormwater pollution, including 27 separate categories of facilities that are required to be in the inventory. The inventory must include the name and address of the facility, contact information, a narrative description of activities performed and potential pollution sources, coverage under any individual or general NPDES permits or waivers, a description of BMPs, and, for trash control devices, an indication of whether it is a partial or certified full capture system. The inventory must be updated at least once during the permit term with information collected through field activities or other readily available informational databases.

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2021 Permit Part VIII.H.5.b requires the Claimants to implement an Integrated Pesticide Management (“IPM”) program, including restrictions on the use of pesticides, restricting treatments only to remove the target organism, selection of pest controls that minimize risks to human health, beneficial non-target organisms and the environment, partnering with other agencies and organizations to encourage the use of an IPM program, adopt and verifiably implement policies, procedures and/or ordinances requiring the minimization of pesticide use, and encouraging the use of IPM techniques in public agency facilities and activities. Additionally, the County must reduce the use of pesticides that cause impairments of surface waters by preparing and updating annually an inventory of pesticides, quantifying pesticide use by staff and contractors, and implementing IPM alternatives where feasible to reduce pesticide use.

2. These Permit Requirements are State Mandates

Nothing in the CWA or the stormwater regulations requires MS4 permittees to maintain an inventory of their public facilities. Similarly, nothing in the CWA or regulations requires the Claimants to develop and implement an IPM program.

The requirements of 2021 Permit Parts VIII.H.2 and H.5.b outlined above exceed the requirements of the CWA and implementing federal regulations, and thus are State mandates. Nothing in federal law or the federal regulations compelled the Regional Board to include these provisions in the Permit. Instead, the Regional Board included them as a matter of discretion. Because the Regional Board exercised “its discretion to impose [the requirements] by virtue of a ‘true choice,’ the [requirements are] not federally mandated.” *Dept. of Finance*, 1 Cal. 5th at 765.

3. These Permit Requirements are a New Program or Higher Level of Service

These public agency requirements are a new program or higher level of service.

The requirements are a program in that they provide a service to the public by causing the reduction of pollutants and are uniquely imposed only on the local governmental entities identified in the permit. *Dept. of Finance II*, 59 Cal.App.5th at 558-560.

These requirements are also a new program or higher level of service. Similar to other requirements at issue in this test claim, these requirements are the partial subject of the test claim the Claimants filed with respect to the 2012 Permit. *See* Narrative Statement in Support of Joint Test Claim of the County of Los Angeles and the Los Angeles County Flood Control District, Section IV.C, pages 18-19; 2012 Permit, Parts VI.D.4.c(iii) and (c)(vi) and VI.D.9.c and 9.g(ii). Because these activities are a continuation of those requirements, through the renewal of that permit, any finding that these obligations are a new program or higher level of service under the 2012 Permit applies equally to the 2021 Permit.

These requirements are also a higher level of service. Again, to the extent these obligations existed under the 2012 Permit, that permit did not require that they continue after the termination of the 2012 Permit. The 2021 Permit, however, extended those obligations for the life of the 2021 Permit, *i.e.*, it increased the services the Claimants must provide from September 2021 until the end of the 2021 permit. This is a “state mandated increase in the services provided by the local

agencies.” The 2021 Permit’s extension of these obligations is thus a higher level of service. *Dept. of Finance II*, 59 Cal.App.5th at 556.

4. Increased Costs of Mandate

As set forth in the Declarations in Section 6, the County incurred approximately \$716,000 in FY 2021-2022 in increased costs to comply with this requirement. The County is projected to incur approximately \$955,000 in increased costs in FY 2022-2023. The District incurred \$516,000 in increased costs in FY 2021-2022. The District is projected to incur approximately \$687,000 in increased costs in FY 2022-2023. See County Declaration, ¶ 15(c) and (d); District Declaration, ¶ 13(c) and (d).

V. STATEWIDE COST ESTIMATE

This Joint Test Claim involves a permit issued to Los Angeles County, the Los Angeles County Flood Control District, Ventura County, the Ventura County Watershed Protection District, 85 cities in Los Angeles County, and 10 cities in Ventura County. The Claimants are only two of the permittees and are not in a position to be able to verify costs incurred by other permittees. The Claimants estimate that they incurred costs of approximately \$29,415,000 in FY 2021-2022 and project incurring approximately \$56,422,000 in FY 2022-2023. See Section 6, County Declaration, ¶¶ 9-15 and District Declaration, ¶¶ 9-13. In making a statewide estimate, the costs estimated by the other permittees should be added to the Claimants’ costs estimated here. If the other permittees collectively have incurred costs approximately equal to the costs incurred by Claimants, this would then result in a combined estimate of approximately \$58,830,000 in FY 2021-2022 and approximately \$112,844,000 projected in FY 2022-2023.

VI. FUNDING SOURCES

The Claimants are not aware of any designated State, federal, or non-local agency funds that are or will be available to fund the mandated activities set forth in this Test Claim.

The Claimants are also restricted by the California Constitution with respect to their ability to assess fees or assessments sufficient to pay for the Permit’s mandates.

First, in providing services or conferring benefits, the Claimants cannot assess fees that cover more than the reasonable cost of providing the benefit, privilege, service or product, and the manner in which those costs are allocated to a payor must bear a fair and reasonable relationship to the payor’s burdens or benefits received from the governmental activity. Otherwise, the fee would be considered a tax subject to the requirements of article XIII C of the California Constitution. Cal. Const., Article XIII C § 1(e). See *Jacks v. City of Santa Barbara* (2017) 3 Cal. 5th 248, 261. In this regard, the Claimants bear the burden of proving by a preponderance of the evidence 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. Cal. Const., Article XIII C § 1(e).

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The mandates at issue in this test claim are not the types of programs for which the Claimants can assess a fee. Compliance with water quality-based effluent limitations, monitoring associated with compliance with water quality-based effluent limitations, requirements relating to the non-stormwater discharge and the illicit discharge detection and elimination program, public information programs, and public agency requirements, described in Sections IV.A, B, C, D, and G of this Narrative Statement, are all obligations imposed on Claimants themselves. Additionally, these all are programs intended to improve the overall water quality in the basin, which benefits all persons within the jurisdiction. It is not possible to identify benefits that any individual resident, business or property owner within the jurisdiction is receiving that is distinct from benefits that all other persons within the jurisdiction are receiving.

Likewise, no fee can be assessed for the cost of the post-construction inspection of BMPs operated by Claimants themselves, 2021 Permit Part VIII.F.3.c.iii; there is no party involved other than Claimants themselves. As for requirements relating to construction sites and the inventory and post-construction inspection of privately held development sites, there is no way to determine a fee that bears a fair and reasonable relationship to the payor's burdens or benefits received from this inventory or inspections as the private owner is not receiving a benefit; the benefit is to the public in general in the form of reduced pollution.

Second, any assessment would be considered a "special tax" and, as such, could not be imposed without a vote of the electorate. Under the Constitution a tax is defined to be "any levy, charge, or exaction of any kind imposed by a local government . . ." Cal. Const., Article XIII C § 1(e). A "special tax" is defined to be "any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund." *Id.*, Article XIII C § 1(d). Under the Constitution, "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." Cal. Const. Article XIII C § 2(d).

Article XIII C, section 1(e), sets forth certain charges that are excepted from the definition of a tax. Those exceptions are:

- (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.

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- (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., Article XIII C § 1(e).

None of these exceptions arguably apply here. As discussed above, any fee or assessment to pay for compliance with water quality-based effluent limitations and monitoring associated therewith, non-stormwater discharge and the illicit discharge detection and elimination program, public information programs, and public agency requirements would be a fee or assessment to pay for the costs of a general program, not one directed towards a specific benefit, privilege, service or product.

Article XIII D of the California Constitution also restricts the County and District's ability to assess property-related fees. Under article XIII D, section 3(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, unless it is for "property-related services"¹⁰ or certain other exceptions, except upon a two-thirds vote of the electorate. Under article XIII D, section 6(c), except for fees or charges for sewer, water, and refuse collection services, no property-related fee or charge shall be imposed unless approved by a majority vote of property owners of the property subject to the fee or charge or by two-thirds vote of the electorate residing the affected area. In *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351, 1354, the Court of Appeal held that a general stormwater fee is a property-related fee that is not a charge for water or sewer services, but instead is a property-related fee subject to the two-thirds electoral vote requirement. *Id.* at 1354-1355, 1357-1359.

In November 2018, Los Angeles County voters adopted the Los Angeles Region Safe Clean Water Program. *See* Los Angeles County Flood Control District Code Sections 16.01 et seq. and 18.01 et seq. This program created a special parcel tax of two and one-half (2.5) cents per square foot of impermeable area, except as exempted, to provide funding for programs and projects to increase stormwater and urban runoff capture and reduce stormwater and urban runoff pollution. *Id.*, Sections 16.02 and 16.08. Ten percent of the revenues generated are allocated to the District for implementation and administration of programs and projects, forty percent allocated to municipalities and the unincorporated County area for their projects and programs, and fifty percent for the implementation of regional projects and programs. *Id.*, Section 16.04.

¹⁰ "Property-related services" means "a public service having a direct relationship to property ownership." Article XIII D, § 2(h).

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The Safe Clean Water Program revenues are not fees or assessments. As set forth in the ordinance, the revenues are generated from a special parcel tax. *Id.*, Section 16.08.

In sum, the Claimants do not have the authority to levy fees or assessments to pay for the mandates that are the subject of this Test Claim. Such fees or assessments can be levied only upon the vote of the electorate.

VII. PRIOR MANDATE DETERMINATIONS

A. Los Angeles County Test Claim

In 2003 and 2007, the County of Los Angeles and 14 cities within the county (“Los Angeles County claimants”) submitted test claims 03-TC-04, 03-TC-19, 03-TC-20 and 03-TC-21. These test claims asserted that provisions of the 2001 Permit, Regional Board Order No. 01-182, constituted unfunded State mandates. The provisions challenged in these test claims concerned the requirement for the Los Angeles County claimants to install and maintain trash receptacles at transit stops and to inspect certain industrial, construction and commercial facilities for compliance with local and/or State stormwater requirements.

The Commission, in a final decision issued on September 3, 2009, determined that the trash receptacle requirement was a reimbursable State mandate. *In re Test Claim on: Los Angeles Regional Quality Control Board Order No. 01-192*, Case Nos.: 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21. The Commission found that the portion of the test claims relating to the inspection requirement was a State mandate, but that the Los Angeles County claimants had fee authority sufficient to fund such inspections. After a significant amount of litigation, the Commission’s decision was affirmed. *Dept. of Finance, supra*, 1 Cal.5th 749; *Dept. of Finance II, supra*, 59 Cal.App.5th 546.

The Commission approved parameters and guidelines for the trash receptacle mandate, and the State Controller’s Office issued Claiming Instructions to the affected local agencies.

B. San Diego County Test Claim

In 2007, the County of San Diego and 21 cities within the county (the “San Diego County claimants”) submitted test claim 07-TC-09. This test claim asserted that several provisions of San Diego Regional Board Order No. R9-2007-0001 constituted reimbursable State mandates. This order was the renewal of the existing MS4 permit for the San Diego County claimants.

On March 30, 2010, the Commission issued a final decision entitled *In re Test Claim on: San Diego Regional Water Quality Control Board Order No. R9-2007-0001*, Case No. 07-TC-09. In that decision, the Commission found the following requirements to be reimbursable State mandates:

1. A requirement to conduct and report on street sweeping activities;
2. A requirement to conduct and report on storm sewer cleaning;

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3. A requirement to conduct public education with respect to specific target communities and on specific topics;
4. A requirement to conduct mandatory watershed activities and collaborate in a Watershed Urban Management Program;
5. A requirement to conduct program effectiveness assessments;
6. A requirement to conduct long-term effectiveness assessments; and
7. A requirement for permittee collaboration.

The Commission also found requirements for hydromodification and low impact development programs to be State mandates, but determined that, because local agencies could charge fees to pay for these programs, they were not reimbursable State mandates.

This case is still the subject of litigation. The most recent court decisions are *Department of Finance v. Commission on State Mandates* (2017) 18 Cal.App.5th 661 and *State of California Department of Finance v. Commission on State Mandates*, Sacramento Superior Court Case No. 34-2010-80000604, Order After Hearing on Cross-Petitions for Writ of Mandate (February 6, 2020), *appeal pending*, *State of California Department of Finance v. Commission on State Mandates*, Case No. C092139 (Ct. Appeal, Third Appellate District).

VIII. LEGISLATIVELY DETERMINED MANDATE

None.

IX. CONCLUSION

As noted in the Introduction, the County and District support the Permit and are working to implement its requirements. Claimants maintain a good working relationship with the Regional Board and its staff and are committed to working together with the Regional Board and other stakeholders to achieve the clean water goals set forth in the Permit.

Nonetheless, important elements of the Permit represent significant mandates. The Claimants submit that the mandates set forth in this Test Claim represent State mandates for which a subvention of funds is required, pursuant to article XIII B, section 6 of the California Constitution. The Claimants respectfully request that the Commission make this finding as to each of the programs and activities set forth herein.

SECTION SIX

DECLARATIONS

In Support of Joint Test Claim of Los Angeles County and the
Los Angeles County Flood Control District Concerning
Los Angeles RWQCB Order No. R4-2021-0105

**DECLARATION OF MARK LOMBOS, P.E.
COUNTY OF LOS ANGELES**

I, Mark Lombos, P.E., hereby declare and state as follows:

1. I am an Assistant Deputy Director for the Los Angeles County Department of Public Works. In that capacity, I share responsibility for the County of Los Angeles' ("County") compliance with the requirements of the Waste Discharge Requirements and National Pollutant Discharge Elimination System (NPDES) Permit for Municipal Separate Storm Sewer System (MS4) Discharges within the Coastal Watershed of Los Angeles and Ventura Counties, Los Angeles Regional Water Quality Control Board ("Regional Board") Order No. R4-2021-0105 (the "2021 Permit").

2. I have reviewed the 2021 Permit and its attachments as set forth herein and am familiar with those provisions. I am also familiar with how the 2021 Permit changed or continued requirements that were previously imposed on the County by the prior Waste Discharge Requirements and NPDES permit for the municipal separate storm sewer system, Regional Board Order No. R4-2012-0175 (the "2012 Permit").

3. I have an understanding of the County's expenditures and sources of funding for programs and activities required to comply with the 2021 Permit.

4. I make this declaration based on my own personal knowledge, except for matters set forth herein based on information and belief and, as to those matters, I believe them to be true. If called upon to testify, I could and would competently testify to the matters set forth herein.

5. Sections 5 and 7 of the Test Claim filed by the County and the Los Angeles County Flood Control District set forth the specific sections of the 2021 Permit at issue in this Test Claim. I hereby incorporate such provisions of Sections 5 and 7 into this declaration as though fully set forth herein.

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6. The County has elected to participate in 12 Watershed Management Programs (WMPs) that are designed to address in whole or in part requirements imposed by the 2021 Permit. (Under the 2012 Permit, the Watershed Management Programs were referred to as “Watershed Management Programs” and “Enhanced Watershed Management Programs”.)

7. Based on my review and understanding of the 2021 Permit, the 2021 Permit requires the County to undertake the following programs, either directly or through the mechanism of a WMP, which programs are new programs and/or higher levels of service, or a continuation of a new program and/or higher level of service first imposed by the 2012 Permit. As to those requirements that were first imposed by the 2012 Permit, because the 2012 Permit has expired, the County would not be required to continue to implement those requirements but for them being imposed again by the 2021 Permit.

8. The County first incurred the Fiscal Year (FY) 2021-2022 costs set forth below in or around September 2021, upon the 2021 Permit becoming effective, or shortly thereafter.

9. **Compliance with Water Quality-Based Effluent Limitations:**

(a) 2021 Permit Part IV.A.2 requires the permittees, including the County, to “comply with applicable water quality-based effluent limitations (WQBELs) as set forth in Attachments K through S of this Order, pursuant to applicable compliance schedules.”

(b) Attachment J to the 2021 Permit is a matrix that summarizes by watershed management area the water quality-based effluent limitations with which the County must comply.

(c) Attachments M and O through S of the 2021 Permit set forth the specific water quality-based effluent limitations with which the County must comply.

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(d) Based on County records, the cost to the County to comply with these water quality-based effluent limitations in FY 2021-2022 was approximately \$13,994,000.

(e) The cost to the County to comply with these water quality-based effluent limitations in FY 2022-2023 is estimated to be \$35,859,000.

10. **Compliance with Monitoring Requirements for Water Quality-Based Effluent Limitations:**

(a) 2021 Permit Part VII requires the permittees, including the County, “to comply with the [Monitoring and Reporting Program] and future revisions thereto, in Attachment E of this Order and Standard Provisions relating to monitoring, reporting, and record keeping in Attachment D of this Order.”

(b) Attachment E to the Permit requires the monitoring program, whether an Integrated Monitoring Program or a Coordinated Integrated Monitoring Program, to address “all [Total Maximum Daily Load (TMDL)]” monitoring requirements. 2021 Permit, Attachment E, Parts III.A.4 and B.5.

(c) As set forth in 2021 Permit Attachment E, Part III.C.2.a, “TMDL compliance monitoring shall be consistent with the recommendations within the TMDL and align with the requirements in Attachments K through S of the Order,” which attachments set forth the water quality-based effluent limitations with which the County must comply.

(d) Attachment E, Sections VI and VII, sets forth the requirements that must be included when monitoring stormwater and non-stormwater for water quality-based effluent limitations.

(e) Based on County records, the cost to the County to comply with these monitoring requirements in FY 2021-2022 was approximately \$3,758,000.

(f) The cost to the County to comply with these monitoring requirements in FY 2022-2023 is estimated to be \$5,010,000.

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11. **Requirements Related to Non-Stormwater Discharge Prohibitions and Illicit Discharge Detection and Elimination Program:**

(a) 2021 Permit Part III.A.1 prohibits certain non-stormwater discharges through the municipal separate storm sewer system (“MS4”) to receiving waters.

(b) 2021 Permit Part III.A.3.a conditionally exempts from this non-stormwater prohibition discharges from essential non-emergency firefighting activities and certain discharges by drinking water suppliers.

(c) 2021 Permit Part III.A.3.b conditionally exempts certain non-essential non-stormwater discharges.

(d) 2021 Permit Part III.A.5.a requires the County to develop and implement procedures to require conditionally exempt dischargers of non-stormwater to the County’s MS4 to comply with the requirements of Part III.A.5.a.i-vi and Table 5 of the Permit.

(e) 2021 Permit Part III.A.5.b requires the County to keep records of all conditionally-exempt non-stormwater discharges greater than 100,000 gallons in an electronic database.

(f) 2021 Permit Part III.A.5.c requires the County to evaluate monitoring data collected pursuant to the Permit’s Monitoring and Reporting Program (Permit Attachment E) and other associated data and information to determine, among other things, if authorized or conditionally authorized non-stormwater discharges are a source of pollutants that may be causing or contributing to an exceedance of receiving water limitations and/or water quality based effluent limitations.

(g) 2021 Permit Part III.A.6 requires the County to take action to address such non-stormwater discharges if they are found to be such a source of pollutants, through effective prohibition, conditions, diversions or treatment. These tasks involve, among other things, meeting with non-stormwater dischargers, identifying and analyzing the nature of non-stormwater discharges, the development and implementation of discharge procedures, conducting public education efforts and evaluating monitoring data.

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(h) 2021 Permit Part VIII.I.5 requires the County to have a spill response plan that includes procedures that prevent, contain, and respond to all sewage and other spills that may discharge into the storm sewer system.

(i) 2021 Permit Part VIII.I.6 requires the County to publicize and provide a means for public reporting of illicit discharges and other water quality impacts from stormwater and non-stormwater discharges into or from the storm sewer system.

(j) 2012 Permit Part VIII.I.8 requires the County to document all public reports of illicit discharges, the dates and results of illicit discharge investigations, any corrective actions taken, any follow-up inspections and the date the investigation was closed.

(k) Based on County records, the cost to the County to comply with these non-stormwater and illicit discharge detection and elimination requirements in FY 2021-2022 was approximately \$249,000.

(l) The cost to the County to comply with these non-stormwater and illicit discharge detection and elimination requirements in FY 2022-2023 is estimated to be \$332,000.

12. **Public Information Program Requirements:**

(a) 2021 Permit Part VIII.D.1 requires the County to continue its public information and participation program, either collaboratively, in partnership with stormwater member agencies, or individually.

(b) 2021 Permit Part VIII.D.3 requires the County to create opportunities for public engagement in stormwater planning and program implementation, and to conduct educational activities and public information focusing on certain wastes and materials identified in that part.

(c) 2021 Permit Part VIII.D.4 requires the County to develop metrics for measuring the effectiveness of its program in reaching the general public and the

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socioeconomic and ethnic groups in the Los Angeles region, increasing the understanding of the importance of stormwater management, increasing support for stormwater management programs, facilitating pollution prevention, and educating and involving residents.

(d) Based on County records, the cost to the County to comply with these public information program requirements in FY 2021-2022 was approximately \$3,795,000.

(e) Based on County records, the cost to the County to comply with these requirements in FY 2022-2023 will be approximately \$5,060,000.

13. **Post-Construction BMP Requirements:**

(a) 2021 Permit Part VIII.F.3.c.i requires the County to implement a GIS or other electronic system to track projects that are required to have post-construction Best Management Practices (BMPs), including project identification, acreage, BMP type and description, BMP locations, dates of acceptance and maintenance agreements, inspection dates and summaries, and corrective action.

(b) 2021 Permit Part VIII.F.3.c.ii requires the County to inspect all development sites upon completion of construction and before issuance of an occupancy certificate to ensure proper installation of Low Impact Development (“LID”) measures, structural BMPs, treatment control BMPs and hydromodification control BMPs.

(c) 2021 Permit Part VIII.F.3.c.iii requires the County to develop a post-construction BMP checklist and to inspect at an interval of at least once every two years County-operated post-construction BMPs to assess operations and condition.

(d) Based on County records, the cost to the County to comply with these post-construction BMP requirements in FY 2021-2022 was approximately \$1,016,000.

(e) Based on County records, the cost to the County to comply with these post-construction BMP requirements in FY 2022-2023 will be approximately \$1,355,000.

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14. **Construction Site Requirements:**

(a) 2021 Permit Part VIII.G.4.a requires the County to require the implementation of effective erosion and sediment control Best Management Practices (BMPs), including a minimum set of BMPs at all construction sites and roadway paving or repair operations (public and private projects).

(b) 2021 Permit Part VIII.G.5.a requires the County to have a procedure to verify that construction sites one acre or greater have existing coverage under applicable permits including the state-issued General Construction Activities Stormwater Permit and State or Regional Board Water Board 401 Water Quality Certification, if needed, and has submitted a post-construction plan that complies with the 2021 Permit's post-construction requirements (2021 Permit Part VIII.F).

(c) 2021 Permit Part VIII.G.5.b.i requires the County to have an electronic system to inventory grading, encroachment, demolition, building or construction permits (and any other municipal authorization to move soil and/or conduct construction or destruction that involves land disturbance).

(d) 2021 Permit Part VIII.G.5.b.ii requires the County to update the inventory and requires the inventory to contain, among other items, contact information for a project, the latitude and longitude of the project, basic site information, the site's risk level, current construction phase where feasible, inspection dates, start and anticipated completion dates, whether the project has submitted a Notice of Intent and obtained coverage under the State Board-issued General Construction Activities Stormwater Permit, a description of post-construction BMPs, and a comparison of pre-construction stormwater runoff volume versus post-construction stormwater runoff volume.

(e) Based on County records, the cost to the County to comply with these construction site requirements in FY 2021-2022 was approximately \$81,000.

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(f) Based on County records, the cost to the County to comply with these construction site requirements in FY 2022-2023 will be approximately \$109,000.

15. **Public Agency Requirements:**

(a) 2021 Permit Part VIII.H.2 requires the County to maintain an updated inventory or database of all permittee-owned or operated facilities that are potential sources of stormwater pollution, including 27 separate categories of facilities that are required to be in the inventory. The inventory must include the name and address of the facility, contact information, a narrative description of activities performed and potential pollution sources, coverage under any individual or general NPDES permits or waivers, a description of BMPs, and, for trash control devices, an indication of whether it is a partial or certified full-capture system. The inventory must be updated at least once during the permit term with information collected through field activities or other readily available informational databases.

(b) 2021 Permit Part VIII.H.5.b requires the County to implement an Integrated Pesticide Management ("IPM") program, including restrictions on the use of pesticides, restricting treatments only to remove the target organism, selection of pest controls that minimize risks to human health, beneficial non-target organisms and the environment, partnering with other agencies and organizations to encourage the use of an IPM program, adopt and verifiably implement policies, procedures and/or ordinances requiring the minimization of pesticide use, and encouraging the use of IPM techniques in public agency facilities and activities. Additionally, the County must reduce the use of pesticides that cause impairments of surface waters by preparing and updating annually an inventory of pesticides, quantifying pesticide use by staff and contractors, and implementing IPM alternatives where feasible to reduce pesticide use.

(c) Based on County records, the cost to the County to comply with these public agency requirements in FY 2021-2022 was approximately \$716,000.

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(d) Based on County records, the cost to the County to comply with these requirements in FY 2022-2023 will be approximately \$955,000.

16. I am informed and believe that there are no dedicated State, federal or regional funds that are or will be available to pay for any of the new and/or upgraded programs and activities set forth in this Declaration.

17. The County has filed a joint test claim with the Los Angeles County Flood Control District. The County and District allege state-mandated costs resulting from the same Executive Order, the 2021 Permit [(1) Parts IV.A.2 and B and Attachments J through S (except Attachments K, L, and N); (2) Part VII and Attachment E; (3) Parts III.A.1, A.3.a, A.3.b, A.5.a, A.5.b, A.5.c, A.6, VIII.I.5; I.6, and I.8; (4) Parts VIII.D.1, D.3, D.4; (5) Parts VIII.F.3.c.i, F.3.c.ii, F.3.c.iii; (6) Parts VIII.G.4.a, G.5.a, G.5.b.i, G.5.b.ii, and (7) Parts VIII.H.2 and H.5.b]. The County and the Flood Control District agree on all issues of the test claim, and have designated one person to act as the sole representative, Howard Gest of Burhenn & Gest LLP.

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

Executed this 14th day of September, 2022, at Alhambra, California



Mark Lombos, P.E.

DECLARATION OF MARK LOMBOS, P.E.
LOS ANGELES DISTRICT FLOOD CONTROL DISTRICT

I, Mark Lombos, P.E., hereby declare and state as follows:

1. I am an Assistant Deputy Director for the Los Angeles County Department of Public Works. In that capacity, I share responsibility for the Los Angeles County Flood Control District's ("District") compliance with the requirements of the Waste Discharge Requirements and National Pollutant Discharge Elimination System (NPDES) Permit for Municipal Separate Storm Sewer System (MS4) Discharges within the Coastal Watershed of Los Angeles and Ventura Counties, Los Angeles Regional Water Quality Control Board ("Regional Board") Order No. R4-2021-0105 (the "2021 Permit").

2. I have reviewed the 2021 Permit and its attachments as set forth herein and am familiar with those provisions. I am also familiar with how the 2021 Permit changed or continued requirements that were previously imposed on the District by the prior Waste Discharge Requirements and NPDES permit for the municipal separate storm sewer system, Regional Board Order No. R4-2012-0175 (the "2012 Permit").

3. I have an understanding of the District's expenditures and sources of funding for programs and activities required to comply with the 2021 Permit.

4. I make this declaration based on my own personal knowledge, except for matters set forth herein based on information and belief and, as to those matters, I believe them to be true. If called upon to testify, I could and would competently testify to the matters set forth herein.

5. Sections 5 and 7 of the Test Claim filed by the County of Los Angeles and the District set forth the specific sections of the 2021 Permit at issue in this Test Claim. I hereby incorporate such provisions of Sections 5 and 7 into this declaration as though fully set forth herein.

Section 6: Declarations in Support of Joint Test Claim of the County of Los Angeles and the Los Angeles District Flood Control District Concerning Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105

6. The District has elected to participate in 18 Watershed Management Programs (WMPs) that are designed to address in whole or in part requirements imposed by the 2021 Permit. (Under the 2012 Permit, the Watershed Management Programs were referred to as “Watershed Management Programs” and “Enhanced Watershed Management Programs”.)

7. Based on my review and understanding of the 2021 Permit, the 2021 Permit requires the District to undertake the following programs, either directly or through the mechanism of a WMP, which programs are new programs and/or higher levels of service, or a continuation of a new program and/or higher level of service first imposed by the 2012 Permit. As to those requirements that were first imposed by the 2012 Permit, because the 2012 Permit has expired, the District would not be required to continue to implement those requirements but for them being imposed again by the 2021 Permit.

8. The District first incurred the Fiscal Year (FY) 2021-2022 costs set forth below in or around September 2021, upon the 2021 Permit becoming effective, or shortly thereafter.

9. **Compliance with Water Quality-Based Effluent Limitations:**

(a) 2021 Permit Part IV.A.2 requires the permittees, including the District, to “comply with applicable water quality-based effluent limitations (WQBELs) as set forth in Attachments K through S of this Order, pursuant to applicable compliance schedules.”

(b) Attachment J to the 2021 Permit is a matrix that summarizes by watershed management area the water quality-based effluent limitations with which the District must comply.

(c) Attachments M and O through S of the 2021 Permit set forth the specific water quality-based effluent limitations with which the District must comply.

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(d) Based on District records, the cost to the District to comply with these water quality-based effluent limitations in FY 2021-2022 was approximately \$481,000.

(e) The cost to the District to comply with these water quality-based effluent limitations in FY 2022-2023 is estimated to be \$642,000.

10. **Compliance with Monitoring Requirements for Water Quality-Based Effluent Limitations:**

(a) 2021 Permit Part VII requires the permittees, including the District, “to comply with the [Monitoring and Reporting Program] and future revisions thereto, in Attachment E of this Order and Standard Provisions relating to monitoring, reporting, and record keeping in Attachment D of this Order.”

(b) Attachment E to the Permit requires the monitoring program, whether an Integrated Monitoring Program or a Coordinated Integrated Monitoring Program, to address “all [Total Maximum Daily Load (TMDL)]” monitoring requirements. 2021 Permit, Attachment E, Parts III.A.4 and B.5.

(c) As set forth in the 2021 Permit Attachment E, Part III.C.2.a, “TMDL compliance monitoring shall be consistent with the recommendations within the TMDL and align with the requirements in Attachments K through S of the Order,” which attachments set forth the water quality-based effluent limitations with which the District must comply.

(d) Attachment E, Sections VI and VII, sets forth the requirements that must be included when monitoring stormwater and non-stormwater for water quality-based effluent limitations.

(e) Based on District records, the cost to the District to comply with these monitoring requirements in FY 2021-2022 was approximately \$2,662,000.

(f) The cost to the District to comply with these monitoring requirements in FY 2022-2023 is estimated to be \$3,549,000.

Section 6: Declarations in Support of Joint Test Claim of the County of Los Angeles and the Los Angeles District Flood Control District Concerning Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105

11. **Requirements Related to Non-Stormwater Discharge Prohibitions and Illicit Discharge Detection and Elimination Program:**

(a) 2021 Permit Part III.A.1 prohibits certain non-stormwater discharges through the municipal separate storm sewer system (“MS4”) to receiving waters.

(b) 2021 Permit Part III.A.3.a conditionally exempts from this non-stormwater prohibition discharges from essential non-emergency firefighting activities and certain discharges by drinking water suppliers.

(c) 2021 Permit Part III.A.3.b conditionally exempts certain non-essential non-stormwater discharges.

(d) 2021 Permit Part III.A.5.a requires the District to develop and implement procedures to require conditionally exempt dischargers of non-stormwater to the District's MS4 to comply with the requirements of Part III.A.5.a.i-vi and Table 5 of the Permit.

(e) 2021 Permit Part III.A.5.b requires the District to keep records of all conditionally exempt non-stormwater discharges greater than 100,000 gallons in an electronic database.

(f) 2021 Permit Part III.A.5.c requires the District to evaluate monitoring data collected pursuant to the Permit's Monitoring and Reporting Program (Permit Attachment E) and other associated data and information to determine, among other things, if authorized or conditionally authorized non-stormwater discharges are a source of pollutants that may be causing or contributing to an exceedance of receiving water limitations and/or water quality based effluent limitations.

(g) 2021 Permit Part III.A.6 requires the District to take action to address such non-stormwater discharges if they are found to be such a source of pollutants, through effective prohibition, conditions, diversions or treatment. These tasks involve, among other things, meeting with non-stormwater dischargers, identifying and analyzing the nature of non-stormwater discharges, the development and implementation of discharge procedures, conducting public education efforts and evaluating monitoring data.

Section 6: Declarations in Support of Joint Test Claim of the County of Los Angeles and the Los Angeles District Flood Control District Concerning Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105

(h) 2021 Permit Part VIII.I.5 requires the District to have a spill response plan that includes procedures that prevent, contain, and respond to all sewage and other spills that may discharge into the storm sewer system.

(i) 2021 Permit Part VIII.I.6 requires the District to publicize and provide a means for public reporting of illicit discharges and other water quality impacts from stormwater and non-stormwater discharges into or from the storm sewer system.

(j) 2012 Permit Part VIII.I.8 requires the District to document all public reports of illicit discharges, the dates and results of illicit discharge investigations, any corrective actions taken, any follow-up inspections, and the date the investigation was closed.

(k) Based on District records, the cost to the District to comply with these non-stormwater and illicit discharge detection and elimination requirements in FY 2021-2022 was approximately \$515,000.

(l) The cost to the District to comply with these non-stormwater and illicit discharge detection and elimination requirements in FY 2022-2023 is estimated to be \$687,000.

12. **Public Information Program Requirements:**

(a) 2021 Permit Part VIII.D.1 requires the District to continue its public information and participation program, either collaboratively, in partnership with stormwater member agencies, or individually.

(b) 2021 Permit Part VIII.D.3 requires the District to create opportunities for public engagement in stormwater planning and program implementation, and to conduct educational activities and public information focusing on certain wastes and materials identified in that part.

(c) 2021 Permit Part VIII.D.4 requires the District to develop metrics for measuring the effectiveness of its program in reaching the general public and the socioeconomic and ethnic groups in the Los Angeles region, increasing the understanding

Section 6: Declarations in Support of Joint Test Claim of the County of Los Angeles and the Los Angeles District Flood Control District Concerning Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105

of the importance of stormwater management, increasing support for stormwater management programs, facilitating pollution prevention, and educating and involving residents.

(d) Based on District records, the cost to the District to comply with these public information program requirements in FY 2021-2022 was approximately \$1,632,000.

(e) Based on District records, the cost to the District to comply with these requirements in FY 2022-2023 will be approximately \$2,177,000.

13. **Public Agency Requirements**

(a) 2021 Permit Part VIII.H.2 requires the District to maintain an updated inventory or database of all permittee-owned or operated facilities that are potential sources of stormwater pollution, including 27 separate categories of facilities that are required to be in the inventory. The inventory must include the name and address of the facility, contact information, a narrative description of activities performed and potential pollution sources, coverage under any individual or general NPDES permits or waivers, a description of BMPs, and, for trash control devices, an indication of whether it is a partial or certified full capture system. The inventory must be updated at least once during the permit term with information collected through field activities or other readily available informational databases.

(b) 2021 Permit Part VIII.H.5.b requires the District to implement an Integrated Pesticide Management (“IPM”) program, including restrictions on the use of pesticides, restricting treatments only to remove the target organism, selection of pest controls that minimize risks to human health, beneficial non-target organisms and the environment, partnering with other agencies and organizations to encourage the use of an IPM program, adopt and verifiably implement policies, procedures and/or ordinances requiring the minimization of pesticide use, and encouraging the use of IPM techniques in public agency facilities and activities. Additionally, the District must reduce the use of pesticides that cause impairments of surface

Section 6: Declarations in Support of Joint Test Claim of the County of Los Angeles and the Los Angeles District Flood Control District Concerning Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105

waters by preparing and updating annually an inventory of pesticides, quantifying pesticide use by staff and contractors, and implementing IPM alternatives where feasible to reduce pesticide use.

(c) Based on District records, the cost to the District to comply with these public agency requirements in FY 2021-2022 was approximately \$516,000.

(d) Based on District records, the cost to the District to comply with these requirements in FY 2022-2023 will be approximately \$687,000.

14. I am informed and believe that there are no dedicated State, federal or regional funds that are or will be available to pay for any of the new and/or upgraded programs and activities set forth in this Declaration.

15. The District has filed a joint test claim with Los Angeles County. The County and District allege state-mandated costs resulting from the same Executive Order, the 2021 Permit [(1) Parts IV.A.2 and B and Attachments J through S (except Attachments K, L and N); (2) Part VII and Attachment E; (3) Parts III.A.1, A.3.a, A3.b, A.5.a, A.5.b, A.5.c, A.6, VIII.I.5, I.6, and I.8; (4) Parts VIII.D.1, D.3, D.4; and (5) Parts VIII.H.2 and H.5.b]. The County and the Flood Control District agree on all issues of the test claim and have designated one person to act as the sole representative, Howard Gest of Burhenn & Gest LLP.

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

Executed this 3rd day of October, 2022, at Alhambra, California



Mark Lombos, P.E.

SECTION SEVEN

DOCUMENTS

In Support of Joint Test Claim of Los Angeles County and the
Los Angeles County Flood Control District Concerning Los
Angeles RWQCB Order No. R4-2021-0105

EXHIBIT A

LOS ANGELES REGIONAL WATER
QUALITY CONTROL BOARD
ORDER NO. R4-2021-0105

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

320 W. 4th Street, Suite 200, Los Angeles, California, 90013
(213) 576 - 6600; MS4stormwaterRB4@waterboards.ca.gov
<http://www.waterboards.ca.gov/losangeles>

REGIONAL PHASE I MS4 NPDES PERMIT

**ORDER NO. R4-2021-0105
NPDES PERMIT NO. CAS004004**

WASTE DISCHARGE REQUIREMENTS AND NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FOR MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) DISCHARGES WITHIN THE COASTAL WATERSHEDS OF LOS ANGELES AND VENTURA COUNTIES

The Los Angeles County Flood Control District, County of Los Angeles, 85 incorporated cities within the coastal watersheds of Los Angeles County, Ventura County Watershed Protection District, County of Ventura, and 10 incorporated cities within Ventura County (hereinafter referred to separately as Permittees and jointly as Dischargers) are subject to waste discharge requirements (WDRs) for their municipal separate storm sewer system (MS4)¹ discharges originating from within their jurisdictional boundaries composed of stormwater and non-stormwater as set forth in this Order.

Table 1. Discharger Information

| | |
|--|--|
| Dischargers | The Los Angeles County Flood Control District, County of Los Angeles, 85 incorporated cities within the coastal watersheds of Los Angeles County, Ventura County Watershed Protection District, the County of Ventura, and 10 incorporated cities within Ventura County (see Table 2 and Table 3). |
| Name of Facility | Municipal Separate Storm Sewer Systems (MS4s) per 40 CFR § 122.26(b)(8) within the Los Angeles Region |
| Facility Contacts, Titles, Addresses, and Phone Numbers | Available through the Stormwater Multiple Application and Report Tracking System (SMARTS) ² at https://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.xhtml |
| The U.S. Environmental Protection Agency (U.S. EPA) and the California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board) have classified the MS4s located in the Los Angeles Region as a large phase I municipal separate storm sewer system (MS4) pursuant to 40 CFR section 122.26(b)(4) and a major facility pursuant to 40 CFR section 122.2. | |

Table 2. Facility Information for Ventura County Permittees

| Permittee (SMARTS WDID) | Physical Address |
|--|-------------------------|
| Ventura County Watershed Protection District | 800 S. Victoria Ave. |

¹ See Attachment A for definitions of terms, acronyms, and abbreviations used in the Order and all other attachments.

² SMARTS provides a platform where dischargers, regulators, and the public can enter, manage, and view stormwater data including permit applications and compliance and monitoring data associated with NPDES permits for stormwater discharges issued by the State of California. SMARTS is compliant with U.S. EPA’s Cross-Media Electronic Reporting Rule, which sets requirements for electronic reporting of NPDES permit-related submittals.

| Permittee (SMARTS WDID) | Physical Address |
|--|---|
| (4 56M1000326) | Ventura CA, 93009 |
| Ventura County (4 56M1000183) | 800 S. Victoria Ave. Ventura CA, 93009 |
| Camarillo (4 56M1000173) | 601 Carmen Drive Camarillo, CA 93010 |
| Fillmore (4 56M1000174) | 250 Central Ave. Fillmore, CA 93015 |
| Moorpark (4 56M1000175) | 799 Moorpark Ave, Moorpark, CA 93021 |
| Ojai (4 56M1000176) | 408 South Signal Street Ojai, CA 93023 |
| Oxnard (4 56M1000177) | 305 West Third Street Oxnard, CA 93030 |
| Port Hueneme (4 56M1000178) | 250 North Ventura Road Port Hueneme, CA 93041 |
| Santa Paula (4 56M1000179) | 970 Ventura Street Santa Paula, CA 93060 |
| Simi Valley (4 56M1000180) | 2929 Tapo Canyon Road Simi Valley, CA 93063 |
| Thousand Oaks (4 56M1000181) | 2100 Thousand Oaks Boulevard Thousand Oaks, CA 91362 |
| Ventura ³ (4 56M1000182) | 501 Poli Street Ventura, CA 93001 |

Table 3. Facility Information for Los Angeles County Permittees

| Permittee (SMARTS WDID) | Physical Address |
|---|--|
| Los Angeles County Flood Control District (4 19M1000134) | 900 South Fremont Avenue Alhambra, CA 91803 |
| County of Los Angeles (4 19M1000133) | 900 South Fremont Avenue Alhambra, CA 91803 |
| Agoura Hills (4 19M1000086) | 30001 Ladyface Court Agoura Hills, CA 91301 |
| Alhambra (4 19M1000087) | 111 South First Street Alhambra, CA 91801 |
| Arcadia (4 19M1000088) | 11800 Goldring Road Arcadia, CA 91066-6021 |
| Artesia (4 19M1000089) | 18747 Clarkdale Avenue Artesia, CA 90701 |
| Azusa (4 19M1000090) | 213 East Foothill Boulevard Azusa, CA 91702 |

³ Formerly referred to as San Buenaventura.

| Permittee (SMARTS WDID) | Physical Address |
|------------------------------------|---|
| Baldwin Park (4 19M1000091) | 14403 East Pacific Avenue Baldwin Park, CA 91706 |
| Bell (4 19M1000092) | 6330 Pine Avenue Bell, CA 90201 |
| Bell Gardens (4 19M1000093) | 8327 Garfield Avenue Bell Gardens, CA 90201-3293 |
| Bellflower (4 19M1000094) | 16600 Civic Center Drive Bellflower, CA 90706 |
| Beverly Hills (4 19M1000095) | 455 North Rexford Drive Beverly Hills, CA 90210 |
| Bradbury (4 19M1000096) | 600 Winston Avenue Bradbury, CA 91008 |
| Burbank (4 19M1000097) | 275 East Olive Avenue Burbank, CA 91502 |
| Calabasas (4 19M1000098) | 100 Civic Center Way Calabasas, CA 91302 |
| Carson (4 19M1000099) | 701 East Carson Street Carson, CA 90745 |
| Cerritos (4 19M1000100) | 18125 Bloomfield Avenue Cerritos, CA 90703-3130 |
| Claremont (4 19M1000102) | 207 Harvard Avenue Claremont, CA 91711 |
| Commerce (4 19M1000103) | 2535 Commerce Way Commerce, CA 90040 |
| Compton (4 19M1000104) | 205 South Willowbrook Avenue Compton, CA 90220 |
| Covina (4 19M1000105) | 125 East College Street Covina, CA 91723 |
| Cudahy (4 19M1000106) | 5220 Santa Ana Street Cudahy, CA 90201 |
| Culver City (4 19M1000107) | 9770 Culver Boulevard Culver City, CA 90232 |
| Diamond Bar (4 19M1000108) | 21810 East Copley Drive Diamond Bar, CA 91765 |
| Downey (4 19M1000109) | 11111 Brookshire Avenue Downey, CA 90241 |
| Duarte (4 19M1000110) | 1600 Huntington Drive Duarte, CA 91010 |
| El Monte (4 19M1000111) | 11333 Valley Boulevard El Monte, CA 91731 |
| El Segundo (4 19M1000112) | 350 Main Street El Segundo, CA 90245 |
| Gardena | 1700 West 162 nd Street |

| Permittee (SMARTS WDID) | Physical Address |
|--|--|
| (4 19M1000113) | Gardena, CA 90247-3732 |
| Glendale (4 19M1000114) | Engineering Section 633 East Broadway, Room 209 Glendale, CA 91206 |
| Glendora (4 19M1000115) | 116 East Foothill Boulevard Glendora, CA 91741 |
| Hawaiian Gardens (4 19M1000116) | 21815 Pioneer Boulevard Hawaiian Gardens, CA 90716 |
| Hawthorne (4 19M1000117) | 4455 West 126 th Street Hawthorne, CA 90250 |
| Hermosa Beach (4 19M1000118) | 1315 Valley Drive Hermosa Beach, CA 90254 |
| Hidden Hills (4 19M1000119) | 6165 Spring Valley Road Hidden Hills, CA 91302 |
| Huntington Park (4 19M1000120) | 6550 Miles Avenue Huntington Park, CA 90255 |
| Industry (4 19M1000101) | 15625 East Stafford Street, Suite 100 Industry, CA 91744 |
| Inglewood (4 19M1000121) | 1 W. Manchester Boulevard, 3rd Floor Inglewood, CA 90301-1750 |
| Irwindale (4 19M1000122) | 5050 North Irwindale Avenue Irwindale, CA 91706 |
| La Cañada Flintridge (4 19M1000123) | One Civic Center Dr. La Cañada Flintridge, CA 91011 |
| La Habra Heights (4 19M1000124) | 1245 North Hacienda Road La Habra Heights, CA 90631 |
| La Mirada (4 19M1000125) | 13700 La Mirada Boulevard La Mirada, CA 90638 |
| La Puente (4 19M1000126) | 15900 East Main Street La Puente, CA 91744 |
| La Verne (4 19M1000127) | 3660 "D" Street La Verne, CA 91750 |
| Lakewood (4 19M1000128) | 5050 Clark Avenue Lakewood, CA 90712 |
| Lawndale (4 19M1000129) | 14717 Burin Avenue Lawndale, CA 90260 |
| Lomita (4 19M1000130) | 24320 Narbonne Avenue Lomita, CA 90717 |
| Long Beach (4 19M1000131) | 333 West Ocean Boulevard, 9 th Floor Long Beach, CA 90802 |
| Los Angeles (4 19M1000132) | 1149 S. Broadway, 10 th Floor Los Angeles, CA 90015 |
| Lynwood | 11330 Bullis Road |


| Permittee (SMARTS WDID) | Physical Address |
|---|--|
| (4 19M1000135) | Lynwood, CA 90262 |
| Malibu (4 19M1000136) | 23825 Stuart Ranch Road Malibu, CA 90265-4861 |
| Manhattan Beach (4 19M1000137) | 1400 Highland Avenue Manhattan Beach, CA 90266 |
| Maywood (4 19M1000138) | 4319 East Slauson Avenue Maywood, CA 90270 |
| Monrovia (4 19M1000139) | 415 South Ivy Avenue Monrovia, CA 91016 |
| Montebello (4 19M1000140) | 1600 West Beverly Boulevard Montebello, CA 90640 |
| Monterey Park (4 19M1000141) | 320 West Newmark Avenue Monterey Park, CA 91754 |
| Norwalk (4 19M1000142) | 12650 East Imperial Highway Norwalk, CA 90650 |
| Palos Verdes Estates (4 19M1000143) | 340 Palos Verdes Drive West Palos Verdes Estates, CA 90274 |
| Paramount (4 19M1000144) | 16400 Colorado Avenue Paramount, CA 90723 |
| Pasadena (4 19M1000145) | 100 North Garfield Avenue Pasadena, CA 91101 |
| Pico Rivera (4 19M1000146) | 6615 Passons Boulevard Pico Rivera, CA 90660 |
| Pomona (4 19M1000147) | 505 South Garey Avenue Pomona, CA 91766 |
| Rancho Palos Verdes (4 19M1000148) | 30940 Hawthorne Boulevard Rancho Palos Verdes, CA 90275 |
| Redondo Beach (4 19M1000149) | 415 Diamond Street Redondo Beach, CA 90277 |
| Rolling Hills (4 19M1000150) | 2 Portuguese Bend Road Rolling Hills, CA 90274 |
| Rolling Hills Estates (4 19M1000151) | 4045 Palos Verdes Drive North Rolling Hills Estates, CA 90274 |
| Rosemead (4 19M1000152) | 8838 East Valley Boulevard Rosemead, CA 91770 |
| San Dimas (4 19M1000153) | 245 East Bonita Avenue San Dimas, CA 91773 |
| San Fernando (4 19M1000154) | 117 Macneil Street San Fernando, CA 91340 |
| San Gabriel (4 19M1000155) | 425 South Mission Drive San Gabriel, CA 91776 |
| San Marino (4 19M1000156) | 2200 Huntington Drive San Marino, CA 91108 |

| Permittee (SMARTS WDID) | Physical Address |
|------------------------------------|--|
| Santa Clarita (4 19M1000157) | 23920 Valencia Boulevard, Suite 300 Santa Clarita, CA 91355 |
| Santa Fe Springs (4 19M1000158) | 11710 East Telegraph Road Santa Fe Springs, CA 90670 |
| Santa Monica (4 19M1000159) | 1685 Main Street Santa Monica, CA 90401 |
| Sierra Madre (4 19M1000160) | 232 West Sierra Madre Boulevard Sierra Madre, CA 91024 |
| Signal Hill (4 19M1000161) | 2175 Cherry Avenue Signal Hill, CA 90755-3799 |
| South El Monte (4 19M1000162) | 1415 North Santa Anita Avenue South El Monte, CA 91733 |
| South Gate (4 19M1000163) | 8650 California Avenue South Gate, CA 90280 |
| South Pasadena (4 19M1000164) | 1414 Mission Street South Pasadena, CA 91030 |
| Temple City (4 19M1000165) | 9701 Las Tunas Drive Temple City, CA 91780 |
| Torrance (4 19M1000166) | 3031 Torrance Boulevard Torrance, CA 90503 |
| Vernon (4 19M1000167) | 4305 South Santa Fe Avenue Vernon, CA 90058 |
| Walnut (4 19M1000168) | 21201 La Puente Road Walnut, CA 91789 |
| West Covina (4 19M1000169) | 1444 West Garvey Avenue South West Covina, CA 91790 |
| West Hollywood (4 19M1000170) | 8300 Santa Monica Boulevard West Hollywood, CA 90069 |
| Westlake Village (4 19M1000171) | 31200 Oak Crest Drive Westlake Village, CA 91361 |
| Whittier (4 19M1000172) | 13230 Penn Street Whittier, CA 90602 |

Table 4. Administrative Information

| | |
|--|---------------------------|
| This Order was adopted on: | July 23, 2021 |
| This Order shall become effective on: | September 11, 2021 |
| This Order shall expire on: | September 11, 2026 |
| In accordance with Title 23, Division 3, Chapter 9 of the California Code of Regulations and to Title 40, Part 122 of the Code of Federal Regulations (CFR), each Discharger shall file a Report of Waste Discharge as an application for reissuance of waste discharge requirements (WDRs) and an application for reissuance of a National Pollutant Discharge Elimination System (NPDES) permit no later than: | March 15, 2026 |
| In accordance with Section 2235.4 of Title 23 of the California Code of Regulations, the terms and conditions of an expired permit are automatically continued pending issuance of a new permit if all requirements of the federal NPDES regulations on continuation of the expired permit are complied with. Accordingly, if a new Order is not adopted by the expiration date above, then the Permittees shall continue to implement the requirements of this Order until a new one is adopted. | |

I, Renee Purdy, Executive Officer, do hereby certify that this Order with all attachments is a full, true, and correct copy of the Order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on **July 23, 2021**.



Renee Purdy, Executive Officer

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I. FACILITY INFORMATION

The 99 entities listed in Table 2 and Table 3 of this Order are the owners and/or operators⁴ of Municipal Separate Storm Sewer Systems within the Los Angeles Region (hereinafter MS4 or Facility). References to the “discharger,” “permittee,” “co-permittee,” or “municipality” in applicable federal and state laws, regulations, plans, or policy are held to be equivalent to references to the Dischargers or Permittees herein. Information describing the Permittees’ MS4 within the Los Angeles Region (Facility) is summarized in Table 1, Table 2, and Table 3 of this Order and in the Fact Sheet (Attachment F). The Fact Sheet also includes information regarding the Permittees’ permit applications. Attachment A lists definitions of terms, abbreviations, and acronyms used in this Order and all other attachments.

II. FINDINGS

The California Regional Water Quality Control Board, Los Angeles Region (hereinafter Los Angeles Water Board or Board), finds:

A. Legal Authorities – Federal Clean Water Act and California Water Code.

This Order serves as WDRs pursuant to article 4, chapter 4, division 7 of the California Water Code (commencing with section 13260). This Order is also issued pursuant to section 402 of the federal Clean Water Act (CWA) and implementing regulations adopted by the U.S. EPA and chapter 5.5, division 7 of the Water Code (commencing with section 13370). It shall serve as an NPDES permit authorizing the Dischargers to discharge into waters of the U.S. within the Los Angeles Region subject to the WDRs in this Order.

B. Background and Rationale for Requirements

The Los Angeles Water Board developed the requirements in this Order based on information submitted as part of the Permittees’ reapplication packages, through monitoring and reporting programs, and other available information. In accordance with federal regulations at 40 CFR section 124.8, the Fact Sheet (Attachment F), which contains background information and the legal, policy and technical rationale for the requirements in this Order, is hereby incorporated into and constitutes Findings for this Order. Attachments A through E and G through S are also incorporated into this Order.

C. This Order, Regional MS4 Permit

This Order supersedes the previous Orders for the City of Long Beach, 86 Permittees in the coastal watersheds of Los Angeles County, and 12 Permittees in Ventura County to cover 99 Permittees within the coastal watersheds of the Los Angeles Region with one region-wide Phase I MS4 Permit (Regional MS4 Permit). This Order implements the federal Phase I NPDES Stormwater Program requirements. These federal requirements include three fundamental elements: (i) a requirement to effectively prohibit non-stormwater discharges through the MS4, (ii) requirements to implement controls to reduce the discharge of pollutants in stormwater to the maximum extent practicable (MEP), and (iii) other provisions the Los Angeles Water Board has determined appropriate for the control of such pollutants.

D. Delegation of Authority to the Executive Officer

The Los Angeles Water Board by prior resolution has delegated broad authority to its Executive Officer to act on the Los Angeles Water Board’s behalf pursuant to Water Code sections 7 and 13223. Therefore, the Los Angeles Water Board Executive Officer is authorized to act on the Los Angeles Water Board’s behalf on all matters within this Order that have been delegated

⁴ Owner or operator means the owner or operator of any facility or activity subject to regulation under the NPDES program (40 CFR § 122.2).

unless such delegation is unlawful under Water Code section 13223 or this Order explicitly states otherwise.

The Board authorizes the Executive Officer to make non-substantive changes to this Order to correct typographical errors, including correcting misspellings/grammar, ensuring correct cross-references, correcting formatting/numbering, and conforming changes made during the development and adoption of this Order that were inadvertently not carried through the entire Order. The Executive Officer shall provide public notice of any non-substantive changes.

E. Notification of Interested Parties

In accordance with state and federal laws and regulations, the Los Angeles Water Board has notified the Permittees and interested agencies and persons of its intent to prescribe WDRs for the discharges authorized by this Order and has provided them with an opportunity to submit their written and oral comments. Details of the notification, as well as the meetings and workshops held on the working proposal and drafts of the permit, are provided in the Fact Sheet (Attachment F) of this Order.

F. Consideration of Public Comment

The Los Angeles Water Board, in a public meeting, heard and considered all oral and written comments pertaining to the discharges authorized by this Order and the requirements contained herein. The Los Angeles Water Board has prepared written responses to all timely comments on the draft permit, which are included in the Administrative Record for this Order. Details of the public hearing are provided in the Fact Sheet (Attachment F) of this Order.

THEREFORE, IT IS HEREBY ORDERED that this Order supersedes Order No. R4-2010-0108, Order No. R4-2012-0175, and Order No. R4-2014-0024 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 CWA and regulations and guidelines adopted thereunder, the Dischargers shall comply with the requirements in this Order. This action in no way prevents the Los Angeles Water Board from taking enforcement action for violations of the previous Orders.

In compliance with the judgment and writ of mandate in *Natural Resources Defense Council, Inc. and Los Angeles Waterkeeper v. State Water Resources Control Board and California Regional Water Quality Control Board, Los Angeles Region*, Los Angeles County Superior Court, Case No. BS156962, the issuance of this Order has the effect of setting aside Order No. R4-2012-0175 upon the effective date of this Order. This action to supersede Order No. R4-2012-0175 is not retroactive. Order No. R4-2012-0175 remains valid while it is still in effect, and violations are therefore subject to enforcement. This action also does not impact or affect any prior actions or determinations by the Los Angeles Water Board or its Executive Officer that implemented Order No. R4-2012-0175 including, but not limited to, actions or determinations related to watershed management programs (subject to State Water Board Order WQ 2020-0038), monitoring programs, and alternative biofiltration designs.

III. DISCHARGE PROHIBITIONS

A. Prohibitions – Non-Stormwater Discharges

1. **Prohibition of Non-Stormwater Discharges.** Each Permittee for the portion of the MS4 for which it is an owner or operator shall prohibit non-stormwater discharges through the MS4 to receiving waters.
2. **Exceptions to Prohibition of Non-Stormwater Discharges.** The following authorized and conditionally exempt non-stormwater discharges are not prohibited:
 - a. Authorized non-stormwater discharges separately regulated by an individual or general NPDES permit;
 - b. Authorized non-stormwater discharges separately regulated by a conditional waiver or WDRs for agricultural lands;
 - c. Temporary non-stormwater discharges authorized pursuant to sections 104(a) or 104(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that either: (i) will comply with water quality standards as applicable or relevant and appropriate requirements (“ARARs”) under section 121(d)(2) of CERCLA; or (ii) are subject to either (a) a written waiver of ARARs pursuant to section 121(d)(4) of CERCLA or (b) a written determination that compliance with ARARs is not practicable considering the exigencies of the situation pursuant to 40 CFR. section 300.415(j)⁵;
 - d. Authorized non-stormwater discharges from emergency firefighting activities (i.e., discharges resulting from water use necessary for the protection of life or property from fire)⁶;
 - e. Natural flows including:
 - i. Natural springs;
 - ii. Flows from riparian habitats and wetlands;
 - iii. Diverted stream flows, authorized by the State Water Board or Los Angeles Water Board;
 - iv. Uncontaminated ground water infiltration⁷;
 - v. Rising ground waters, where ground water seepage is not otherwise covered by a NPDES permit⁸;
 - f. Conditionally exempt non-stormwater discharges in accordance with Parts III.A.3 and III.A.4 below.

⁵ These typically include short-term, high volume discharges resulting from the development or redevelopment of groundwater extraction wells, or federal or State-required compliance testing of potable water treatment plants, as part of an authorized groundwater remediation action under CERCLA.

⁶ Discharges from vehicle washing, building fire suppression system maintenance and testing (e.g., sprinkler line flushing), fire hydrant maintenance and testing, and other routine maintenance activities are not considered emergency firefighting activities.

⁷ Uncontaminated ground water infiltration is water other than wastewater that enters the MS4 (including foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow. (See 40 CFR § 35.2005(20).)

⁸ A NPDES permit for discharges associated with ground water dewatering is required within the Los Angeles Region.

- 3. Conditional Exemptions from Non-Stormwater Discharges Prohibition.** The following categories of non-stormwater discharges are exempt from the non-stormwater discharge prohibition, if (1) the Permittee ensures that all required conditions specified below, including in Table 5 of this Order, or other conditions specified and/or approved by the Los Angeles Water Board Executive Officer are met, and (2) the discharge is not a direct discharge into an Area of Special Biological Significance (ASBS) within the Los Angeles Region unless otherwise allowed in Part III.A.4 of this Order.
- a. Conditionally Exempt Essential Non-Stormwater Discharges.** The following non-stormwater discharges are directly or indirectly required by other state or federal statutes and/or regulations, and are exempt from the discharge prohibition in Part III.A.1 of this Order:
- i. Discharges from essential *non-emergency* firefighting activities⁹;
 - ii. Discharges from drinking water systems that are not otherwise regulated by NPDES Permit No. CAG674001, NPDES Permit No. CAG140001, or another separate NPDES permit¹⁰;
- b. Conditionally Exempt Non-Essential Non-Stormwater Discharges.** The following non-stormwater discharges are exempt from the discharge prohibition in Part III.A.1 of this Order, provided that the discharge is not a source of pollutants that will cause or contribute to an exceedance of applicable limitations in Part IV, Part V, and Attachments K through S of this Order:
- i. Dewatering of lakes¹¹;
 - ii. Landscape irrigation;
 - iii. Dechlorinated/debrominated swimming pool/spa discharges¹² not otherwise regulated by a separate NPDES permit;
 - iv. Dewatering of decorative fountains¹³;
 - v. Non-commercial car washing by residents or by non-profit organizations;
 - vi. Street/sidewalk wash water¹⁴;

⁹ This includes firefighting training activities, which simulate emergency responses, and routine maintenance and testing activities necessary for the protection of life and property, including building fire suppression system maintenance and testing (e.g., sprinkler line flushing) and fire hydrant testing and maintenance. Discharges from vehicle washing are not considered essential and as such are not conditionally exempt from the non-stormwater discharge prohibition.

¹⁰ Drinking water system discharges means short-term or seasonal discharges from a drinking water system of water that has been dedicated for drinking water purposes. Discharges from drinking water systems include sources of flows from drinking water storage, supply and distribution systems (including flows from system failures), pressure releases, system maintenance, distribution line testing, and flushing and dewatering of pipes, reservoirs, and vaults, and minor non-invasive well maintenance activities not involving chemical addition(s).

¹¹ Dewatering of lakes does not include dewatering of drinking water reservoirs. Dewatering of drinking water reservoirs is addressed in Part III.A.3.a.ii of this Order.

¹² Conditionally exempt dechlorinated/debrominated swimming pool/spa discharges do not include swimming pool/spa filter backwash or swimming pool/spa water containing bacteria, detergents, wastes, or algaecides, or any other chemicals (including salts from pools commonly referred to as "saltwater pools").

¹³ Conditionally exempt discharges from dewatering of decorative fountains do not include fountain water containing bacteria, detergents wastes, or algaecides, or any other chemicals.

¹⁴ Conditionally exempt non-stormwater discharges of street/sidewalk wash water only include those discharges resulting from use of high pressure, low volume spray washing using only potable water with no cleaning agents

- vii. Short-term releases of potable water with no additives or dyes for filming purposes;
 - viii. Potable wash water used to clean reservoir covers.
- 4. Additional Provisions for Non-Stormwater Discharges to an ASBS.** The following non-stormwater discharges to an MS4 with a direct discharge to an ASBS are allowed pursuant to the California Ocean Plan, provided that:
- a. The non-stormwater discharge falls within any of the following categories:
 - i. One of the conditionally exempt essential non-stormwater discharge categories in Part III.A.3.a of this Order;
 - ii. Essential for emergency response purposes, structural stability, and slope stability, which may include but are not limited to the following discharges:
 - (a) Discharges associated with emergency firefighting operations (i.e., discharges resulting from water use necessary for the protection of life or property from fire)¹⁵;
 - (b) Foundation and footing drains;
 - (c) Water from crawl space or basement pumps;
 - (d) Hillside dewatering.
 - iii. Naturally occurring discharges as follows:
 - (a) Naturally occurring groundwater seepage via a MS4;
 - (b) Non-anthropogenic flows from a naturally occurring stream via a culvert or MS4, as long as there are no contributions of anthropogenic runoff.
 - b. The non-stormwater discharge shall not cause or contribute¹⁶ to an exceedance of applicable limitations in Part IV, Part V, and Attachments K through S of this Order or the water quality objectives in Chapter II of the Ocean Plan, or an undesirable alteration in natural ocean water quality in an ASBS.
- 5. Permittee Requirements.** For conditionally exempt non-stormwater discharges, each Permittee shall:
- a. Develop and implement procedures to ensure that a discharger, if not a named Permittee in this Order, fulfills the following for conditionally exempt non-stormwater discharges to the Permittee's MS4:
 - i. Notifies Permittee of the planned discharge in advance, where required in Table 5 of this Order or consistent with recommendations pursuant to the applicable BMP manual;
 - ii. Obtains any local permits required by the MS4 owner(s) and/or operator(s);

at an average usage of 0.006 gallons per square feet of sidewalk area in accordance with Los Angeles Water Board Resolution No. 98-08. Conditionally exempt non-stormwater discharges of street/sidewalk wash water do not include hosing of any sidewalk or street with a garden hose with a high pressure high volume nozzle.

¹⁵ Discharges from vehicle washing, building fire suppression system maintenance and testing (e.g., sprinkler line flushing), fire hydrant maintenance and testing, and other routine maintenance activities are not considered emergency firefighting activities.

¹⁶ Based on the water quality characteristics of the conditionally exempt non-stormwater discharge itself.

- iii. Provides documentation that it has obtained any other necessary permits or water quality certifications¹⁷ for the discharge;
 - iv. Conducts monitoring of the discharge, if required by the Permittee;
 - v. Implements BMPs and/or control measures as specified in Table 5 of this Order or in the applicable BMP manual(s) as a condition of the approval to discharge into the Permittee's MS4; and
 - vi. Maintains records of its discharge to the MS4, consistent with requirements in Table 5 of this Order or recommendations pursuant to the applicable BMP manual. For lake dewatering, the Permittee shall require that the following information is maintained by the lake owner / operator: name of discharger, date and time of notification, method of notification, location of discharge, discharge pathway, receiving water, date of discharge, time of the beginning and end of the discharge, duration of the discharge, flow rate or velocity, total number of gallons discharged, type(s) of sediment controls used, pH of discharge, type(s) of volumetric and velocity controls used, and field and laboratory monitoring data. These records shall be made available upon request by the Permittee or Los Angeles Water Board.
- b. Maintain records of all conditionally exempt non-stormwater discharges greater than 100,000 gallons in an electronic database consistent with Table 5 of this Order.
 - c. Evaluate monitoring data collected pursuant to the Monitoring and Reporting Program (MRP) of this Order (Attachment E), and any other associated data or information, and determine whether any of the authorized or conditionally exempt non-stormwater discharges identified in Parts III.A.2-4 above are a source of pollutants that may be causing or contributing to an exceedance of applicable limitations in Part IV, Part V, and Attachments K through S of this Order. Based on non-stormwater outfall-based monitoring as implemented through the MRP, if monitoring data show exceedances of applicable limitations at the outfall, the Permittee shall take further action to determine whether the discharge is causing or contributing to exceedances of applicable limitations in the receiving water.
6. If the Permittee determines that any of the conditionally exempt non-essential non-stormwater discharges identified in Part III.A.3.b of this Order is a source of pollutants that causes or contributes to an exceedance of applicable limitations in Part IV, Part V, and Attachments K through S of this Order, the Permittee(s) shall report its findings to the Los Angeles Water Board in its annual report. Based on this determination, the Permittee(s) shall also either:
- a. Effectively prohibit¹⁸ the non-stormwater discharge into the MS4; or
 - b. Impose conditions in addition to those in Table 5 of this Order, subject to approval by the Los Angeles Water Board Executive Officer, on the non-stormwater discharge such that it will not be a source of pollutants; or
 - c. Require diversion of the non-stormwater discharge to the sanitary sewer; or
 - d. Require treatment of the non-stormwater discharge prior to discharge to the receiving water.

¹⁷ Pursuant to the Federal Clean Water Act § 401.

¹⁸ To "effectively prohibit" means to not allow the non-stormwater discharge into the MS4 unless the discharger obtains coverage under a separate NPDES permit prior to discharge into the MS4.

7. If the Permittee effectively prohibits the non-stormwater discharge to the MS4, as per Part III.A.6.a above, then the Permittee shall implement procedures developed under Part VIII.I of this Order (Illicit Discharge Detection and Elimination Program) to eliminate the discharge to the MS4 unless the non-stormwater discharge is regulated by a separate NPDES permit prior to the next discharge.
8. If the Permittee determines that any of the authorized or conditionally exempt essential non-stormwater discharges is a source of pollutants that causes or contributes to an exceedance of applicable limitations in Part IV, Part V, and Attachments K through S of this Order, the Permittee shall notify the Los Angeles Water Board within 30 days of any such determination.
9. Notwithstanding the above, the Los Angeles Water Board, based on an evaluation of monitoring data and other relevant information including TMDLs and antidegradation policies, may require that a discharger obtain coverage under a separate individual or general State Water Board or Los Angeles Water Board NPDES permit for the non-stormwater discharge or may require that the Permittee ensures that the discharger implements additional conditions specified or approved by the Executive Officer to ensure that the discharge is not a source of pollutants.

Table 5. Required Conditions for Conditionally Exempt Non-Stormwater Discharges

| Discharge Category | General Conditions for Exempt MS4 Discharges | Requirements/Required BMPs Prior to Discharge through the MS4 |
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| All Discharge Categories | See discharge specific conditions below. | <p>Ensure conditionally exempt non-stormwater discharges avoid potential sources of pollutants in the flow path to prevent introduction of pollutants to the MS4 and receiving water.</p> <p>Whenever there is a discharge of 100,000 gallons or more into the MS4, Permittees shall require advance notification by the discharger to the potentially affected MS4 Permittees, including at a minimum either the VCWPD or the LACFCD, and the Permittee with jurisdiction over the land area from which the discharge originates.</p> |
| Discharges from essential <i>non-emergency</i> firefighting activities | Discharges allowed after implementation of specified BMPs. | Implement appropriate BMPs based on the CAL FIRE, Office of the State Fire Marshal’s <i>Water-Based Fire Protection Systems Discharge Best Management Practices Manual</i> (September 2011) for water-based fire protection system discharges, and based on <i>Riverside County’s Best Management Practices Plan for Urban Runoff Management</i> (May 1, 2004), or equivalent BMP manual for fire training activities and post-emergency firefighting activities. |
| Discharges from drinking water systems that are not otherwise regulated by NPDES Permit No. CAG674001, NPDES Permit No. CAG140001, or another | Discharges allowed after implementation of specified BMPs. | <p>Implement appropriate BMPs based on the American Water Works Association (California-Nevada Section) <i>Guidelines for the Development of Your Best Management Practices (BMP) Manual for Drinking Water System Releases</i> (2005) or equivalent industry standard BMP manual.</p> <p>Chlorine residual in the discharge shall not exceed 0.1 mg/L. Additionally, each Permittee shall work with drinking water system owners/operators that may discharge to the Permittee’s MS4 to ensure the following for all discharges greater than 100,000 gallons: (1) notification at least 72 hours prior to a planned discharge and as soon as possible after an unplanned discharge; (2) monitoring of any pollutants of concern¹⁹ in the drinking water system discharge; and (3) record keeping.</p> |

¹⁹ Pollutants of concern in drinking water distribution system discharges may include trash and debris, including organic matter, total suspended solids (TSS), residual chlorine, pH, and any pollutant for which there is a limitation in Parts IV, Part V, and Attachments K through S of this Order applicable to discharges from the MS4 to the receiving water. Determination of the pollutants of concern for a particular discharge shall be based on an evaluation of the potential for the constituent(s) to be present in the discharge at levels that may cause or contribute to exceedances of applicable limitations in Parts IV, Part V, and Attachments K through S of this Order.

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| <p>separate NPDES permit</p> | | <p>Permittees shall ensure that the following information is maintained for all drinking water system discharges to the MS4 (planned and unplanned) greater than 100,000 gallons: name of discharger, date and time of notification (for planned discharges), method of notification, location of discharge, discharge pathway, receiving water, date of discharge, time of the beginning and end of the discharge, duration of the discharge, flow rate or velocity, total number of gallons discharged, type of dechlorination equipment used, type of dechlorination chemicals used, concentration of residual chlorine, type(s) of sediment controls used, pH of discharge, type(s) of volumetric and velocity controls used, and field and laboratory monitoring data.</p> <p>Records shall be retained for five years and made available upon request by the Permittee or Los Angeles Water Board.</p> |
| <p>Potable wash water discharges associated with reservoir cover cleaning</p> | <p>Per the Operations and Maintenance Plan approved by the California Department of Public Health (CDPH)</p> | <p>Create a list of the total number of reservoir covers that must be cleaned to comply with operations and maintenance requirements for reservoir covers; the list should also include the annual cleaning frequency, the address where the reservoirs are located; and the type and size (surface area) of the reservoir covers.</p> <p>The cleaning of the reservoirs shall be done in such a way that minimizes the amount of water used to clean the cover.</p> <p>Wastewater from the cleaning of the reservoir covers shall be discharged to a sanitary sewer or allowed to percolate into the ground; and the discharge shall not cause or contribute to erosion in the area where there will be percolation.</p> <p>If wastewater from the cleaning of the reservoir covers is percolated into the ground, the wash water shall not contain solvents, or other contaminants that might migrate into and contaminate the groundwater supplies.</p> |
| <p>Lake Dewatering</p> | <p>Discharge allowed only if all necessary permits/water quality certifications for dredge and fill activities, including water diversions, are obtained prior to discharge.</p> | <p>Ensure procedures for advanced notification by the lake owner/operator to the Permittee(s) no less than 72 hours prior to the planned discharge.</p> <p>Immediately prior to discharge, visible trash on the shoreline or on the surface of the lake shall be removed and disposed of in a legal manner.</p> <p>Immediately prior to discharge, the discharge pathway and the MS4 inlet to which the discharge is directed, shall be inspected and cleaned out of all pre-existing trash and debris.</p> |

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| | | <p>Discharges shall be volumetrically and velocity controlled to minimize re-suspension of sediments.</p> <p>Measures shall be taken to stabilize lake bottom sediments.</p> <p>Ensure procedures for water quality monitoring for pollutants of concern²⁰ in the lake.</p> <p>Ensure record-keeping of lake dewatering by the lake owner/operator as described in Part III.A.5.a.vi of this Order.</p> |
| Landscape irrigation using potable water | <p>Discharge allowed if runoff due to potable landscape irrigation is minimized through the implementation of an ordinance specifying water efficient landscaping standards, as well as an outreach and education program focusing on water conservation and landscape water use efficiency.</p> | <p>Implement BMPs to minimize runoff and prevent introduction of pollutants to the MS4 and receiving water, including landscape water use efficiency requirements for existing landscaping, use of drought tolerant, native vegetation, and the use of less toxic options for pest control and landscape management.</p> <p>Implement water conservation programs to minimize discharge by using less water.</p> |
| Landscape irrigation using reclaimed or recycled water | <p>Discharge of reclaimed or recycled water runoff from landscape irrigation is allowed if the discharge is in compliance with the producer and distributor operations and management (O&M) plan, and all relevant portions thereof, including the Irrigation Management Plan.</p> | <p>Discharges must comply with applicable O&M Plans, and all relevant portions thereof, including the Irrigation Management Plan.</p> |

²⁰ Pollutants of concern include, at a minimum, trash and debris, including organic matter, TSS, and any pollutant for which there is an limitation in Parts IV, Part V, and Attachments K through S of this Order for the lake and/or receiving water.

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| <p>Dechlorinated / debrominated swimming pool / spa discharges</p> | <p>Discharges allowed after implementation of specified BMPs.</p> <p>Pool or spa water containing copper-based algaecides is not allowed to be discharged to the MS4.</p> <p>Discharges of cleaning wastewater and filter backwash allowed only if authorized by a separate NPDES permit.</p> | <p>Implement BMPs and ensure discharge avoids potential sources of pollutants in the flow path to prevent introduction of pollutants prior to discharge to the MS4 and receiving water.</p> <p>Swimming pool water must be de-chlorinated or de-brominated using holding time, aeration, and/or sodium thiosulfate. Chlorine residual in the discharge shall not exceed 0.1 mg/L.</p> <p>Swimming pool water shall not contain any detergents, wastes, or algaecides, or any other chemicals (including salts from pools commonly referred to as “salt water pools”) in excess of applicable water quality objectives.²¹</p> <p>Swimming pool discharges are to be pH adjusted, if necessary, and be within the range of 6.5 and 8.5 standard units.</p> <p>Swimming pool discharges shall be volumetrically and velocity controlled to promote evaporation and/or infiltration.</p> <p>Ensure procedures for advanced notification by the pool owner to the Permittee(s) at least 72 hours prior to planned discharge for discharges of 100,000 gallons or more.</p> <p>For discharges of 100,000 gallons or more, immediately prior to discharge, inspect and clean out of all pre-existing trash and debris the discharge pathway and the MS4 inlet to which the discharge is directed to.</p> |
| <p>Dewatering of decorative fountains</p> | <p>Discharges allowed after implementation of specified BMPs.</p> <p>Fountain water containing copper-based algaecides may not be discharged to the MS4.</p> <p>Fountain water containing dyes may not be discharged to the MS4.</p> | <p>Implement BMPs and ensure discharge avoids potential sources of pollutants in the flow path to prevent introduction of pollutants prior to discharge to the MS4 and receiving water.</p> <p>Fountain water must be de-chlorinated or de-brominated using holding time, aeration, and/or sodium thiosulfate. Chlorine residual in the discharge shall not exceed 0.1 mg/L.</p> <p>Fountain discharges are to be pH adjusted, if necessary, and be within the range of 6.5 and 8.5 standard units.</p> <p>Fountain discharges shall be volumetrically and velocity controlled to promote evaporation and/or infiltration.</p> |

²¹ Applicable mineral water quality objectives for surface waters are contained in Chapter 3 of the Basin Plan for the Los Angeles Region.

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| | | <p>Ensure procedures for advanced notification by the fountain owner to the Permittee(s) at least 72 hours prior to planned discharge for discharges of 100,000 gallons or more.</p> <p>For discharges of 100,000 gallons or more, immediately prior to discharge, the discharge pathway and the MS4 inlet to which the discharge is directed to shall be inspected and cleaned out of all pre-existing trash and debris.</p> |
| <p>Non-commercial car washing by residents or by non-profit organizations</p> | <p>Discharges allowed after implementation of specified BMPs.</p> | <p>Implement BMPs and ensure discharge avoids potential sources of pollutants in the flow path to prevent introduction of pollutants prior to discharge to the MS4 and receiving water.</p> <p>Minimize the amount of water used by employing water conservation practices such as turning off nozzles or kinking the hose when not spraying a car and using a low volume pressure washer.</p> <p>Encourage use of biodegradable, phosphate free detergents and non-toxic cleaning products.</p> <p>Where possible, wash cars on a permeable surface where wash water can percolate into the ground (e.g. gravel or grassy areas).</p> <p>Empty buckets of soapy or rinse water into the sanitary sewer system (e.g., sinks or toilets).</p> |
| <p>Street/sidewalk wash water</p> | <p>Discharges allowed after implementation of specified BMPs.</p> | <p>Sweeping should be used as an alternate BMP whenever possible and sweepings should be disposed of in the trash.</p> <p>Remove trash, debris, and free standing oil/grease spills/leaks (use absorbent material if necessary) from the area before washing.</p> <p>Use high pressure, low volume spray washing using only potable water with no cleaning agents at an average usage of 0.006 gallons per square feet of sidewalk area.</p> <p>In areas of unsanitary conditions (e.g., areas where the congregation of transient populations can reasonably be expected to result in a significant threat to water quality), whenever practicable, Permittees shall collect and divert street and alley wash water from the Permittee's street and sidewalk cleaning activities to the sanitary sewer.</p> |

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| <p>Potable water discharges for filming activities</p> | <p>Discharges allowed after implementation of specified BMPs.</p> | <p>Prior to discharging the water, the storm drain to the receiving water where the discharge will occur as well as the area in the immediate vicinity of the outlet to the receiving water, and the adjacent downstream portion of the channel that will be influenced by the discharge must be cleaned of all pre-existing trash and debris, and kept free of trash and debris during filming.</p> <p>No trash or debris from the filming activities shall be allowed to remain in the storm drain or channel.</p> <p>Each day, prior to water discharge for the movie scenes, a walk-through of the filming area (including the targeted storm drain and receiving water) shall be conducted by the discharger to ensure that all trash and debris has been removed and no illicit discharges are observed.</p> <p>The source of the water that will be discharged will be de-ionized, chlorine free water.</p> <p>In receiving waters where scour of the channel is a concern, the water must be discharged at a steady, low velocity to minimize scour.</p> <p>Upon the completion of the discharges and associated filming, the discharger shall visually inspect the storm drain and channel downstream of the storm drain outlet to remove any possible trash or debris related to the discharge and filming activities.</p> |
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B. Prohibitions – 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:

1. **For areas addressed by a trash TMDL.** Each Permittee shall comply with the appropriate trash WQBELs as specified in Part IV.B.3 of this Order.
2. **For areas not addressed by a trash TMDL.** Permittees with regulatory authority over Priority Land Uses (PLUs),²² designated land uses,²³ and equivalent alternate land uses²⁴ shall comply with the following requirements:
 - a. **Compliance Methods**²⁵: The Permittee shall install, operate, and maintain either:
 - i. **Track 1:** A *full capture system (FCS)*²⁶ for all storm drains that capture runoff from the PLUs, designated land uses, and equivalent alternate land uses in the Permittee’s jurisdiction; or
 - ii. **Track 2:** Any combination of *full capture systems, multi-benefit projects,*²⁷ other *treatment controls,* and/or *institutional controls* within either the Permittee’s jurisdiction or within the jurisdiction of the Permittee and contiguous Permittees. The Permittee may determine the locations or land uses within its jurisdiction to implement any combination of controls. The Permittee shall demonstrate that such combination achieves Full Capture System Equivalency (FCSE).²⁸ The Permittee may determine which controls to implement to achieve compliance with Full Capture System Equivalency.

The Permittee may change its compliance method by submitting a written request to the Los Angeles Water Board for approval of a modified Implementation Plan and/or Jurisdictional Map consistent with the requirements specified in subparts b and c below²⁹:

²² Priority Land Uses as defined in Attachment A of this Order.

²³ If the Los Angeles Water Board determines that specific land uses or locations (e.g., parks, stadia, schools, campuses, or roads leading to landfills) generate a substantial amount of trash, a Permittee may be required to comply with Part III.B.2 of this Order. These specific land uses and locations are defined as designated land uses.

²⁴ Equivalent alternate land uses as defined in Attachment A of this Order. A Permittee may request authorization from the Executive Officer to substitute one or more PLUs with equivalent alternate land uses that generate rates of trash equivalent to or greater than the PLU(s) being substituted.

²⁵ Permittees selected a compliance method in response to the Los Angeles Water Board’s August 18, 2017, 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 In The Los Angeles Region. Refer to the Fact Sheet (Attachment F) for Permittees’ selected tracks.

²⁶ A list of Full Capture System Trash Treatment Control Devices Certified by the State Water Board is available on the State Water Board’s Stormwater Program - Trash Implementation Program page at https://www.waterboards.ca.gov/water_issues/programs/stormwater/trash_implementation.html

²⁷ Defined as treatment control projects designed to achieve any of the benefits set forth in section 10562, subdivision (d) of the Water Code.

²⁸ Full capture system equivalency as defined in Attachment A of this Order.

²⁹ In no case shall the Permittee receive a time extension to meet final compliance. The Permittee shall meet full compliance per Part III.B.2.d of this Order.

- b. Implementation Plan (For Track 2 Only):** The Permittee shall maintain and implement a Trash Implementation Plan. At a minimum, the Trash Implementation Plan shall include the following:
- i. Locations of proposed and existing certified *full capture systems*, the drainage area served, design specifications and treatment capacity treated by each *full capture system*;
 - ii. In drainage areas without certified *full capture systems*, the combination of controls selected by the Permittee and the rationale for the selection; discussion of how the combination of controls is designed to achieve Full Capture System Equivalency;
 - iii. How Full Capture System Equivalency will be demonstrated, including calculation of baseline trash load using the methodology per the Visual Trash Assessment Approach or other equivalent trash assessment methodology, for all PLUs as well as any designated land uses, and equivalent alternate land uses³⁰;
 - iv. Monitoring of annual trash load using the same methodology that was used to calculate the baseline load for all PLUs as well as any designated land uses, and equivalent alternate land uses to track progress towards achieving Full Capture System Equivalency;
 - v. If using a methodology other than the Visual Trash Assessment Approach to determine trash levels, a description of the methodology used and rationale of how the alternative methodology is equivalent to the Visual Trash Assessment Approach; and
 - vi. If proposing equivalent alternate land uses, a rationale demonstrating that any alternative land uses generate trash at rates that are equivalent to or greater than the PLUs.
- c. Jurisdictional Map:** The Permittee shall maintain and update, at least annually, a Jurisdictional Map identifying the following:
- i. All PLUs, designated land uses and equivalent alternate land uses discharging to the storm drain network;
 - ii. Any drainage areas addressed by existing trash TMDLs;
 - iii. The corresponding storm drain network;
 - iv. Proposed locations of all certified *full capture systems* and where any combination of controls will be implemented that will achieve Full Capture System Equivalency;
- d. Implementation Schedule:** The Permittee shall achieve full compliance as follows:
- i. **Interim Compliance Deadline:** Within 5 years from the effective date of this Order, 50 percent of all PLUs and equivalent alternate land uses must meet Full Capture or Full Capture System Equivalency.
 - ii. **Final Compliance Deadline:** By no later than December 2, 2030, except in designated land uses that have been issued a time schedule by the Los Angeles

³⁰ Refer to the “Recommended Trash Assessment Minimum Level of Effort for Establishing Baseline Trash Generation Levels” document that was included as an enclosure to the Los Angeles Water Board’s August 18, 2017, Water Code Section 13383 Order.

Water Board. In no case may the final compliance date in a time schedule for a designated land use be longer than ten years from the determination by the Los Angeles Water Board to designate a land use or location as a designated land use.

IV. EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

A. Effluent Limitations

1. **Technology Based Effluent Limitations.** Each Permittee shall reduce pollutants in stormwater discharges from the MS4 to the maximum extent practicable (MEP).
2. **Water Quality-Based Effluent Limitations.** Each Permittee shall comply with applicable water quality-based effluent limitations (WQBELs) as set forth in Attachments K through S of this Order, pursuant to applicable compliance schedules. The WQBELs in this Order are consistent with the assumptions and requirements of the TMDL waste load allocations (WLAs) assigned to discharges from the MS4.³¹

B. Total Maximum Daily Load Provisions

1. General

- a. The provisions of this Part IV.B implement and are consistent with the assumptions and requirements of available WLAs established in TMDLs applicable to the Permittees.
- b. The provisions in this Part IV.B are designed to ensure that Permittees achieve WLAs and meet other requirements of TMDLs covering receiving waters impacted by the Permittees' MS4 discharges. TMDL provisions are grouped by WMA in Attachments K through S of this Order.
- c. Permittees subject to each TMDL are identified in Attachment J of this Order.
- d. Permittees shall comply with the applicable WQBELs and/or receiving water limitations contained in Attachments K through S of this Order, consistent with the assumptions and requirements of the WLAs established in the TMDLs, including programs of implementation and schedules, where provided for in the State adoption of the TMDL (40 CFR §122.44(d)(1)(vii)(B); Cal. Wat. Code §13263(a)).
- e. Permittees may comply with WQBELs and receiving water limitations in Attachments K through S of this Order using any lawful means.

2. U.S. EPA Established TMDLs

- a. For U.S. EPA promulgated TMDLs that have Los Angeles Water Board adopted programs of implementation pursuant to Water Code sections 13240 and 13242, Permittees shall comply with the applicable WQBELs and/or receiving water limitations contained in Attachments K through S of this Order, including the programs of implementation and schedules adopted by the Los Angeles Water Board. These TMDLs are the *TMDLs for Nutrients in the Malibu Creek Watershed; Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients to Address Benthic Community Impairments; TMDLs for Metals and Selenium in the San Gabriel River and Impaired Tributaries; and Los Cerritos Channel TMDLs for Metals.*
- b. For U.S. EPA promulgated TMDLs where the WLAs are equivalent to existing loads or, where Permittees' data reported under the previous MS4 permits indicates they are complying with WLAs; Permittees shall comply with the applicable WQBELs and/or receiving water limitations contained in Attachments K through S as of the effective date of this Order. These TMDLs are the *TMDL for Chloride in the Santa*

³¹ According to 40 CFR § 130.2, waste load allocations constitute a type of water quality-based effluent limitation. Pursuant to 40 CFR § 122.2, effluent limitation means any restriction imposed by the permitting authority on quantities, discharge rates, and concentrations of pollutants that are discharged from point sources.

*Clara River Reach 3; Santa Monica Bay TMDLs for DDTs and PCBs; Ballona Creek Wetlands TMDLs for Sediment and Invasive Exotic Vegetation; Echo Park Lake Nutrient and Trash TMDLs; and Peck Road Park Lake Nutrient and Trash TMDLs.*³²

- c. For U.S. EPA promulgated TMDLs where load reductions are required to meet the WLAs and there is no program of implementation pursuant to Water Code section 13240 and 13242, this Order allows Permittees to propose and implement BMPs that will be effective in achieving compliance with U.S. EPA established WLAs. These TMDLs are the *Pesticides, PCBs, and Sediment Toxicity in Oxnard Drain 3 TMDL; Long Beach City Beaches and Los Angeles River Estuary Indicator Bacteria TMDL; Legg Lake System Nutrient TMDL; Lake Calabasas Nutrient TMDL; Echo Park Lake Chlordane, Dieldrin, and PCBs TMDLs; Peck Road Park Lake Chlordane, Dieldrin, DDTs, and PCBs TMDLs; and Puddingstone Reservoir Nutrient, Mercury, Chlordane, Dieldrin, DDTs, and PCBs TMDLs.*³³
- i. Each Permittee, individually or collaboratively, shall propose BMPs to achieve the applicable numeric WQBELs and/or receiving water limitations contained in Attachments K through S of this Order and a schedule for implementing the BMPs that is as short as possible, in a Watershed Management Program.
- ii. At a minimum, each Permittee shall include the following information in its Watershed Management Program, relevant to each applicable U.S. EPA established TMDL:
- (a) Available data demonstrating the current quality of the Permittee's MS4 discharge(s) in terms of concentration and/or load of the target pollutant(s) to the receiving waters subject to the TMDL.
- (b) A detailed description of BMPs that have been implemented, and/or are currently being implemented by the Permittee to achieve the TMDL WLA(s), if any.
- (c) A detailed time schedule of specific actions the Permittee will take in order to achieve compliance with the applicable TMDL WLA(s).
- (d) A demonstration that the time schedule requested is as short as possible. The time schedule requested should take into account the time since U.S. EPA establishment of the TMDL, and technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the applicable numeric WQBELs contained in Attachments K through S of this Order.
- (1) For the *Long Beach City Beaches and Los Angeles River Estuary Indicator Bacteria TMDL* the time schedule to achieve the WQBELs and receiving water limitations shall be as follows:
- (i) During dry weather, for the Long Beach City Beaches no later than the effective date of this Order³⁴;

³² The Echo Park Lake Nutrient and Trash TMDLs and the Peck Road Park Lake Nutrient and Trash TMDLs are part of the *Los Angeles Area Lakes TMDLs for Nitrogen, Phosphorus, Mercury, Trash, Organochlorine Pesticides and PCBs* (Los Angeles Area Lakes TMDLs).

³³ The Legg Lake System Nutrient TMDL; Lake Calabasas Nutrient TMDL; Echo Park Lake Chlordane, Dieldrin, and PCBs TMDLs; Peck Road Park Lake Chlordane, Dieldrin, DDTs, and PCBs TMDLs; and Puddingstone Reservoir Nutrient, Mercury, Chlordane, Dieldrin, DDTs, and PCBs TMDLs are part of the Los Angeles Area Lakes TMDLs.

³⁴ Deadline is established per the City of Long Beach MS4 Permit, Order No. R4-2014-0024, Part VIII.G.1.c.iv.(1).

- (ii) During wet weather, for the Long Beach City Beaches a time schedule as short as possible per Part IV.B.2.c.i of this Order;
 - (iii) During dry weather, for the Los Angeles River Estuary no later than the schedule for Segment A (Rosecrans Avenue to Willow Street) in Table Q – 1 within Attachment Q of this Order;
 - (iv) During wet weather, for the Los Angeles River Estuary no later than March 23, 2037; and
 - (v) For the geometric mean WQBELs and receiving water limitations, no later than the time schedule proposed for wet weather for the Long Beach City Beaches and the Los Angeles River Estuary.
- (e) If the requested time schedule exceeds one year, the proposed schedule shall include interim requirements and the dates for their achievement.
- iii. Each Permittee subject to WQBELs and/or receiving water limitations contained in Attachments K through S of this Order for U.S. EPA established TMDL(s), individually or collaboratively, may submit a Watershed Management Program to the Los Angeles Water Board for approval per the schedule in Parts IX.F and G of this Order.
 - iv. If a Permittee submits a Watershed Management Program that is not approved, then the Permittee shall be required to directly demonstrate compliance with the applicable numeric WQBELs and/or receiving water limitations immediately upon notification of the Los Angeles Water Board’s disapproval.
 - v. If a Permittee does not submit a Watershed Management Program, then the Permittee shall be required to directly demonstrate compliance with the applicable numeric WQBELs and/or receiving water limitations as of the effective date of the Order.

3. Water Quality-Based Effluent Limitations for Trash

Permittees assigned a WQBEL for a trash TMDL shall comply as set forth below.

- a. **Effluent Limitations.** Permittees shall comply with the interim and final WQBELs for the following trash TMDLs:
 - i. Ventura River Estuary Trash TMDL (Attachment K)
 - ii. Lake Elizabeth Trash TMDL (Attachment M)
 - iii. Revolon Slough and Beardsley Wash Trash TMDL (Attachment N)
 - iv. Santa Monica Bay Nearshore and Offshore Debris TMDL (Attachment O)
 - v. Malibu Creek Watershed Trash TMDL (Attachment O)
 - vi. Ballona Creek Watershed Trash TMDL (Attachment O)
 - vii. Machado Lake Trash TMDL (Attachment P)
 - viii. Los Angeles River Watershed Trash TMDL (Attachment Q)
 - ix. Legg Lake Trash TMDL (Attachment Q)
 - x. Echo Park Lake Trash TMDL (Attachment Q)
 - xi. Peck Road Park Lake Trash TMDL (Attachment Q)

- b. Compliance.** Pursuant to California Water Code section 13360(a), Permittees may comply with the trash effluent limitations using any lawful means. Such compliance options are broadly described below. Any combination of these, as allowed by the applicable TMDL, may be employed to achieve compliance:

i. Full Capture Systems (FCS) Compliance Approach

(a) Certified Full Capture Systems. *Full capture systems* are systems that meet the operating and performance requirements described in Attachment A of this Order. The Los Angeles Water Board recognizes the *full capture systems* certified by the State Water Board Executive Director as well as the systems previously certified by the Los Angeles Water Board Executive Officer: nine Los Angeles Water Board Executive Officer-certified *full capture systems*, including Vortex Separation Systems (VSS), specific types or designs of trash nets; two gross solids removal devices (GSRDs); catch basin brush inserts and mesh screens; vertical and horizontal trash capture screen inserts; a connector pipe screen device; and a nutrient separating baffle box.³⁵

(b) Permittees are authorized to comply with their effluent limitations through certified *full capture systems* provided the requirements of subpart (c), immediately below, and any conditions in the certification, continue to be met.

(c) Permittees may comply with their effluent limitations through progressive installation of *full capture systems* throughout their jurisdictional areas until all areas draining to the waterbody associated with the trash TMDL are addressed. For purposes of this Order, attainment of the effluent limitations shall be conclusively presumed for any drainage area to the waterbody associated with the trash TMDL where certified *full capture systems* treat all drainage from the area, provided that the *full capture systems* are adequately sized and maintained, and that maintenance records are up-to-date and available for inspection by the Los Angeles Water Board.

(1) Final Effluent Limitations. A Permittee shall be in compliance with its final effluent limitation if all drainage areas under its jurisdiction and/or authority are serviced by appropriate certified *full capture systems*.

(2) Interim Effluent Limitations. A Permittee shall be in compliance with its interim effluent limitations, where applicable:

(i) By demonstrating that *full capture systems* treat the percentage of drainage areas in the watershed that corresponds to the required trash abatement.

(ii) Alternatively, a Permittee may propose a schedule for installation of *full capture systems* in areas under its jurisdiction and/or authority within a given watershed, targeting first the areas of greatest trash generation, for the Los Angeles Water Board Executive Officer's approval. Any such schedule shall result in timely compliance with the final effluent limitations, consistent with the established TMDL implementation schedule and applicable State policies. A Permittee shall be in compliance with its interim

³⁵ See August 3, 2004 Los Angeles Water Board Memorandum titled "Procedures and Requirements for Certification of a Best Management Practice for Trash Control as a Full Capture System".

effluent limitations provided it is fully in compliance with any such approved schedule.

(d) Full Capture System Technical Infeasibility. In drainage areas where the vast majority of catch basins are retrofitted with *full capture systems*; the *full capture systems* are properly sized, operated, and maintained; and retrofit of remaining catch basins is technically infeasible; a Permittee may submit a written request that the Los Angeles Water Board Executive Officer make a determination that the Permittee is in full compliance with its final effluent limitation if all of the following criteria are met:

- (1)** 98% of all catch basins within the Permittee's jurisdictional land area in the watershed are retrofitted with *full capture systems* (or, alternatively, 98% of the jurisdiction's drainage area is addressed by *full capture systems*) and at least 97% of the catch basins (or, alternatively, drainage area) within the Permittee's jurisdiction in the subwatershed (the smaller of the HUC-12 equivalent area or tributary subwatershed) are retrofitted with *full capture systems*; and
- (2)** The Permittee submits to the Los Angeles Water Board a report for Executive Officer concurrence, detailing the technical infeasibility of *full capture system* retrofits in the remaining catch basins and evaluating the feasibility of *partial capture devices*, and the potential to install *full capture systems* or *partial capture devices* along the storm drain or at the MS4 outfall downgradient from the catch basin; and
- (3)** The Permittee submits to the Los Angeles Water Board a report for Executive Officer approval, detailing the *partial capture devices and institutional controls* that are currently and will continue to be implemented in the affected subwatershed(s), including an assessment of the effectiveness of the *partial capture devices and institutional controls* using existing data and representative studies.

In addition, if significant land use changes occur in the affected subwatershed (based on permits for new development and significant re-development) or if there is a significant change in the suite of implemented *partial capture devices and/or institutional controls* (e.g., reduced frequency of implementation, reduced spatial coverage of implementation, change in technology employed), the Permittee shall re-evaluate the effectiveness of *institutional controls* and *partial capture devices* and report the findings to the Los Angeles Water Board for confirmation or change to the determination. Such re-evaluation shall occur within one year of the identification of the significant changes.

(e) Exceptions for Malibu Creek Watershed and Revolon Slough and Beardsley Wash Trash TMDLs. Permittees subject to the Malibu Creek Watershed and Revolon Slough and Beardsley Wash Trash TMDLs, in Attachments O and N of this Order respectively, may comply with trash WQBELs through the installation of *full capture systems*, or any lawful manner to achieve Full Capture System Equivalency, in Priority Land Uses (PLUs) consistent with implementation of Part III.B.2.a of this Order.

ii. **Mass Balance Compliance Approach.** Permittees may comply with their interim and final effluent limitations through a combination of *full capture*

systems, *partial capture devices*, and the application of *institutional controls*.³⁶ In this approach, a Permittee shall demonstrate compliance by calculating its annual trash discharge and comparing this estimate to applicable interim and/or final effluent limitations. To calculate the annual trash discharge, the Permittee shall conduct a study to determine how much trash is accumulating within its jurisdiction between storm events to calculate a Daily Generation Rate (DGR).

(a) Intermediate Calculations

- (1) Daily Generation Rate (DGR).** The DGR is the average amount of litter deposited to land or surface water during a 24-hour period, as measured in a specified drainage area. Permittees shall conduct a study to estimate the DGR for the applicable trash TMDL area. The DGR will be used in the mass balance calculation to determine the trash discharged during storm events.
 - (i) Study Area:** The DGR study area(s) shall be representative of the land uses and activities within the Permittee’s authority. The DGR for the applicable area under the Permittee’s jurisdiction and/or authority shall be extrapolated from the representative drainage area(s) analyzed during the study.
 - (ii) Study Time Period:** The DGR shall be determined from direct measurement of trash deposited in the drainage study area during any 30-day period between June 22nd and September 22nd exclusive of rain events.³⁷
 - (iii) Recalculation Frequency:** The DGR shall be re-calculated every year unless a less frequent period for recalculation is approved by the Los Angeles Water Board Executive Officer. Upon achieving compliance with final water quality-based effluent limitations, Permittees may reduce the frequency of DGR recalculation to every five years (no Executive Officer approval necessary).

Daily Generation Rate

$$DGR = \sum \left(\frac{A_i}{A_i^{study}} \right) \left(\frac{m_i}{t_i} \right)$$

where:

- A_i = total area within jurisdiction represented by land use i
- A_i^{study} = representative area used in DGR study for land use i
- m_i = amount of trash collected during the DGR study collection period for land use i [gal or lbs]
- t_i = number of days of DGR study collection period for land use i (should be at least 30 days) [days]

- (2) Partial Capture Devices.** Trash discharges from areas serviced solely by *partial capture devices* may be estimated based on demonstrated

³⁶ While interim effluent limitations may be complied with using *partial capture devices*, compliance with final effluent limitations cannot be achieved with the exclusive use of *partial capture devices*.

³⁷ Provided no special events are scheduled that may affect the representative nature of that collection period.

performance of the device(s) in the implementing area. Performance shall be demonstrated under different conditions (e.g. low to high trash loading). That is, trash reduction is equivalent to the *partial capture devices'* trash removal efficiency multiplied by the percentage of drainage area serviced by the devices. For automatic retractable screens (ARS), Permittees may use an 86% removal efficiency.³⁸

- (3) **Certified Full Capture Systems.** Areas serviced by properly sized, operated, and maintained *full capture systems* are considered to have no trash discharge.
- (b) **Mass Balance Calculation.** A mass balance equation shall be used to estimate the amount of trash discharged during a storm event.³⁹
 - (1) **Storm Event Trash Discharge.** The *Storm Event Trash Discharge* for a given rain event in the Permittee's drainage area shall be calculated by multiplying the number of days since the last street sweeping⁴⁰ by the DGR and subtracting the amount of any trash recovered in the catch basins. For each day of a storm event that generates greater than 0.25 inch of rain, the Permittee shall calculate a *Storm Event Trash Discharge*. In cases where the calculated *Storm Event Trash Discharge* is negative, the *Storm Event Trash Discharge* will be equivalent to zero gallons or pounds of trash.

Storm Event Trash Discharge

$$\text{Storm Event Trash Discharge} = (t * DGR) - m_{\text{recovered}}$$

where:

- t = days since last street sweeping [days]
- DGR = Daily Generation Rate [gal/day or lbs/day]
- $m_{\text{recovered}}$ = trash recovered from catch basins [gal or lbs]

- (2) **Total Storm Year Trash Discharge.** The sum of the *Storm Event Trash Discharges* for the storm year shall be the Permittee's calculated annual trash discharge.

³⁸ City of Los Angeles Technical Report: Assessment of Catch Basin Opening Screen Covers. June 2016.

³⁹ Amount of trash shall refer to the uncompressed volume (in gallons) or drip-dry weight (in pounds) of trash collected.

⁴⁰ If the Permittee's jurisdiction is not swept all in one day but on multiple days of the week, the weighted average of days since the last street sweeping shall be used, using the "Weighted Average of Days Since Last Street Sweeping" spreadsheet in Attachment I of this Order.

Total Storm Year Trash Discharge

$$\text{Total Storm Year Trash Discharge} = \sum_i^n D_i$$

where:

D_i = the *Storm Event Trash Discharge* for storm event day i

n = the number of storm event days with precipitation greater than 0.25 inch

- (c) **Interim Effluent Limitations.** Permittees employing a mass balance compliance approach shall be in compliance with interim effluent limitations if the calculated Total Storm Year Trash Discharge is less than the applicable interim water quality-based effluent limitation. This can also be expressed as an equivalent percent reduction relative to the Permittee's baseline load in the applicable TMDL.
- (d) **Final Effluent Limitations.**
- (1) Permittees using a *mass balance compliance approach* shall be in compliance with the final effluent limitations when the reduction of trash from the jurisdiction's baseline load is 99% or greater as calculated using the approach, and *partial capture devices* are properly sized, operated, and maintained; or
 - (2) **Mass Balance Equivalency.** A Permittee may request that the Los Angeles Water Board Executive Officer make a determination that a 97% to 98% reduction of the baseline load, as calculated using a mass balance approach, constitutes full compliance with the final effluent limitation if the Permittee submits a report to the Los Angeles Water Board for Executive Officer approval including:
 - (i) Two or more consecutive years of data showing that the Permittee's compliance was at or above a 97% reduction in its baseline trash load; and
 - (ii) An evaluation of *institutional controls* in the jurisdiction demonstrating continued effectiveness and any potential enhancements; and
 - (iii) Demonstration that opportunities to implement *partial capture devices* have been fully exploited.
- iii. **Scientifically Based Alternative Compliance Approach.** A Permittee may comply with their interim and final effluent limitations using a scientifically based alternative compliance approach wherein the Permittee conducts effectiveness studies of *institutional controls* and *partial capture devices* for their particular subwatershed(s) and/or demonstrates that existing studies are representative and transferable to their implementing area. Permittees must request approval from the Los Angeles Water Board Executive Officer prior to conducting any studies and/or reporting compliance using this approach. In any such request to use an scientifically based alternative compliance approach, the Permittee shall provide a schedule for periodic compliance effectiveness demonstration and evaluation.

- iv. Minimum Frequency of Assessment and Collection Compliance Approach.** If allowed in a trash TMDL⁴¹ and approved by the Executive Officer, a Permittee may alternatively comply with its final effluent limitations by implementing a program for *minimum frequency of assessment and collection* (MFAC) in conjunction with BMPs. To the satisfaction of the Executive Officer, the MFAC/BMP program must meet the following criteria:
- (a)** The MFAC/BMP Program includes an initial minimum frequency of trash assessment and collection and suite of structural and/or nonstructural BMPs. The MFAC/BMP program shall include collection and disposal of all trash found in the receiving water and shoreline. Permittees shall implement an initial suite of BMPs based on current trash management practices in land areas that are found to be sources of trash to the water body.
 - (b)** The MFAC/BMP Program includes reasonable assurances that it will be implemented by the responsible Permittees.
 - (c)** MFAC protocols may be based on Surface Water Ambient Monitoring Program (SWAMP) protocols for rapid trash assessment, or alternative protocols proposed by Permittees and approved by the Los Angeles Water Board Executive Officer.
 - (d)** Implementation of the MFAC/BMP program should include a Health and Safety Program to protect personnel. The MFAC/BMP program shall not require Permittees to access and collect trash from areas where personnel are prohibited.
 - (e)** The Los Angeles Water Board Executive Officer may approve or require a revised assessment and collection frequency and definition of the critical conditions under the MFAC:
 - (1)** To prevent trash from accumulating in deleterious amounts that cause nuisance or adversely affect beneficial uses between collections;
 - (2)** To reflect the results of trash assessment and collection;
 - (3)** If the amount of trash collected does not show a decreasing trend, where necessary, such that a shorter interval between collections is warranted; or
 - (4)** If the amount of trash collected is decreasing such that a longer interval between collections is warranted.
 - (f)** At the end of the implementation period, a revised MFAC/BMP program may be required if the Los Angeles Water Board Executive Officer determines that the amount of trash accumulating between collections is causing nuisance or otherwise adversely affecting beneficial uses.
 - (g)** With regard to subparts (iv)(e)(1), (iv)(e)(2), or (iv)(e)(3) above, the Los Angeles Water Board Executive Officer is authorized to allow responsible Permittees to implement additional structural or non-structural BMPs in lieu of modifying the monitoring frequency.

⁴¹ The Lake Elizabeth Trash TMDL (Attachment M), Legg Lake Trash TMDL (Attachment Q), Machado Lake Trash TMDL (Attachment P), Ventura River Estuary Trash TMDL (Attachment K), and Revolon Slough and Beardsley Wash Trash TMDL (Attachment N) allow Permittees to comply with WQBELs by implementing an MFAC program in conjunction with BMPs.

- c. Los Angeles County Flood Control District and Ventura County Watershed Protection District Compliance for Trash TMDLs.** For all trash TMDLs where the LACFCD and VCWPD are named as a responsible Permittee per Attachment J of this Order, the following shall apply:
- i.** The LACFCD and VCWPD are responsible for performing storm drain operation and maintenance, including but not limited to: catch basin labeling, catch basin label inspections, and open channel signage; open channel maintenance that includes removal of trash and debris; and implementation of activity specific BMPs, including those related to litter/debris/graffiti in compliance with this Order.
 - ii.** The LACFCD and VCWPD may be held responsible with a Permittee for non-compliance with water quality-based effluent limitations where it has either:
 - (a)** Without good cause denied entitlements or other necessary authority to a responsible jurisdiction or agency for the timely installation and/or maintenance of *full and/or partial capture trash control devices* for purposes of TMDL compliance in parts of the MS4 physical infrastructure that are under its authority, or
 - (b)** Not fulfilled its obligations regarding proper BMP installation, operation, and maintenance for purposes of TMDL compliance within the MS4 physical infrastructure under its authority, thereby causing or contributing to a responsible jurisdiction and/or agency to be out of compliance with its interim or final water quality-based effluent limitation.
 - iii.** Under these circumstances, the LACFCD and VCWPD's responsibility shall be limited to non-compliance related to the drainage area(s) within the jurisdiction where the LACFCD and VCWPD has authority over the relevant portions of the MS4 physical infrastructure.

V. RECEIVING WATER LIMITATIONS

- A. Discharges from the MS4 that cause or contribute to the violation of receiving water limitations are prohibited.
- B. Discharges from the MS4 of stormwater, or non-stormwater, for which a Permittee is responsible,⁴² shall not cause or contribute to a condition of nuisance.
- C. The Permittee shall comply with Parts V.A and V.B through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with their stormwater management program and its components and other requirements of this Order including any modifications. The Permittees' stormwater management program and its components shall be designed to achieve compliance with receiving water limitations. If exceedances of receiving water limitations persist, notwithstanding implementation of the Permittees' stormwater management program and its components and other requirements of this Order, the Permittee shall ensure compliance with discharge prohibitions and receiving water limitations by complying with the following procedure:
 - 1. Upon a determination by either the Permittee or the Los Angeles Water Board that discharges from the MS4 are causing or contributing to an exceedance of an applicable Receiving Water Limitation, the Permittee shall promptly notify the Los Angeles Water Board and thereafter submit a Receiving Water Limitations Compliance Report (as described in the Reporting Requirements, Part XIV.C of the Monitoring and Reporting Program, Attachment E) to the Los Angeles Water Board for approval. The Receiving Water Limitations Compliance Report shall describe the BMPs that are currently being implemented by the Permittee and additional BMPs, including modifications to current BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedances of receiving water limitations. The Receiving Water Limitations Compliance Report shall include an implementation schedule. This Receiving Water Limitations Compliance Report shall be submitted per Attachment E Part XIV.C unless the Los Angeles Water Board directs an earlier submittal. The Los Angeles Water Board may require modifications to the Receiving Water Limitations Compliance Report.
 - 2. The Permittee shall submit any modifications to the Receiving Water Limitations Compliance Report required by the Los Angeles Water Board within 30 days of notification.
 - 3. Within 30 days following the Los Angeles Water Board Executive Officer's approval of the Receiving Water Limitations Compliance Report, the Permittee shall revise its stormwater management program and its components and monitoring program to incorporate the approved modified BMPs that have been and will be implemented, an implementation schedule, and any additional monitoring required.
 - 4. The Permittee shall implement its revised stormwater management program and its components and monitoring program according to the approved implementation schedule in the Receiving Water Limitations Compliance Report.
- D. So long as the Permittee has complied with the procedures set forth in Part V.C above and is implementing its revised stormwater management program and its components, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the Los Angeles Water Board to modify current BMPs or develop additional BMPs.

⁴² Pursuant to 40 CFR § 122.26(a)(3)(vi), a Permittee is only responsible for discharges of stormwater and non-stormwater from the MS4 for which it is an owner or operator. MS4 is defined in Attachment A of this Order and 40 CFR § 122.26(b)(8).

VI. STANDARD PROVISIONS

Permittees shall comply with the following provisions. If there is any conflict, duplication, or overlap between provisions specified by this Order, the more stringent provision shall apply:

A. Federal Standard Provisions

Each Permittee shall comply with all Standard Provisions included in Attachment D of this Order, in accordance with 40 CFR sections 122.41 and 122.42.

B. Legal Authority

1. Each Permittee must establish and maintain adequate legal authority, within its respective jurisdiction, to control pollutant discharges into and from its MS4 through ordinance, statute, permit, contract or similar means. This legal authority must, at a minimum, authorize or enable the Permittee to:
 - a. Control the contribution of pollutants to its MS4 from stormwater discharges associated with industrial and construction activity and control the quality of stormwater discharged from industrial and construction sites. This requirement applies both to industrial and construction sites with coverage under an NPDES permit, as well as to those sites that do not have coverage under an NPDES permit.
 - b. Prohibit all non-stormwater discharges into the MS4 to receiving waters not otherwise authorized or conditionally exempt pursuant to Part III.A of this Order;
 - c. Prohibit and eliminate illicit discharges and illicit connections to the MS4;
 - d. Control the discharge of spills, dumping, or disposal of materials other than stormwater to its MS4;
 - e. Require compliance with conditions in Permittee ordinances, permits, contracts or orders (i.e., hold dischargers to its MS4 accountable for their contributions of pollutants and flows);
 - f. Utilize enforcement mechanisms to require compliance with applicable ordinances, permits, contracts, or orders;
 - g. Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Permittees;
 - h. Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements with other owners of the MS4 such as the State of California Department of Transportation;
 - i. Carry out all inspections, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with applicable municipal ordinances, permits, contracts and orders, and with the provisions of this Order, including the prohibition of non-stormwater discharges into the MS4 and receiving waters. This means the Permittee must have authority to enter, monitor, inspect, take measurements, review and copy records, and require regular reports from entities discharging into its MS4;
 - j. Require the use of control measures to prevent or reduce the discharge of pollutants to achieve water quality standards/receiving water limitations;
 - k. Require that structural BMPs are properly operated and maintained; and
 - l. Require documentation on the operation and maintenance of structural BMPs and their effectiveness in reducing the discharge of pollutants to the MS4.

2. Each Permittee must submit a statement certified by its chief legal counsel that the Permittee has the legal authority within its jurisdiction to implement and enforce each of the requirements contained in 40 CFR § 122.26(d)(2)(i)(A-F) and this Order. Each Permittee shall submit this certification annually as part of its Annual Report beginning with the first Annual Report required under this Order. These statements must include:
 - a. Citation of applicable municipal ordinances or other appropriate legal authorities and their relationship to the requirements of 40 CFR § 122.26(d)(2)(i)(A)-(F) and of this Order; and
 - b. Identification of the local administrative and legal procedures available to mandate compliance with applicable municipal ordinances identified in subpart a above and therefore with the conditions of this Order, and a statement as to whether enforcement actions can be completed administratively or whether they must be commenced and completed in the judicial system.

C. Fiscal Resources

1. Each Permittee shall conduct a fiscal analysis of the annual capital and operation and maintenance expenditures necessary to implement the requirements of this Order. The analysis shall include the following: costs incurred to comply with this Order and an estimate of the costs for the upcoming permit year. See Attachment E for Annual Report requirements.
2. Each Permittee shall also enumerate and describe in its Annual Report the source(s) of funds used in the past year, and proposed for the coming year, to meet necessary expenditures to implement the requirements of this Order.

D. Responsibilities of the Permittees

Each Permittee is required to comply with the requirements of this Order applicable to its discharges. Permittees are not responsible for the implementation of the provisions applicable to other Permittees. Each Permittee shall:

1. Comply with the requirements of this Order including attachments and any modifications thereto.
2. Inform the Los Angeles Water Board of instances of non-compliance pursuant to the MRP (Attachment E).
3. Submit complete and timely reports including but not limited to non-compliance reporting, annual reports, monitoring reports, and the report of waste discharge.
4. Consider facilitating coordination among internal departments and agencies, as necessary, to achieve the implementation of the requirements of this Order applicable to such Permittees in an efficient and cost-effective manner.
5. Consider participating in intra-agency coordination (e.g., Planning Department, Fire Department, Building and Safety, Code Enforcement, Public Health, Parks and Recreation, and others) and inter-agency coordination (e.g., other Permittees under this Order, other NPDES permittees) necessary to successfully implement the provisions of this Order.

E. Public Review

1. All documents submitted by the Permittee to the Los Angeles Water Board in compliance with the terms and conditions of this Order shall be made available to members of the public pursuant to the Freedom of Information Act (5 U.S.C. § 552 (as amended)) and the Public Records Act (Cal. Government Code § 6250 et seq.).

2. All documents submitted by the Permittee to the Los Angeles Water Board Executive Officer for approval shall be made available by the Permittee to the public for a 30-day period to allow for public comment, unless otherwise specified.

F. Los Angeles Water Board Review

1. An approval of a document by the Los Angeles Water Board or the Executive Officer per their delegated authority, may include conditions that must be met by the Permittee. If the conditions are not met, the approval may be revoked.
2. Any formal determination or approval made by the Los Angeles Water Board Executive Officer pursuant to the provisions of this Order may be reviewed by the Los Angeles Water Board. A Permittee(s) or a member of the public may request such review upon petition within 30 days of the effective date of the notification of such decision to the Permittee(s) and interested persons on file at the Los Angeles Water Board.

G. Reopener and Modification

1. This Order may be modified, revoked, reissued, or terminated in accordance with the provisions of 40 CFR sections 122.44, 122.62, 122.63, 122.64, 124.5, 125.62, and 125.64. Causes for taking such actions include, but are not limited to:
 - a. Endangerment to human health or the environment resulting from the permitted activity, including information that the discharge(s) regulated by this Order may have the potential to cause or contribute to adverse impacts on water quality and/or beneficial uses;
 - b. Acquisition of newly obtained information that would have justified the application of different conditions if known at the time of Order adoption;
 - c. To address changed conditions identified in required reports or other sources deemed significant by the Los Angeles Water Board;
 - d. To incorporate provisions as a result of future amendments to the Basin Plan, such as a new or revised water quality objective or the adoption or reconsideration of a TMDL, including the program of implementation and time schedule for implementation. As soon as possible after the effective date of a revised TMDL, where the revisions warrant a change to the provisions of this Order, the Los Angeles Water Board may modify this Order consistent with the assumptions and requirements of the revised WLA(s), including the program of implementation;
 - e. To incorporate provisions as a result of new or amended statewide water quality control plans or policies adopted by the State Water Board;
 - f. To incorporate provisions as a result of the promulgation of new or amended federal or state laws or regulations, U.S. EPA guidance concerning regulated activities, or judicial decisions that becomes effective after adoption of this Order.
 - g. To incorporate effluent limitations for toxic constituents determined to be present in significant amount in the discharge through a more comprehensive monitoring program included as part of this Order;
 - h. To include new Reporting Levels (RLs), in accordance with the provisions set forth in 40 CFR Parts 122 and 124; and/or
 - i. To include provisions or modifications to WQBELs in Part IV and Attachments K through S of this Order prior to the final compliance deadlines, if practicable, that would allow an action-based, BMP compliance demonstration approach with regard to final WQBELs for stormwater discharges. Such modifications shall be based on the

Los Angeles Water Board's evaluation of whether Watershed Management Programs in Part IX of this Order have resulted in attainment of interim WQBELs for stormwater and review of relevant research, including but not limited to data and information provided by Permittees and other stakeholders, on stormwater quality and the efficacy and reliability of stormwater control technologies. Provisions or modifications to WQBELs in Part IV and Attachments K through S of this Order shall only be included in this Order where there is evidence that stormwater control technologies can reliably achieve final WQBELs.

2. After notice and opportunity for a hearing, this Order may be terminated or modified for cause, including, but not limited to:
 - a. Violation of any term or condition contained in this Order;
 - b. Obtaining this Order by misrepresentation, or failure to disclose all relevant facts; or
 - c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
 3. The filing of a request by a Permittee for a modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any condition of this Order.
 4. Upon the consent of the Permittee(s), this Order may be modified to make corrections or allowances for changes in the permitted activity, following the procedures at 40 CFR section 122.63, if processed as a minor modification.⁴³ Minor modifications may only:
 - a. Correct typographical errors;
 - b. Require more frequent monitoring or reporting by a Permittee; or
 - c. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement.
- H. Any discharge of waste to any point(s) other than specifically described in this Order is prohibited and constitutes a violation of this Order.
- I. A copy of this Order shall be maintained by each Permittee so as to be available during normal business hours to Permittee employees responsible for implementation of the provisions of this Order and members of the public.
- J. This Order does not exempt any Permittee from compliance with any other laws, regulations, or ordinances that may be applicable.
- K. The provisions of this Order are severable. If any provision of this Order or the application of any provision of this Order to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby.

VII. MONITORING AND REPORTING PROGRAM (MRP) REQUIREMENTS

Permittees shall comply with the MRP, and future revisions thereto, in Attachment E of this Order and Standard Provisions relating to monitoring, reporting, and record keeping in Attachment D of this Order.

⁴³ This provision does not apply to Watershed Management Programs, Integrated Monitoring Programs, or Coordinated Integrated Monitoring Programs.

VIII. STORMWATER MANAGEMENT PROGRAM MINIMUM CONTROL MEASURES

A. General

1. Each Permittee shall implement the requirements in Parts VIII.D through VIII.I below or may in lieu of the requirements in Parts VIII.D through VIII.I, implement customized actions within each of these general categories of control measures as set forth in an approved Watershed Management Program per Part IX of this Order. Implementation shall be consistent with the requirements of 40 CFR § 122.26(d)(2)(iv).
2. **Timelines for Implementation.** Unless otherwise noted in this Part VIII, each Permittee that does not elect to develop or continue to implement a Watershed Management Program per Part IX shall implement the requirements contained in this Part VIII as of the effective date of this Order unless it is a new or modified requirement as compared to the Permittee's prior permit. Permittees shall have up to 6 months from the effective date of this Order to incorporate new or modified requirements into their existing stormwater management program unless otherwise specified below.
3. **Municipal Employee and Contractor Training**
 - a. Each Permittee shall ensure all employees in targeted positions (whose interactions, jobs, and activities affect stormwater quality) are trained on an annual basis on the requirements of the overall stormwater management program in this Order, and shall ensure contractors performing privatized/contracted municipal services are appropriately trained to:
 - i. Promote a clear understanding of the potential for activities to pollute stormwater.
 - ii. Identify opportunities to require, implement, and maintain appropriate BMPs in their line of work.
 - b. Each Permittee shall ensure all employees and contractors who use or have the potential to use pesticides and/or fertilizers (whether or not they normally apply these as part of their work) are trained on an annual basis. Training programs shall address:
 - i. The potential for pesticide-related surface water toxicity;
 - ii. Proper use, handling, and disposal of pesticides;
 - iii. The least toxic methods of pest prevention and control, including Integrated Pest Management (IPM); and
 - iv. Reduction of pesticide use.
 - c. Outside contractors can self-certify, providing they certify they have received all applicable training to implement the requirements in this Order and have documentation to that effect.
 - d. New Permittee staff members must be provided with stormwater training applicable to their position within 180 days of starting employment. Each Permittee must create and maintain a list of applicable positions and contractors which require specific MS4 Permit compliance training.
 - e. Each Permittee must continue to annually implement a training program regarding the identification of illicit discharges through an illicit discharges detection and elimination (IDDE) program for all municipal field staff, who, as part of their normal job responsibilities (including but not limited to street sweeping, storm drain maintenance, solid waste management, sanitary sewer collection system maintenance, road maintenance), may come into contact with or otherwise observe an illicit discharge or

illicit connection to the MS4. The IDDE training program should address, at a minimum, the following:

- i. Illicit connection and discharge identification, including definitions and examples,
 - ii. investigation,
 - iii. elimination,
 - iv. cleanup,
 - v. reporting, and
 - vi. documentation.
- f. Each Permittee shall ensure that all staff whose primary job duties are related to implementing the construction stormwater program in Part VIII.G of this Order are adequately trained on an annual basis. Training shall be provided to pertinent staff to ensure appropriate knowledge of:
- i. The General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit), including its SWPPP, monitoring and reporting program, and BMP requirements.
 - ii. Local requirements, including any applicable ordinances and BMP standards.
 - iii. Appropriate structural and non-structural BMPs.
 - iv. Post-construction and runoff reduction requirements.
- g. Each Permittee shall ensure that all staff whose primary job duties are related to implementing the industrial and commercial facilities program in Part VIII.E of this Order are adequately trained on an annual basis. Training shall be provided to pertinent staff to ensure appropriate general knowledge of:
- i. The General Permit for Storm Water Discharges Associated with Industrial Activities (Industrial General Permit), including its SWPPP, monitoring and reporting program, and BMP requirements.
 - ii. Local requirements, including any applicable ordinances and BMP standards.
 - iii. Appropriate structural and non-structural BMPs.
- h. Each Permittee shall maintain documentation of municipal employee and contractor training activities.

B. Progressive Enforcement and Interagency Coordination

1. Each Permittee shall develop and implement a Progressive Enforcement Policy to ensure that (1) regulated Industrial/Commercial facilities, (2) construction sites, (3) new development and redevelopment sites with post-construction controls, and (4) illicit discharges are each brought into compliance with all stormwater and non-stormwater requirements within a reasonable time period as specified below.
 - a. **Follow-up Inspections.** In the event that a Permittee determines, based on an inspection or illicit discharge investigation, that a facility or site operator has failed to adequately implement all necessary BMPs, that Permittee shall take progressive enforcement actions which, at a minimum, shall include a follow-up inspection within 4 weeks from the date of the initial inspection and/or investigation.
 - b. **Enforcement Action.** In the event that a Permittee determines that a facility or site operator has failed to adequately implement BMPs after a follow-up inspection, that

Permittee shall take enforcement action as established through authority in its municipal code and ordinances, through the judicial system, or refer the case to the Los Angeles Water Board, per the Interagency Coordination provisions below.

- c. **Records Retention.** Each Permittee shall maintain records, per their existing record retention policies, and make them available on request to the Los Angeles Water Board, including inspection reports, warning letters, notices of violations, and other enforcement records, demonstrating a good faith effort to bring facilities into compliance.
- d. **Referral of Violations of Municipal Ordinances and California Water Code § 13260.** A Permittee may refer a violation(s) of its municipal stormwater ordinances and/or California Water Code section 13260 by industrial and commercial facilities and construction site operators not subject to the Industrial and/or Construction General Permits to the Los Angeles Water Board (via telephone or electronically⁴⁴) provided that the Permittee has made a good faith effort of applying its Progressive Enforcement Policy to achieve compliance with its own ordinances. At a minimum, a Permittee's good faith effort must be documented with:
 - i. Two follow-up inspections; and
 - ii. Two warning letters or notices of violation.
- e. **Referral of Violations of the Industrial and Construction General Permits, including Requirements to File a Notice of Intent or No Exposure Certification.** For those facilities or site operators in violation of municipal stormwater ordinances and subject to the Industrial and/or Construction General Permits, Permittees may escalate referral of such violations to the Los Angeles Water Board (promptly via telephone or electronically⁴⁵) after one inspection and one written notice of violation (copied to the Los Angeles Water Board) to the facility or site operator regarding the violation. In making such referrals, Permittees shall include, at a minimum, the following documentation:
 - i. Name of the facility or site,
 - ii. Facility or site physical address (or GPS coordinates if a physical address is not available),
 - iii. Contact information of the Owner and Operator of the facility or site (i.e., name, address, phone number, email),
 - iv. WDID Number (if applicable),
 - v. Records of communication with the facility/site operator regarding the violation, which shall include at least one inspection report,
 - vi. The written notice of violation (copied to the Los Angeles Water Board),
 - vii. For industrial sites, the industrial activity being conducted at the facility that is subject to the Industrial General Permit and the corresponding SIC code (if available), and
 - viii. For construction sites, site acreage and site risk level.

⁴⁴ Email to MS4stormwaterRB4@waterboards.ca.gov.

⁴⁵ Ibid.

- 2. Investigation of Complaints Transmitted by the Los Angeles Water Board Staff.** Each Permittee shall initiate, within one business day,⁴⁶ investigation of complaints from facilities within its jurisdiction. The initial investigation shall include, at a minimum, a limited inspection of the facility to confirm validity of the complaint and to determine if the facility is in compliance with municipal stormwater ordinances and, if necessary, to oversee corrective action. Each Permittee shall report their findings of their investigation to the Los Angeles Water Board within 3 weeks of receiving the complaint.
- 3. Assistance with Los Angeles Water Board Enforcement Actions.** As directed by the Los Angeles Water Board Executive Officer, Permittees shall assist Los Angeles Water Board enforcement actions by:
 - a. Assisting in identification of current owners, operators, and lessees of properties and sites.
 - b. Providing staff, when available, for joint inspections with Los Angeles Water Board inspectors.
 - c. Appearing to testify as witnesses in Los Angeles Water Board enforcement hearings.
 - d. Providing copies of inspection reports and documentation demonstrating application of its Progressive Enforcement Policy.

C. Modifications/Revisions

Each Permittee shall modify its stormwater management programs, protocols, practices, and municipal codes to make them consistent with the requirements in this Order.

D. Public Information and Participation Program

1. General Provisions

- a. Each Permittee shall continue to include public participation in their stormwater management program consistent with the requirements of 40 C.F.R. section 122.26(d)(2)(iv).
- b. Each Permittee shall develop and implement the requirements listed in Part VIII.D.3 and Part VIII.D.4 below using one or more of the following approaches:
 - i. Collaboratively (i.e., multiple Permittees, County-wide or Region-wide, or one or more Watershed Groups)
 - ii. State or national partnerships with stormwater member agencies (e.g., CASQA)
 - iii. Individually within its jurisdiction.
- c. Each Permittee shall adapt its Public Information and Participation Program (PIPP) over time to address new information, water quality priorities, and stormwater management program priorities as they arise.

2. Objectives

- a. Reach the general population and involve the range of socioeconomic groups and ethnic communities that make up the Los Angeles Region in Permittees' stormwater management programs to facilitate:

⁴⁶ Permittees may comply with the Permit by taking initial steps (such as logging, prioritizing, and tasking) to "initiate" the investigation within that one business day. However, the Los Angeles Water Board would expect that the initial investigation, including a site visit, to occur within four business days.

- i. Increased understanding about the importance of stormwater management to public health/community health, environmental quality and local water resiliency; and
- ii. Increased support for stormwater management programs and stormwater projects among residents in the region.
- b. Facilitate pollution prevention through the proper management and disposal of used oil, toxic materials, and targeted pollutants as potential sources of water quality impacts associated with discharges into the MS4.
- c. Use effective strategies to educate and involve residents and population subgroups through culturally effective methods.⁴⁷

3. Program Requirements

- a. Permittee(s) shall create opportunities for public engagement in stormwater planning and program implementation and shall raise public awareness of stormwater program benefits and needs. The Permittee may build upon programs/activities such as Caltrans' *Protect Every Drop* campaign and the Measure W campaign, which featured many educational events conducted by multiple stakeholders and MS4 Permittees.
- b. Permittee(s) shall conduct educational activities and public information activities to facilitate stormwater and non-stormwater pollution prevention and mitigation. Activities should be focused on priority water quality issues as identified by the Permittee(s).
 - i. The Permittee(s) shall identify and select targeted pollutants for public information/education topics and materials. In selecting targets, the Permittee(s) shall consider the proper management and disposal of:
 - (a) Vehicle wastes (e.g., used oil, used tires);
 - (b) Household waste materials (i.e., trash and household hazardous waste, including personal care products, pharmaceuticals, and household cleaners);
 - (c) Pesticides, herbicides, and fertilizers;
 - (d) Green waste;
 - (e) Animal wastes; and/or
 - (f) Other materials as determined by the Permittee(s).
 - ii. Public informational/educational materials shall be distributed using the method(s) that the Permittee(s) chooses to most effectively reach the public and promote behavioral change and achieve the objectives in Part VIII.D.2 above. Such methods may include, but are not limited to the following:
 - (a) Internet-based platforms (e.g., stormwater websites, social media websites and applications);
 - (b) Commercial points-of-purchase (e.g., automotive parts stores, home improvement centers / hardware stores / paint stores, landscape / gardening centers, pet shops);

⁴⁷ Culturally effective methods require Permittees to identify audiences based on demographics, language and/or cultural attributes and behaviors and then identify and select outreach activities that will best align with the identified audiences.

- (c) Schools;
- (d) Radio/television; and/or
- (e) Community events.

4. Documentation and Tracking

- a. Permittee(s) shall develop metrics for measuring the effectiveness in achieving each objective listed in Part VIII.D.2 above.
- b. Each Permittee shall, at a minimum, document and track the following information on Public Information and Participation activities implemented:
 - i. Activity;
 - ii. Date(s) of activity;
 - iii. Method of Dissemination;
 - iv. Targeted Behavior;
 - v. Targeted Pollutant;
 - vi. Targeted Audience;
 - vii. Culturally Effective Method(s); and
 - viii. Other information necessary for the metrics identified in Part VIII.D.4.a above
 - ix. Metric for measuring effectiveness.

E. Industrial/Commercial Facilities Program

This Part VIII.E is applicable to all Permittees except LACFCD and VCWPD.

- 1. **General.** Each Permittee except LACFCD and VCWPD shall implement an Industrial / Commercial Facilities Program that meets the requirements of this Part VIII.E. Through policies, procedures, and/or ordinances, the Industrial / Commercial Facilities Program shall be designed to prevent illicit discharges to the MS4 and receiving waters, reduce industrial / commercial discharges of stormwater to the maximum extent practicable, and prevent industrial / commercial discharges from the MS4 from causing or contributing to a violation of receiving water limitations. Minimum program components shall include the following:
 - a. Inventory and track Critical Industrial/Commercial Sources;
 - b. Educate, assist, and inspect Critical Industrial/Commercial Sources; and
 - c. Ensure compliance with municipal policies, procedures, and/or ordinances at industrial and commercial facilities that are critical sources of pollutants in stormwater.
- 2. **Industrial/Commercial Sources Inventory / Electronic Tracking System**
 - a. Each Permittee shall maintain an updated watershed-based inventory or database of all industrial and commercial facilities within its jurisdiction that are critical sources of stormwater pollution. The inventory or database shall be maintained in electronic format and incorporation of facility information into a Geographical Information System (GIS) is recommended. Critical Sources to be tracked are summarized below:
 - i. U.S. EPA “Phase I” Facilities [as specified in 40 CFR §122.26(b)(14)(i)-(xi)]
 - ii. Other federally mandated facilities [as specified in 40 CFR §122.26(d)(2)(iv)(C)]:
 - (a) Municipal landfills;

- (b) Hazardous waste treatment, disposal, and recovery facilities; and
 - (c) Industrial facilities subject to section 313 “Toxic Release Inventory” reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) [42 U.S.C. § 11023].
- iii. Commercial Facilities may include, but are not limited to:
 - (a) Restaurants;
 - (b) Automotive service facilities (including those located at automotive dealerships);
 - (c) Retail Gasoline Outlets; and
 - (d) Nurseries and Nursery Centers (Merchant Wholesalers, Nondurable Goods, and Retail Trade).
 - iv. All other facilities that the Permittee determines may contribute significant amounts of pollutants to the MS4.
- b. Each Permittee shall include the following minimum fields of information for each critical source industrial and commercial facility identified in its watershed-based inventory or database:
 - i. Name of facility;
 - ii. Name of owner/operator and contact information;
 - iii. Address of facility (physical and mailing);
 - iv. The latitude / longitude coordinates;
 - v. Standard Industrial Classification (SIC) code;
 - vi. North American Industry Classification System (NAICS) code (optional);
 - vii. A narrative description of the activities performed and/or principal products produced;
 - viii. Identification of facilities that have active coverage under the State Water Board’s General NPDES Permit for the Discharge of Storm Water Associated with Industrial Activities (Industrial General Permit) or other individual or general NPDES permits. For facilities with active coverage under the Industrial General Permit, the type of coverage (i.e. Notice of Intent or No Exposure Certification) and the Waste Discharge Identification (WDID) number shall be included;
 - ix. Identification of facilities that have filed a Notice of Non-Applicability (NONA) or any applicable waiver issued by the Los Angeles Water Board or State Water Board pertaining to stormwater discharges;
 - x. Date and description of outreach; and
 - xi. Date(s) of inspection(s).
 - c. Each Permittee shall update its inventory of critical sources at least once every two years. The update shall be accomplished through collection of new information obtained through field activities or through other readily available inter- and intra-agency informational databases (e.g., business licenses, pretreatment permits, sanitary sewer connection permits, and similar information).
- 3. Requirements for Commercial Sources.** The provisions contained in this Part VIII.E.3 apply to all facilities listed in Parts VIII.E.2.a.ii through iv above.

- a. **Outreach.** At least once during the five-year period of this Order, each Permittee shall notify the owner/operator of each of its inventoried sites of the BMP requirements applicable to the site/source.
 - b. **Business Assistance Program.** Each Permittee shall implement a Business Assistance Program to provide technical information to businesses to facilitate their efforts to reduce the discharge of pollutants in stormwater. Assistance shall be targeted to select business sectors or small businesses upon a determination that their activities may be contributing substantial amounts of pollutants to the MS4 or receiving water. Assistance may include technical guidance and provision of educational materials. The Program may include:
 - i. On-site technical assistance, telephone, or e-mail consultation regarding the responsibilities of business to reduce the discharge of pollutants, procedural requirements, and available guidance documents.
 - ii. Distribution of stormwater pollution prevention educational materials to operators of auto repair shops; car wash facilities; restaurants and mobile sources including automobile/equipment repair, washing, or detailing; power washing services; mobile carpet, drape, or upholstery cleaning services; swimming pool, water softener, and spa services; portable sanitary services; and commercial applicators and distributors of pesticides, herbicides and fertilizers, if present.
 - c. **Inspection.** Each Permittee shall inspect all facilities identified in Parts VIII.E.2.a.ii through iv of this Order in accordance with the frequency and scope stated below:
 - i. **Frequency of Inspections.** Each Permittee shall inspect the facilities every two years, ensuring that the first mandatory compliance inspection occurs no later than 2 years after the effective date of this Order. A minimum interval of 6 months between the compliance inspections is required.
 - ii. **Scope of Inspections.** Each Permittee shall inspect these facilities to confirm that stormwater and non-stormwater BMPs are being effectively implemented in compliance with municipal ordinances. At each facility, inspectors shall verify that the operator is implementing effective source control BMPs for the pollutants generated by the commercial activity. Likewise, for those BMPs that are not adequately protective of water quality, a Permittee may require additional site-specific controls. Each inspection shall be documented by an inspection report that includes a summary of the inspection, conclusion, and photos.
- 4. Requirements for Industrial Sources.** The provisions contained in this Part VIII.E.4 apply to all facilities listed in Part VIII.E.2.a.i of this Order. The Industrial General Permit is the primary regulating permit for these facilities. Requirements for Permittees are as follows:
- a. **Business Assistance Program.** Each Permittee shall implement a Business Assistance Program to provide technical information to businesses to facilitate their efforts to comply with the requirements of the Industrial General Permit.⁴⁸ Assistance shall be targeted to select business sectors or small businesses upon a determination that their activities may be contributing substantial amounts of pollutants to the MS4 or receiving water. Assistance may include technical guidance and provision of educational materials. The Program may include on-site technical assistance, telephone, or e-mail consultation regarding the responsibilities of business and

⁴⁸ Permittees may use information and tools available at the Los Angeles Water Board and State Water Board websites respectively at www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/sw_index.html and www.waterboards.ca.gov/water_issues/programs/stormwater/industrial.html.

techniques to reduce the discharge of pollutants, procedural requirements, and available guidance documents. Permittees may also refer businesses to the Los Angeles Water Board or State Water Board to provide further technical assistance.

- b. Inspection.** Each Permittee shall inspect all facilities identified in Part VIII.E.2.a.i of this Order in accordance with the frequency and scope stated below:
 - i. Frequency of Inspections.** Each Permittee shall inspect the facilities every two years for facilities that have exposure to stormwater and every five years for facilities that do not have exposure to stormwater. Permittees shall ensure that the first mandatory compliance inspection occurs no later than 2 years after the effective date of this Order. A minimum interval of 6 months between the compliance inspections is required.
 - ii. Scope of Inspections.** Each Permittee shall inspect these facilities to confirm that:
 - (a)** The facility is either enrolled in the Industrial General Permit (i.e. has an active WDID number) or has submitted a NONA application to the Los Angeles Water Board.
 - (b)** A Storm Water Pollution Prevention Plan (SWPPP) is developed and available at the facility.
 - (c)** BMPs are being effectively implemented at the facility for all pollutants of concern.
 - (d)** Each inspection shall be documented by an inspection report that includes a summary of the inspection, conclusion, and if possible, photos.
 - iii. Exclusion of Industrial Facility Inspection.** The Permittee is exempt from performing the inspection requirements listed in Parts VIII.E.4.b.i and ii above if the facility has been inspected by the Los Angeles Water Board within the past 2 years.⁴⁹
- 5. Source Control BMPs for All Facilities Listed Under Part VIII.E.2.a.i – iv.** Effective source control BMPs for the activities listed in Table 6 of this Order shall be implemented at all facilities listed under Part VIII.E.2.a.i – iv of this Order unless the pollutant generating activity does not occur or occurs in areas where there is no exposure to stormwater discharges:

⁴⁹ History of inspections may be verified by contacting the Los Angeles Water Board or through SMARTS at <https://smarts.waterboards.ca.gov>.

Table 6. Source Control BMPs for Industrial and Commercial Facilities

| Pollutant-Generating Activity | BMP Narrative Description |
|--|---|
| Unauthorized Non-Stormwater Discharges | Effective elimination of unauthorized non-stormwater discharges |
| Accidental Spills/Leaks | Implementation of effective spills/leaks prevention and response procedures |
| Vehicle/Equipment Fueling | Implementation of effective fueling source control devices and practices |
| Vehicle/Equipment Cleaning | Implementation of effective equipment/vehicle cleaning practices and appropriate wash water management practices |
| Vehicle/Equipment Repair | Implementation of effective vehicle/equipment repair practices and source control devices |
| Outdoor Liquid Storage | Implementation of effective outdoor liquid storage source controls and practices |
| Outdoor Equipment Operations | Implementation of effective outdoor equipment source control devices and practices |
| Outdoor Storage of Raw Materials | Implementation of effective source control practices and structural devices |
| Storage and Handling of Solid Waste | Implementation of effective solid waste storage/handling practices and appropriate control measures |
| Building and Grounds Maintenance | Implementation of effective facility maintenance practices |
| Parking/Storage Area Maintenance | Implementation of effective parking/storage area designs and housekeeping/maintenance practices |
| Stormwater Conveyance System Maintenance Practices | Implementation of proper conveyance system operation and maintenance protocols |
| Pollutant-Generating Activity | BMP Narrative Description from Los Angeles Water Board Resolution No. 98-08 |
| Sidewalk Washing | <ol style="list-style-type: none"> 1. Remove trash, debris, and free-standing oil/grease spills/leaks (use absorbent material, if necessary) from the area before washing; and 2. Use high pressure, low volume spray washing using only potable water with no cleaning agents at an average usage of 0.006 gallons per square feet of sidewalk area. |
| Street Washing | Collect and divert wash water to the sanitary sewer. Note: Approval from the applicable sanitary sewer collection agency may be needed. |

6. Progressive Enforcement. Each Permittee shall implement its Progressive Enforcement Policy to ensure that Industrial / Commercial facilities are brought into compliance with all stormwater requirements within a reasonable time period. See Part VIII.B for requirements for the development and implementation of a Progressive Enforcement Policy.

F. Planning and Land Development Program

This Part VIII.F is applicable to all Permittees except LACFCD and VCWPD. Each Permittee except LACFCD and VCWPD must use their land use and planning authorities to implement a Planning and Land Development Program.

1. **Priority Development Projects.** Priority Development Projects are land development projects that fall under the Permittee’s planning and building authority for which the Permittee must impose specific requirements, including the implementation of structural BMPs to meet the performance requirements described in Part VIII.F.4 of this Order.
 - a. **Definition of Priority Development Projects.** Priority Development Projects include the following:
 - i. New development projects that are in any of the following categories:
 - (a) Projects equal to 1 acre or greater of disturbed area and adding more than 10,000 square feet or more of impervious surface area (collectively over the entire project site)
 - (b) Industrial parks of 10,000 square feet or more of surface area
 - (c) Commercial malls of 10,000 square feet or more of surface area
 - ii. Redevelopment projects that create and/or replace 5,000 square feet or more of impervious surface (collectively over the entire project site) on any of the following:
 - (a) Existing sites of 10,000 square feet or more of impervious surface area
 - (b) Industrial parks 10,000 square feet or more of surface area
 - (c) Commercial malls 10,000 square feet or more of surface area
 - iii. New development and redevelopment projects that create and/or replace 5,000 square feet or more of impervious surface (collectively over the entire project site) and support one or more of the following uses:
 - (a) Restaurants (SIC 5812)
 - (b) Parking lots
 - (c) Automotive service facilities (SIC 5013, 5014, 5511, 5541, 7532-7534 and 7536-7539)
 - (d) Retail gasoline outlets
 - iv. New development and redevelopment projects that create and/or replace 2,500 square feet or more of impervious area; discharge stormwater that is likely to impact a sensitive biological species or habitat; and are located in or directly adjacent to or are discharging directly to an ASBS, “Sensitive Ecological Area” in Los Angeles County,⁵⁰ or “Environmentally Sensitive Area” in Ventura County.⁵¹
 - v. Street and road construction of 10,000 square feet or more of impervious surface area shall follow U.S. EPA guidance regarding Managing Wet Weather with Green Infrastructure: Green Streets (December 2008 EPA-833-F-08-009) to the maximum extent practicable. Street and road construction applies to standalone streets, roads, highways, and freeway projects. Temporary access roads are not subject to this requirement. Projects under this category are exempt from the

⁵⁰ As identified by the County of Los Angeles’ Significant Ecological Areas Program. (<http://planning.lacounty.gov/site/sea/home/>)

⁵¹ As identified by Ventura County Permittees using the definition of an “Environmentally Sensitive Area” in Order No. R4-2010-0108.

Priority Development Structural BMP Performance Requirements in Part VIII.F.4 of this Order.

b. Considerations for Redevelopment Projects

- i. The structural BMP performance requirements of Part VIII.F.4 of this Order are applicable to redevelopment Priority Development Projects, as defined in Part VIII.F.1.a of this Order, as follows:
 - (a) Where redevelopment results in an alteration to more than fifty percent of impervious surfaces of a previously existing development the entire project must be mitigated.
 - (b) Where redevelopment results in an alteration of less than fifty percent of impervious surfaces of a previously existing development only the alteration must be mitigated, and not the entire development.
- ii. Redevelopment does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, original purpose of facility or emergency redevelopment activity required to protect public health and safety. Impervious surface replacement, such as the reconstruction of parking lots and roadways which does not disturb additional area and maintains the original grade and alignment, is considered a routine maintenance activity. Redevelopment does not include the repaving of existing roads to maintain original line and grade.

c. Exemptions. Permittees can exempt themselves from the Priority Development Project Structural BMP Performance Requirements in Part VIII.F.4 of this Order if they implement one of the following:

- i. **Local Ordinance Equivalence.** A Permittee that has adopted a local LID ordinance prior to the adoption of this Order, and which includes a retention requirement numerically equal to the 0.75-inch, 24-hour rain event or the 85th percentile, 24-hour rain event, whichever is greater, may submit documentation to the Los Angeles Water Board that the alternative requirements in the local ordinance will provide equal or greater reduction in stormwater discharge pollutant loading and volume as would have been obtained through strict conformance with Part VIII.F.4 of this Order and, if applicable, Part VIII.F.2 of this Order.
 - (a) The Los Angeles Water Board shall provide public notice of the proposed equivalency determination and a minimum 30-day period for public comment. After review and consideration of public comments, the Los Angeles Water Board Executive Officer will determine whether implementation of the local ordinance provides equivalent pollutant control to the applicable provisions of this Order. Local ordinances that do not strictly conform to the provisions of this Order must be approved by the Los Angeles Water Board Executive Officer as being “equivalent” in effect to the applicable provisions of this Order in order to substitute for the requirements in Part VIII.F.4 of this Order and, where applicable, Part VIII.F.2 of this Order.
 - (b) Where the Los Angeles Water Board Executive Officer determines that a Permittee’s local LID ordinance does not provide equivalent pollutant control, the Permittee shall either:

- (1) Require conformance with Part VIII.F.4 of this Order and, where applicable, Part VIII.F.2 of this Order, or
 - (2) Update its local ordinance to conform to the requirements herein and resubmit to the Los Angeles Water Board Executive Officer for approval.
 - ii. **Regional Stormwater Mitigation Program.** Permittees may apply for approval of a regional or sub-regional stormwater mitigation program to substitute in part or wholly for new development and redevelopment requirements for proposed areas. Upon review and a determination by the Los Angeles Water Board Executive Officer that the proposal is technically valid and appropriate, the Los Angeles Water Board may consider for approval such a program if its implementation meets all of the following requirements:
 - (a) Retains the runoff from the 85th percentile, 24-hour rain event or the 0.75 inch, 24-hour rain event, whichever is greater;
 - (b) Results in improved stormwater quality;
 - (c) Meets the hydromodification management requirements in Part VIII.F.2 of this Order if applicable;
 - (d) Is fiscally sustainable and has secure funding; and
 - (e) Is completed in five years including the construction and start-up of treatment facilities.
 - (f) Nothing in this provision shall be construed as to delay the implementation of requirements for new development and redevelopment, as approved in this Order.
 - iii. **Specific LID Performance Standards attached to Waste Discharge Requirements (Order No. R4-2012-0139) for Newhall Ranch Project Phases I and II.** The Newhall Ranch Project Phases I and II (a.k.a. the Landmark and Mission Village projects) are deemed to be an existing development that will at a minimum be designed to comply with the Specific LID Performance Standards attached to the Waste Discharge Requirements in Order No. R4-2012-0139. All subsequent phases of the Newhall Ranch Project constructed during the term of this Order shall be subject to the requirements of this Order.
 - d. **Priority Development Project Structural BMP Performance Requirements.** Each Permittee shall require all Priority Development Projects identified in Part VIII.F.1.a of this Order to meet the Structural BMP Performance Requirements contained in Part VIII.F.4 of this Order in the following order of preference:
 - i. On-site infiltration, bioretention and/or rainfall harvest and use,
 - ii. If subpart i above is infeasible, on-site biofiltration, off-site groundwater replenishment, and/or off-site retrofit, or
 - iii. If subpart ii above is infeasible, on-site treatment, where all the above options are infeasible.
2. **Hydromodification Management Requirements.** Permittees must require (i) Priority Development Projects within natural drainage systems in Los Angeles County and (ii) Priority Development Projects disturbing land areas of 50 acres or greater in Ventura County to implement hydrological control measures to prevent accelerated downstream erosion and protect stream habitat.

- a. Definition of Natural Drainage Systems.** Natural drainage systems that are subject to the hydromodification assessments and control include all drainages that have not been modified using engineering controls or drainages that are tributary to a natural drainage system. Examples of engineering modifications to a drainage include channelization, armoring with concrete, and application of rip-rap. The clearing or dredging of a natural drainage system does not constitute a “modification” for purposes of these provisions.
- b. Exemptions to Hydromodification Controls.** Permittees may exempt the following New Development and Redevelopment projects from implementation of hydromodification controls where assessments of downstream channel conditions and proposed discharge hydrology indicate that adverse hydromodification effects to beneficial uses of Natural Drainage Systems are unlikely:

 - i. Projects that are replacement, maintenance or repair of a Permittee’s existing flood control facility, storm drain, or transportation network.
 - ii. Redevelopment Projects in the Urban Core that do not increase the effective impervious area or decrease the infiltration capacity of pervious areas compared to the pre-project conditions.
 - iii. Projects that have any increased discharge directly or via a storm drain to a sump, lake, area under tidal influence, into a waterway that has a 100-year peak flow (Q100) of 25,000 cfs or more, or other receiving water that is not susceptible to hydromodification impacts.
 - iv. Projects that discharge directly or via a storm drain into concrete or otherwise engineered (not natural) channels (e.g., channelized or armored with rip rap, shotcrete, etc.), which, in turn, discharge into receiving water that is not susceptible to hydromodification impacts (as in Parts VIII.F.2.b.i-iii above).
 - v. LID BMPs implemented on single family homes are sufficient to comply with Hydromodification criteria.
- c. Hydromodification Management Control Criteria**

 - i. Projects disturbing an area less than or equal to 1 acre must implement controls meeting applicable performance requirements in Part VIII.F.4 of this Order.
 - ii. Projects disturbing an area greater than 1 acre, but less than 50 acres will be presumed to meet pre-development hydrology if one of the following demonstrations are made:

 - (a) The project is designed to retain onsite the runoff of the 95th percentile, 24-hour storm; or
 - (b) The runoff flow rate, volume, velocity, and duration for the post-development condition do not exceed the pre-development condition for the 2-year, 24-hour storm event. This condition may be substantiated by simple screening models, including those described in Hydromodification Effects on Flow Peaks and Durations in Southern California Urbanizing Watersheds or other models acceptable to the Executive Officer of the Los Angeles Water Board; or
 - (c) The Erosion Potential (Ep) in the receiving water is approximately 1. Ep is determined as follows: The total *effective work* done on the channel boundary is derived and used as a metric to predict the likelihood of channel adjustment given watershed and stream hydrologic and geomorphic

variables. The index under urbanized conditions is compared to the index under pre-urban conditions expressed as a ratio (E_p). The effective work index (W) can be computed in several different ways including simplistic work equations, material specific sediment transport equations, or more complex functions based on site calibrated sediment rating curves. One such work equation, which represents the total work done on the channel boundary, includes the following:

$$\text{Equation 1: } W = \sum_{i=1}^n (\tau_i - \tau_c)^{1.5} \cdot V \cdot \Delta t_i$$

Where: W = effective work, τ_c = critical shear stress that initiates bed mobility or erodes the weakest bank layer, τ_i = applied hydraulic shear stress, Δt = duration of flows (in hours), V = mid-channel flow velocity, and n = length of flow record. The effective work index for presumed stable stream channels under pre-urban conditions (W_{post}) is compared to stable and unstable channels under current urbanized conditions (W_{pre}). The comparison, expressed as a ratio, is defined as the Erosion Potential (E_p)⁵² (McRae (1992, 1996)).

$$\text{Equation 2: } E_p = \frac{W_{post}}{W_{pre}}$$

where:

W_{post} = work index estimated for the post-urban condition

W_{pre} = work index estimated for the pre-urban condition

Alternatively, Permittees can demonstrate that an E_p of approximately 1 has been achieved in the receiving water as determined by a Hydromodification Analysis Study or opt to use other work equations to demonstrate that an E_p of approximately 1 has been achieved for Los Angeles Water Board Executive Officer approval. Additionally, Permittees can use a sediment transport function such as the Brownlie equation or the Meyer-Peter and Muller equation (*US Department of Agriculture, Natural Resources Conservation Service, 2007. Part 654 Stream Restoration Design, National Engineering Handbook, August 2007*) to demonstrate appropriate Hydromodification control.

- iii. Projects disturbing 50 acres or more will be presumed to meet pre-development hydrology based on the successful demonstration of one of the following conditions:
 - (a) The site infiltrates onsite the runoff from a 2-year, 24-hour storm event; or
 - (b) The runoff flow rate, volume, velocity, and duration for the post-development condition does not exceed the pre-development condition for the 2-year,

⁵² MacRae, C.R. 1992. The Role of Moderate Flow Events and Bank Structure in the Determination of Channel Response to Urbanization. Resolving conflicts and uncertainty in water management: Proceedings of the 45th Annual Conference of the Canadian Water Resources Association. Shrubsole, D, ed. 1992, pg. 12.1-12.21; MacRae, C.R. 1996. Experience from Morphological Research on Canadian Streams: Is Control of the Two-Year Frequency Runoff Event the Best Basis for Stream Channel Protection. Effects of Watershed Development and Management on Aquatic Ecosystems, ASCE Engineering Foundation Conference, Snowbird, Utah, pg. 144-162.

24-hour storm event. These conditions must be substantiated by hydrologic modeling acceptable to the Los Angeles Water Board Executive Officer; or

(c) The Erosion Potential (Ep) in the receiving water is approximately 1.

d. Alternative Criteria

i. **Low Impact Development Manual.** Permittees may satisfy hydromodification requirements by implementing the hydromodification requirements in the current County of Los Angeles Low Impact Development Manual and/or Ventura County Hydromodification Control Plan for all projects disturbing an area greater than 1 acre within natural drainage systems.

ii. **Hydromodification Control Plans.** Permittees may alternatively develop and implement watershed specific Hydromodification Control Plans (HCPs). Such plans shall be developed no later than one year after the effective date of this Order for Los Angeles Water Board Executive Officer approval. The HCP shall be deemed in effect upon approval.

(a) An HCP shall identify:

- (1) Stream classifications
- (2) Flow rate and duration control methods
- (3) Sub-watershed mitigation strategies
- (4) Stream and/or riparian buffer restoration measures, which will maintain the stream and tributary Erosion Potential at 1 unless an alternative value can be shown to be protective of the natural drainage systems from erosion, incision, and sedimentation that can occur as the result of flow increases from impervious surfaces and prevent damage to stream habitat in natural drainage system tributaries.

(b) An HCP shall contain the following elements:

- (1) Hydromodification Management Standards
- (2) Natural Drainage Areas and Hydromodification Management Controls
- (3) Hydromodification Management Control Design Criteria
- (4) For flow duration control methods, the range of flows to control for, and goodness of fit criteria
- (5) Allowable low critical flow (Q_c) which initiates sediment transport
- (6) Description of the approved Hydromodification Model
- (7) Any alternate Hydromodification Management Model and Design
- (8) Stream Restoration Measures Design Criteria
- (9) Monitoring and Effectiveness Assessment
- (10) Record Keeping

3. Implementation Requirements

a. **Project Coordination.** Each Permittee shall facilitate a process for effective approval of post-construction stormwater control measures. The process shall include:

i. Detailed LID site design and BMP review including BMP sizing calculations, BMP pollutant removal performance, and municipal approval; and

- ii. An established structure for communication and delineated authority between and among municipal departments that have jurisdiction over project review, plan approval, and project construction through memoranda of understanding or an equivalent agreement.
- b. **Maintenance Agreement and Transfer.** Prior to issuing approval for final occupancy, each Permittee shall require that all new development and redevelopment projects subject to post-construction BMP requirements, with the exception of simple LID BMPs implemented on single family residences, provide an operation and maintenance plan, monitoring plan, where required, and verification of ongoing maintenance provisions for LID practices, Treatment Control BMPs, and Hydromodification Control BMPs including but not limited to: final map conditions, legal agreements, covenants, conditions or restrictions, CEQA mitigation requirements, conditional use permits, and/or other legally binding maintenance agreements. Permittees shall require maintenance records be kept on site for treatment BMPs implemented on single family residences.
 - i. Verification at a minimum shall include the developer's signed statement accepting responsibility for maintenance until the responsibility is legally transferred; and either:
 - (a) A signed statement from the public entity assuming responsibility for BMP maintenance; or
 - (b) Written conditions in the sales or lease agreement, which require the property owner or tenant to assume responsibility for BMP maintenance and conduct a maintenance inspection at least once a year; or
 - (c) Written text in project covenants, conditions, and restrictions for residential properties assigning BMP maintenance responsibilities to the Homeowners Association; or
 - (d) Any other legally enforceable agreement or mechanism that assigns responsibility for the maintenance of BMPs.
 - ii. Each Permittee shall require all development projects subject to post-construction BMP requirements to provide a plan for the operation and maintenance of all structural and treatment controls. The plan shall be submitted for examination of relevance to keeping the BMPs in proper working order. Where BMPs are transferred to Permittee for ownership and maintenance, the plan shall also include all relevant costs for upkeep of BMPs in the transfer. Operation and Maintenance plans for private BMPs shall be kept on-site for periodic review by Permittee inspectors.
- c. **Tracking, Inspection, and Enforcement of Post-Construction BMPs.** Each Permittee shall implement a tracking system and an inspection and enforcement program for new development and redevelopment post-construction stormwater no later than 60 days after Order adoption date.
 - i. Implement a GIS or other electronic system for tracking projects that have been conditioned for post-construction BMPs. The electronic system, at a minimum, should contain the following information:
 - (a) Municipal Project ID
 - (b) Project Acreage
 - (c) BMP Type and Description

- (d) BMP Location (coordinates)
 - (e) Date of Acceptance
 - (f) Date of Maintenance Agreement
 - (g) Maintenance Records
 - (h) Inspection Date and Summary
 - (i) Corrective Action
 - (j) Date Certificate of Occupancy Issued
 - (k) Replacement or Repair Date
- ii. Inspect all development sites upon completion of construction and prior to the issuance of occupancy certificates to ensure proper installation of LID measures, structural BMPs, treatment control BMPs and hydromodification control BMPs. The inspection may be combined with other inspections provided it is conducted by trained personnel.
 - iii. Verify proper maintenance and operation of post-construction BMPs previously approved for new development and redevelopment and operated by the Permittee. The post-construction BMP maintenance inspection program shall incorporate the following elements:
 - (a) The development of a Post-construction BMP Maintenance Inspection checklist; and
 - (b) Inspection at least once every 2 years after project completion, of post-construction BMPs to assess operation conditions with particular attention to criteria and procedures for post-construction treatment control and hydromodification control BMP repair, replacement, or re-vegetation.
 - iv. For post-construction BMPs operated and maintained by parties other than the Permittee, the Permittee shall require the other parties to document proper maintenance and operations.
 - v. Undertake enforcement action per the established Progressive Enforcement Policy as appropriate based on the results of the inspection. See Part VIII.B of this Order for requirements for the development and implementation of a Progressive Enforcement Policy.

4. Priority Development Project Structural BMP Performance Requirements

a. Water Quality / Flow Reduction / Resources Management Criteria

- i. Except as provided in Part VIII.F.1.c, Part VIII.F.2, or Part VIII.F.4.b of this Order, each Permittee shall require Priority Development Projects to retain on-site the Storm Water Quality Design Volume (SWQDV). The SWQDV is defined the greater of the following:
 - (a) The runoff from the 0.75-inch, 24-hour rain event; or
 - (b) The runoff from the 85th percentile, 24-hour rain event.
- ii. When evaluating the potential for on-site retention, each Permittee shall consider the maximum potential for evapotranspiration from green roofs and rainfall harvest and use.

b. Alternative Compliance

- i.** In instances of technical infeasibility or where a project has been determined to provide an opportunity to replenish regional ground water supplies at an offsite location within the same sub-watershed (HUC-12) as the new development or redevelopment project, each Permittee may allow projects to comply with this Order through the alternative compliance measures as described in Part VIII.F.4.c of this Order.
- ii. Technical Infeasibility Demonstration.** Technical infeasibility may be determined by the Permittee or demonstrated to the Permittee by the project applicant. If a project applicant is demonstrating technical infeasibility, the project applicant must demonstrate that the project cannot reliably retain 100 percent of the SWQDV on-site, even with the maximum application of green roofs and/or rainwater harvest and use, and that compliance with the applicable postconstruction requirements would be technically infeasible by submitting a site-specific hydrologic and/or design analysis conducted and endorsed by a registered professional engineer, geologist, architect, and/or landscape architect. Technical infeasibility may result from conditions including the following:

 - (a)** The infiltration rate of saturated in-situ soils is less than 0.3 inch per hour and it is not technically feasible to amend the in-situ soils to attain an infiltration rate necessary to achieve reliable performance of infiltration or bioretention BMPs in retaining the SWQDV on-site.
 - (b)** Locations where seasonal high ground water is within 5 to 10 feet of the surface.
 - (c)** Locations within 100 feet of a ground water well used for drinking water.
 - (d)** Brownfield development sites where infiltration poses a risk of causing pollutant mobilization.
 - (e)** Other locations where pollutant mobilization is a documented concern.⁵³
 - (f)** Locations with potential geotechnical hazards.
 - (g)** Smart growth and infill or redevelopment locations where the density and/or nature of the project would create significant difficulty for compliance with the on-site volume retention requirement.
- iii. Alternative Compliance for Groundwater Replenishment Opportunities.** To utilize alternative compliance measures to replenish groundwater at an offsite location, the project applicant shall demonstrate:

 - (a)** Why it is not advantageous to replenish groundwater at the project site,
 - (b)** That the offsite location is in the same subwatershed (HUC-12) as the Priority Development Project,
 - (c)** That groundwater can be used for beneficial purposes at the offsite location, and

⁵³ Pollutant mobilization is considered a documented concern at or near properties that are contaminated or store hazardous substances underground.

- (d) That the alternative measures shall also provide equal or greater water quality benefits to the receiving surface water than the Water Quality/Flow Reduction/Resource Management Criteria in Part VIII.F.4.a of this Order.

c. Alternative Compliance Measures

- i. **Onsite Biofiltration:** Projects can use biofiltration for 1.5 times the portion of the SWQDV that is not reliably retained onsite where R_v = volume reliably retained onsite and B_v is the biofiltration volume.

$$\text{Equation 3: } B_v = 1.5(SWQDV - R_v)$$

- (a) Biofiltration systems shall, at a minimum, meet design specifications consistent with those provided in the Los Angeles County LID Manual, Ventura County Technical Guidance Manual for Storm Water Quality Control Measures (July 2002 and its revisions), or equivalent LID Manual.
- (b) Biofiltration systems discharging to a receiving water that is included on the Clean Water Act section 303(d) list of water quality-limited (i.e., impaired) water bodies due to nitrogen compounds or related effects shall be designed and maintained to achieve enhanced nitrogen removal capacity.

- ii. **Onsite Flow-based BMPs:** If a Permittee determines that onsite biofiltration and offsite alternative compliance measures are not technically feasible, the Permittee may request the Executive Officer allow the use of onsite flow-based BMPs. In the request, Permittees must outline why none of the other alternative compliance measures are feasible. Approval will only be granted to areas where other alternative compliance measures are not feasible due to significant technical issues.

If approved, the Permittee may allow the Priority Development Project to utilize flow-through treatment control BMPs to treat runoff leaving the site, and mitigate for the design capture volume not reliably retained onsite pursuant to Part VIII.F.4.a of this Order. Flow-through treatment control BMPs must be sized and designed to:

- (a) Filter or 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; or
 - (2) The maximum flow rate of runoff produced by the 85th percentile hourly rainfall intensity (for each hour of a storm event), as determined from the local historical rainfall record, multiplied by a factor of two;
- (b) Be certified for “Enhanced Treatment” under the Washington State Department of Ecology’s TAPE Program; or an appropriate future BMP certification developed by the State of California.

- iii. **Off-site Infiltration:** Projects may use infiltration or bioretention BMPs to intercept a volume of stormwater runoff equal to the SWQDV, less the volume of stormwater runoff reliably retained onsite, at an approved offsite project located within the same subwatershed (HUC-12) as the Priority Development Project, and provide pollutant reduction (treatment) of the stormwater runoff discharged from the project site in accordance with the Water Quality Mitigation Criteria provided in Part VIII.F.4.d of this Order. The required offsite mitigation volume (M_v) shall be calculated by the equation below:

Equation 4: $M_v = SWQDV - R_v$

- iv. **Groundwater Replenishment Projects:** Permittees may propose regional projects to replenish regional groundwater supplies at offsite location, provided the groundwater supply has a designated beneficial use in the Basin Plan.
 - (a) Regional groundwater replenishment projects must use infiltration, groundwater replenishment, or bioretention BMPs to intercept a volume of stormwater runoff equal to the SWQDV for Priority Development Projects, within the approved project area, and
 - (b) Provide pollutant reduction (treatment) of the stormwater runoff discharged from Priority Development Projects, within the project area to mitigate stormwater pollution in accordance with the Water Quality Mitigation Criteria provided in Part VIII.F.4.d of this Order.
 - (c) Permittees implementing a regional groundwater replenishment project in lieu of onsite controls shall ensure the volume of runoff captured by the project shall be equal to the mitigation volume calculated using Equation 4 in Part VIII.F.4.c.iii of this Order.
 - (d) Regional groundwater replenishment projects must be located in the same sub-watershed (HUC-12) as the Priority Development Project(s) that did not fully retain the SWQDV. Permittees may consider locations outside of the HUC-12 but within the HUC-10 subwatershed area if there are no opportunities within the HUC-12 subwatershed or if greater pollutant reductions and/or groundwater replenishment can be achieved at a location within the larger HUC-10 subwatershed. The use of a mitigation, groundwater replenishment, or retrofit project outside of the HUC-12 subwatershed is subject to the approval of the Executive Officer of the Los Angeles Water Board.
 - v. **Off-site Project – Retrofit Existing Development:** Project proponents may use infiltration, bioretention, rainfall harvest and use and/or biofiltration BMPs to retrofit an existing development, with similar land uses or land uses associated with comparable or higher stormwater runoff event mean concentrations (EMCs) than the as the project which did not fully retain the SWQDV. Comparison of EMCs for different land uses shall be based on published data from studies performed in southern California.
 - (a) The retrofit land shall be designed and constructed to intercept a volume of stormwater runoff equal to the mitigation volume as described above in Equation 4, except biofiltration BMPs shall be designed to meet the biofiltration volume as described in Equation 3 and
 - (b) Provide pollutant reduction (treatment) of the stormwater runoff from the project site as described in the Water Quality Mitigation Criteria provided in Part VIII.F.4.d of this Order.
- d. **Water Quality Mitigation Criteria**
- i. Each Permittee shall require all Priority Development Projects that have been approved for offsite mitigation or ground water replenishment projects as defined in Part VIII.F.4.b through Part VIII.F.4.c of this Order to also provide treatment of stormwater runoff from the project site. Each Permittee shall require these projects to design and implement post-construction stormwater BMPs and

control measures to reduce pollutant loading as necessary to ensure that the controls implemented on the site are designed so that the discharge does not cause or contribute to an exceedance of receiving water limitations at the Permittee's downstream MS4 outfall.

- ii. Each Permittee may allow the project proponent to install flow-through modular treatment systems including sand filters, or other proprietary BMP treatment systems that are certified for "Basic Treatment" under the Washington State Department of Ecology's TAPE Program; or an appropriate future BMP certification developed by the State of California. The sizing of the flow through treatment device shall be based on a rainfall intensity of:
 - (a) 0.2 inch per hour, or
 - (b) The one year, one-hour rainfall intensity as determined from the most recent Los Angeles County or Ventura County isohyetal map, whichever is greater.
- iii. In addition to the requirements for controlling pollutant discharges as described in Part VIII.F.4.c of this Order and the treatment benchmarks described above, each Permittee shall ensure that the new development or redevelopment will not cause or contribute to an exceedance of applicable limitations at the outfall established in Part IV.B and Attachments K through S of this Order.

G. Construction Program

1. **Construction Program Applicability.** The requirements contained in this part apply to all activities involving land disturbance with the exception of agricultural activities. Activities covered by this permit include construction or demolition activity, including, but not limited to clearing, grading, grubbing, soil compaction, excavation, paving or re-paving, linear underground/overhead projects (LUPs), or any other activity that results in a land disturbance.
2. Each Permittee shall develop, implement, and enforce a construction program that:
 - a. Prevents illicit construction-related discharges of pollutants into the MS4 and receiving waters.
 - b. Implements and maintains structural and non-structural BMPs to reduce pollutants in stormwater runoff from construction sites.
 - c. Reduces construction site discharges of pollutants to the MS4 to the maximum extent possible.
 - d. Prevents construction site discharges to the MS4 from causing or contributing to a violation of receiving water limitations.
 - e. Ensures that the pertinent provisions contained in Part VIII.F (Planning and Land Development Program) of this Order are incorporated in applicable construction projects.
3. Each Permittee shall establish for its jurisdiction an enforceable erosion and sediment control ordinance, or equivalent municipal code language, for all construction sites that disturb land.
4. **Construction Sites Less than One Acre.** The provisions contained in this Part VIII.G.4 apply exclusively to construction sites less than 1 acre that are not part of a common plan of development.
 - a. **BMP Implementation.** Through the use of the Permittee's erosion and sediment control ordinance and/or building permit, the Permittee shall require the

implementation of an effective combination of erosion and sediment control BMPs from Table 7 and/or Table 8 of this Order (where applicable) to prevent erosion and sediment loss, and the discharge of construction wastes.

Table 7. Minimum Set of BMPs for All Construction Sites

| | |
|----------------------------------|--|
| Site Management | Housekeeping |
| | Scheduling |
| Erosion Controls | Preservation of Existing Vegetation |
| | Wind erosion controls |
| Sediment Controls | Perimeter controls (e.g. Silt Fence, Sandbag Barriers, etc.) |
| | Stabilized Construction Site Entrance/Exit |
| Non-Stormwater Management | Water Conservation Practices |
| | Dewatering Operations |
| Waste Management | Material Delivery and Storage |
| | Stockpile Management |
| | Spill Prevention and Control |
| | Solid Waste Management |
| | Concrete Waste Management |
| | Sanitary/Septic Waste Management |

Table 8. Minimum Required BMPs for Roadway Paving or Repair Operation (For Private or Public Projects)

| | |
|-----------|--|
| 1 | Restrict paving and repaving activity to exclude periods of rainfall or predicted rainfall unless required by emergency conditions. |
| 2 | Install gravel bags and filter fabric or other equivalent inlet protection at all susceptible storm drain inlets and at manholes to prevent spills of paving products and tack coat. |
| 3 | Prevent the discharge of release agents including soybean oil, other oils, or diesel to the stormwater drainage system or receiving waters. |
| 4 | Minimize non stormwater runoff from water use for the roller and for evaporative cooling of the asphalt. |
| 5 | Clean equipment over absorbent pads, drip pans, plastic sheeting or other material to capture all spillage and dispose of properly. |
| 6 | Collect liquid waste in a container, with a secure lid, for transport to a maintenance facility to be reused, recycled or disposed of properly. |
| 7 | Collect solid waste by vacuuming or sweeping and securing in an appropriate container for transport to a maintenance facility to be reused, recycled or disposed of properly. |
| 8 | Cover the "cold-mix" asphalt (i.e., pre-mixed aggregate and asphalt binder) with protective sheeting during a rainstorm. |
| 9 | Cover loads with tarp before haul-off to a storage site, and do not overload trucks. |
| 10 | Minimize airborne dust by using water spray or other approved dust suppressant during grinding. |
| 11 | Avoid stockpiling soil, sand, sediment, asphalt material and asphalt grindings materials or rubble in or near stormwater drainage system or receiving waters. |
| 12 | Protect stockpiles with a cover or sediment barriers during a rain. |

b. Construction Site Inspection. Inspect construction sites as needed based on the evaluation of the factors that are a threat to water quality. In evaluating the threat to

water quality, the following factors shall be considered: project start and estimated completion date; soil erosion potential; site slope; project size and type; sensitivity of receiving water bodies; proximity to receiving water bodies; non-stormwater discharges; past record of non-compliance by the operators of the construction site; and any water quality issues relevant to the watershed where the construction site is located.

- 5. Construction Sites One Acre or Greater.** The provisions contained in this Part VIII.G.5 apply exclusively to construction sites 1 acre or greater and construction sites less than 1 acre that are part of a common plan of development totaling 1 acre or greater. The Construction General Permit is the primary regulating permit for these sites. Requirements for Permittees are as follows:

a. Construction Plan Review and Approval

- i. Prior to the Permittee issuing a grading or building permit (or any pertinent permits), each Permittee shall verify that the construction site operators have existing coverage under applicable permits, including, but not limited to the Construction General Permit, and State Water Board 401 Water Quality Certification.
- ii. Prior to the Permittee issuing a grading or building permit (or any pertinent permits), each Permittee shall require each operator of a construction activity within its jurisdiction to prepare and submit a post-construction plan prior to the disturbance of land for the Permittee's review and written approval. Prior to approval, each Permittee shall verify that the post-construction plans comply with the applicable provisions listed in Part VIII.F (Planning and Land Development Program) of this Order.

b. Construction Site Inventory / Electronic Tracking System

- i. Each Permittee shall use an electronic system to inventory grading permits, encroachment permits, demolition permits, building permits, or construction permits (and any other municipal authorization to move soil and/ or conduct construction or destruction that involves land disturbance) issued by the Permittee. To satisfy this requirement, the use of a database or GIS is recommended.
- ii. Each Permittee shall continuously update the inventory as new sites are permitted and sites are completed. The inventory / tracking system shall contain, at a minimum:
 - (a) Relevant contact information for each project (e.g., name, address, phone, email, etc. for the owner and contractor);
 - (b) The latitude / longitude coordinates of the project;
 - (c) The basic site information including status, size of the project and area of disturbance;
 - (d) Site Risk Level (or Type for Linear Underground/Overhead projects);
 - (e) The current construction phase where feasible;
 - (f) Inspection date(s);
 - (g) The project start date and anticipated completion date;

- (h) Whether the project has submitted a Notice of Intent and obtained coverage under the Construction General Permit, and if so, the project's Waste Discharge Identification (WDID) number; and
 - (i) A brief description of the project's post-construction BMPs and a comparison of pre-construction stormwater runoff volume versus post-construction stormwater runoff volume.
- c. **Construction Site Inspection.** Each Permittee shall inspect all construction sites 1 acre or greater and construction sites less than 1 acre that are part of a common plan of development totaling 1 acre or greater in accordance with the frequency and scope stated below:
 - i. **Frequency of Inspections**
 - (a) For construction sites that are determined to be a significant threat to water quality⁵⁴ and construction sites that discharge to a 303(d)-listed waterbody impaired for sediment or turbidity, the Permittee shall conduct an inspection:
 - (1) At least once every two weeks,
 - (2) When two or more consecutive days with greater than 50% chance of rainfall are predicted by National Oceanic and Atmospheric Administration (NOAA)⁵⁵,
 - (3) And within 48 hours of a 0.5-inch rain event.
 - (b) For all other construction sites, the Permittee shall conduct monthly inspections.
 - (c) If following a site inspection, the Permittee deems the site in compliance with the requirements listed in Part VIII.G.5.c.ii below, the Permittee may reduce the inspection frequency as necessary to a minimum of once during wet weather and once during dry weather.
 - (d) Once the project is completed and prior to issuing a certificate of occupancy, the Permittee shall conduct a post-construction inspection.
 - ii. **Scope of Inspections.** Each Permittee shall inspect these sites to confirm that:
 - (a) The project is enrolled in the Construction General Permit (i.e. has an active WDID number).
 - (b) A SWPPP is developed and available at the site.
 - (c) An effective combination of erosion and sediment control BMPs from Table 7 or Table 8 of this Order (where applicable) are implemented to prevent erosion and sediment loss, and the discharge of construction wastes.
 - (d) During the Certificate of Occupancy inspection, or any type of post-construction inspection, each Permittee shall ensure post-construction BMPs have been implemented in accordance with the project's post-construction plans approved per Part VIII.G.5.a.ii above.

⁵⁴ In evaluating the threat to water quality, the following factors shall be considered: soil erosion potential; site slope; project size and type; sensitivity of receiving water bodies; proximity to receiving water bodies; non-stormwater discharges; past record of non-compliance by the operators of the construction site; and any water quality issues relevant to the particular MS4.

⁵⁵ <https://www.nws.noaa.gov>

- iii. The requirements under Part VIII.G.5.c of this Order can be satisfied by inspections conducted by the project proponent's Qualified SWPPP Developer (QSD), Qualified SWPPP Practitioner (QSP), or other personnel/consultants who are Certified Professionals in Erosion and Sediment Control (CPESC), provided that the Permittee:
 - (a) Ensures all requirements under Part VIII.G.5.c are satisfied by the inspection,
 - (b) Verifies the inspection findings,
 - (c) Takes responsibility for the validity of the inspections, and
 - (d) Takes any follow-up or Progressive Enforcement Actions, if applicable.
- 6. **Progressive Enforcement.** Each Permittee shall implement its Progressive Enforcement Policy to ensure that construction sites are brought into compliance with all stormwater requirements within a reasonable time period. See Part VIII.B of this Order for requirements for the development and implementation of a Progressive Enforcement Policy.

H. Public Agency Activities Program

- 1. **General Provisions.** Each Permittee shall implement a Public Agency Activities Program consistent with the requirements specified in this Part VIII.H. The purpose of the program is to prevent or minimize impacts from MS4 discharges from Permittee-owned or operated facilities and activities. Requirements for Public Agency Facilities and Activities consist of the following components:
 - a. Public Facility and Activity Inventory;
 - b. Public Facility and Activity Management;
 - c. Vehicle and Equipment Wash Areas;
 - d. Landscape, Park, and Recreational Facilities Management;
 - e. Storm Drain Operation and Maintenance;
 - f. Road Reconstruction;
 - g. Streets and Road Pollutant Management;
 - h. Parking Facilities Maintenance; and
 - i. Emergency Procedures.
- 2. **Public Agency Facility and Activity Inventory.**
 - a. Each Permittee shall maintain an updated inventory or database of all Permittee-owned or operated (i.e., public) facilities and activities within its jurisdiction that the Permittee determines are potential sources of pollutants to the MS4. The inventory or database shall be maintained in electronic format and incorporation of facility information into a GIS is recommended. The Permittee shall consider the following facilities when determining sources to be inventoried:
 - i. Animal control facilities
 - ii. Chemical storage facilities
 - iii. Composting facilities

- iv.** Equipment storage and maintenance facilities (including landscape maintenance-related operations)
 - v.** Fueling or fuel storage facilities (including municipal airports)
 - vi.** Hazardous waste disposal facilities
 - vii.** Hazardous waste handling and transfer facilities
 - viii.** Incinerators
 - ix.** Landfills
 - x.** Materials storage yards
 - xi.** Pesticide storage facilities
 - xii.** Fire stations
 - xiii.** Public restrooms
 - xiv.** Public parking lots
 - xv.** Public golf courses
 - xvi.** Public swimming pools
 - xvii.** Public parks
 - xviii.** Public works yards
 - xix.** Public marinas
 - xx.** Recycling facilities
 - xxi.** Solid waste handling and transfer facilities
 - xxii.** Vehicle storage and maintenance yards
 - xxiii.** Stormwater management facilities (e.g., detention basins)
 - xxiv.** Streets and roads
 - xxv.** Catch basins
 - xxvi.** Stormwater capture, control, and treatment devices
 - xxvii.** All other Permittee-owned or operated facilities or activities that each Permittee determines may contribute a substantial amount of pollutants to the MS4.
- b.** Each Permittee shall include the following minimum fields of information for each Permittee-owned or operated facility in its inventory.
- i.** Name of facility;
 - ii.** Name of facility manager and contact information;
 - iii.** Address of facility (physical and mailing, or description if no address available or applicable);
 - iv.** A narrative description of activities performed and potential pollution sources;
 - v.** If applicable, coverage under the Industrial General Permit or other individual or general NPDES permits or any applicable waiver issued by the Los Angeles or State Water Board pertaining to stormwater discharges;

- vi. Activities listed in Table 9 of this Order that occur at the facility and a description of BMPs implemented for the activity. Treatment control BMPs⁵⁶ (i.e., BMPs that remove pollutants) and/or BMPs that involve stormwater capture (including infiltration or use) must also be noted; and
 - vii. For trash treatment control devices, indication of whether it is a *partial capture system* or a certified *full capture system*.
- c. Each Permittee shall verify the accuracy of their inventory once during the permit term. The update shall be accomplished through collection of new information obtained through field activities or through other readily available inter- and intra-agency informational databases (e.g., property management, land-use approvals, accounting and depreciation ledger account, and similar information).
- 3. Public Agency Facility and Activity Management**
- a. Where activities listed in Table 9 of this Order occur at Permittee-owned/leased facilities, including streets and roads, each Permittee must implement BMPs to control the discharge of pollutants to the MS4. The Permittee shall select BMPs that will reduce pollutants in discharges from the MS4 to the MEP and prevent discharges from public agency facilities and activities to the MS4 from causing or contributing to a violation of receiving water limitations.

Table 9. Activities Requiring BMP Implementation

| General Category | Specific Activity |
|--------------------------------|---|
| Flexible Pavement | Asphalt Cement Crack and Joint Grinding/Sealing |
| | Asphalt Paving |
| | Structural Pavement Failure (Digouts) Pavement Grinding and Paving |
| | Emergency Pothole Repairs |
| | Sealing Operations |
| Rigid Pavement | Portland Cement Crack and Joint Sealing |
| | Mudjacking and Drilling |
| | Concrete Slab and Spall Repair |
| Slope/Drains/Vegetation | Shoulder Grading |
| | Non-landscaped Chemical Vegetation Control |
| | Non-landscaped Mechanical Vegetation Control/Mowing |
| | Non-landscaped Tree and Shrub Pruning, Brush Chipping, Tree and Shrub Removal |
| | Fence Repair |
| | Drainage Ditch and Channel Maintenance |
| | Drain and Culvert Maintenance |
| | Curb and Sidewalk Repair |
| Litter/Debris/Graffiti | Sweeping Operations |
| | Litter and Debris Removal |
| | Emergency Response and Cleanup Practices |
| | Graffiti Removal |

⁵⁶ Treatment control BMPs are defined as any engineered system designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media absorption or any other physical, biological, or chemical process.

| General Category | Specific Activity |
|-------------------------------|---|
| Landscaping | Chemical Vegetation Control |
| | Manual Vegetation Control |
| | Landscaped Mechanical Vegetation Control/ Mowing |
| | Landscaped Tree and Shrub Pruning, Brush Chipping, Tree and Shrub Removal |
| | Irrigation Line Repairs |
| | Irrigation (Watering), Potable and Non-potable |
| Environmental | Storm Drain Stenciling |
| | Roadside Slope Inspection |
| | Roadside Stabilization |
| | Stormwater Treatment Devices |
| | Traction Sand Trap Devices |
| Bridges | Welding and Grinding |
| | Sandblasting, Wet Blast with Sand Injection and Hydroblasting |
| | Painting |
| | Bridge Repairs |
| Other Structures | Pump Station Cleaning |
| | Tube and Tunnel Maintenance and Repair |
| | Tow Truck Operations |
| | Toll Booth Lane Scrubbing Operations |
| Electrical | Sawcutting for Loop Installation |
| Traffic Guidance | Thermoplastic Striping and Marking |
| | Paint Striping and Marking |
| | Raised/Recessed Pavement Marker Application and Removal |
| | Sign Repair and Maintenance |
| | Median Barrier and Guard Rail Repair |
| | Emergency Vehicle Energy Attenuation Repair |
| Storm Maintenance | Minor Slides and Slipouts Cleanup / Repair |
| Management and Support | Building and Grounds Maintenance |
| | Storage of Hazardous Materials (Working Stock) |
| | Material Storage Control (Hazardous Waste) |
| | Outdoor Storage of Raw Materials |
| | Vehicle and Equipment Fueling |
| | Vehicle and Equipment Cleaning |
| | Vehicle and Equipment Maintenance and Repair |
| | Aboveground and Underground Tank Leak and Spill Control |

- b. Each Permittee shall ensure proper operation of all treatment control BMPs and maintain them as necessary for proper operation, including all post-construction treatment control BMPs.

- c. Any residual water⁵⁷ produced by a treatment control BMP and not being internal to the BMP performance when being maintained shall be:
 - i. Hauled away and legally disposed of,
 - ii. Applied to the land without runoff, or
 - iii. Discharged to the sanitary sewer system (with permits or authorization).
- d. Any contractors hired by the Permittee to conduct Public Agency Activities listed in Table 9 of this Order shall be contractually required to implement and maintain the activity specific BMPs as required by Part VIII.H.3.a and b of this Order. Each Permittee shall conduct oversight of contractor activities to ensure these BMPs are implemented and maintained.
- e. Each Permittee shall implement an inspection and maintenance program for all Permittee-owned treatment control BMPs, including post-construction treatment control BMPs. The inspection shall document whether the BMPs identified in the inventory are implemented in compliance with municipal ordinances. The Permittee shall use inspection results to target future inspection sites.
- f. If there is any storage of hazardous or toxic materials or hydrocarbons at a facility owned and/or operated by a Permittee and if the facility is not manned at all times, a 24-hour emergency response telephone number shall be prominently posted where it can easily be read from the outside.
- g. Permittee-owned or operated facilities that have obtained coverage under the Industrial General Permit shall implement and maintain BMPs consistent with the associated SWPPP in areas of industrial activity at the facility. The activity specific BMPs listed in Table 9 of this Order shall be implemented in the areas of non-industrial activity at the facility.

4. Vehicle and Equipment Washing

- a. Each Permittee shall implement and maintain appropriate activity specific BMPs as required by Part VIII.H.3.a of this Order for all fixed vehicle and equipment washing; including firefighting and emergency response vehicles.
- b. Each Permittee shall prevent discharges of wash waters from vehicle and equipment washing to the MS4 by implementing any of the following measures at existing facilities with vehicle or equipment wash areas:
 - i. Self-contain, and haul off for disposal;
 - ii. Equip with a clarifier or an alternative pre-treatment device and plumb to the sanitary sewer in accordance with applicable wastewater provider regulations;
or
 - iii. Infiltrate with no discharge off-site.
- c. Each Permittee shall ensure that any municipal facilities constructed, redeveloped, or replaced shall not discharge wastewater from vehicle and equipment wash areas to the MS4 by plumbing all areas to the sanitary sewer in accordance with applicable wastewater provider regulations, or self-containing all wastewater / wash water and hauling to a point of legal disposal.

⁵⁷ In the context of this Order, residual water is defined as water remaining in a structural BMP subsequent to the drawdown or drainage period. The residual water typically contains high concentration(s) of pollutants.

5. Landscape, Park, and Recreational Facilities Management

- a. Each Permittee shall implement and maintain appropriate activity specific BMPs as required by Part VIII.H.3.a of this Order for all Landscape, Park, and Recreational Facilities Management facilities.
- b. Each Permittee shall comply with pesticide regulations pertaining to the use, application, and disposal of Pesticides in California Code of Regulations (CCR), Chapter 4, Subchapters 3, 4, and 5 and shall implement an Integrated Pesticide Management (IPM) program that includes the following:
 - i. Pesticides are used only if monitoring indicates they are needed, and pesticides are applied according to applicable permits and established guidelines.
 - ii. Treatments are made with the goal of removing only the target organism.
 - iii. Pest controls are selected and applied in a manner that minimizes risks to human health, beneficial non-target organisms, and the environment.
 - iv. The use of pesticides, including organophosphates and pyrethroids, that does not threaten water quality.
 - v. Partner with other agencies and organizations to encourage the use of IPM.
 - vi. Adopt and verifiably implement policies, procedures, and/ or ordinances requiring the minimization of pesticide use and encouraging the use of IPM techniques (including beneficial insects) for Public Agency Facilities and Activities.
 - vii. Policies, procedures, and ordinances shall include commitments and a schedule to reduce the use of pesticides that cause impairment of surface waters by implementing the following procedures:
 - (a) Prepare and annually update an inventory of pesticides used by all internal departments, divisions, and other operational units.
 - (b) Quantify pesticide use by staff and hired contractors.
 - (c) Demonstrate implementation of IPM alternatives where feasible to reduce pesticide use.
- c. Each Permittee shall implement the following requirements:
 - i. Use a standardized protocol for the routine and non-routine application of pesticides (including pre-emergent), and fertilizers.
 - ii. Ensure there is no application of pesticides or fertilizers (1) when two or more consecutive days with greater than 50% chance of rainfall are predicted by NOAA,⁵⁸ (2) within 48 hours of a ½-inch rain event, or (3) when water is flowing off the area where the application is to occur. This requirement does not apply to the application of aquatic pesticides or pesticides which require water for activation.
 - iii. Ensure that no banned or unregistered pesticides are stored or applied.
 - iv. Ensure that all staff applying pesticides are certified in the appropriate category by the California Department of Pesticide Regulation or are under the direct supervision of a pesticide applicator certified in the appropriate category.

⁵⁸ <https://www.nws.noaa.gov>

- v. Implement procedures to encourage the retention and planting of native vegetation to reduce water, pesticide and fertilizer needs; and
- vi. Store pesticides and fertilizers indoors or under cover on paved surfaces or use secondary containment.
- vii. Reduce the use, storage, and handling of hazardous materials to reduce the potential for spills.
- viii. Regularly inspect storage areas.

6. Storm Drain Operation and Maintenance

- a. Each Permittee shall implement and maintain activity specific BMPs as required in Part VIII.H.3.a of this Order.
- b. Each Permittee shall ensure that all material removed from the MS4 does not reenter the system. Solid material shall be dewatered in a contained area and liquid material shall be disposed in accordance with any of the following measures:
 - i. Self-contain, and haul off for legal disposal; or
 - ii. Applied to the land without runoff; or
 - iii. Equip with a clarifier or an alternative pre-treatment device; and plumb to the sanitary sewer in accordance with applicable wastewater provider regulations.
- c. **Catch Basin Labels and Open Signage**
 - i. Each Permittee shall label all storm drain inlets that they own with a legible “no dumping” message.
 - ii. Each Permittee shall inspect the legibility of the stencil or label nearest each inlet prior to the wet season every year.
 - iii. Each Permittee shall record all catch basins with illegible stencils and labels and re-stencil or re-label within 180 days of inspection.
 - iv. Each Permittee shall post signs, referencing local code(s) that prohibit littering and illegal dumping, at designated public access points to open channels, creeks, urban lakes, and other relevant water bodies.
- d. **MS4 Maintenance.** Each Permittee shall continue to implement a program for MS4 maintenance that includes the following:
 - i. Visual monitoring of Permittee-owned open channels⁵⁹ and other drainage structures for trash and debris at least annually.
 - ii. Removal of trash and debris from open channels⁶⁰ a minimum of once per year before the wet season.
 - iii. Reduce or eliminate of the discharge of contaminants during MS4 maintenance and clean outs.
 - iv. Proper disposal of debris and trash removed during MS4 maintenance.

⁵⁹ Open channel excludes curbs, trenches in parking lots that lead to catch basins, etc.

⁶⁰ Ibid.

7. Road Reconstruction

- a. Each Permittee shall require that for any project that includes roadbed or street paving, repaving, patching, digouts, or resurfacing roadbed surfaces, that the following BMPs be implemented for each project.
- b. Restrict paving and repaving activity to exclude periods of rainfall or predicted rainfall⁶¹ unless required by emergency conditions.
- c. Install sandbags or gravel bags and filter fabric at all susceptible storm drain inlets and at manholes to prevent spills of paving products and tack coat.
- d. Prevent the discharge of release agents including soybean oil, other oils, or diesel into the MS4 or receiving waters.
- e. Prevent non-stormwater runoff from water use for the roller and for evaporative cooling of the asphalt.
- f. Clean equipment over absorbent pads, drip pans, plastic sheeting or other material to capture all spillage and dispose of properly.
- g. Collect liquid waste in a container, with a secure lid, for transport to a maintenance facility to be reused, recycled or disposed of properly.
- h. Collect solid waste by vacuuming or sweeping and securing in an appropriate container for transport to a maintenance facility, or other appropriate facility, to be reused, recycled or disposed of properly.
- i. Cover the “cold-mix” asphalt (i.e., pre-mixed aggregate and asphalt binder) with protective sheeting during a rainstorm.
- j. Cover loads with tarp before haul-off to a storage site, and do not overload trucks.
- k. Minimize airborne dust by using water spray during grinding.
- l. Avoid stockpiling soil, sand, sediment, asphalt material and asphalt grindings materials or rubble in or near MS4 or receiving waters.
- m. Protect stockpiles with a cover or sediment barriers during a rain.

8. Streets and Road Pollutant Management

- a. Each Permittee shall designate streets and/or street segments within its jurisdiction as one of the following:
 - i. Priority A: Streets and/or street segments that are designated as consistently generating the highest volumes of trash and/or debris.
 - ii. Priority B: Streets and/or street segments that are designated as consistently generating moderate volumes of trash and/or debris.
 - iii. Priority C: Streets and/or street segments that are designated as generating low volumes of trash and/or debris.
- b. Each Permittee shall perform street sweeping of curbed streets according to the following schedule:
 - i. Priority A: Streets and/or street segments that are designated as Priority A shall be swept at least two times per month.

⁶¹ A probability of precipitation (POP) of 50% or more is required.

- ii. Priority B: Streets and/or street segments that are designated as Priority B shall be swept at least once per month.
 - iii. Priority C: Streets and/or street segments that are designated as Priority C shall be swept as necessary but in no case less than once per year.
- 9. Parking Facilities Maintenance.** Permittee-owned parking lots exposed to stormwater and meeting either criteria listed below, shall be inspected at least twice per month. If debris and/or oil is observed during the inspection, the parking lot shall be cleaned. At a minimum, parking lots must be cleaned once per month. For parking lots with a gravel/sediment base, Permittees shall also implement and maintain BMPs to prevent the discharge of gravel and sediment to the MS4.
- a. Facility parking lots greater than 1 acre; or
 - b. Facility parking lots used for heavy vehicle storage such as, construction vehicles, buses, refuse trucks, etc.
- 10. Emergency Procedures.** Each Permittee may conduct activities to restore essential public service systems and infrastructure in emergency situations with a self-waiver of the provisions of this Order as follows:
- a. The Permittee shall abide by all other regulatory requirements, including notification to other agencies as appropriate.
 - b. Where the self-waiver has been invoked, the Permittee shall submit to the Los Angeles Water Board Executive Officer a statement of the occurrence of the emergency, an explanation of the circumstances, and the measures that were implemented to reduce the threat to water quality, no later than 30 business days after the situation of emergency has passed.
 - c. Minor restorations of essential public service systems and infrastructure in emergency situations (that can be completed in less than 1 week) are not subject to the notification provisions. Appropriate BMPs to reduce the threat to water quality shall be implemented.

I. Illicit Discharge Detection and Elimination Program

1. General

- a. Each Permittee shall continue to implement a program to detect and remove or require the dischargers to the MS4 to obtain a separate NPDES permit for, illicit discharges and improper disposal into the storm sewer as required by 40 C.F.R. section 122.26(d)(2)(iv)(B).
- b. Each Permittee shall maintain a written description, including a schedule and procedures, for its IDDE program⁶² that addresses the required program elements in 40 C.F.R. section 122.26(d)(2)(iv)(B)(1-7).
- c. Once each permit term, each Permittee shall review, and update as necessary, all written program descriptions including procedures, that pertain to its IDDE program.
- d. Oil or oily material, chemicals, refuse, or other pollution causing materials shall not be stored or deposited in areas where they may be picked up by rainfall and carried off of the property and/or discharged to surface waters. Any such spill of such materials shall be contained and removed immediately.

⁶² Referred to as Illicit Connection and Illicit Discharge Elimination Program in previous Orders.

2. Illicit Discharge Source Investigation

- a.** Each Permittee shall conduct an investigation to identify the location and source of all reported illicit discharges. For non-stormwater discharges from outfalls, the Permittee shall follow procedures in Part VII of the MRP (Non-Stormwater Outfall-Based Screening and Monitoring Requirements).
- b.** At a minimum, each Permittee shall initiate an investigation to identify and locate the source within 72 hours of becoming aware of the illicit discharges.

3. Illicit Discharge Elimination

- a.** Once the source of the illicit discharge is identified, the Permittee shall notify the responsible party and require the responsible party to conduct all necessary corrective actions to eliminate the illicit discharge or obtain a separate NPDES permit for the discharge.
- b.** The Permittee shall conduct follow-up inspections as necessary until the illicit discharge is eliminated or permitted.
- c.** If the Permittee determines that the source of the illicit discharge originates within an upstream jurisdiction, the Permittee shall notify the upstream jurisdiction and the Los Angeles Water Board within 30 days of such determination and provide all information collected regarding efforts to identify its source.
- d.** In the event the Permittee is unable to eliminate an ongoing illicit discharge following full execution of its legal authority and in accordance with its Progressive Enforcement Policy, or other circumstances prevent the full elimination of an ongoing illicit discharge, including the inability to find the responsible party(ies), the Permittee shall provide for elimination of the illicit discharge through diversion to the sanitary sewer or, alternatively, provide treatment at the location of the identified discharge. In either instance, the Permittee shall notify the Los Angeles Water Board in writing within 30 days of such determination and shall provide a written description of the efforts that have been undertaken to eliminate the illicit discharge, the proposed action(s) to be undertaken, anticipated costs, and a schedule for completion.

4. Infiltration from Sanitary Sewer to MS4 – Preventive Maintenance

- a.** Each Permittee shall implement controls and measures to prevent and eliminate infiltration of seepage from sanitary sewers to MS4s through thorough, routine preventive maintenance of the MS4.
- b.** Each Permittee that operates both a municipal sanitary sewer system and an MS4 must implement controls and measures to prevent and eliminate infiltration of seepage from the sanitary sewers to the MS4s that must include overall sanitary sewer and MS4 surveys and thorough, routine preventive maintenance of both. Implementation of a Sewer System Management Plan in accordance with the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems may be used to fulfill this requirement.
- c.** Each Permittee shall implement controls to prevent infiltration of seepage from sanitary sewers to the MS4 where necessary. Such controls must include:
 - i.** Adequate plan checking for construction and new development;
 - ii.** Incident response training for its municipal employees that identify sanitary sewer spills;
 - iii.** Code enforcement inspections;

- iv. MS4 maintenance and inspections;
- v. Interagency coordination with sewer agencies; and
- vi. Proper education of its municipal staff and contractors conducting field operations on the MS4 or its municipal sanitary sewer (if applicable).

5. Spill Response

- a. Each Permittee shall continue to implement a spill response plan that includes procedures to prevent, contain, and respond to all sewage and other spills that may discharge into the MS4.
- b. Each Permittee shall report spills that may endanger health or the environment in accordance with California Water Code § 13271.

6. Public Reporting

- a. Permittee(s) shall publicize and provide a means for public reporting of illicit discharges and other water quality impacts from stormwater and non-stormwater discharges into or from MS4s.
 - i. Permittee(s) may elect to use either an existing county-wide telephone hotline for Los Angeles County or Ventura County as the public reporting contact, or may establish its own hotline, if preferred.
 - ii. In lieu of a telephone hotline, the Permittee(s) may facilitate public reporting by providing an email address, Web-based form/reporting portal, or other Internet-based application.
- b. Permittee(s) shall maintain current contact information for staff assigned to the IDDE public reporting program.

7. Progressive Enforcement. Each Permittee shall implement its Progressive Enforcement Policy to ensure that illicit discharges are brought into compliance with all stormwater requirements within a reasonable time period. See Part VIII.B of this Order for requirements for the development and implementation of a Progressive Enforcement Policy.

8. Documentation and Tracking

- a. Public reports of illicit discharges shall be documented.
- b. Each Permittee shall track investigations of illicit discharges to document, at a minimum, the date(s) the illicit discharge was observed; the results of the investigation, including the corrective actions taken to eliminate the discharge; any follow-up inspections; and the date the investigation was closed.

IX. WATERSHED MANAGEMENT PROGRAMS

A. General

- 1.** The purpose of this Part IX is to allow Permittees the flexibility to individually or collaboratively develop Watershed Management Programs to implement the requirements of this Order on a watershed scale through customized strategies, control measures, and BMPs.
- 2.** Participation in a Watershed Management Program is voluntary and allows a Permittee to address its highest watershed priorities, including complying with the requirements of Part V (Receiving Water Limitations), Part IV and Attachments K through S (Total Maximum Daily Load Provisions), Part III (Discharge Prohibitions), and Part VIII (Minimum Control Measures) of this Order. This Part IX and other requirements in this Order pertaining to Watershed Management Programs do not apply to Permittees not participating in an approved Watershed Management Program.
- 3.** A Permittee's implementation of an approved Watershed Management Program does not constitute compliance with the non-stormwater discharge prohibition in Part III.A of this Order. However, a Permittee may use an approved Watershed Management Program to implement program elements and control measures to effectively eliminate prohibited non-stormwater discharges consistent with Part III.A and Part VIII.I (Illicit Discharge Detection and Elimination Program) of this Order as appropriate.
- 4.** The Permittee(s) may elect to develop a Watershed Management Program (WMP) using the Los Angeles Water Board's WMAs. Where appropriate, WMAs may be separated into subwatersheds to focus water quality prioritization and implementation efforts by receiving water. Each WMP shall:
 - a.** Be consistent with the provisions in Parts IX.B through IX.E of this Order,
 - b.** Identify and implement strategies, control measures, and BMPs for Water Body-Pollutant Combinations (WBPCs) addressed in the WMP to ensure that: (i) discharges from the Permittee's MS4 achieve any applicable WQBELs in Part IV and Attachments K through S of this Order pursuant to the corresponding compliance schedules, (ii) discharges from the Permittee's MS4 do not cause or contribute to exceedances of receiving water limitations in Part V, Part IV.B, and Attachments K through S of this Order, and (iii) non-stormwater discharges that are a source of pollutants are prohibited pursuant to Part III.A of this Order. The program shall also ensure that controls are implemented to reduce the discharge of pollutants to the MEP pursuant to Part IV.A.1 of this Order,
 - c.** Execute a monitoring and reporting program pursuant to Attachment E (MRP) of this Order to determine progress towards achieving applicable limitations,
 - d.** Modify strategies, control measures, and BMPs as necessary based on analysis of monitoring data collected pursuant to the MRP and other applicable information to ensure that applicable WQBELs, receiving water limitations, TMDL compliance schedules, and other milestones set forth in the WMP are achieved in the required timeframes.
 - e.** Provide appropriate opportunity for meaningful stakeholder and community input into the development or revision of the WMP.
 - f.** Maximize the effectiveness of available funds by leveraging the funds through partnerships and creative funding models that utilize multiple funding sources and through analysis of alternatives and the selection and sequencing of actions needed

to comply with WQBELs and receiving water limitations according to compliance schedules and, thus, to address human health and water quality related challenges;

- g.** Incorporate effective innovative technologies, approaches and practices, such as green infrastructure;
- h.** Ensure that actions to address existing requirements in this Order to comply with technology-based effluent limitations and core requirements (e.g., including elimination of non-stormwater discharges of pollutants through the MS4, and controls to reduce the discharge of pollutants in stormwater to the maximum extent practicable) are not interrupted or delayed;
- i.** Include an estimate of the capital and operation and maintenance costs of implementing the WMP and a financial strategy to fund those costs. Discuss which program costs have secured funding and the corresponding funding sources. If funding is not available for near-term watershed control measures (within 5 years from the effective date of this Order), discuss how Permittee(s) plan to obtain funding and what the anticipated funding sources are.
- j.** Implement structural watershed control measures such as multi-benefit regional projects. Permittees and other partners are encouraged to collaborate on multi-benefit regional projects.
- k.** Demonstrate that strategies, control measures, and BMPs cumulatively retain the runoff volume of the 85th percentile, 24-hour storm event for the drainage area tributary to the applicable receiving water. For drainage areas not addressed by retaining the runoff volume of the 85th percentile, 24-hour storm event, the WMP shall include a Reasonable Assurance Analysis (RAA) to demonstrate that applicable WQBELs and receiving water limitations shall be achieved through implementation of other watershed control measures.
- l.** Identify the group lead, if the WMP includes multiple Permittees, and provide names of all Permittees participating in the WMP. If the group lead or participants change, the group shall promptly notify the Los Angeles Water Board.

B. Program Development

- 1. Water Quality Characterization.** The WMP shall include an evaluation of existing water quality conditions, including characterization of stormwater and non-stormwater discharges from the MS4 and receiving water quality, to support development of the source assessment, identification of water quality priorities and sequencing of management actions. The evaluation shall include, at a minimum, the routine water quality data collected over the last five years pursuant to the Permittee(s) monitoring and reporting program(s) and approved TMDL monitoring programs. The WMP should include an explanation of the process used to determine what available data was relevant, how information considered was used, and why any relevant available data was disregarded.
- 2. Source Assessment.** In identifying WBPCs in Categories 1 – 3 in subpart 3 below, Permittees shall identify known and suspected stormwater and non-stormwater pollutant sources in discharges to the MS4 and from the MS4 to receiving waters and any other stressors related to MS4 discharges causing or contributing to the water quality priorities.
 - a.** The identification of known and suspected pollutant sources shall consider the following information:
 - i.** All relevant, available water quality data;

- ii. Special studies conducted pursuant the Permittee(s) monitoring and reporting program or TMDLs; and
 - iii. Locations of the Permittees' MS4s, including, at a minimum, all MS4 major outfalls and major structural controls for stormwater and non-stormwater that discharge to receiving waters.
 - b. The source assessment shall include the following:
 - i. An explanation of how any information considered as part of the Source Assessment was ultimately used to inform development of the WMP (e.g., directly or via citations to the appropriate WMP or RAA section); and
 - ii. An explanation of why any relevant available data was disregarded.
- 3. **Water Body-Pollutant Combinations (WBPCs).** On the basis of the evaluation of existing water quality conditions, WBPCs addressed in the WMP shall be classified into one of the following three categories:
 - a. **Category 1 (Highest Priority):** Pollutants for which WQBELs and receiving water limitations are established in Part IV and Attachments K through S of this Order to implement TMDLs.
 - b. **Category 2 (High Priority):** Pollutants for which data indicate water quality impairment in the receiving water according to the State's Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (State Listing Policy) and for which MS4 discharges may be causing or contributing to the impairment.
 - c. **Category 3 (Medium Priority):** Pollutants for which there are insufficient data to indicate water quality impairment in the receiving water according to the State's Listing Policy, but which exceed applicable receiving water limitations contained in this Order and for which MS4 discharges may be causing or contributing to the exceedance within the last five years.
- 4. **Sequencing of Water Quality Priorities.** Permittees shall identify the water quality priorities within each WMA that will be addressed by the WMP. Permittees shall sequence management actions to address water quality priorities based on the water quality characterization, source assessment, WBPC prioritization, and compliance schedules. The following categories of WBPCs should be considered when determining the appropriate sequencing of management actions:
 - a. **TMDLs**
 - i. Controlling pollutants for which there are WQBELs and/or receiving water limitations with final compliance deadlines within the permit term, or TMDL compliance deadlines that have already passed, and limitations have not been achieved.
 - ii. Controlling pollutants for which there are WQBELs and/or receiving water limitations with interim deadlines within the term of this Order.
 - iii. Progress toward controlling pollutants for which there are WQBELs and/or receiving water limitations with interim and/or final compliance deadlines beyond the term of this Order.

b. Other Receiving Water Considerations

- i. Controlling pollutants for which data indicate impairment pursuant to the State’s Listing Policy and the findings from the source assessment implicates discharges from the MS4.
- ii. Controlling pollutants for which data indicate exceedances of receiving water limitations in the receiving water within the last five years and the findings from the source assessment implicates discharges from the MS4.

5. Selection of Watershed Control Measures. Permittees shall identify strategies, control measures, and BMPs for WBPCs addressed in the WMP to implement through their jurisdiction-specific stormwater management programs, and collectively on a watershed or subwatershed scale, with the goal of creating a cost-effective program to focus individual and collective resources on water quality priorities.

a. The objectives of the Watershed Control Measures shall include:

- i. Prevent or eliminate non-stormwater discharges through the MS4 that are a source of pollutants to receiving waters.
- ii. Implement pollutant controls necessary to achieve applicable interim and final WQBELs and/or receiving water limitations pursuant to corresponding compliance schedules in Part IV.B and Attachments K through S of this Order.
- iii. Ensure that discharges from the MS4 do not cause or contribute to exceedances of receiving water limitations.

b. Watershed Control Measures may include but are not limited to:

i. Structural controls such as:

- (a)** Vegetated nature-based solutions (e.g., bioretention, green roofs, constructed storm water wetlands, wet and dry detention basins);
- (b)** Multi-benefit regional projects;
- (c)** Stormwater retention basins/subsurface stormwater infiltration galleries or dry wells;
- (d)** Other green infrastructure;
- (e)** Low Impact Development (LID) design features such as cisterns and rooftop/impervious area disconnection; and
- (f)** Diversions to sanitary sewer collection, treatment, and reclamation systems.

ii. Non-structural controls such as:

- (a)** Operation and maintenance procedures; and
- (b)** Source control, including but not limited to market-based solutions such as product replacement/substitution initiatives; human source management programs; and local ordinances prohibiting sources of pollutants (e.g., plastic bags, straws, Styrofoam containers)

c. Each Permittee shall ensure that all employees and contractors whose primary job duties are related to implementation of structural and non-structural BMPs are adequately trained to effectively implement, operate, and maintain such BMPs and are versed in factors affecting BMP effectiveness.

- 6. Watershed Management Program Provisions.** The following provisions of this Order shall be incorporated as part of the WMP:
- a. Stormwater Management Program Minimum Control Measures**
 - i. Permittees shall assess the minimum control measures (MCMs) as defined in Parts VIII.D to VIII.I of this Order to identify opportunities for focusing resources on the water quality priorities in each watershed. For each of the following minimum control measures, Permittees shall propose modifications, if appropriate, that will address water quality priorities:
 - (a) Public Information and Participation Program (PIPP)
 - (b) Industrial/Commercial Facilities Program
 - (c) Planning and Land Development Program
 - (d) Development Construction Program
 - (e) Public Agency Activities Program
 - (f) Illicit Discharge Detection and Elimination Program (IDDE)
 - ii. At a minimum, the WMP shall include management programs consistent with 40 CFR section 122.26(d)(2)(iv)(A)-(D).
 - iii. If the Permittee(s) proposes to eliminate in their WMP a control measure identified in Parts VIII.D through VIII.I of this Order because that specific control measure is not applicable to the Permittee(s), the Permittee(s) shall provide a rationale and appropriate documentation for its elimination.
 - iv. Such modifications, once approved as part of the WMP, shall replace in part or in whole the requirements in Parts VIII.D through VIII.I of this Order for participating Permittees.
 - b. Non-Stormwater Discharge Measures.** Where Permittees identify non-stormwater discharges from the MS4 as a source of pollutants that cause or contribute to exceedance of receiving water limitations and/or WQBELs addressed in the WMP, the Watershed Control Measures shall include strategies, control measures, and/or BMPs to effectively prohibit the source of pollutants consistent with Parts III.A (Prohibitions – Non-Stormwater Discharges) and VIII.I (IDDE) of this Order. Requirements in Part III.A of this Order apply to all Permittees regardless of whether a Permittee is implementing a Watershed Management Program or not.
- 7. Each program shall include the following components:**
- a.** Documentation that Permittees have the necessary legal authority to independently or collaboratively implement the Watershed Control Measures identified in the program, or that other legal authority exists to compel implementation of the Watershed Control Measures.
 - b.** Identification of watershed control measures to achieve WQBELs and receiving water limitations contained in this Part IV, V, and Attachments K through S of this Order to which the Permittee(s) is subject. The WMP shall clearly identify which watershed control measures are addressing which WQBELs and receiving water limitations;
 - c.** For structural controls, the number, type, and locations of projects and/or the volume capture or target load reduction for a drainage area that will be met by structural controls;
 - d.** For each non-structural control, the nature and scope of implementation;

- e. Interim milestones and dates for achievement to ensure that any applicable TMDL compliance deadlines will be met;
 - f. The program shall clearly identify the responsibilities of each participating Permittee for implementation of watershed control measures;
 - g. Identification of any unavailable but necessary information needed to support any analysis in the WMP, including but not limited to the Water Quality Characterization in Part IX.B.1 of this Order, the Source Assessment in Part IX.B.2 of this Order, and the Reasonable Assurance Analysis in Part IX.B.8 of this Order. The discussion of the missing information must include the assumptions made to substitute that information, and milestones for acquiring and incorporating that information into the WMP or RAA as appropriate; and
 - h. Expected volume capture, load reductions, or other compliance metric at regular milestones, and the methods by which these reductions will be measured and demonstrated for each WBPC. Interim milestones shall be no more than 5 years apart.
- 8. Reasonable Assurance Analysis.** Per Part IX.A.4.k of this Order, for drainage areas not addressed by retaining the runoff volume of the 85th percentile, 24-hour storm event, Permittees shall conduct a Reasonable Assurance Analysis (RAA) to demonstrate that implementation of the watershed control measures in the WMP will reasonably ensure that the Permittee's MS4 discharges achieve any applicable WQBELs and do not cause or contribute to exceedances of receiving water limitations. Permittees shall address all WBPCs addressed in the WMP in its RAA, except for those WBPCs in drainage areas addressed by retaining the runoff volume defined above.
- a. The RAA may be based on any available guidance documents to conduct an RAA such as: the Los Angeles Water Board's *Guidelines for Conducting Reasonable Assurance Analysis in a Watershed Management Program, Including an Enhanced Watershed Management Program* dated March 25, 2014 and any updates thereto;⁶³ and *Developing Reasonable Assurance: A Guide to Performing Model-Based Analysis to Support Municipal Stormwater Program Planning* dated February 2017 prepared by Paradigm Environmental for U.S. EPA Region 9.
 - b. The RAA shall be a quantitative analysis that is performed using a peer-reviewed model in the public domain where available. Examples of models that may be considered for use for the RAA include the Watershed Management Modeling System (WMMS) and the Structural BMP Prioritization and Analysis Tool (SBPAT). Where modeling is unavailable or inappropriate, a Permittee may consider alternative numeric analyses or other quantitative methods, including a non-modeling-based analysis (e.g., empirical data analysis) for its RAA. The quantitative reasoning for non-modeling based analysis may use one or more metrics such as magnitude of loading, frequency of exceedance, required percent reduction, or similar metric as compared to the modeled WBPCs and associated watershed control measures.
 - c. Permittees may rely on modeling in TMDL Implementation Plans approved by the Los Angeles Water Board to fulfill the requirements for the RAA for the WBPCs addressed by the TMDL Implementation Plan(s). If the Los Angeles Water Board, in its comments on the TMDL Implementation Plan(s), indicates that more information

⁶³ The Los Angeles Water Board expressly delegates authority to its Executive Officer to revise, as necessary, the 2014 RAA Guidelines after an appropriate public notice and comment period. If any of the proposed revisions to the RAA Guidelines are significant or generate significant public controversy, then a quorum of the Los Angeles Water Board shall consider whether to approve the proposed revisions at publicly noticed meeting.

would be required to use the modeling as a basis for permit compliance, the additional information specified by the Board must be provided when the draft/revised WMP is submitted or in advance of submittal of the draft/revised WMP. If the Permittees identify a pollutant in a TMDL Implementation Plan to use as a limiting pollutant in the RAA, the Permittees must include justification for the limiting pollutant per Part IX.B.8.f of the Order.

- d.** Models utilized in the RAA shall be calibrated using available data that are relevant to the WMP's environmental setting and conditions. The WMP shall explain how the models were calibrated or explain why no further calibration was required (e.g., relied on WMMS default hydrology calibration).
- e.** Models utilized in the RAA shall be validated with relevant data that are independent of the data used for model calibration.
- f.** Where appropriate, Permittees may identify the "limiting" pollutant(s) in the RAA, which if controlled to achieve the applicable WQBEL and/or receiving water limitation will ensure that the applicable limitations for other pollutants are also achieved. If a limiting pollutant(s) is used in the RAA, the WMP must include a justification for the limiting pollutant(s). At a minimum, this justification must include:
 - i.** Identification of each limiting pollutant grouping and the waterbodies addressed (e.g., a table);
 - ii.** An explanation of why the limiting pollutant groupings can be addressed via similar control measures and schedules. This explanation should discuss (1) the similarities in fate and transport mechanisms or explain why any differences in fate and transport mechanisms are irrelevant, (2) the ability of the proposed control measures to address all pollutants in the limited pollutant grouping, and (3) how addressing the limiting pollutant will result in attainment of WQBELs and receiving water limitations for all WBPCs in the RAA within applicable compliance schedules, considering, where relevant, the sources of the different pollutants to be addressed; and
 - iii.** For WBPCs that are addressed by the limiting pollutant approach but not modeled, the RAA shall provide an alternative quantitative analysis for how control of the limiting pollutant(s) will address the identified non-modeled WBPCs and their applicable WQBELs and receiving water limitations consistent with the requirements in Part IX.B.8.a above.
- g.** The RAA shall involve the assembly of relevant data, including land use, hydrological, and pollutant loading data. Permittees shall review quality assurance/quality control (QA/QC) criteria for data and identify datasets that meet QA/QC criteria. A Permittee's use of WMMS shall satisfy this requirement.
- h.** Parameters or data relating to the performance of watershed control measures represented in a model utilized in the RAA shall be based on impartial, well accepted studies and sources. These data shall have been statistically analyzed to determine appropriate estimates of control measure performance.
- i.** Permittees shall demonstrate using the RAA that the activities and watershed control measures identified in the WMP will achieve applicable WQBELs and/or receiving water limitations in Part IV, Part V, and Attachments K through S of this Order for each water body-pollutant combination or limiting pollutant group.
- j.** Permittees may include other regulated point and nonpoint sources within the drainage area in the RAA. The RAA shall demonstrate, for the drainage area to the

compliance point, that the activities and watershed control measures identified in the WMP in conjunction with those identified to address other regulated point and nonpoint sources will, in combination, result in a total pollutant load equal to or less than the sum of the individual allowable pollutant loads established in the applicable TMDL and incorporated into the respective permit(s) and Board order(s).

- 9. Compliance Schedules.** Permittees shall incorporate any applicable compliance schedules in Part IV.B and Attachments K through S of this Order, or approved Time Schedule Order (TSO), for WBPCs addressed in the WMP and, where necessary develop interim requirements and dates for their achievement. Compliance schedules and interim requirements and dates for their achievement shall be used to measure progress towards addressing the highest water quality priorities and achieving applicable WQBELs and/or receiving water limitations.
- a. Schedules must be adequate for measuring progress on a watershed or subwatershed scale throughout the term of this Order.
 - b. Schedules must be developed for both the strategies, control measures and BMPs implemented by each Permittee within its jurisdiction and for those that will be implemented by multiple Permittees on a watershed scale.
 - c. Schedules shall incorporate the following:
 - i. Final compliance deadlines occurring within the permit term for any applicable WQBELs and/or receiving water limitations in Part IV.B and Attachments K through S of this Order, or approved TSO;
 - ii. Where WQBELs and/or receiving water limitations in Part IV.B and Attachments K through S of this Order have final compliance deadlines or time schedules in an approved TSO beyond the permit term, Permittees shall identify interim requirements and dates for their achievement that are within the permit term to ensure adequate progress toward achieving final compliance deadlines or time schedules in an approved TSO. Interim milestones shall be no more than 5 years apart.
 - iii. For water quality priorities related to addressing exceedances of receiving water limitations in Part V and not otherwise addressed by TMDLs in Part IV.B and Attachments K through S of this Order:
 - (a) Requirements based on measurable criteria or indicators, to be achieved in the receiving waters and/or MS4 discharges,
 - (b) A schedule with dates for achieving the requirements, and
 - (c) A final date for achieving the receiving water limitations as soon as possible,
 - (d) If the schedule extends beyond the permit term, interim milestones shall be no more than 5 years apart.
 - iv. Incorporation of the requirements and implementation schedule in subpart B.9 above into an approved WMP fulfills the requirements in Part V.C.1 of this Order to prepare an Receiving Water Limitations Compliance Report.

C. Watershed Management Program Implementation

1. Each Permittee shall begin implementing the WMP immediately upon approval of the program by the Los Angeles Water Board.
2. Notwithstanding Part IX.E (Adaptive Management) of this Order, Permittees may propose WMP modifications at any time during the term of this Order, as necessary. Permittees

shall provide written requests explaining the nature of the proposed modification and justification for consideration by the Los Angeles Water Board. Such justification may include the need to align the timing of implementation for a specific project with a project partner that is not regulated by the Regional MS4 Permit.

3. Through the process in Part IX.C.2, above, Permittees may request an extension of deadlines for achievement of interim requirements and final compliance deadlines established pursuant to Part IX.B.9 of this Order, with the exception of those final compliance deadlines established in a TMDL. Permittees shall provide requests in writing and shall include in the request the justification for the extension. Extensions are subject to approval by the Los Angeles Water Board.

D. Integrated Watershed Monitoring and Assessment

Permittees shall conduct monitoring as set forth in the MRP (Attachment E). The monitoring program shall assess progress toward achieving the WQBELs and/or receiving water limitations addressed in the WMP. The monitoring program shall assess progress toward addressing water quality priorities, per any applicable compliance schedules and approved TSOs as set forth in Part IX.B.9 of this Order.

E. Adaptive Management Process

1. Permittees shall implement an adaptive management process for each approved WMP. The purpose of the adaptive management process is to adapt the WMP so that the watershed control measures in the WMP become more effective, based on, but not limited to a consideration of the following:
 - a. Progress toward achieving interim and/or final WQBELs and/or receiving water limitations in Part IV and Attachments K through S of this Order, according to established compliance schedules set forth in Part IX.B.9 of this Order;
 - b. Progress toward achieving improved water quality in MS4 discharges and achieving receiving water limitations through implementation of the watershed control measures based on an evaluation of outfall-based monitoring data and receiving water monitoring data;
 - c. Re-evaluation of watershed control measures for the achievement of interim and final milestones for stormwater volume addressed (via capture, infiltration, diversion, etc.), load reduction, or other compliance metric;
 - d. Multi-year efforts that were not completed in the current permit term and will continue over the next 5 year(s);
 - e. Re-evaluation of the water quality priorities identified for the WMA based on more recent water quality data for discharges from the MS4 and the receiving water(s) and a reassessment of sources of pollutants in MS4 discharges;
 - f. Availability of new information and data from sources other than the Permittees' monitoring program(s) within the WMA that informs the effectiveness of the actions implemented by the Permittees;
 - g. Costs and available funding;
 - h. Los Angeles Water Board recommendations; and
 - i. Recommendations for modifications to the WMP solicited through a public participation process.
2. Based on the results of the adaptive management process, the Permittee(s) may propose WMP modifications necessary to improve the effectiveness of the WMP, including but not

limited to new compliance deadlines and interim requirements, with the exception of those final compliance deadlines established in a TMDL, and new or substitute watershed control measures. The Permittee(s) shall clearly identify any WMP modification proposals in their submittal.

3. The adaptive management process fulfills the requirements in Part V.D of this Order to address continuing exceedances of receiving water limitations.
4. **Reporting on the adaptive management process results.** The results of the adaptive management process shall be submitted with the Permittees' ROWD. Permittees shall report the following information to the Los Angeles Water Board concurrently with the submittal of the ROWD (180 days before Order expiration date) required pursuant to Part II.B of Attachment D (Standard Provisions):
 - a. On-the-ground structural control measures completed since approval of the WMP;
 - b. Non-structural control measures completed since approval of the WMP;
 - c. Monitoring data that evaluates the effectiveness of implemented control measures in improving water quality;
 - d. Comparison of the effectiveness of the control measures to the results projected by the RAA;
 - e. Assessment of the appropriateness of the assumptions used in the RAA (e.g. non-structural BMP implementation and corresponding reductions, rates of redevelopment, etc.);
 - f. Comparison of control measures completed to date with control measures projected to be completed to date pursuant to the WMP using equivalent metrics;
 - g. Control measures proposed to be completed in the next five years pursuant to the WMP and the schedule for completion of those control measures using metrics consistent with those in the approved WMP;
 - h. Status of funding and implementation for control measures proposed to be completed in the next five years; and
 - i. Identification of the most effective and least effective control measures and explain why those control measures were effective or least effective and how control measures will be optimized, modified, or terminated accordingly for WMP implementation in the next 5 years.
5. Subsequent to the first adaptive management submittal, the Los Angeles Water Board Executive Officer may require additional implementation of an adaptive management process and submittal of results at any time but no earlier than two years after the submittal of the ROWD.

F. Ventura County Permittees

1. Ventura County Permittees that opt to develop a Watershed Management Program shall implement requirements per the schedule specified in Table 10 below:

Table 10. Ventura County WMP Implementation Schedule

| Part | Provision | Due Date |
|--------|--|---|
| IX.F.2 | Submit NOI to the Los Angeles Water Board electing to develop a WMP and/or stating its intent to join an existing WMP | 3 months after Order effective date |
| IX.F.3 | For Ventura County Permittees that elect to develop a WMP or join an existing WMP, submit the new or updated WMP to Los Angeles Water Board | 24 months after Order effective date |
| IX.F.3 | For Ventura County Permittees that elect to develop a WMP or join an existing WMP, submit the final WMP in response to comments from the Los Angeles Water Board | Within 3 months of receipt of comments from the Los Angeles Water Board or as otherwise directed by the Executive Officer |
| IX.F.5 | Begin implementation of the WMP | Immediately upon Los Angeles Water Board approval of final program |
| IX.E | Submit results of WMP adaptive management process | With submittal of ROWD |

2. Ventura County Permittees that elect to develop a WMP or join an existing WMP shall submit a Notice of Intent (NOI) to the Los Angeles Water Board no later than 3 months after the effective date of this Order. The NOI shall:
 - a. Identify all participating Ventura County Permittees and provide the program concept and geographical scope (county-wide and/or watershed/subwatershed scale).
 - b. Provide a letter of intent from each participating Permittee that is signed per the signatory requirements in Part V.B in Attachment D of this Order.
 - c. Identify which Water-Body Pollutant Combinations as defined in Part IX.B.3 of this Order will be addressed in the WMP.
3. A Ventura County Permittee(s) that elects to develop a WMP or join an existing WMP shall submit the new or updated WMP to the Los Angeles Water Board Executive Officer no later than 24 months after the effective date of this Order. Within 3 months of receipt of comments from the Los Angeles Water Board or as otherwise directed by the Executive Officer, Ventura County Permittee(s) shall submit the final WMP in response to comments.
4. Until the WMP is approved by the Los Angeles Water Board, Ventura County Permittees that elect to develop a WMP shall:
 - a. Continue to implement their existing stormwater management programs, including actions within each of the six categories of minimum control measures consistent with 40 CFR section 122.26(d)(2)(iv) in lieu of Part VIII.D through Part VIII.I in this Order;
 - b. Comply with all other Parts of this Order, including Parts III, IV, VI, VII, VIII.A and B and Attachments K through S; and
 - c. Comply with Part V of this Order for Water-Body Pollutant Combinations not identified in the NOI.
5. The Ventura County Permittee(s) shall implement their WMP immediately upon approval by the Los Angeles Water Board.

6. Ventura County Permittees that do not elect to develop a WMP shall be subject to all requirements in this Order except those requirements pertaining to Watershed Management Programs immediately upon the effective date of this Order.
7. Ventura County Permittees that do not have an approvable WMP shall be subject to all requirements in this Order except those requirements pertaining to Watershed Management Programs upon disapproval by the Los Angeles Water Board.
8. Ventura County Permittees may request an extension of the deadlines to submit an NOI to develop a WMP, submit a draft program, and submit a final program. The extension is subject to approval by the Executive Officer of the Los Angeles Water Board. If the extension is approved, Ventura County Permittees shall comply with Part VIII (Stormwater Management Program Minimum Control Measures) of this Order and shall demonstrate compliance with all receiving water limitations pursuant to Part V of this Order during any extension period.
9. For those Ventura County Permittees opting to discontinue participation in an approved Watershed Management Program, the Ventura County Permittee, immediately upon submittal of their notice shall be subject to all requirements of this Order except those requirements pertaining to Watershed Management Programs.

G. Los Angeles County Permittees

1. Los Angeles County Permittees with an approved Watershed Management Program⁶⁴ shall implement requirements per the schedule specified in Table 11 below:

Table 11. Los Angeles County WMP Implementation Schedule

| Part | Provision | Due Date |
|-------------|---|---|
| IX.G.3.a | Submit revised RAA and WMP in response to comments from the Los Angeles Water Board | Within 3 months of receipt of comments from the Los Angeles Water Board or as otherwise directed by the Executive Officer |
| IX.G.3.c | Implement revised WMP | Upon Los Angeles Water Board approval of revised program |
| IX.E | Submit results of WMP Adaptive Management process | With submittal of ROWD |

2. Notifications Regarding WMP Participation

- a. Within 30 days of withdrawing from participation in a WMP, a Los Angeles County Permittee currently participating in the implementation of an approved Watershed Management Program shall notify the Los Angeles Water Board that it is discontinuing its participation in the implementation of the Watershed Management Program.
- b. Los Angeles County Permittees that currently do not have an approved Watershed Management Program may opt to join an approved Watershed Management Program. In such case, the Los Angeles County Permittee seeking to join an already

⁶⁴ Reference to the term “approved Watershed Management Program or approved WMP” in this section includes Watershed Management Programs (WMPs) and Enhanced Watershed Management Programs (EWMPs) that were developed pursuant to the previous MS4 permits (Order Number R4-2012-0175 and Order Number R4-2014-0024).

approved program shall notify the Los Angeles Water Board as soon as possible. This Permittee remains subject to all requirements of this Order (except those requirements pertaining to Watershed Management Programs) until the Watershed Management Program has been modified and approved by the Los Angeles Water Board to add the Permittee to the Watershed Management Program and to update schedules and milestones accordingly.

- c. For those Los Angeles County Permittees opting to discontinue participation in an approved Watershed Management Program, the Los Angeles County Permittee, immediately upon submittal of their notice shall be subject to all requirements of this Order except those requirements pertaining to Watershed Management Programs.

3. Revised WMP and RAA

- a. Los Angeles County Permittee(s) that opt to continue implementing a Watershed Management Program shall update their Watershed Management Program and RAA to be consistent with the requirements of this Order as directed by the Executive Officer. In response to the Los Angeles Water Board’s comments on any WMP and RAA, Los Angeles County Permittee(s) shall submit a revised RAA and WMP within three months of receipt of comments or as otherwise directed by the Executive Officer.
- b. The Los Angeles Water Board, or the Executive Officer pursuant to their delegated authority, will approve or disapprove the updated WMP. The Executive Officer may waive the requirement for approval of the updated WMP, following the 60-day public review and comment period, if the Executive Officer determines that a Los Angeles County Permittee has adequately demonstrated using water quality monitoring data that the WMP as currently approved is meeting appropriate water quality targets in accordance with established deadlines.
- c. The Los Angeles County Permittee(s) shall implement revisions to their WMP immediately upon approval by the Los Angeles Water Board.
- d. Until the updated WMP is approved by the Los Angeles Water Board, the Los Angeles County Permittee(s) shall continue to implement the currently approved version of their Watershed Management Program as identified in Table 12 below:

Table 12. Watershed Management Programs

| Los Angeles County Permittee / Group Name | Initial Approval Date |
|--|-----------------------|
| Upper Santa Clara River Watershed Group (Los Angeles County, LACFCD, and city of Santa Clarita) | 4/7/2016 |
| Upper Los Angeles River Watershed Group (Los Angeles County, LACFCD, and cities of Alhambra, Burbank, Calabasas, Glendale, Hidden Hills, La Cañada Flintridge, Los Angeles, Montebello, Monterey Park, Pasadena, Rosemead, San Fernando, San Gabriel, San Marino, South El Monte, South Pasadena, and Temple City) | 4/20/2016 |
| Los Angeles River Upper Reach 2 Sub Watershed Group (LACFCD and cities of Bell, Bell Gardens, Commerce, Cudahy, Maywood, and Huntington Park, and Vernon) | 4/28/2015 |
| Lower Los Angeles River Watershed Group (LACFCD and cities of Downey, Lakewood, Long Beach, Lynwood, Paramount, Pico Rivera, Signal Hill, and South Gate) | 4/28/2015 |

| Los Angeles County Permittee / Group Name | Initial Approval Date |
|---|--|
| Rio Hondo/San Gabriel River Water Quality Group (Los Angeles County, LACFCD, and cities of Arcadia, Bradbury, Duarte, Monrovia, and Sierra Madre) | 4/21/2016 (Revised WMP approved 4/2/2019) |
| Upper San Gabriel River Group (Los Angeles County, LACFCD, and cities of Baldwin Park, Covina, Glendora, Industry, and La Puente, West Covina) | 4/11/2016 |
| East San Gabriel Valley Watershed Management Area Group (cities of Claremont, La Verne, Pomona, and San Dimas) | 4/28/2015 |
| Lower San Gabriel River Group (LACFCD, and cities of Artesia, Bellflower, Cerritos, Diamond Bar, Downey, Hawaiian Gardens, La Mirada, Lakewood, Long Beach, Norwalk, Pico Rivera, Santa Fe Springs, and Whittier) | 4/28/2015 |
| Los Cerritos Channel Watershed Group (LACFCD, and cities of Bellflower, Cerritos, Downey, Lakewood, Long Beach, Paramount, and Signal Hill) | 4/28/2015 |
| Malibu Creek Watershed Group (Los Angeles County, LACFCD, and Agoura Hills, Calabasas, Hidden Hills, and Westlake Village) | 4/27/2016 |
| Marina del Rey Group (Los Angeles County, LACFCD, and cities of Culver City and Los Angeles) | 4/27/2016 |
| North Santa Monica Bay Coastal Watersheds Group (Los Angeles County, LACFCD, and City of Malibu) | 4/19/2016 |
| Santa Monica Bay Watershed Jurisdictions 2 & 3 Group (Los Angeles County, LACFCD, and cities of El Segundo, Los Angeles, and Santa Monica) | 4/21/2016 |
| Beach Cities Watershed Management Group (LACFCD and cities of Hermosa Beach, Manhattan Beach, Redondo Beach, and Torrance) / Machado Lake Subwatershed Supplement (City of Torrance) | 4/18/2016; 12/9/2016 |
| Palos Verdes Peninsula Watershed Management Group (Los Angeles County, LACFCD, and cities of Palos Verdes Estates, Rancho Palos Verdes, and Rolling Hills Estates) | 4/19/2016 |
| Ballona Creek Group (Los Angeles County, LACFCD, Beverly Hills, Culver City, Inglewood, Los Angeles, Santa Monica, and West Hollywood) | 4/20/2016 |
| Dominguez Channel Watershed Management Area Group (Los Angeles County, LACFCD, and cities of Carson, El Segundo, Hawthorne, Inglewood, Lawndale, Lomita, and Los Angeles) | 4/21/2016 |
| Alamitos Bay/Los Cerritos Channel Group (Los Angeles County and LACFCD) | 4/28/2015 |
| Santa Monica Bay Watershed Jurisdiction 7 Group (LACFCD and City of Los Angeles) | 4/28/2015 |
| Nearshore Watersheds (City of Long Beach) | 1/28/2016 |
| City of El Monte | 4/28/2015 |
| City of La Habra Heights | 12/12/2014 |
| City of Walnut | 4/28/2015 |

- Los Angeles County Permittees that do not have an approvable updated WMP shall be subject to all requirements in this Order except those requirements pertaining to Watershed Management Programs upon disapproval by the Los Angeles Water Board.

5. Los Angeles County Permittees may request an extension of the deadlines in Table 11. The extension is subject to approval by the Executive Officer of the Los Angeles Water Board. Part IX.G.3.d above applies until the Los Angeles County Permittee(s) has an approved revised WMP in place.

X. Compliance Determination for WQBELs and Receiving Water Limitations

A. General

1. Compliance Points

A Permittee shall demonstrate compliance with WQBELs and receiving water limitations in Part IV, Part V, and Attachments K through S of this Order, at the compliance monitoring locations identified in monitoring programs per Attachment E of this Order unless a Permittee is implementing a Watershed Management Program per Part IX of this Order. Compliance points may include outfalls and/or alternative access points, such as manholes or in channels at the Permittee's jurisdictional boundary, or locations in the receiving water.

2. Compliance with Receiving Water Limitations

Compliance with the procedure described in Part V.C of this Order does not constitute compliance with the receiving water limitation provisions of Part V.A and Part V.B of this Order.

3. Compliance with Bacteriological Limitations During High Flow Suspension (HFS) Conditions

WQBELs and receiving water limitations for protection of water contact recreation (REC-1) and non-contact recreation (REC-2) do not apply during a high flow suspension as defined in Attachment A of this Order.

B. WQBELs and Receiving Water Limitations for Pollutants other than Trash

1. Interim WQBELs and Receiving Water Limitations⁶⁵

a. Direct Demonstration of Compliance with TMDL-Specific Requirements

- i. A Permittee is in compliance with interim WQBELs and receiving water limitations associated with a TMDL, if the Permittee is implementing the requirements, including compliance schedules, outlined in Part IV.B and Attachments K through S of this Order applicable to the waterbody-pollutant combination(s) addressed by that TMDL.
- ii. A Permittee demonstrates compliance with interim WQBELs and receiving water limitations associated with a TMDL in the same manner as described in Part X.B.2 of this Order

b. Alternative Demonstration of Compliance

- i. A Permittee shall be deemed in compliance with interim WQBELs and receiving water limitations if it is implementing an approved Watershed Management Program, consistent with the actions and schedules therein, to address the applicable waterbody-pollutant combination pursuant to Part IX of this Order. For milestones proposed to be met entirely by implementation of strategies, control measures, or BMPs for which there is no quantitative analysis that satisfies the requirements in Part IX.B.8.b of this Order, Permittees may only be deemed in compliance with the interim WQBELs and receiving water limitations if the

⁶⁵ In this Order all interim WQBELs are associated with TMDLs. Interim receiving water limitations are generally associated with TMDLs (i.e. an interim WLA expressed as a standard to be met in the receiving water), but may also include interim requirements incorporated into an approved Watershed Management Program to achieve compliance with final receiving water limitations in Part V of this Order for waterbody-pollutant combinations that are not addressed by a TMDL.

- Permittee demonstrates actual attainment of the associated water quality milestone.
- ii. Minor deviations from interim actions, requirements, and schedules in an approved Watershed Management Program are permitted under the following circumstances:
 - (a) Notification is provided to the Los Angeles Water Board in the Annual Report, including a clear description of the interim action or requirement in the Watershed Management Program, an explanation for the deviation, and the revised schedule, requirement, and/or action.
 - (b) The final deadline for project completion or program implementation will still be met.
 - (c) Any revised action or substituted action(s) will provide equivalent water quality improvement.
 - iii. A Permittee that fails to implement the actions and schedules in an approved Watershed Management Program for any waterbody-pollutant combination must either:
 - (a) Revise its Watershed Management Program per Parts IX.E.2, IX.F.3 or Part IX.G.3.a of this Order to maintain deemed compliance status unless the deviation is minor per Part X.B.1.b.ii of this Order; or
 - (b) Comply directly with the WQBELs and receiving water limitations in Part IV.B and Attachments K through S of this Order, or
 - (c) If there is no applicable TMDL, comply directly with the final receiving water limitations in Part V of this Order.

2. Final WQBELs and Receiving Water Limitations

- a. **Direct Demonstration of Compliance.** A Permittee is in compliance with final WQBELs and receiving water limitations in Part IV.B and Attachments K through S of this Order and/or in Part V of this Order, if the Permittee demonstrates any of the following:
 - i. There are no exceedances of the WQBEL for the specific pollutant in the discharge at the Permittee's compliance point(s), including an outfall to the receiving water that collects discharges from multiple Permittees' jurisdictions;
 - ii. There are no exceedances of the receiving water limitation for the specific pollutant in the receiving water(s) at, or downstream of, the Permittees' compliance point(s);
 - iii. There is no direct or indirect discharge from the Permittee's MS4 to the receiving water during the relevant time period; or
 - iv. The exceedance is the result of an authorized or exempt non-stormwater discharge specified in Part III.A.2 of this Order during a specific sampling event. The water quality characteristics must be based on the source specific water quality monitoring data from the authorized or conditionally exempt essential non-stormwater discharge or other relevant information documenting the characteristics of the specific non-stormwater discharge.

b. Alternative Demonstration of Compliance

- i. A Permittee shall be deemed in compliance with the receiving water limitations in Part V of the Order if it is implementing the applicable TMDL requirement(s) in Part IV.B and Attachments K through S of this Order; or
- ii. A Permittee shall be deemed in compliance with the WQBELs and receiving water limitations for the U.S. EPA TMDLs identified in Part IV.B.2.c of this Order and/or the receiving water limitations in Part V of the Order if it is implementing an approved Watershed Management Program, consistent with the actions and schedules therein, to address the applicable waterbody-pollutant combination pursuant to Part IX of this Order. A Permittee may only rely on this compliance path up until the final deadline for achievement of the relevant WQBEL and/or receiving water limitation; or
- iii. A Permittee shall be deemed in compliance with final WQBELs and receiving water limitations in Part IV.B and Attachments K through S of this Order if it has retained all conditionally exempt, non-essential non-stormwater as defined in Part III.A (Prohibitions – Non-Stormwater Discharges) of this Order and all stormwater runoff up to and including the volume equivalent to the 85th percentile, 24-hour event for the drainage area tributary to the applicable receiving water for that waterbody provided the Permittee is implementing all actions and schedules in an approved Watershed Management Program including, but not limited to the ongoing monitoring and adaptive management requirements in Parts IX.D and IX.E of this Order; or
- iv. Upon notification of a Ventura County Permittee’s intent to develop a WMP or join an existing WMP and prior to approval of the new or updated WMP, a Permittee’s full compliance with all requirements in Part IX.F of this Order shall constitute a Permittee’s compliance with the receiving water limitations provisions in Part V.A of this Order. A Permittee will only be deemed in compliance for receiving water limitations for those pollutants that are listed in the NOI.

C. WQBELs and Receiving Water Limitations for Trash

1. General

- a. A Permittee may rely on another permittee or entity to implement trash controls or systems to achieve compliance with WQBELs or receiving water limitations for trash; however, a Permittee remains ultimately responsible for compliance with any WQBEL or receiving water limitation for trash applicable to its jurisdictional area.
- b. If a Permittee’s compliance strategy includes the installation of full capture systems and/or partial capture devices and institutional controls in the area serviced by another public entity, then the Permittee is responsible for obtaining all necessary authorizations, including any permits, to do so.
- c. If a Permittee is unable to obtain the necessary authorizations to install a full capture system or partial capture device within another Permittee’s MS4 infrastructure, either Permittee may request a dispute resolution conference with the Los Angeles Water Board. Nothing in this subsection shall be construed as relieving a Permittee of any liability that the Permittee would otherwise have under this Order.

2. Areas not addressed by a Trash TMDL

- a. A Permittee is in compliance with the receiving water limitation for trash in Part V of this Order if the Permittee demonstrates any one of the following:
 - i. There are no exceedances of the trash receiving water limitation in the receiving water(s) at, or downstream of, the Permittees' outfall(s); or
 - ii. There is no direct or indirect discharge from the Permittee's MS4 to the receiving water during the relevant time period.
- b. Compliance with the Discharge Prohibition in Part III.B of this Order will be considered as evidence of whether a Permittee is causing or contributing to a violation of the receiving water limitation for trash in Part V of this Order in drainage areas within PLUs, equivalent alternative land uses, or designated land uses.

3. Areas Addressed by a Trash TMDL

a. Full Capture System Compliance Option

- i. A Permittee is in compliance with the interim and final WQBELs for trash outlined in Part IV.B and Attachments K through S of this Order, as specified in Part IV.B.3.b.i of this Order.
- ii. A Permittee violates its interim or final WQBELs for trash, if any of the following are true:
 - (a) The Permittee fails to demonstrate that it has addressed all drainage areas within its jurisdiction with full capture systems,
 - (b) The full capture systems for any drainage area(s) are not adequately sized and maintained,
 - (c) Maintenance records are not up-to-date and available for inspection by the Los Angeles Water Board, or
 - (d) It is not in compliance with any of the conditions of the certification of the specific full capture device.
- iii. A Permittee that violates its interim or final WQBELs for trash is presumed to have discharged trash in an amount equal to the percentage of the baseline waste load allocation⁶⁶ represented by the drainage area within its jurisdiction not addressed with full capture systems. A Permittee may overcome this presumption by demonstrating that the actual or calculated discharge for that drainage area is fully or partially in compliance with the applicable interim or final effluent limitation.

b. Other Compliance Options

- i. A Permittee is in compliance with the interim or final WQBELs for trash outlined in Part IV.B and Attachments K through S of this Order, as specified in Part IV.B.3.b.ii-iv of this Order (Mass Balance, Scientifically Based Alternative, and Minimum Frequency of Assessment and Collection).
- ii. A Permittee that violates its interim and/or final WQBEL is presumed to have violated the applicable limitation for each day of each storm event that generated precipitation greater than 0.25 inch during the applicable water year, except

⁶⁶ Baseline Waste Load Allocation as defined in Attachment A of this Order.

those storm days on which it establishes that its trash discharges have not exceeded the applicable effluent limitation.

D. Commingled Discharges

1. Permittees that have commingled MS4 discharges are jointly responsible for meeting the requirements of this Order. However, Permittees are only responsible for discharges from the MS4 for which they are owners and/or operators.
2. Where Permittees have commingled MS4 discharges to the receiving water, compliance at the outfall discharging to the receiving water or compliance in the receiving water shall be determined for the group of Permittees as a whole unless an individual Permittee demonstrates that its discharge did not cause or contribute to the exceedance.
3. Permittees are responsible for demonstrating that their discharge did not cause or contribute to an exceedance of an applicable WQBEL or receiving water limitation.
4. A Permittee may demonstrate that its discharge did not cause or contribute to an exceedance of an applicable WQBEL or receiving water limitation in the manner described in Part X.B.2 of this Order.
5. A Permittee may also demonstrate that its discharge did not cause or contribute to an exceedance of an applicable receiving water limitation by demonstrating that there was an alternative source of a pollutant that is not typically associated with MS4 discharges that caused the exceedance, and that pollutant was not discharged from the Permittee's MS4. For any such demonstration, the Permittee shall use the most current source identification methodology(ies) for the applicable pollutant.

E. Time Schedule Orders

1. Unless a Permittee has selected, and is in compliance, with one of the alternative compliance options set forth in Part X.B of this Order, the Permittee must comply with any applicable interim and final WQBELs and receiving water limitations in accordance with the corresponding compliance schedule deadlines.
2. Where a Permittee believes that it needs additional time to comply with these WQBELs and/or receiving water limitations, a Permittee may request a TSO pursuant to California Water Code sections 13300 and/or 13385(j)(3) for the Los Angeles Water Board's consideration. A Permittee seeking an extension of a compliance deadline, other than a final TMDL deadline, in an approved Watershed Management Program does not need a TSO and may request the extension in accordance with the modification provisions in Part IX.C of this Order.
3. If a TSO is issued and the Permittee is in compliance with that TSO, the Los Angeles Water Board will not pursue further enforcement of violations involving the specific waterbody-pollutant combination(s) addressed in the TSO, including the mandatory minimum penalty provisions of section 13385(h) and (i) for violations of WQBELs in Part IV.B and Attachments K through S of this Order.
4. Permittees may either individually request a TSO or may jointly request a TSO with Permittees subject to the WQBELs and/or receiving water limitations.
5. At a minimum, a written request for a time schedule order must include the following:
 - a. Data demonstrating the current quality of the MS4 discharge(s) in terms of concentration and/or load of the target pollutant(s) to the receiving waters subject to the TMDL;

- b. A detailed description and chronology of structural controls and source control efforts, since the effective date of the TMDL, to reduce the discharge of the pollutant(s) from the MS4 to the receiving waters subject to the TMDL;
- c. Justification of the need for additional time to achieve the WQBELs and/or receiving water limitations which may include time to collaborate with other entities not regulated by the Regional MS4 Permit on a specific project(s) that will reduce discharges of the pollutant(s) from multiple sources;
- d. A detailed time schedule of specific actions the Permittee will take in order to achieve the water WQBELs and/or receiving water limitations;
- e. A demonstration that the time schedule requested is as short as possible, considering the technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the WQBELs and/or receiving water limitation(s); and
- f. If the requested time schedule exceeds one year, the proposed schedule must include interim requirements and the date(s) for their achievement.

XI. ENFORCEMENT

A. General

- 1. With the caveat that only one kind of penalty may be applied for each kind of violation, violation of any of the provisions of this Order may subject the violator to any of the penalties described herein or in Attachment D of this Order, or any combination thereof, at the discretion of the prosecuting authority.
- 2. Failure to comply with provisions or requirements of this Order, or violation of other applicable laws or regulations governing discharges through the MS4 to receiving waters, may subject a Permittee to administrative or civil liabilities, criminal penalties, and/or other enforcement remedies to ensure compliance. Additionally, certain violations may subject a Permittee to civil or criminal enforcement from appropriate local, state, or federal law enforcement entities.
- 3. Section 13385 of the California Water Code provides that any person who violates a waste discharge requirement or a provision of the California Water Code is subject to civil penalties of up to \$5,000 per day, \$10,000 per day, or \$25,000 per day of violation, or when the violation involves the discharge of pollutants, is subject to civil penalties of up to \$10 per gallon per day or \$25 per gallon per day of violation; or some combination thereof, depending on the violation, or upon the combination of violations.
- 4. California Water Code section 13385(h)(1) requires the Los Angeles Water Board to assess a mandatory minimum penalty of three-thousand dollars (\$3,000) for each serious violation. Pursuant to California Water Code section 13385(h)(2), a “serious violation” is defined as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent or more, or for a Group I pollutant by 40 percent or more. Appendix A of 40 CFR section 123.45 specifies the Group I and II pollutants. Pursuant to California Water Code section 13385.1(a)(1), a “serious violation” is also defined as “a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.”

5. California Water Code section 13385(i) requires the Los Angeles Water Board to assess a mandatory minimum penalty of three-thousand dollars (\$3,000) for each violation whenever a person violates a waste discharge requirement effluent limitation in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations within that time period.
6. Pursuant to California Water Code section 13385.1(d), for the purposes of section 13385.1 and subdivisions (h), (i), and (j) of section 13385, “effluent limitation” means a numeric restriction or a numerically expressed narrative restriction, on the quantity, discharge rate, concentration, or toxicity units of a pollutant or pollutants that may be discharged from an authorized location. An effluent limitation may be final or interim and may be expressed as a prohibition. An effluent limitation, for these purposes, does not include a receiving water limitation, a compliance schedule, or a best management practice.
7. Unlike subdivision (c) of California Water Code section 13385, where violations of effluent limitations may be assessed administrative civil liability on a per day basis, the mandatory minimum penalties provisions identified above require the Los Angeles Water Board to assess mandatory minimum penalties for “each violation” of an effluent limitation. Some water quality-based effluent limitations in Attachments K through S of this Order (e.g., trash, as described immediately below) are expressed as annual effluent limitations. Therefore, for such limitations, there can be no more than one mandatory minimum penalty for each interim or final effluent limitation per year.

B. Trash TMDLs

For the purposes of discretionary enforcement under California Water Code section 13385, subdivisions (a), (b), and (c), not every storm event may result in trash discharges. In trash TMDLs adopted by the Los Angeles Water Board, the Los Angeles Water Board states that improperly deposited trash is mobilized during storm events of greater than 0.25 inch of precipitation. Therefore, violations of the effluent limitations are limited to the days of a storm event of greater than 0.25 inch. When a Permittee has violated the annual effluent limitation, any subsequent discharges of trash during any day of a storm event of greater than 0.25 inch during the same water year constitutes an additional day in which the violation of the effluent limitation occurs, unless the Permittee has established that its discharge has not exceeded the applicable effluent limitation for trash on the relevant storm days consistent with Part X.C.3.b.ii of this Order.

ATTACHMENT A – DEFINITIONS

85th Percentile, 24-Hour Storm Event

The 85th percentile, 24-hour storm event is a statistical design storm defined through a hydrologic analysis of long-term rainfall records for a particular geographic area. At the most basic level, the design storm represents the 85th percentile, 24-hour rainfall depth (typically measured in inches of rain) among all 24-hour rainfall depths evaluated in the historical record. Analyses that define this storm event often express the 85th percentile, 24-hour storm event as an “isohyetal” or “isopluvial” map with contour lines connecting areas with the same 85th percentile, 24-hour rainfall depth. In some situations (e.g. in storm hydrographs), the temporal distribution of rainfall during the 85th percentile, 24-hour storm event may be assumed.

Adverse Impact

A detrimental effect upon water quality or beneficial uses caused by a discharge or loading of a pollutant or pollutants.

Anti-degradation Policies

State and federal laws, regulations and policies established to protect waters from degradation. In particular, these laws, regulations and policies protect waters where existing quality is higher than necessary for the protection of beneficial uses. These requirements are set forth in *Statement of Policy with Respect to Maintaining High Quality of Waters in California*, State Water Board Resolution No. 68-16 and 40 C.F.R. section 131.12.

Applicable Standards and Limitations

All State, interstate, and federal standards and limitations to which a “discharge” or a related activity is subject under the CWA, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403 and 404 of the CWA.

Areas of Special Biological Significance (ASBS)

As defined in the Water Quality Control Plan for Ocean Waters of California (California Ocean Plan), ASBS are all those areas designated by the State Water Board as ocean areas requiring protection of species or biological communities to the extent that maintenance of natural water quality is assured. All Areas of Special Biological Significance are also classified as a subset of State Water Quality Protection Areas. ASBS are also referred to as State Water Quality Protection Areas – Areas of Special Biological Significance (SWQPA-ASBS). These areas include the Mugu Lagoon to Latigo Point ASBS (also known as ASBS 24) located along the coastline of Ventura and Los Angeles counties.

Arithmetic Sample Mean (μ)

Also called the average, is the sum of measured values divided by the number of samples. For ambient water concentrations, the arithmetic sample mean is calculated as follows:

Arithmetic sample mean = $\mu = \Sigma \bar{x} / n$ where:

$\Sigma \bar{x}$ is the sum of the measured ambient water concentrations, and n is the number of samples.

Authorized Discharge

Any discharge that is authorized pursuant to an NPDES permit, waste discharge requirements, a conditional waiver of waste discharge requirements, or other appropriate order issued by the State or Regional Water Board or complies with the requirements set forth in the Order.

Authorized Non-Stormwater Discharge

Authorized non-stormwater discharges are discharges that are not composed entirely of stormwater and that are either: (1) separately regulated by an individual or general NPDES permit and allowed to discharge into the MS4 when in compliance with all NPDES permit conditions; (2) separately regulated by a conditional waiver of waste discharge requirements (WDRs) or WDRs for agricultural lands; (2) authorized by U.S. EPA¹ pursuant to sections 104(a) or 104(b) of CERCLA that either (i) will comply with water quality standards as applicable or relevant and appropriate requirements (“ARARs”) under section 121(d)(2) of CERCLA or (ii) are subject to (a) a written waiver of ARARs by U.S. EPA pursuant to section 121(d)(4) of CERCLA or (b) a written determination by U.S. EPA that compliance with ARARs is not practicable considering the exigencies of the situation, pursuant to 40 CFR section 300.415(j); or (3) necessary for emergency responses purposes, including discharges from emergency firefighting activities.

Automotive Service Facilities

A facility that is categorized in any one of the following Standard Industrial Classification (SIC) and North American Industry Classification System (NAICS) codes. For inspection purposes, Permittees need not inspect facilities with SIC codes 5013, 5014, 5511, and 5541, provided that these facilities have no outside activities or materials that may be exposed to stormwater.

| SIC Code | Corresponding NAICS Code |
|----------|------------------------------------|
| 5013 | 425120, 441310, 425110, and 423120 |
| 5014 | 425120, 425110, 423130, and 441320 |
| 5511 | 441110 |
| 5541 | 447110 and 447190 |
| 7532 | 811121 |
| 7533 | 811112 |
| 7534 | 326212 and 811198 |
| 7536 | 811122 |
| 7537 | 811113 |
| 7538 | 811111 |
| 7539 | 811198 and 811118 |

Average Monthly Effluent Limitation (AMEL)

The highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

Baseline Waste Load Allocation

The initial pollutant load ascribed to a Permittee as part of a TMDL. Typically Baseline Waste Load Allocations are used to implement trash TMDLs, in which progressive reductions in the Waste Load Allocations are based on a percentage of the Baseline Waste Load Allocation. Several trash TMDLs applicable to the Permittees require that Permittees establish Baseline Waste Load Allocations through an approved Trash Monitoring and Reporting Plan.

¹ These typically include short-term, high volume discharges resulting from the development or redevelopment of groundwater extraction wells, or U.S. EPA or State-required compliance testing of potable water treatment plants, as part of a U.S. EPA authorized groundwater remediation action under CERCLA.

Basin Plan

The Water Quality Control Plan, Los Angeles Region, otherwise known as the Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties.

Beneficial Uses

The existing or potential uses of receiving waters as designated by the Los Angeles Water Board in the Basin Plan.

Best Management Practices (BMPs)

BMPs are practices or physical devices or systems designed to prevent or reduce pollutant loading from stormwater or non-stormwater discharges to receiving waters.

Bioaccumulative

Those substances taken up by an organism from its surrounding medium through gill membranes, epithelial tissue, or from food and subsequently concentrated and retained in the body of the organism.

Biofiltration

A Low Impact Development (LID) BMP that reduces stormwater pollutant discharges by intercepting rainfall on vegetative canopy, and through incidental infiltration and/or evapotranspiration, and filtration. Planning level analyses described in the *Ventura County Technical Guidance Manual* estimate that biofiltration of 1.5 times the stormwater quality design volume (SWQDv) provides approximately equivalent or greater reductions in pollutant loading when compared to bioretention or infiltration of the SWQDv.² Incidental infiltration is an important factor in achieving the required pollutant load reduction. Therefore, the term “biofiltration” as used in the Order is defined to include only systems designed to facilitate incidental infiltration or achieve the equivalent pollutant reduction as biofiltration BMPs with an underdrain. Biofiltration BMPs include bioretention systems with an underdrain and bioswales.

Bioretention

A LID BMP that reduces stormwater runoff by intercepting rainfall on vegetative canopy, and through evapotranspiration and infiltration. The bioretention system typically includes a minimum 2-foot top layer of a specified soil and compost mixture underlain by a gravel-filled temporary storage pit dug into the *in-situ* soil. As defined in the Order, a bioretention BMP may be designed with an overflow drain but may not include an underdrain. When a bioretention BMP is designed or constructed with an underdrain it is regulated in the Order as a biofiltration BMP.

Bioswale

A LID BMP consisting of a shallow channel lined with grass or other dense, low-growing vegetation. Bioswales are designed to collect stormwater runoff and to achieve a uniform sheet flow through the dense vegetation for a period of several minutes.

Carcinogenic

Pollutants that are known to cause cancer in living organisms.

Chronic Toxicity

A measurement of a sublethal effect (e.g., reduced growth, reproduction) to experimental test organisms exposed to effluent or ambient waters compared to that of the control organisms.

² Geosyntec Consultants and Larry Walker Associates. 2015. *Ventura County Technical Guidance Manual for Stormwater Quality and Control Measures, Manual Update 2011, Errata Update 2015. Appendix D.* Prepared for the Ventura Countywide Stormwater Quality Management Program. May 29, 2015. pp. D-4 – D-15.

Co-Permittee

Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators (40 CFR 122.26(a)(3)(vi)).

Coefficient of Variation (CV)

CV is a measure of data variability and is calculated as the estimated standard deviation divided by the arithmetic mean of the observed values.

Commercial Malls

Any development on private land comprised of one or more buildings forming a complex of stores which sells various merchandise, with interconnecting walkways enabling visitors to easily walk from store to store, along with a parking area(s). A commercial mall includes, but is not limited to: mini-malls, strip malls, other retail complexes, and enclosed shopping malls or shopping centers.

Conditionally Exempt Essential Non-Stormwater Discharge

Conditionally exempt essential non-stormwater discharges are certain categories of discharges that are not composed entirely of stormwater and that are allowed by the Los Angeles Water Board to discharge into the MS4, if the discharge is in compliance with all specified requirements; are not otherwise regulated by an individual or general NPDES permit; and are essential public services that are directly or indirectly required by other State or federal statute and/or regulation. These include non-stormwater discharges such as from drinking water supplier distribution system releases. Conditionally exempt essential non-stormwater discharges may contain minimal amounts of pollutants, however, when in compliance with industry standard BMPs and control measures, do not result in significant environmental effects. (See 55 Fed. Reg. 47990, 47995 (Nov. 16, 1990)).

Conditionally Exempt Non-Stormwater Discharge

Conditionally exempt non-stormwater discharges are certain categories of discharges that are not composed entirely of stormwater and that are either not sources of pollutants or may contain only minimal amounts of pollutants and when in compliance with specified BMPs do not result in significant environmental impacts. (See 55 Fed. Reg. 47990, 47995 (Nov. 16, 1990)).

Construction Activity

Construction activity includes any construction or demolition activity, clearing, grading, grubbing, or excavation or any other activity that results in land disturbance. Construction does not include emergency construction activities required to immediately protect public health and safety or routine maintenance activities required to maintain the integrity of structures by performing minor repair and restoration work, maintain the original line and grade, hydraulic capacity, or original purposes of the facility. See "Routine Maintenance" definition for further explanation. Where clearing, grading or excavating of underlying soil takes place during a repaving operation, the Statewide General Construction Permit coverage is required if more than one acre is disturbed or the activities are part of a larger plan.

Construction General Permit

General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities. General NPDES permit issued by the State Water Board, which authorizes the discharge of stormwater from construction activities under certain conditions.

Control

To minimize, reduce, eliminate, or prohibit by technological, legal, contractual or other means, the discharge of pollutants from an activity or activities.

Daily Discharge

Daily Discharge is defined as “discharge of a pollutant” measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the “daily discharge” is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the “daily discharge” is calculated as the average measurement of the pollutant over the day. (40 CFR § 122.2).

The daily discharge may be determined by the analytical results of a composite sample taken over the course of one day (a calendar day or other 24-hour period defined as a day) or by the arithmetic mean of analytical results from one or more grab samples taken over the course of the day.

For composite sampling, if 1 day is defined as a 24-hour period other than a calendar day, the analytical result for the 24-hour period will be considered as the result for the calendar day in which the 24-hour period ends.

Daily Generation Rate (DGR)

The estimated amount of trash deposited within a representative drainage area during a 24-hour period, calculated from the amount of trash collected from streets and catch basins in the area over a 30-day period between June 22 and September 22.

Dechlorinated / Debrominated Swimming Pool Discharge

Swimming pool discharges which do not contain measurable quantities of chlorine or bromine and do not contain any detergents, wastes, or additional chemicals not typically found in swimming pool water. The term does not include swimming pool filter backwash.

Detected, but Not Quantified (DNQ)

DNQ are those sample results less than the Reporting Level (RL), but greater than or equal to the laboratory’s Method Detection Limit (MDL). Sample results reported as DNQ are estimated concentrations.

Development

Any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

Directly Adjacent

For priority development projects as set forth in the “Planning and Land Development” provisions, projects situated within 200 feet of the contiguous zone required for the continued maintenance, function, and structural stability of an environmentally sensitive area.

Director

The Director of a municipality and Person(s) designated by and under the Director’s instruction and supervision.

Discharge

When used without qualification the release of a pollutant or pollutants from the MS4.

Direct Discharge

Outflow from a drainage conveyance system that is composed entirely or predominantly of flows from the subject, property, development, subdivision, or industrial facility, and not commingled with the flows from adjacent lands.

Discharge of a Pollutant

Any addition of any “pollutant” or combination of pollutants to “waters of the United States” from any “point source” or, any addition of any pollutant or combination of pollutants to the waters of the “contiguous zone” or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. The term discharge includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

Disturbed Area

An area that is altered as a result of clearing, grading, and/or excavation.

Drinking Water Distribution System Discharges

Sources of flows from drinking water storage, supply and distribution systems including flows from system failures, pressure releases, system maintenance, distribution line testing, fire hydrant flow testing; and flushing and dewatering of pipes, reservoirs, vaults, and minor non-invasive well maintenance activities not involving chemical addition(s). It does not include wastewater discharges from activities that occur at wellheads, such as well construction, well development (i.e., aquifer pumping tests, well purging, etc.), or major well maintenance. For the purposes of the Order, drinking water distribution system discharges include treated and raw water (from raw water pipelines, reservoirs, storage tanks, etc.) that are dedicated for drinking water supply.

Effective Impervious Area (EIA)

EIA is the portion of the surface area that is hydrologically connected to a drainage system via a hardened conveyance or impervious surface without any intervening pervious area to mitigate the runoff volume.

Effluent Limitation

Any restriction imposed on quantities, discharge rates, and concentrations of pollutants, which are discharged from point sources to waters of the U.S. (40 CFR § 122.2).

Emergency Situation

Any incident, whether natural, technological, or human-caused, that requires responsive action to protect life or property.³ The responsive action should implement measures, to the fullest extent possible, to reduce the threat to water quality.

Enclosed Bays

Enclosed Bays means indentations along the coast that enclose an area of oceanic water within distinct headlands or harbor works. Enclosed bays include all bays where the narrowest distance between the headlands or outermost harbor works is less than 75 percent of the greatest dimension of the enclosed portion of the bay. Enclosed bays include, but are not limited to, Humboldt Bay, Bodega Harbor, Tomales Bay, Drake’s Estero, San Francisco Bay, Morro Bay, Los Angeles-Long Beach Harbor, Upper and Lower

³ As defined by the Federal Emergency Management Agency (FEMA).

Newport Bay, Mission Bay, and San Diego Bay. Enclosed bays do not include inland surface waters or ocean waters.

Equivalent Alternate Land Uses

Per the *Water Quality Control Plan for Ocean Waters of California* (Ocean Plan) and the *Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (ISWEBE Plan), hereafter collectively referred to as the Statewide Trash Provisions, an MS4 permittee with regulatory authority over priority land uses may request to substitute one or more priority land uses with alternate land use(s) 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 substitution request 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. However, the total trash generated in the equivalent alternate land use must be 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 assessment; or other information as required by the Los Angeles Water Board.

Estimated Chemical Concentration

The estimated chemical concentration that results from the confirmed detection of the substance by an analytical method which results in a value below the Minimum Level (ML).

Estuaries

Estuaries means waters, including coastal lagoons, located at the mouths of streams that serve as areas of mixing for fresh and ocean waters. Coastal lagoons and mouths of streams that are temporarily separated from the ocean by sandbars shall be considered estuaries. Estuarine waters shall be considered to extend from a bay or the open ocean to a point upstream where there is no significant mixing of fresh water and seawater. Estuaries do not include inland surface waters or ocean waters.

Existing Discharger

Any discharger that is not a new discharger. An existing discharger includes an "increasing discharger" (i.e., any existing facility with treatment systems in place for its current discharge that is or will be expanding, upgrading, or modifying its permitted discharge after the effective date of the Order).

Flow-through treatment BMPs

Flow-through treatment BMPs include modular, vault type "high flow biotreatment" devices contained within an impervious vault with an underdrain or designed with an impervious liner and an underdrain.

Freshwater

All waters where the salinity is equal to or less than 1 ppt (one part per thousand) 95 percent or more of the time during the water year.

Full Capture System (FCS)

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.

The rational equation is used to compute the peak flow rate: $Q = C \times I \times A$, 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 in the Order pertaining to trash. Full capture systems certified by the Los Angeles Water Board prior to the effective date of the Trash Amendments shall satisfy the requirements pertaining to trash, unless the Executive Director, or designee, of the State Water Board determines otherwise.

Full Capture System Equivalency (FCSE)

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 stormwater 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 the Los Angeles Water Board.

Geometric Mean

A type of mean or average that indicates the central tendency or typical value of a set of numbers by using the product of their values (as opposed to the arithmetic mean which uses their sum). The geometric mean is defined as the n th root of the product of n numbers. The formula is expressed as: $GM = \sqrt[n]{(x_1)(x_2)(x_3) \dots (x_n)}$, where x_n is the sample value and n is the number of samples collected.

Green Infrastructure

The range of measures that use plant or soil systems, permeable pavement or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, or evapotranspire stormwater and reduce flows to sewer systems or to surface waters (CWA § 502(27), 33 U.S.C. 1362(27)).

Green Roof

A LID BMP using planter boxes and vegetation to intercept rainfall on a roof surface. Rainfall is intercepted by vegetation leaves and through evapotranspiration. Green roofs may be designed as either a bioretention BMP or as a biofiltration BMP. To receive credit as a bioretention BMP, the green roof system planting medium shall be of sufficient depth to provide capacity within the pore space volume to contain the design storm depth and may not be designed or constructed with an underdrain.

High Flow Suspension (HFS)

The High Flow Suspension shall apply to waters where the (av) footnote appears in Table 2-1a of the Basin Plan on days with rainfall equal to or greater than ½ inch and the 24 hours following the end of the ½-inch or greater rain event, as measured at the nearest local rain gauge, using local Doppler radar, or using widely accepted rainfall estimation methods. The HFS only applies to water contact recreational activities associated with the swimmable goal as expressed in the federal Clean Water Act section 101(a)(2) and regulated under the REC-1 use, non-contact water recreation involving incidental water contact regulated under the REC-2 use, and the associated bacteriological objectives set to protect those activities. Water quality objectives set to protect (1) other recreational uses associated with the fishable goal as expressed in the federal Clean Water Act section 101(a)(2) and regulated under the REC-1 use and (2) other REC-2 uses (e.g., uses involving the aesthetic aspects of water) shall remain in effect at all times for waters subject to the HFS.

Hydrologic Unit Code (HUC)

A standardized watershed classification system in which each hydrologic unit is identified by a unique hydrologic unit code (HUC). The HUC may consist of an eight (8) to twelve (12) digit number. The 8-digit HUC identifies an area based on four levels of classification: region, sub-region, hydrologic basin, and hydrologic sub-basin. The Watershed Boundary Dataset includes the 12-digit HUC delineation, which further divides each hydrologic unit into watersheds and sub-watersheds based on scientific information and not administrative boundaries. The Watershed Boundary Dataset is the highest resolution and the most detailed delineation of the watershed boundaries. The mapping precision has been improved to a scale of 1:24,000.

Hydromodification

The alteration away from a natural state of stream flows or the beds or banks of rivers, streams, or creeks, including ephemeral washes, which results in hydrogeomorphic changes.

Illicit Connection

Any man-made conveyance that is connected to the storm drain system without a permit, excluding roof drains and other similar type connections. Examples include channels, pipelines, conduits, inlets, or outlets that are connected directly to the storm drain system.

Illicit Discharge

Any discharge into the MS4 that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. The term illicit discharge includes any non-stormwater discharge, except authorized non-stormwater discharges; conditionally exempt non-stormwater discharges; and non-stormwater discharges resulting from natural flows specifically identified in the Order.

Illicit Disposal

Any disposal, either intentionally or unintentionally, of material(s) or waste(s) that can pollute stormwater or authorized or conditionally exempt non-stormwater.

Industrial General Permit

General Permit for Storm Water Discharges Associated with Industrial Activities. General NPDES permit issued by the State Water Board, which authorizes the discharge of stormwater from certain industrial activities under certain conditions.

Industrial/Commercial Facility

Any facility involved and/or used in the production, manufacture, storage, transportation, distribution, exchange or sale of goods and/or commodities, and any facility involved and/or used in providing professional and non-professional services. This category of facilities includes, but is not limited to, any facility defined by either the Standard Industrial Classifications (SIC) or the North American Industry Classification System (NAICS). Facility ownership (federal, state, municipal, private) and profit motive of the facility are not factors in this definition.

Industrial Park

A land development that is set aside for industrial development. Industrial parks are typically located close to transport facilities, especially where more than one transport modalities coincide: highways, railroads, airports, and navigable rivers. It also includes office parks, which have offices and light industry.

Infiltration BMP

A LID BMP that reduces stormwater runoff by capturing and infiltrating the runoff into in-situ soils or amended on-site soils. Examples of infiltration BMPs include infiltration basins, dry wells, and pervious pavement.⁴

Inland Surface Waters

All surface waters of the state that do not include the ocean, enclosed bays, or estuaries.

Inspection

An on-site review of a facility and its operations, at reasonable times, to determine compliance with specific municipal or other legal requirements. The steps involved in performing an inspection, include, but are not limited to:

1. Pre-inspection documentation research;
2. Request for entry;
3. Interview of facility personnel;
4. Facility walk-through;
5. Visual observation of the condition of facility premises;
6. Examination and copying of records as required;
7. Sample collection (if necessary or required);
8. Exit conference (to discuss preliminary evaluation); and,
9. Report preparation, and if appropriate, recommendations for coming into compliance.

Instantaneous Maximum Effluent Limitation

The highest allowable value for any single grab sample or aliquot (i.e., each grab sample or aliquot is independently compared to the instantaneous maximum limitation).

Instantaneous Minimum Effluent Limitation

The lowest allowable value for any single grab sample or aliquot (i.e., each grab sample or aliquot is independently compared to the instantaneous minimum limitation).

Institutional Controls

Programmatic measures that do not require construction or structural modifications to the MS4. Examples include street sweeping, public education, and clean out of catch basins that discharge to storm drains.

Integrated Pest Management (IPM)

An ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices, and use of resistant varieties.

Large Municipal Separate Storm Sewer System (MS4)

As defined in 40 CFR 122.26 (b)(4), all MS4s that are either:

- (i) Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census;

⁴ Some types of infiltration BMPs such as dry wells, may meet the definition of a Class V, deep well injection facility and may be subject to permitting under U.S. EPA requirements.

- (ii) Located in the counties listed in appendix H [of 40 CFR Part 122], except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or
- (iii) Owned or operated by a municipality other than those described in paragraph (b)(4) (i) or (ii) of this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(4) (i) or (ii) of this section. In making this determination the Director may consider the following factors:
 - (A) Physical interconnections between the municipal separate storm sewers;
 - (B) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (b)(4)(i) of this section;
 - (C) The quantity and nature of pollutants discharged to waters of the United States;
 - (D) The nature of the receiving waters; and
 - (E) Other relevant factors; or
- (iv) The Director may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraph (b)(4) (i), (ii), (iii) of this section.”

Limiting Pollutant

The limiting pollutant is defined as a pollutant, demonstrated through an RAA, that requires a higher level of stormwater management relative to other pollutants, such that implementation of actions or controls to address the limiting pollutant are reasonably expected to achieve receiving water and/or water quality based effluent limitation(s) for other pollutants within the same schedule.

Linear Underground/Overhead Project (LUP)

LUPs including, but are not limited to, those activities necessary for the installation of underground and overhead linear facilities (e.g., conduits, substructures, pipelines, towers, poles, cables, wires, connectors, switching, regulating and transforming equipment and associated ancillary facilities) and include, but are not limited to, underground utility mark-out, potholing, concrete and asphalt cutting and removal, trenching, excavation, boring and drilling, access road and pole/tower pad and cable/wire pull station, substation construction, substructure installation, construction of tower footings and/or foundations, pole and tower installations, pipeline installations, welding, concrete and/or pavement repair or replacement, and stockpile/borrow locations.

Linear Underground / Overhead Project Type

Based on the location and complexity of a Linear Underground/Overhead Project, these projects are separated into LUP Types. The possible LUP Types are Type 1, Type 2, and Type 3 with Type 1 sites imposing the lowest risk to water quality and Type 3 sites imposing the highest. The Construction General Permit provides an LUP Type determination worksheet.

Low Impact Development (LID)

The implementation of systems and practices that use or mimic natural processes to: 1) infiltrate and recharge, 2) evapotranspire and/or 3) harvest and use precipitation near to where it falls to earth.

Los Angeles Region

Los Angeles 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. (California Water Code section 13200(d).) The Los Angeles Region does not include the cities of Lancaster and Palmdale, which are within the jurisdiction of the Lahontan Region (also known as Region 6).

Major Outfall

Major municipal separate storm sewer outfall (or “major outfall”) means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more). (40 CFR § 122.26(b)(5))

Marine Waters

All waters where the salinity is greater than 1 ppt (one part per thousand) more than 5 percent of the time during the water year. Marine waters include ocean waters and saline non-ocean waters such as enclosed bay, estuarine, and coastal lagoon waters.

Maximum Daily Effluent Limitation (MDEL)

The highest allowable daily discharge of a pollutant, over a calendar day (or 24-hour period). For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the arithmetic mean measurement of the pollutant over the day.

Median

The middle measurement in a set of data. The median of a set of data is found by first arranging the measurements in order of magnitude (either increasing or decreasing order). If the number of measurements (n) is odd, then the median = $X_{(n+1)/2}$. If n is even, then the median = $(X_{n/2} + X_{(n/2)+1})/2$ (i.e., the midpoint between the $n/2$ and $n/2+1$).

Medium Municipal Separate Storm Sewer System (MS4)

All MS4s that serve a population greater than 100,000 or more but less than 250,000 (1990 Census) as defined in 40 CFR 122.26 (b)(7).

Method Detection Limit (MDL)

MDL is the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is distinguishable from method blank results, as defined in 40 C.F.R. part 136, Appendix B.

Minimum Level (ML)

ML is the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. The ML is the concentration in a sample that is equivalent to the 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.

Municipal Separate Storm Sewer System (MS4)

A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) (40 CFR § 122.26(b)(8)):

1. 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, 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 a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;
2. Designed or used for collecting or conveying storm water;
3. Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR § 122.2.

National Pollutant Discharge Elimination System (NPDES)

The national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA §307, 402, 318, and 405. The term includes an “approved program.”

Natural Drainage System

A natural drainage system is a drainage system that has not been modified using engineering controls (e.g., channelized or armored). The clearing or dredging of a natural drainage system does not cause the system to be classified as modified for purposes of the “Hydromodification Management Requirements” in the Order.

Nature-Based Solution

A project that utilizes natural processes that slow, detain, infiltrate or filter stormwater or urban runoff. These methods may include relying predominantly on soils and vegetation; increasing the permeability of impermeable areas; protecting undeveloped mountains and floodplains; creating and restoring riparian habitat and wetlands; creating rain gardens, bioswales, and parkway basins; and enhancing soil through composting, mulching, and planting trees and vegetation, with preference for native species. Nature-based solutions include projects that mimic natural processes, such as green streets, spreading grounds and planted areas with water storage capacity.

New Development

Land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.

Non-Stormwater Discharge

Any discharge into the MS4 that is not composed entirely of stormwater.

Not Detected (ND)

Sample results which are less than the laboratory's MDL.

Nuisance

Anything that 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.

Nursery

Nursery operations that are generally classified under 4 broad NAICS classification sectors: (1) 111xxx – Crop Production – Agriculture; (b) 424xxx – Merchant Wholesalers, Nondurable Goods; (c) 44xxxx – Retail Trade; and (d) 454xxx – Non-store retailers. Retail nursery operations shall be covered by the Order. The Order does not cover wholesale nursery stock operations or agricultural nursery operations, unless such operations are not covered by another Order.

Ocean Waters

The territorial marine waters of the State as defined by California law to the extent these waters are outside of enclosed bays, estuaries, and coastal lagoons. Discharges to ocean waters are regulated in accordance with the State Water Board's California Ocean Plan.

Outfall

A point source as defined by 40 CFR § 122.2 at 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))

Parking Lot

Land area or facility for the parking or storage of motor vehicles used for businesses, commerce, industry, or personal use.

Partial Capture Device

Any structural trash control device that has not been certified by the Executive Officer of the Los Angeles Water Board, or the Executive Director of the State Water Board, as meeting the "full capture" performance requirements.

Persistent Pollutants

Persistent pollutants are substances for which degradation or decomposition in the environment is nonexistent or prolonged.

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 operation, landfill leachate collection system, 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 stormwater runoff. (40 CFR § 122.2)

Pollutants

Those "pollutants" defined in CWA § 502(6) (33 U.S.C. § 1362(6)) and incorporated by reference into California Water Code §13373.

Pollution Prevention

Pollution Prevention means any action that causes a net reduction in the use or generation of a hazardous substance or other pollutant that is discharged into water and includes, but is not limited to, input change, operational improvement, production process change, and product reformulation (as defined in Water Code § 13263.3). Pollution prevention does not include actions that merely shift a pollutant in wastewater from one environmental medium to another environmental medium, unless clear environmental benefits of such an approach are identified to the satisfaction of the State Water Board or the Los Angeles Water Board.

Potable Water

Water that meets the drinking water standards of the U.S. Environmental Protection Agency.

Priority Land Uses (PLUs)

Per the *Water Quality Control Plan for Ocean Waters of California* (Ocean Plan) and the *Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (ISWEBE Plan), hereafter collectively referred to as the Statewide Trash Provisions, PLUs 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 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).

Project

All development, redevelopment, and land disturbing activities. The term is not limited to "Project" as defined under CEQA (Pub. Resources Code §21065).

Rain Event

Any rain event greater than 0.1 inch in 24 hours except where specifically stated otherwise.

Rainfall Harvest and Use

Rainfall harvest and use is an LID BMP system designed to capture runoff, typically from a roof but it can also include runoff capture from elsewhere within the site, and to provide for temporary storage until the harvested water can be used for irrigation or non-potable uses. The harvested water may also be used for potable water uses if the system includes disinfection treatment and is approved for such use by the local building department.

Rare, Threatened, or Endangered Species (RARE)

A beneficial use for waterbodies in the Los Angeles Region, as designated for specific waterbodies in the Basin Plan, that supports habitats necessary, at least in part, for the survival and successful maintenance of plant or animal species established under state or federal law as rare, threatened, or endangered.

Raw Water

Water that is taken from the environment by drinking water suppliers with the intent to subsequently treat or purify it to produce potable water. Raw water does not include wastewater discharges from activities that occur at wellheads, such as well construction, well development (i.e., aquifer pumping tests, well purging, etc.), or major well maintenance.

Receiving Water

A “water of the United States” into which waste and/or pollutants are, or may be, discharged.

Receiving Water Limitation

Any applicable numeric or narrative water quality objective or criterion, or limitation to implement the applicable water quality objective or criterion, for the receiving water as contained in Chapter 3 or 7 of the Water Quality Control Plan for the Los Angeles Region (Basin Plan), water quality control plans or policies adopted by the State Water Board, or federal regulations, including but not limited to, 40 CFR § 131.38.

Redevelopment

Redevelopment includes but is not limited to: the expansion of a building footprint; addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

Regional Administrator

The Regional Administrator of the Regional Office of the U.S. EPA or the authorized representative of the Regional Administrator.

Reporting Level (RL)

The RL is the Minimum Level (ML) (and its associated analytical method) chosen by the Discharger for reporting and compliance determination. MLs correspond to the approved analytical methods for reporting a sample result either from Appendix 4 of the SIP in accordance with section 2.4.2 of the SIP or established in accordance with section 2.4.3 of the SIP. The ML represents the lowest quantifiable concentration in a sample based on the proper application of method-based analytical procedures and the absence of any matrix interferences. Other factors may be applied to the ML depending on the specific sample preparation steps employed. For example, the treatment typically applied in cases where there are matrix-effects is to dilute the sample or sample aliquot by a factor of ten. In such cases, this additional factor must be applied in the computation of the Reporting Level (RL).

Residual Water

In the context of the Order, water remaining in a structural BMP subsequent to the drawdown or drainage period. The residual water typically contains high concentration(s) of pollutants.

Restaurant

Establishments primarily engaged in the retail sale of prepared food and drinks for on-premise or immediate consumption. Caterers and industrial and institutional food service establishments are also included in this industry. (SIC Code 5812).

Retail Gasoline Outlet

Any facility engaged in selling gasoline and lubricating oils – SIC 5541 and NAICS 447110 and 447190.

Routine Maintenance

Routine maintenance projects include, but are not limited to projects conducted to:

1. Maintain the original line and grade, hydraulic capacity, or original purpose of the facility.
2. Perform as needed restoration work to preserve the original design grade, integrity and hydraulic capacity of flood control facilities.
3. Includes road shoulder work, regrading dirt or gravel roadways and shoulders and performing ditch cleanouts.
4. Update existing lines⁵ and facilities to comply with applicable codes, standards, and regulations regardless if such projects result in increased capacity.
5. Repair leaks.
6. Routine maintenance does not include construction of new⁶ lines or facilities resulting from compliance with applicable codes, standards and regulations.

Runoff

Any runoff including stormwater and non-stormwater from a drainage area that reaches a receiving water body.

Screening

Using proactive methods to identify illicit discharges and/or illicit connections through a continually narrowing process. The methods may include: performing baseline monitoring of open channels, conducting special investigations using a prioritization approach, analyzing maintenance records for catch basin and storm drain cleaning and operation, and verifying all permitted connections into the storm drains. Special investigation techniques may include: dye testing, visual inspection, smoke testing, flow monitoring, infrared, aerial and thermal photography, and remote control camera operation.

Sidewalk Rinsing

Means low-volume pressure washing of paved pedestrian walkways with average water usage of 0.006 gallons per square foot, with no cleaning agents, and proper disposal of all debris collected.

Site

The land or water area where any “facility or activity” is physically located or conducted, including adjacent land used in connection with the facility or activity.

Site Risk Level

The Construction General Permit establishes three levels of risk possible for a construction site. The possible risk levels are level 1, level 2, and level 3 with risk level 1 sites imposing the lowest risk to water quality and risk level 3 sites imposing the highest. Risk levels are assessed by calculating the sediment

⁵ Update existing lines includes replacing existing lines with new materials or pipes.

⁶ New lines are those that are not associated with existing facilities and are not part of a project to update or replace existing lines.

transport risk using the RUSLE formula and determining the receiving water risk. The Construction General Permit provides a Risk Level determination worksheet.

Source Control BMP

Any schedules of activities, prohibitions of practices, maintenance procedures, managerial practices or operational practices that aim to prevent stormwater pollution by reducing the potential for contamination at the source of pollution.

Source of Drinking Water

Any water designated as municipal or domestic supply (MUN) in the Los Angeles Region Basin Plan.

Southern California Stormwater Monitoring Coalition or Stormwater Monitoring Coalition (SMC)

A collaborative research/monitoring partnership of the Southern California Water Boards, Municipal Storm Water Agencies, and municipalities to develop the methodologies and assessment tools to more effectively understand urban stormwater and non-stormwater (anthropogenic) impacts to receiving waters and to conduct research/monitoring through Subsequent Research Implementation Agreements. The first original cooperative agreement was entered into on February 8, 2001.

Standard Deviation (σ)

Standard Deviation is a measure of variability that is calculated as follows:

$$\sigma = (\sum[(x - \mu)^2]/(n - 1))^{0.5}$$

where:

x is the observed value;

μ is the arithmetic mean of the observed values; and

n is the number of samples.

State Water Quality Protection Areas (SWQPAs)

As defined in the California Ocean Plan, State Water Quality Protection Areas (SWQPAs) are non-terrestrial marine or estuarine areas designated to protect marine species or biological communities from an undesirable alteration in natural water quality. All Areas of Special Biological Significance (ASBS) that were previously designated by the State Water Board in Resolutions 74-28, 74-32, and 75-61 are now also classified as a subset of State Water Quality Protection Areas and require special protections afforded by the California Ocean Plan.

Stormwater Management Program

A Permittees' stormwater management program includes all actions, activities and projects that it implements individually or in conjunction with other Permittees or partners in fulfillment of the requirements of the Order, including those pursuant to an approved Watershed Management Program in which the Permittee is participating.

Storm Water Pollution Prevention Plan (SWPPP)

A plan, as required by a state general permit for discharges of stormwater (e.g., Construction General Permit or Industrial General Permit), identifying potential pollutant sources and describing the design, placement and implementation of BMPs, to effectively prevent non-stormwater discharges and reduce pollutants in stormwater discharges from activities covered by the general permit.

Storm Water (or Stormwater)

Storm water runoff, snow melt runoff, and surface runoff and drainage related to precipitation events (pursuant to 40 CFR § 122.26(b)(13); 55 Fed. Reg. 47990, 47995 (Nov. 16, 1990)).

Storm Water Discharge Associated with Industrial Activity

Industrial discharge as defined in 40 CFR § 122.26(b)(14).

Structural BMP

Any structural facility designed and constructed to mitigate the adverse impacts of stormwater and non-stormwater pollution (e.g. Treatment Control BMPs).

Total Chlordane

The sum of alpha Chlordane, gamma Chlordane, cis-Nonachlor, trans-Nonachlor, and Oxychlordane.

Total DDTs

The sum of isomers *p,p'*-DDT, *p,p'*-DDE, *p,p'*-DDD, *o,p'*-DDT, *o,p'*-DDE and *o,p'*-DDD. Alternatively, the sum of 4,4'-DDT, 4,4'-DDE, 4,4'-DDD, 2,4'-DDT, 2,4'-DDE, and 2,4'-DDD.

Total Maximum Daily Load (TMDL)

The sum of the individual waste load allocations for point sources and load allocations for nonpoint sources and natural background such that the cumulative pollutant load from all sources does not exceed the loading (assimilative) capacity of the waterbody.

Total Nitrogen

The sum of Total Kjeldahl Nitrogen (TKN), Nitrate as Nitrogen and Nitrite as Nitrogen.

Total Polychlorinated Biphenyls (PCBs)

Sum of all 55 PCB congeners listed in Table A-7 of the Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1, Sediment Quality Provisions.

Toxicity Identification Evaluation (TIE)

A set of procedures to identify the specific chemical(s) responsible for toxicity. These procedures are performed in three phases (characterization, identification, and confirmation) using aquatic organism toxicity tests.

Toxicity Reduction Evaluation (TRE)

TRE is a study conducted in a step-wise process designed to identify the causative agents of effluent or ambient toxicity, isolate the sources of toxicity, evaluate the effectiveness of toxicity control options, and then confirm the reduction in toxicity. The first steps of the TRE consist of the collection of data relevant to the toxicity, including additional toxicity testing, and an evaluation of facility operations and maintenance practices, and best management practices. A Toxicity Identification Evaluation (TIE) may be required as part of the TRE, if appropriate.

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 Discharge

Any trash that passes through the trash capture devices and/or uncovered catch basins and enters the storm drain system.

Trash Excluders

Any structural trash control device that prevents the discharge of trash to the storm drain system or to receiving waters. A trash excluder may or may not be certified by the Executive Officer of the Los Angeles

Water Board or the Executive Director of the State Water Board as meeting the “full capture” performance requirements.

Treatment

The application of engineered systems that use physical, chemical, or biological processes to remove pollutants. Such processes include, but are not limited to, filtration, gravity settling, media absorption, biodegradation, biological uptake, chemical oxidation and UV radiation.

Treatment Control BMP

Any engineered system designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media absorption or any other physical, biological, or chemical process.

Uncontaminated Ground Water Infiltration

Water other than waste water that enters the MS4 (including foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow. (See 40 CFR § 35.2005(20).)

U.S. EPA Phase I Facilities

Facilities in specified industrial categories that are required to obtain a NPDES permit for stormwater discharges, as required by 40 CFR § 122.26(c). These categories include:

1. facilities subject to stormwater effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR Subchapter N)
2. manufacturing facilities
3. oil and gas/mining facilities
4. hazardous waste treatment, storage, or disposal facilities
5. landfills, land application sites, and open dumps
6. recycling facilities
7. steam electric power generating facilities
8. transportation facilities
9. sewage of wastewater treatment works
10. light manufacturing facilities

Vehicle Maintenance/Material Storage Facilities/Corporation Yards

Any Permittee owned or operated facility or portion thereof that:

1. Conducts industrial activity, operates equipment, handles materials, and provides services similar to Federal Phase I facilities;
2. Performs fleet vehicle service/maintenance on ten or more vehicles per day including repair, maintenance, washing, and fueling;
3. Performs maintenance and/or repair of heavy industrial machinery/equipment;
4. Stores chemicals, raw materials, or waste materials in quantities that require a hazardous materials business plan or a Spill Prevention, Control, and Counter-measures (SPCC) plan.

Water Quality-based Effluent Limitation

Any restriction imposed on quantities, discharge rates, and concentrations of pollutants, which are discharged from point sources to waters of the U.S. necessary to achieve a water quality standard.

Waters of the State

Any surface water or groundwater, including saline waters, within the boundaries of the state.

Watershed Management Program (WMP)

A voluntary, alternative compliance pathway where a Permittee or group of Permittees develops a comprehensive program on a watershed or subwatershed scale to achieve compliance with the requirements of the Order, including complying with Receiving Water Limitations, Total Maximum Daily Load Provisions, Discharge Prohibitions, and Minimum Control Measures in a collaborative and holistic manner. Through a WMP, Permittees can identify and implement customized, cost effective strategies and BMPs based on the unique characteristics and water quality priorities of the watershed.

Water Year

Unless otherwise defined in specific permit provisions, the 12-month period beginning October 1, for any given year through September 30, of the following year. The water year is designated by the calendar year in which it ends.

Waters of the United States or Waters of the U.S.⁷

1. All waters that 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;
2. All interstate waters, including interstate "wetlands";
3. 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:
 - a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in paragraphs 1 through 4 of this definition;
6. The territorial sea; and
7. "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraph 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR section 423.22(m), which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to man-made bodies of water, which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. 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 CWA, the final authority regarding CWA jurisdiction remains with U.S. EPA.

Wet Season

The calendar period beginning October 1 through April 15 unless otherwise stated.

⁷ Waters of the U.S. definition shall be defined per U.S. EPA's The Navigable Waters Protection Rule (85 Federal Register 22250 (April 21, 2020)) effective on June 22, 2020.

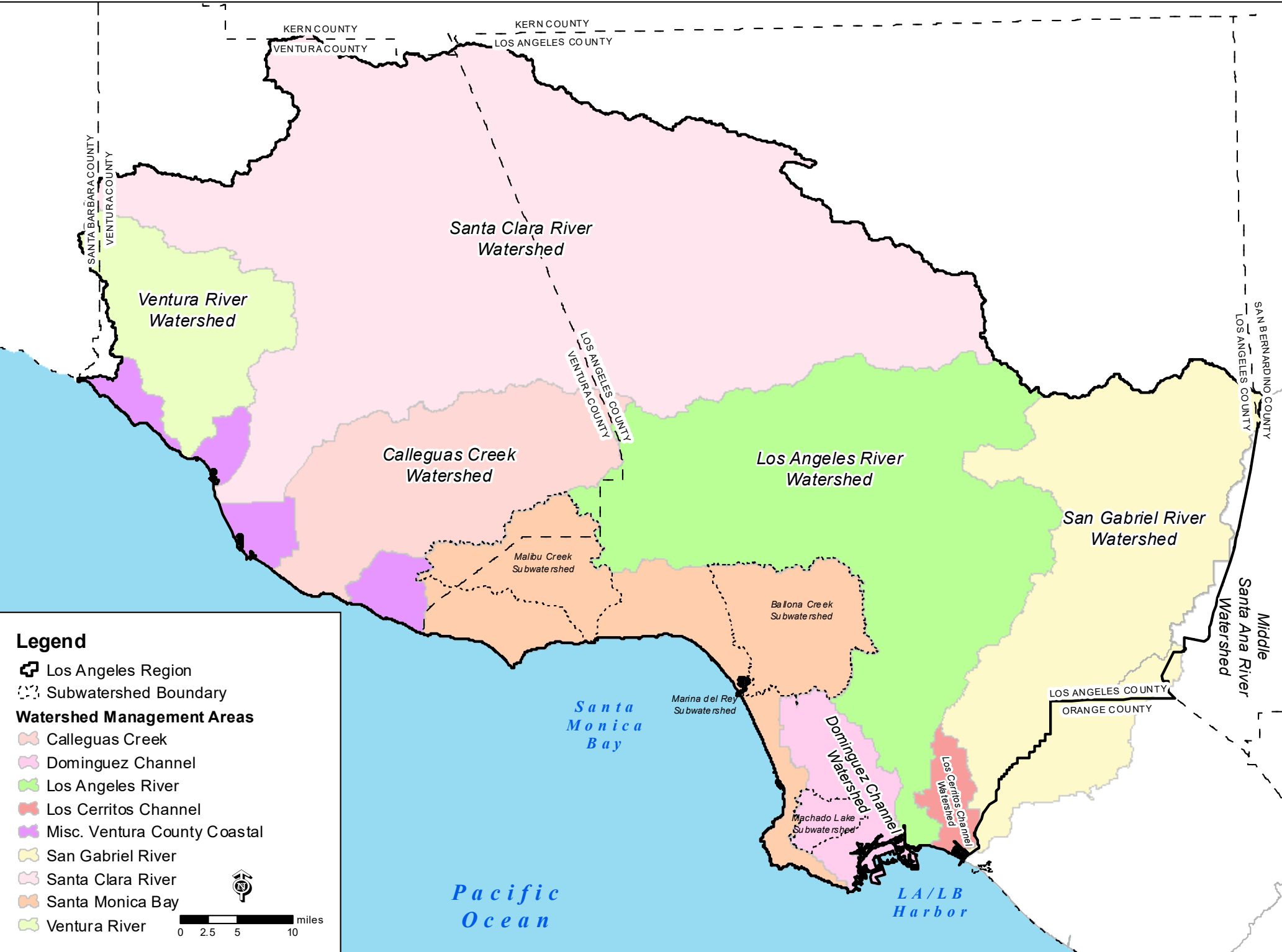
ACRONYMS AND ABBREVIATIONS

| | |
|------------------|--|
| ASBS | Areas of Special Biological Significance |
| Basin Plan | <i>Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties</i> |
| BMP | Best Management Practices |
| BPJ | Best Professional Judgment |
| BOD | Biochemical Oxygen Demand 5-day @ 20 °C |
| CB | Catch Basin |
| CCR | California Code of Regulations |
| CEEIN | California Environmental Education Interagency Network |
| CEQA | California Environmental Quality Act |
| CFR | Code of Federal Regulations |
| cfs | Cubic feet per second |
| cfu | Colony-forming Unit |
| CTR | California Toxics Rule |
| CV | Coefficient of Variation |
| CWA | Clean Water Act |
| CWC | California Water Code |
| DGR | Daily Generation Rate |
| DNQ | Detected But Not Quantified |
| ELAP | Environmental Laboratory Accreditation Program (State Water Board Division of Drinking Water) |
| ELG | Effluent Limitations, Guidelines and Standards |
| ELS | Early Life Stages |
| EMC | Event Mean Concentration |
| Ep | Erosion Potential |
| ESCP | Erosion and Sediment Control Plan |
| FCS | Full Capture System |
| FCSE | Full Capture System Equivalency |
| GIS | Geographic Information System |
| gpd | Gallons per day |
| HFS | High Flow Suspension |
| HUC | Hydrologic Unit Code |
| IC | Inhibition Coefficient |
| IC ₁₅ | Concentration at which the organism is 15% inhibited |
| IC ₂₅ | Concentration at which the organism is 25% inhibited |
| IC ₄₀ | Concentration at which the organism is 40% inhibited |
| IC ₅₀ | Concentration at which the organism is 50% inhibited |
| IDDE | Illicit Discharge Detection and Elimination |
| IPM | Integrated Pest Management |
| LA | Load Allocation |
| LAR | Los Angeles River |
| LCC | Los Cerritos Channel |
| LID | Low Impact Development |
| LRS | Load Reduction Strategy |
| LOEC | Lowest Observed Effect Concentration |

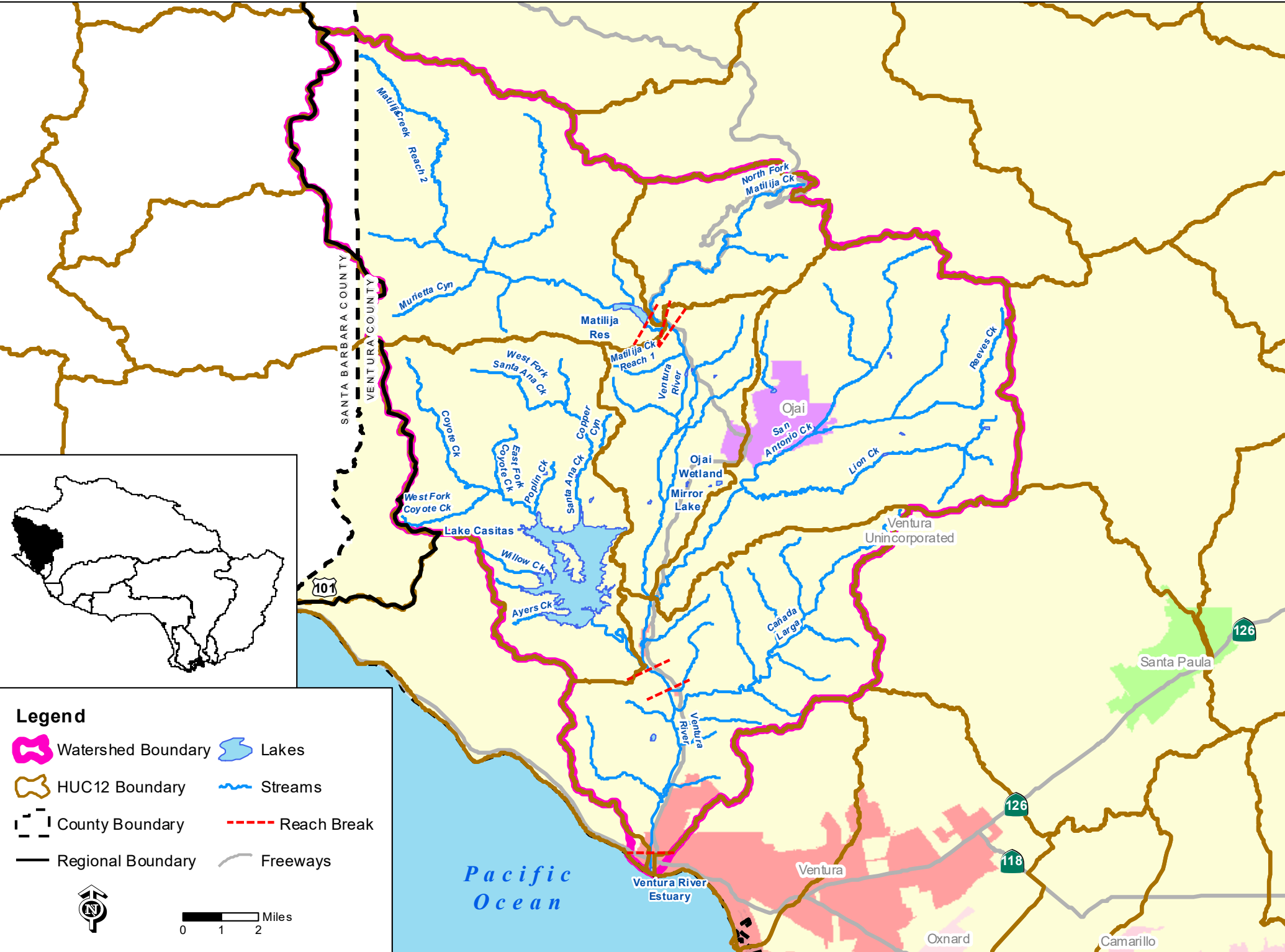
| | |
|-----------------------------|--|
| LUPs | Linear Underground/Overhead Projects |
| Los Angeles Water Board | California Regional Water Quality Control Board, Los Angeles Region |
| µg/L | Micrograms per Liter |
| MCM | Minimum Control Measure |
| MEP | Maximum Extent Practicable |
| mg/L | Milligrams per Liter |
| MDEL | Maximum Daily Effluent Limitation |
| MEC | Maximum Effluent Concentration |
| MGD | Million Gallons per Day |
| MGY | Million Gallons per Year |
| ML | Minimum Level |
| MPN | Most Probable Number |
| MRP | Monitoring and Reporting Program |
| MS4 | Municipal Separate Storm Sewer System |
| NAICS | North American Industry Classification System |
| ND | Not Detected |
| ng/L | Nanograms per Liter |
| NOEC | No Observable Effect Concentration |
| NPDES | National Pollutant Discharge Elimination System |
| NTR | National Toxics Rule |
| OAL | Office of Administrative Law |
| PAHs | Polycyclic Aromatic Hydrocarbons |
| PCBs | Polychlorinated Biphenyls |
| PIPP | Public Information and Participation Program |
| PLU | Priority Land Use |
| PMRP | Plastic Pellet Monitoring and Reporting Plan |
| POTW | Publicly Owned Treatment Works |
| QA | Quality Assurance |
| QA/QC | Quality Assurance/Quality Control |
| QSD | Qualified SWPPP Developer |
| QSP | Qualified SWPPP Practitioner |
| Ocean Plan | <i>Water Quality Control Plan for Ocean Waters of California</i> |
| RAA | Reasonable Assurance Analysis |
| RGOs | Retail Gasoline Outlets |
| RL | Reporting Level |
| SCP | Spill Contingency Plan |
| SCR | Santa Clara River |
| Sediment Quality Provisions | <i>Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1 Sediment Quality Provisions</i> |
| SGR | San Gabriel River |
| SIC | Standard Industrial Classification |
| SIP | State Implementation Policy (<i>Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California</i>) |
| SMARTS | Stormwater Multiple Application and Report Tracking System |

| | |
|-------------------|--|
| SMB | Santa Monica Bay |
| SSC | Suspended Sediment Concentration |
| State Water Board | California State Water Resources Control Board |
| SWPPP | Storm Water Pollution Prevention Plan |
| SWQDv | Storm Water Quality Design Volume |
| Thermal Plan | <i>Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Water and Enclosed Bays and Estuaries of California</i> |
| TIE | Toxicity Identification Evaluation |
| TKN | Total Kjeldahl Nitrogen |
| TMDL | Total Maximum Daily Load |
| TMRP | Trash Monitoring and Reporting Plan |
| TOC | Total Organic Carbon |
| TRE | Toxicity Reduction Evaluation |
| TSS | Total Suspended Solids |
| TU _c | Chronic Toxicity Unit |
| U.S. EPA | United States Environmental Protection Agency |
| WDR | Waste Discharge Requirements |
| WDID | Waste Discharge Identification |
| WER | Water Effect Ratio |
| WET | Whole Effluent Toxicity |
| WLA | Waste Load Allocation |
| WMA | Watershed Management Area |
| WMP | Watershed Management Program |
| WQBELs | Water Quality-Based Effluent Limitations |
| WQS | Water Quality Standards |
| % | Percent |

ATTACHMENT B – WATERSHED MANAGEMENT AREA MAPS



185
Figure B-1: Major Watershed Management Areas in the Los Angeles Region.



186
Figure B-2: Ventura River Watershed Management Area Hydrologic Units.

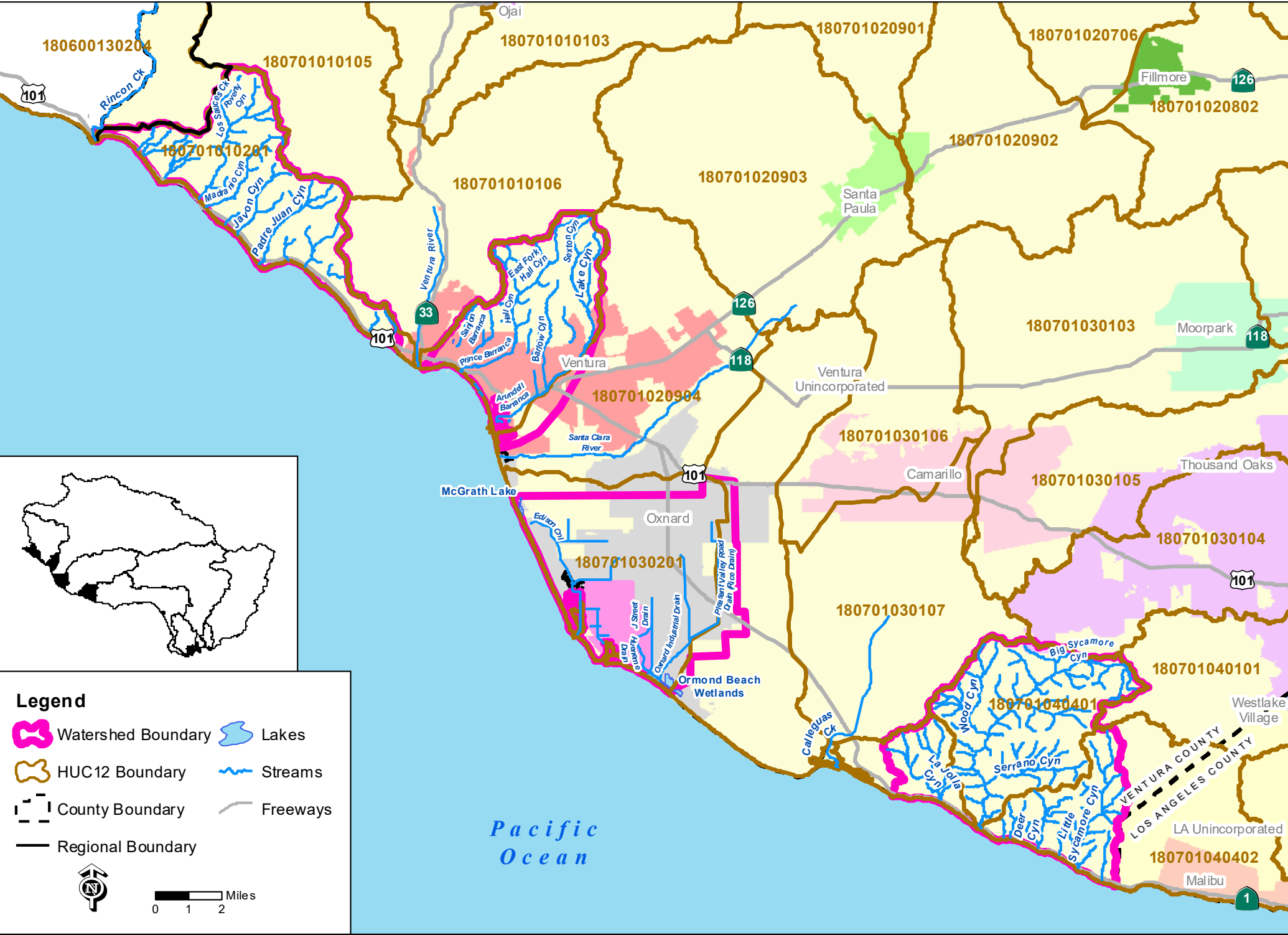


Figure B-3: Miscellaneous Ventura County Coastal Watersheds Management Area Hydrologic Units.

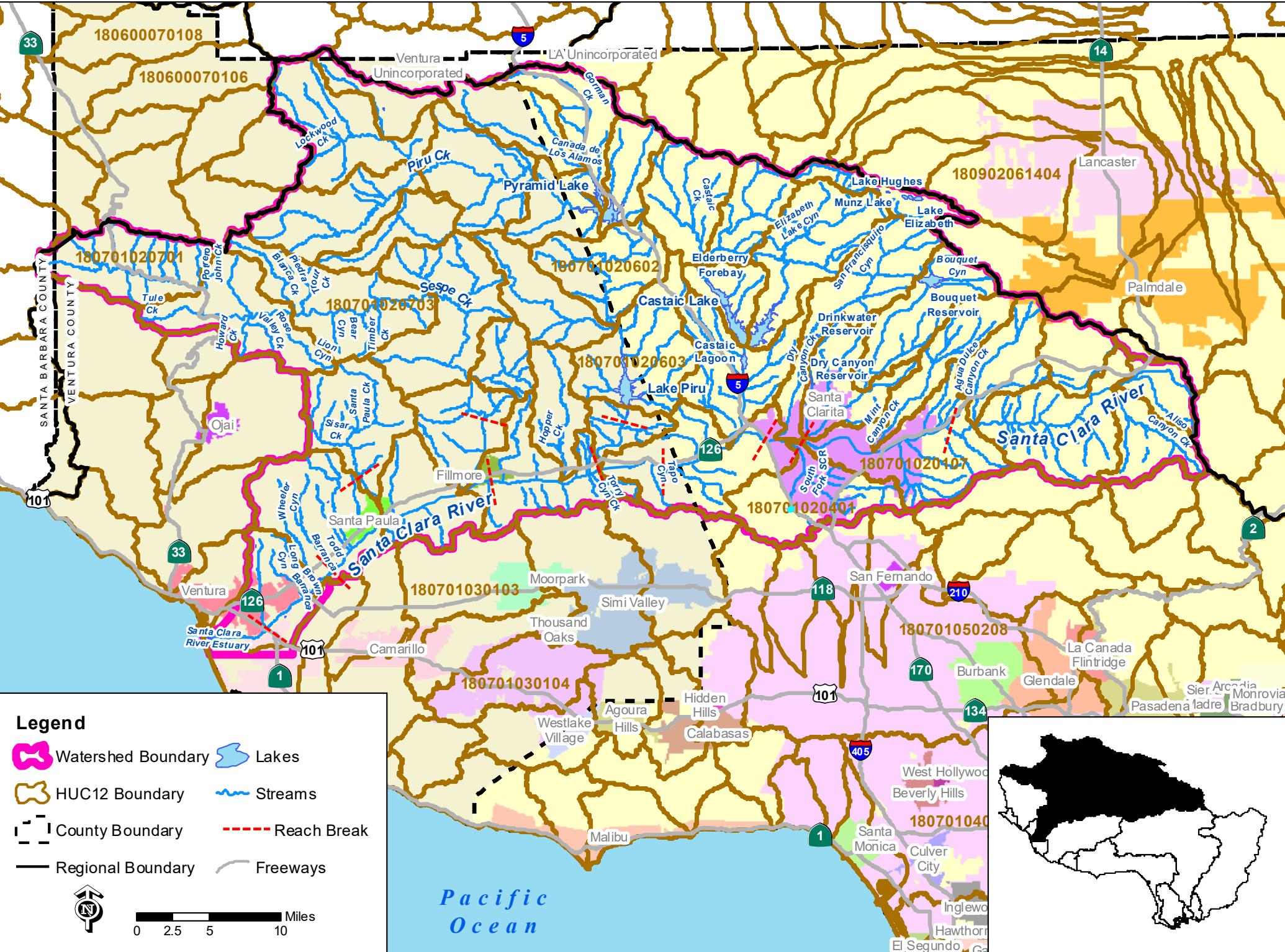


Figure B-4: Santa Clara River Watershed Management Area Hydrologic Units.



Figure B-5: Calleguas Creek Watershed Management Area Hydrologic Units.

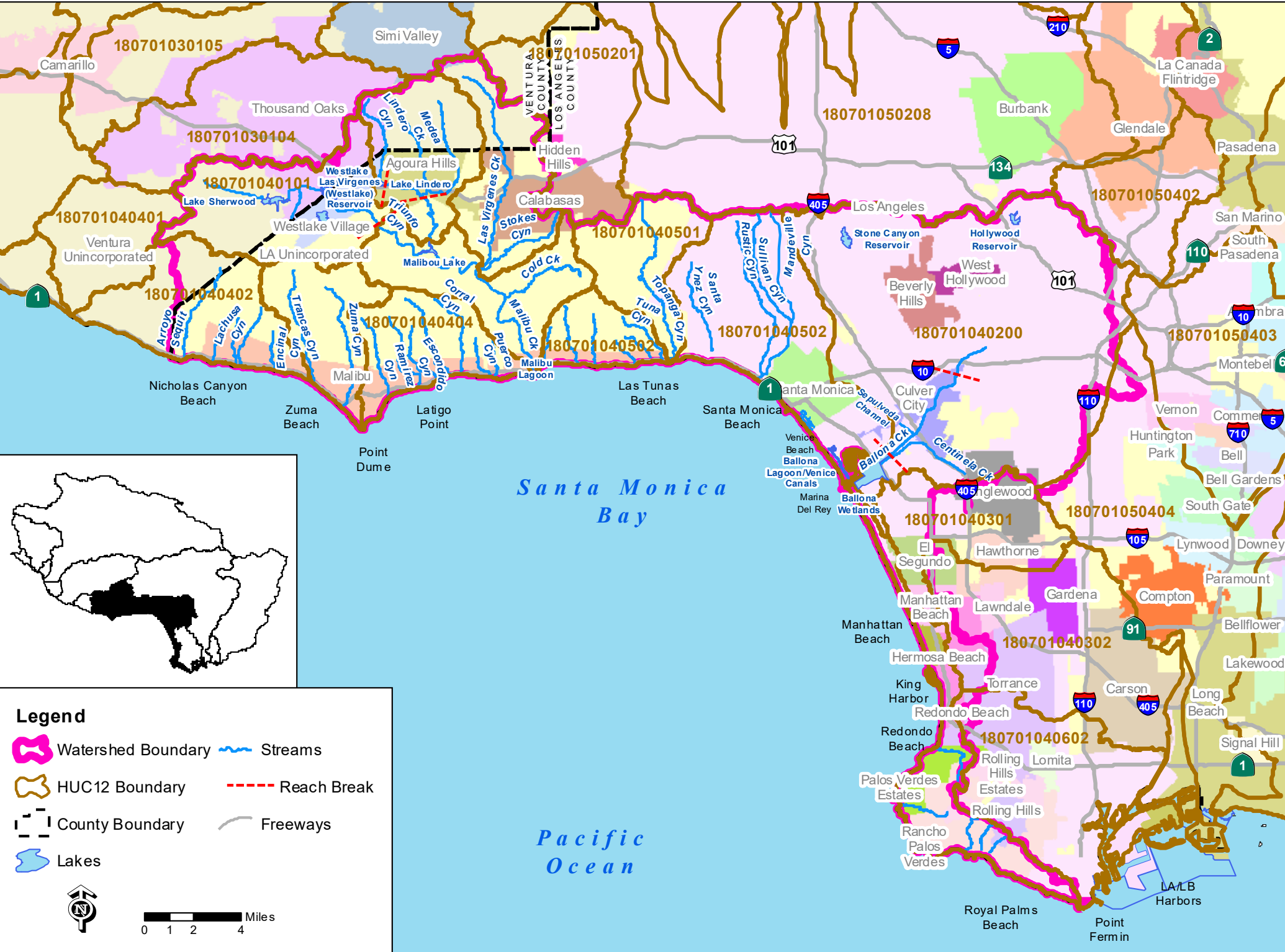


Figure B-6: Santa Monica Bay Watershed Management Area Hydrologic Units.

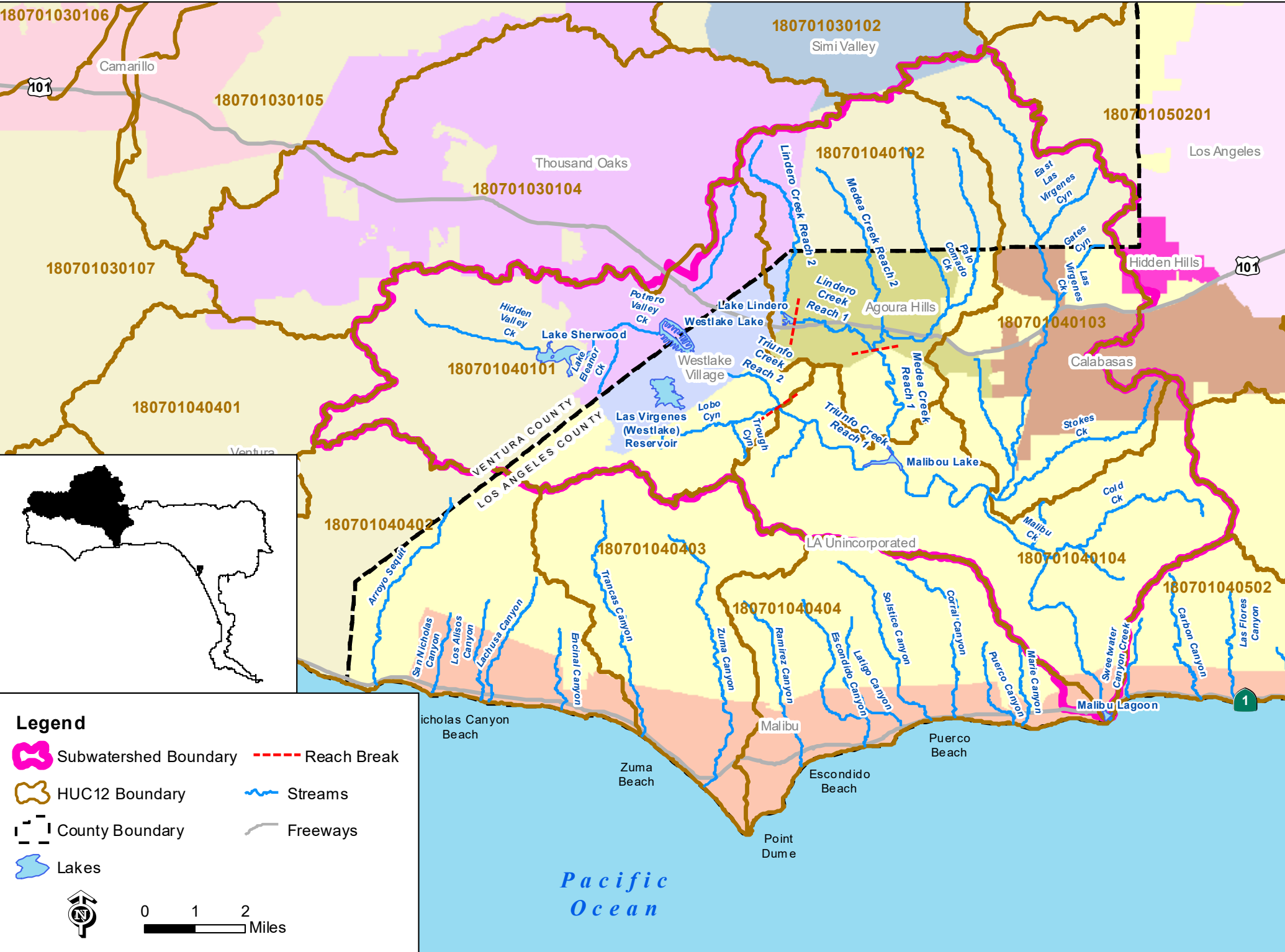


Figure B-6a: Malibu Creek Subwatershed Hydrologic Units (Santa Monica Bay WMA).

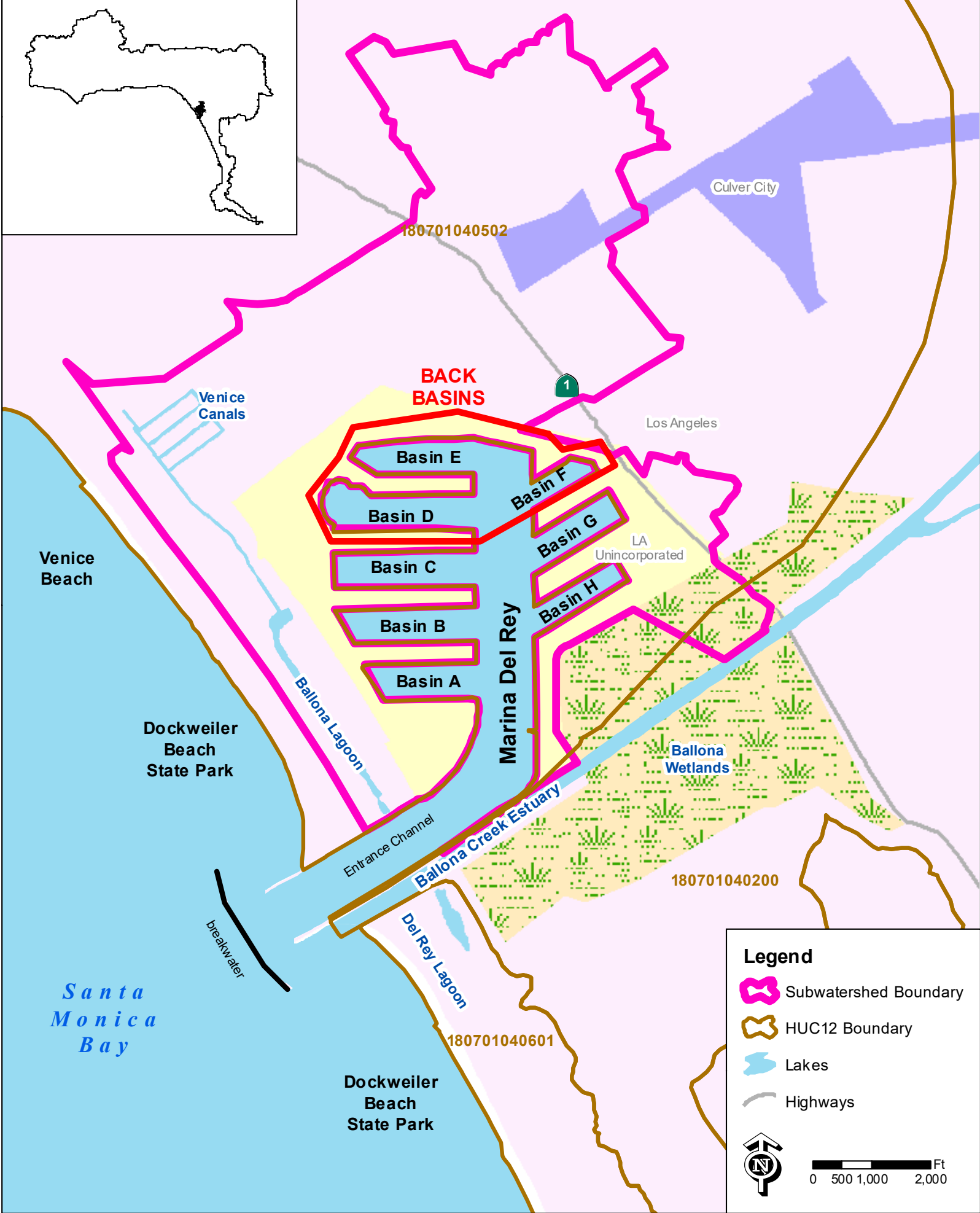


Figure B-6b: Marina Del Rey Subwatershed Hydrologic Units (Santa Monica Bay WMA).

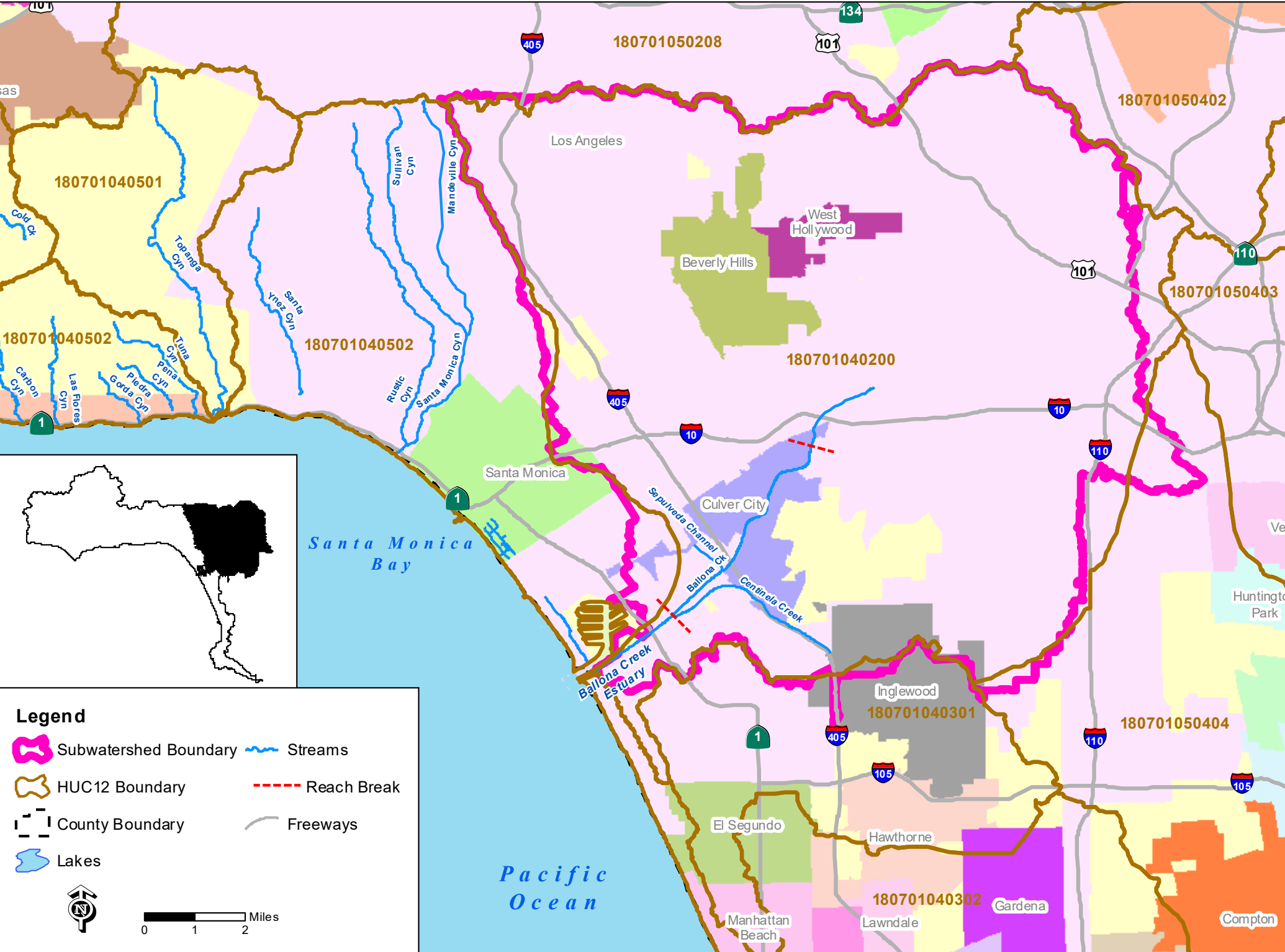


Figure B-6c: Ballona Creek Subwatershed Hydrologic Units (Santa Monica Bay WMA).

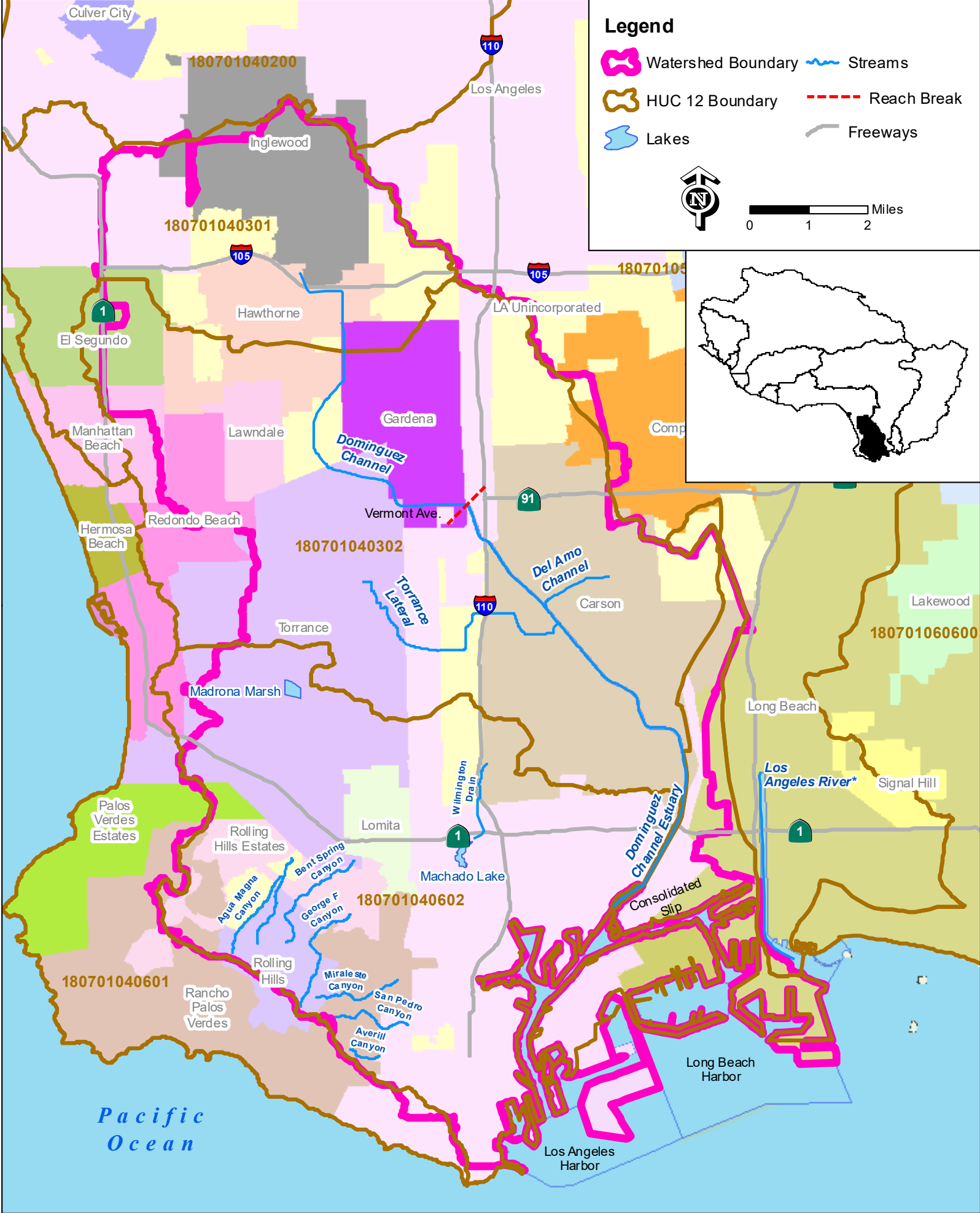


Figure B-7: Dominguez Channel and Los Angeles/Long Beach Harbors Watershed Management Area Hydrologic Units.

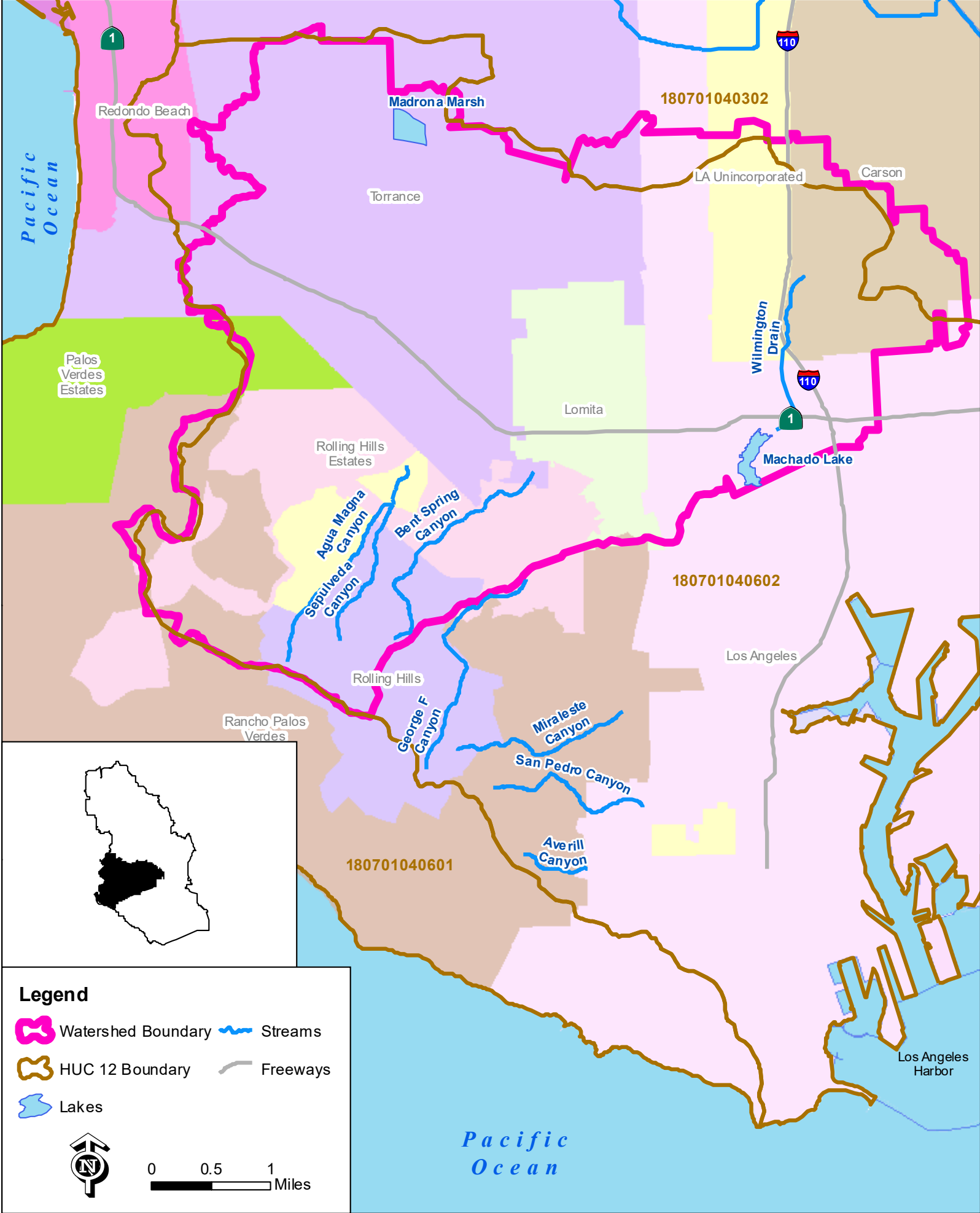


Figure B-7a: Machado Lake Subwatershed Hydrologic Unit (Dominguez Channel & LA/LB Harbors WMA).



Figure B-8: Los Angeles River Watershed Management Area Hydrologic Units.

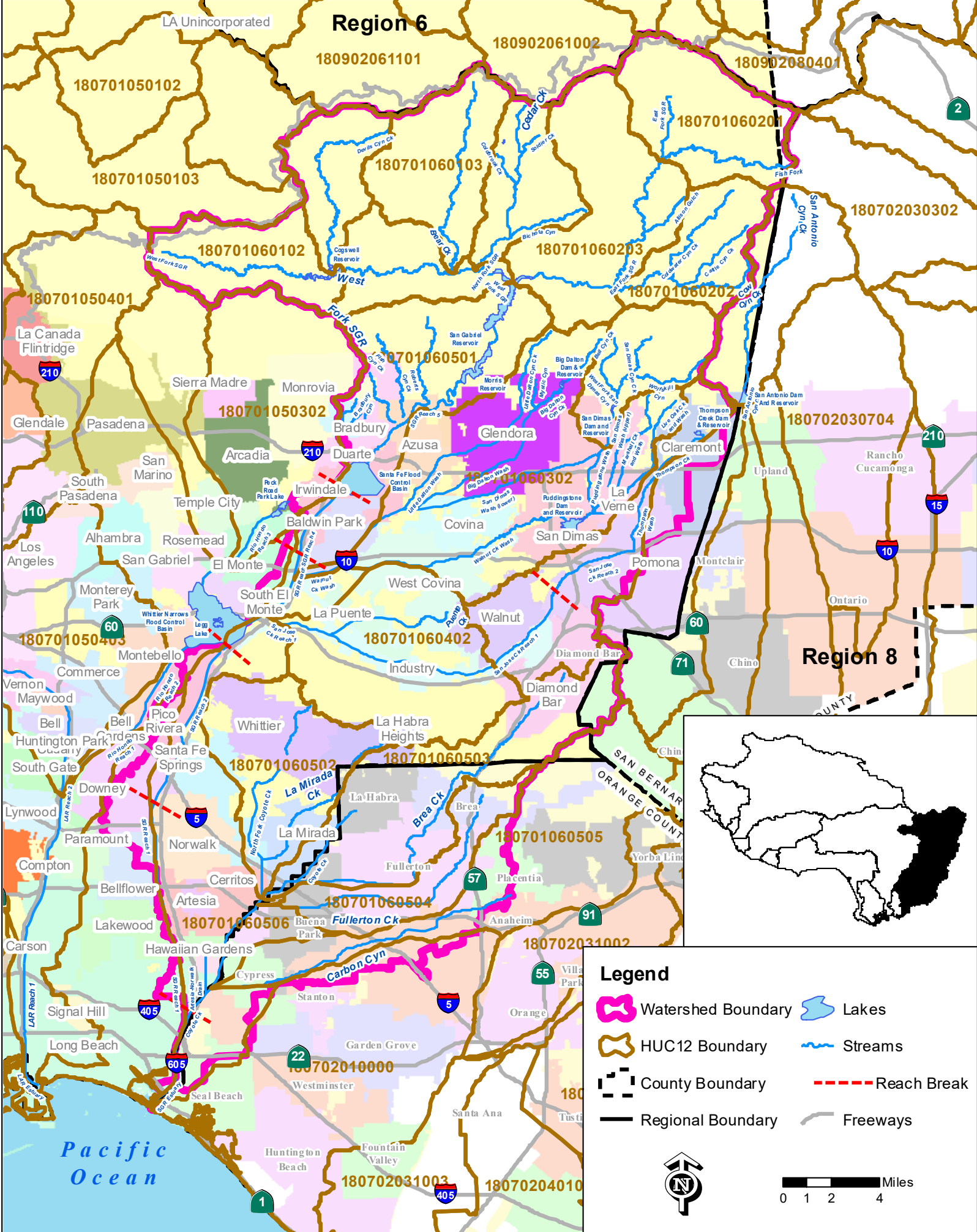


Figure B-9: San Gabriel River Watershed Management Area Hydrologic Units.

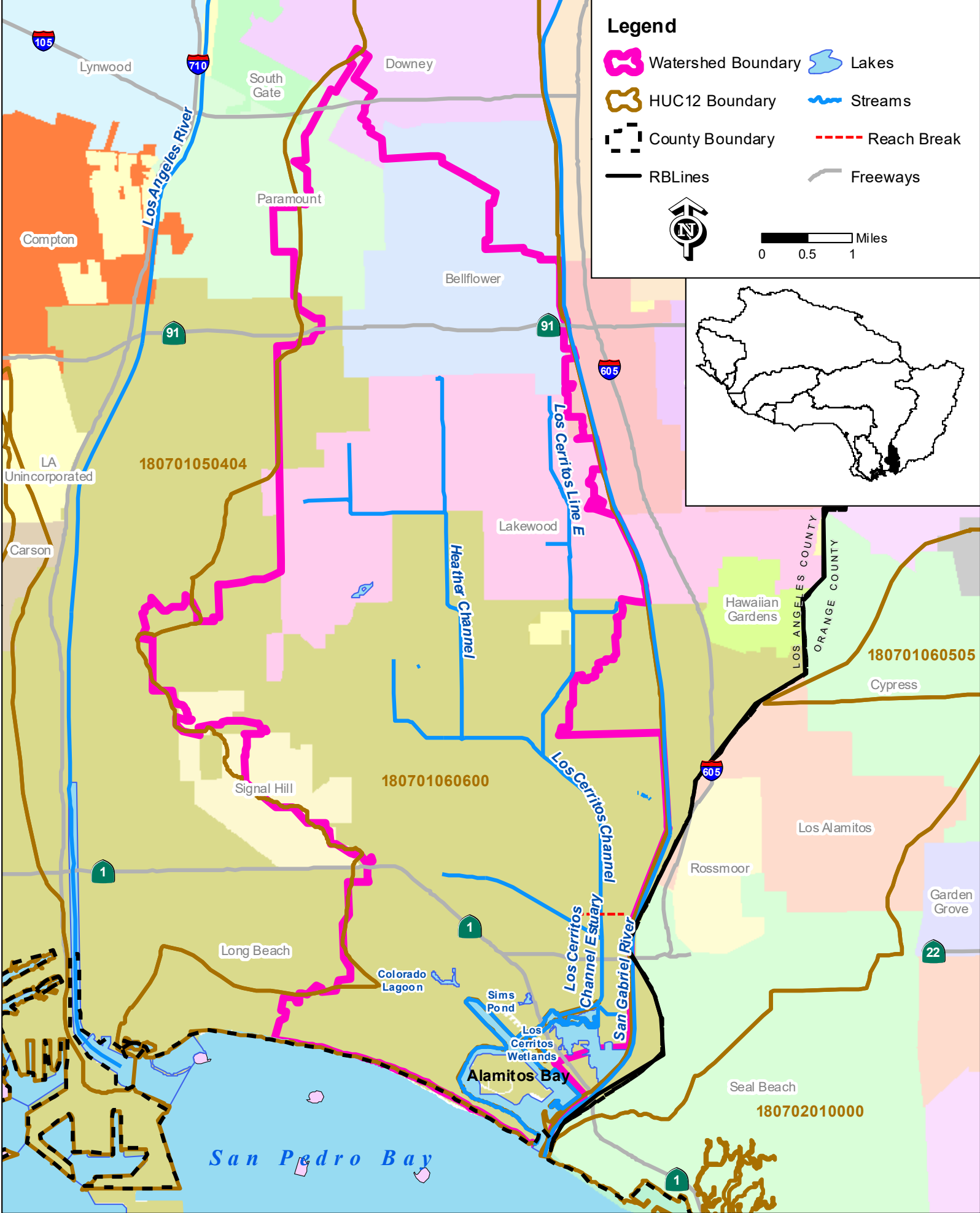


Figure B-10: Los Cerritos Channel and Alamitos Bay Watershed Management Area Hydrologic Units.

**ATTACHMENT C – LOS ANGELES REGION STORM DRAIN SYSTEM AND VENTURA COUNTY
MONITORING LOCATION MAPS**

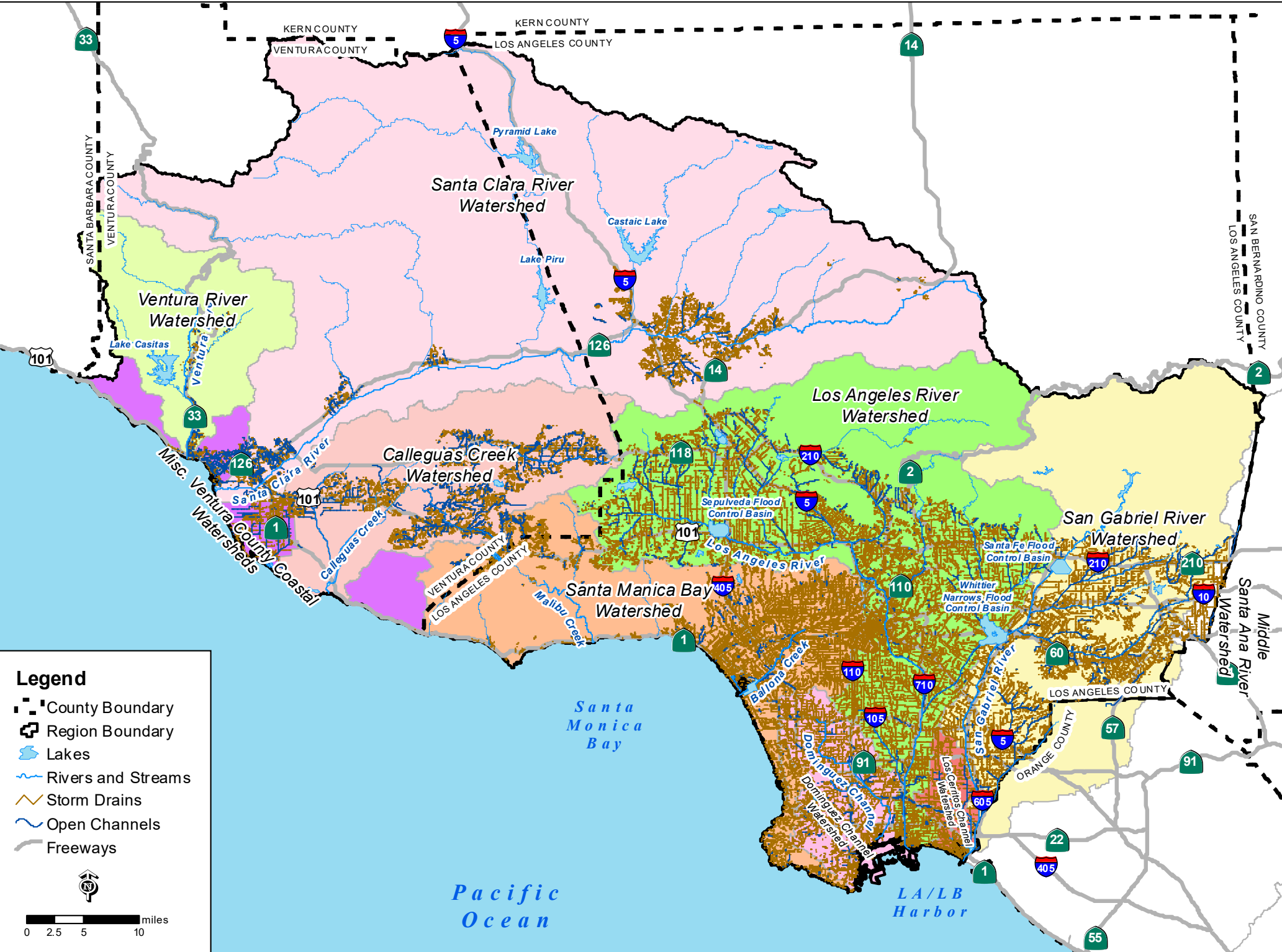


Figure C-1: Storm Drain System of Major Watershed Management Areas in the Los Angeles Region.

VENTURARIVER

1. Between Main St. and Ventura River Estuary
2. Between confluence with Weldon Canyon and Main St.
3. Between Casitas Vista Rd. and confluence with Weldon Canyon
4. Between Camino Cielo Rd. and Casitas Vista Rd.
5. Above Camino Cielo Rd.

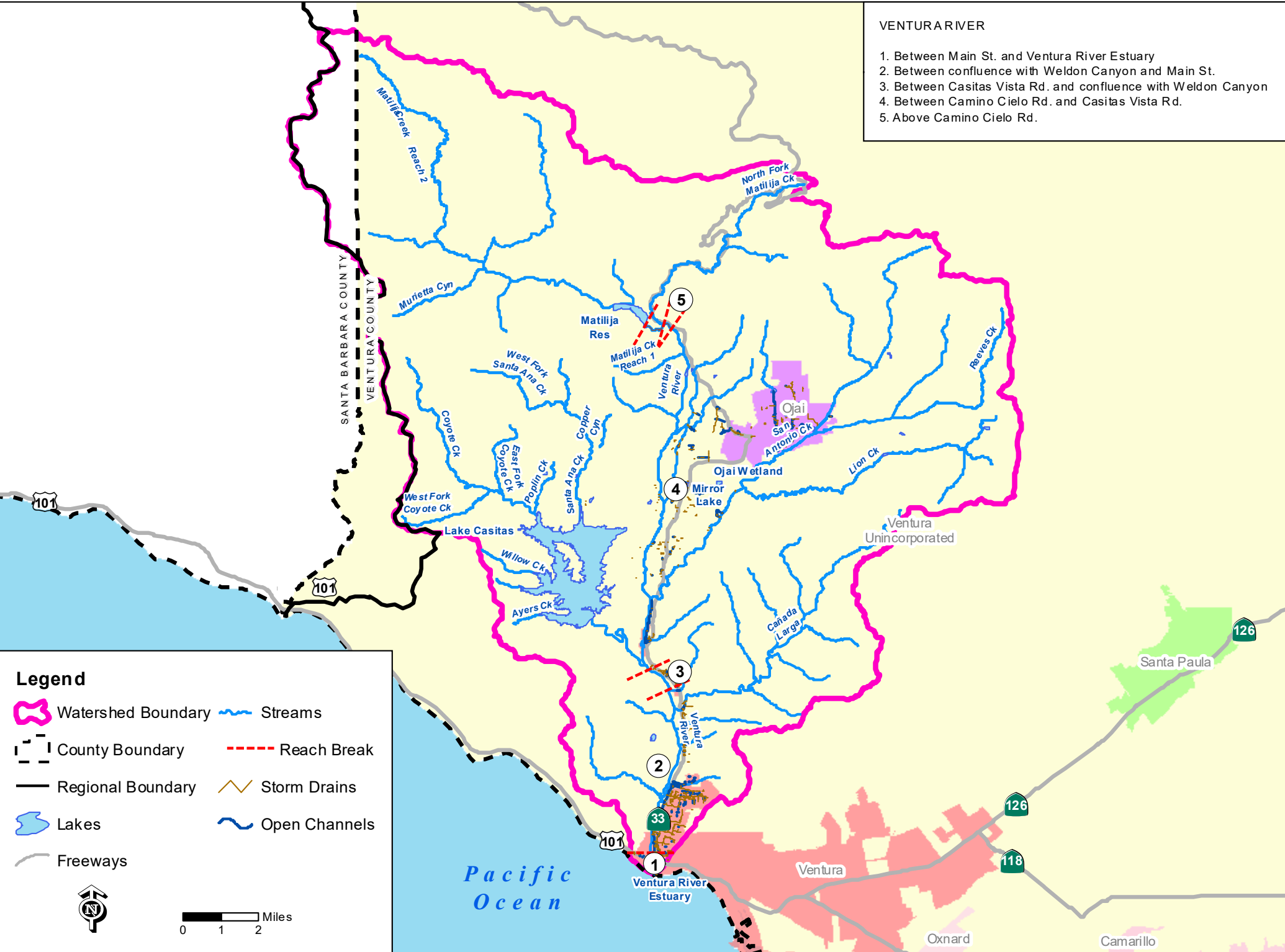


Figure C-2: Ventura River Watershed Management Area Storm Drain System.

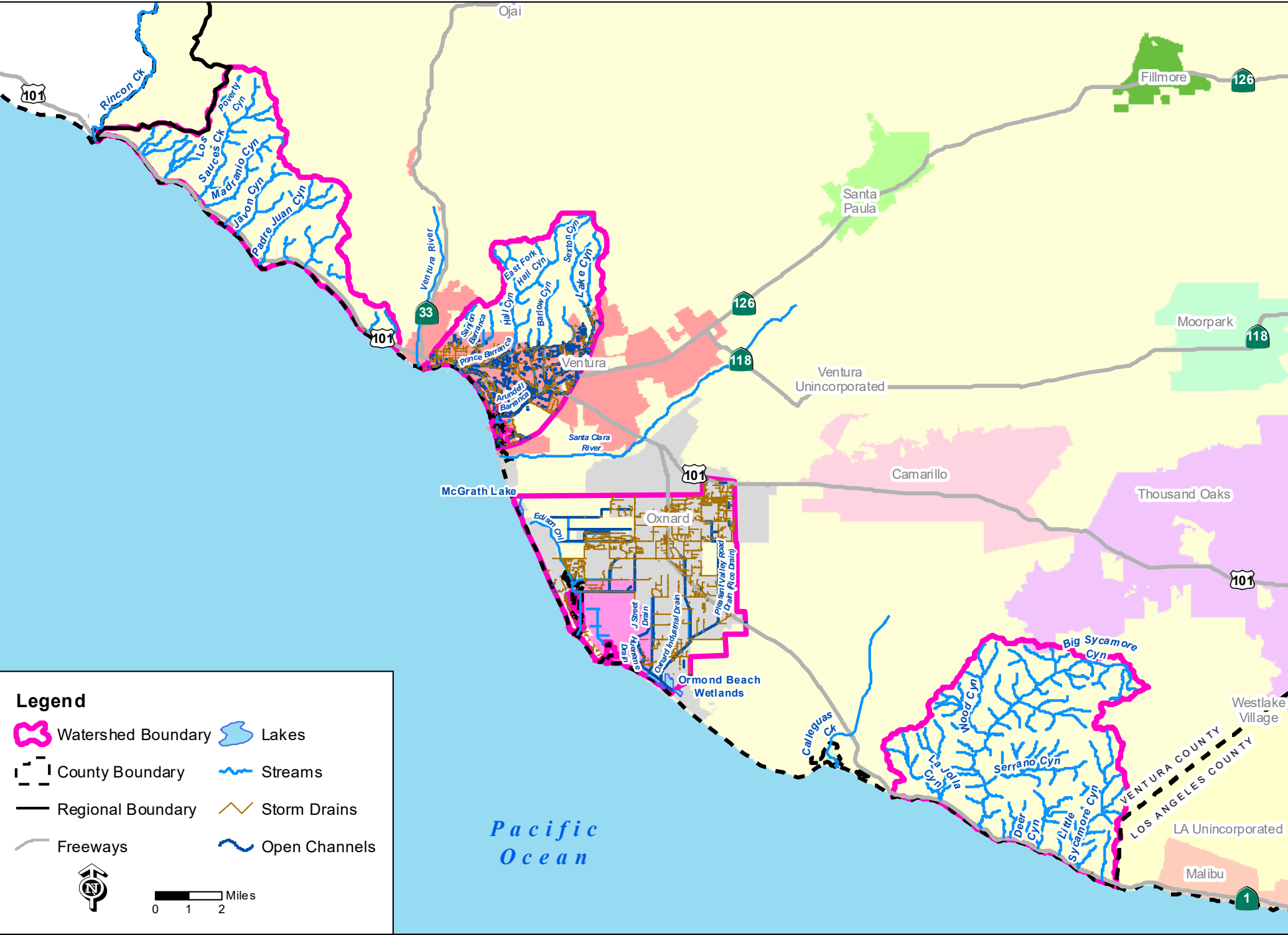


Figure C-3: Miscellaneous Ventura County Coastal Watersheds Management Area Storm Drain System.

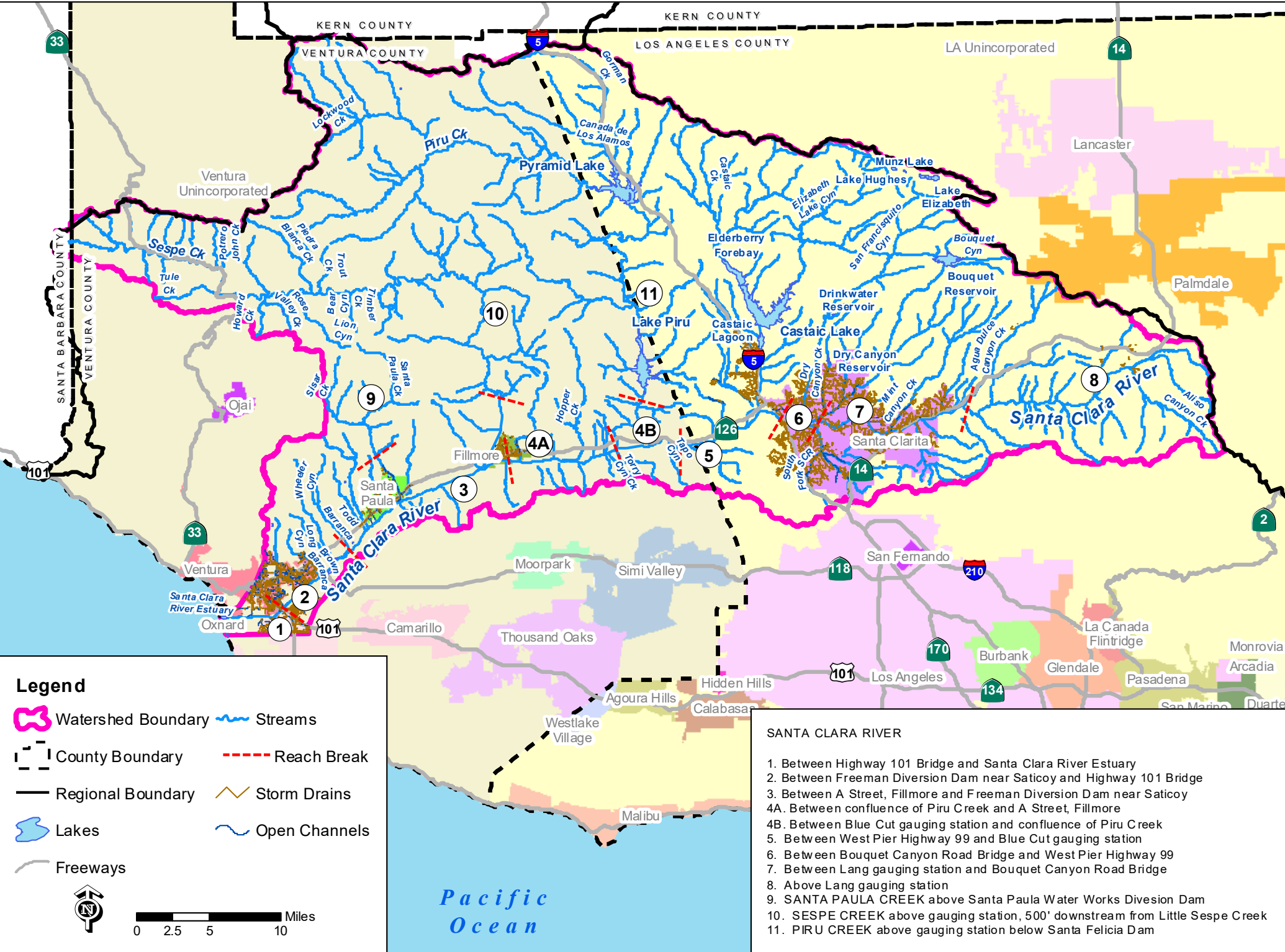
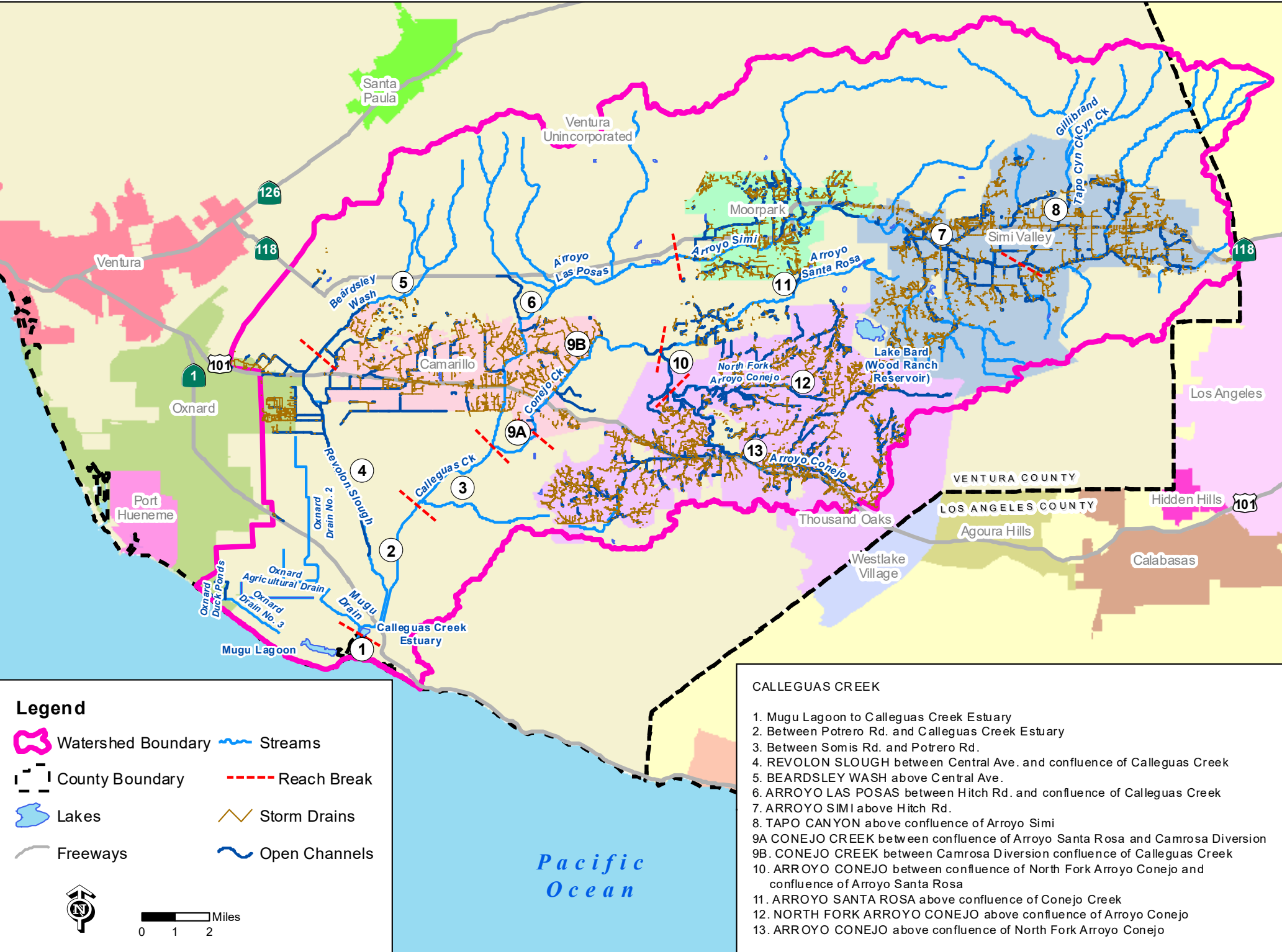


Figure C-4: Santa Clara River Watershed Management Area Storm Drain System.

- SANTA CLARA RIVER**
1. Between Highway 101 Bridge and Santa Clara River Estuary
 2. Between Freeman Diversion Dam near Saticoy and Highway 101 Bridge
 3. Between A Street, Fillmore and Freeman Diversion Dam near Saticoy
 - 4A. Between confluence of Piru Creek and A Street, Fillmore
 - 4B. Between Blue Cut gauging station and confluence of Piru Creek
 5. Between West Pier Highway 99 and Blue Cut gauging station
 6. Between Bouquet Canyon Road Bridge and West Pier Highway 99
 7. Between Lang gauging station and Bouquet Canyon Road Bridge
 8. Above Lang gauging station
 9. SANTA PAULA CREEK above Santa Paula Water Works Diversion Dam
 10. SESPE CREEK above gauging station, 500' downstream from Little Sespe Creek
 11. PIRU CREEK above gauging station below Santa Felicia Dam



Legend

- Watershed Boundary
- Streams
- County Boundary
- Reach Break
- Lakes
- Storm Drains
- Freeways
- Open Channels

Miles
0 1 2

- CALLEGUAS CREEK**
1. Mugu Lagoon to Calleguas Creek Estuary
 2. Between Potrero Rd. and Calleguas Creek Estuary
 3. Between Somis Rd. and Potrero Rd.
 4. REVOLON SLOUGH between Central Ave. and confluence of Calleguas Creek
 5. BEARDSLEY WASH above Central Ave.
 6. ARROYO LAS POSAS between Hitch Rd. and confluence of Calleguas Creek
 7. ARROYO SIMI above Hitch Rd.
 8. TAPO CANYON above confluence of Arroyo Simi
 - 9A CONEJO CREEK between confluence of Arroyo Santa Rosa and Camrosa Diversion
 - 9B. CONEJO CREEK between Camrosa Diversion confluence of Calleguas Creek
 10. ARROYO CONEJO between confluence of North Fork Arroyo Conejo and confluence of Arroyo Santa Rosa
 11. ARROYO SANTA ROSA above confluence of Conejo Creek
 12. NORTH FORK ARROYO CONEJO above confluence of Arroyo Conejo
 13. ARROYO CONEJO above confluence of North Fork Arroyo Conejo

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Figure C-5: Calleguas Creek Watershed Management Area Storm Drain System.

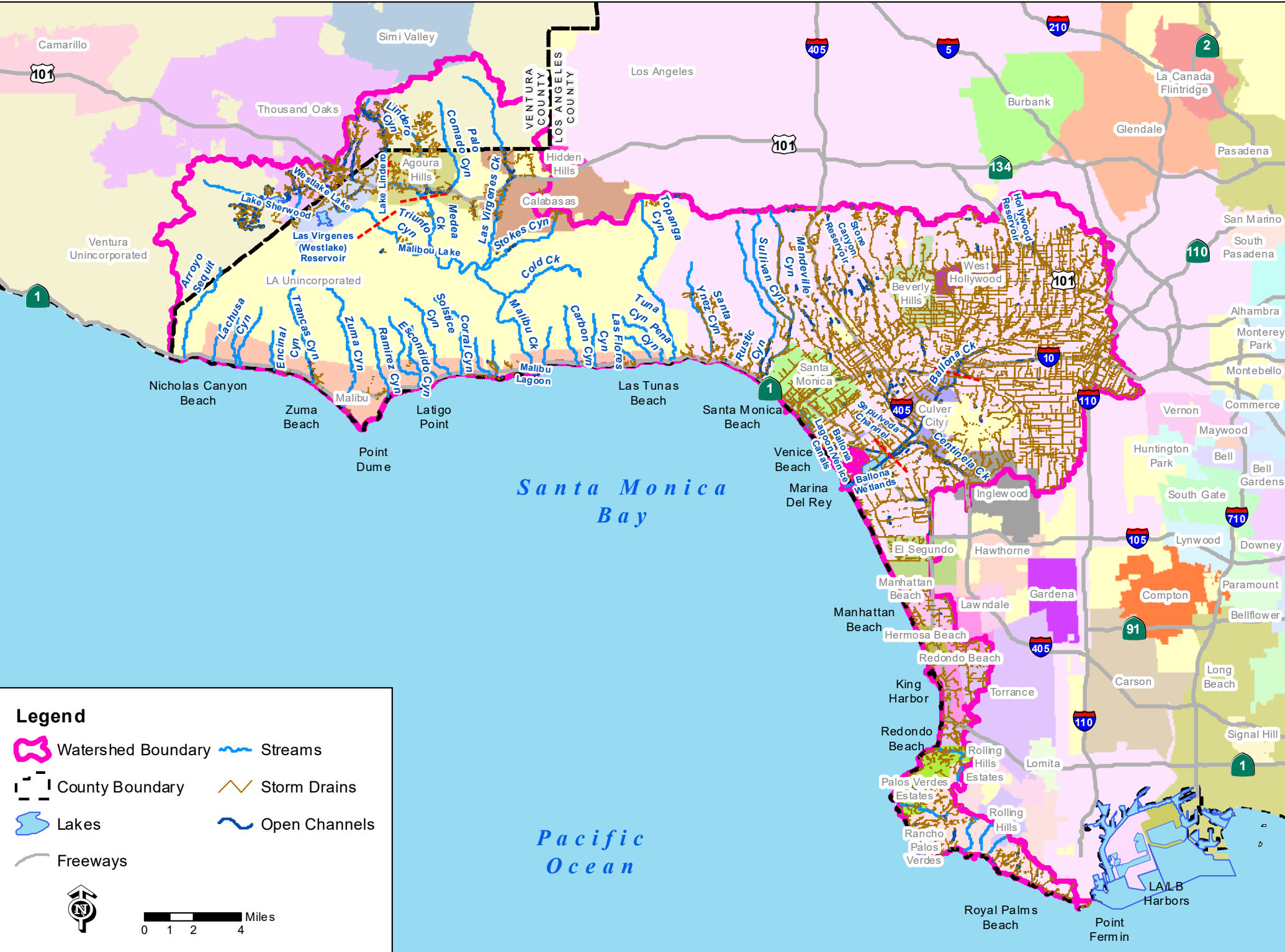


Figure C-6: Santa Monica Bay Watershed Management Area Storm Drain System.

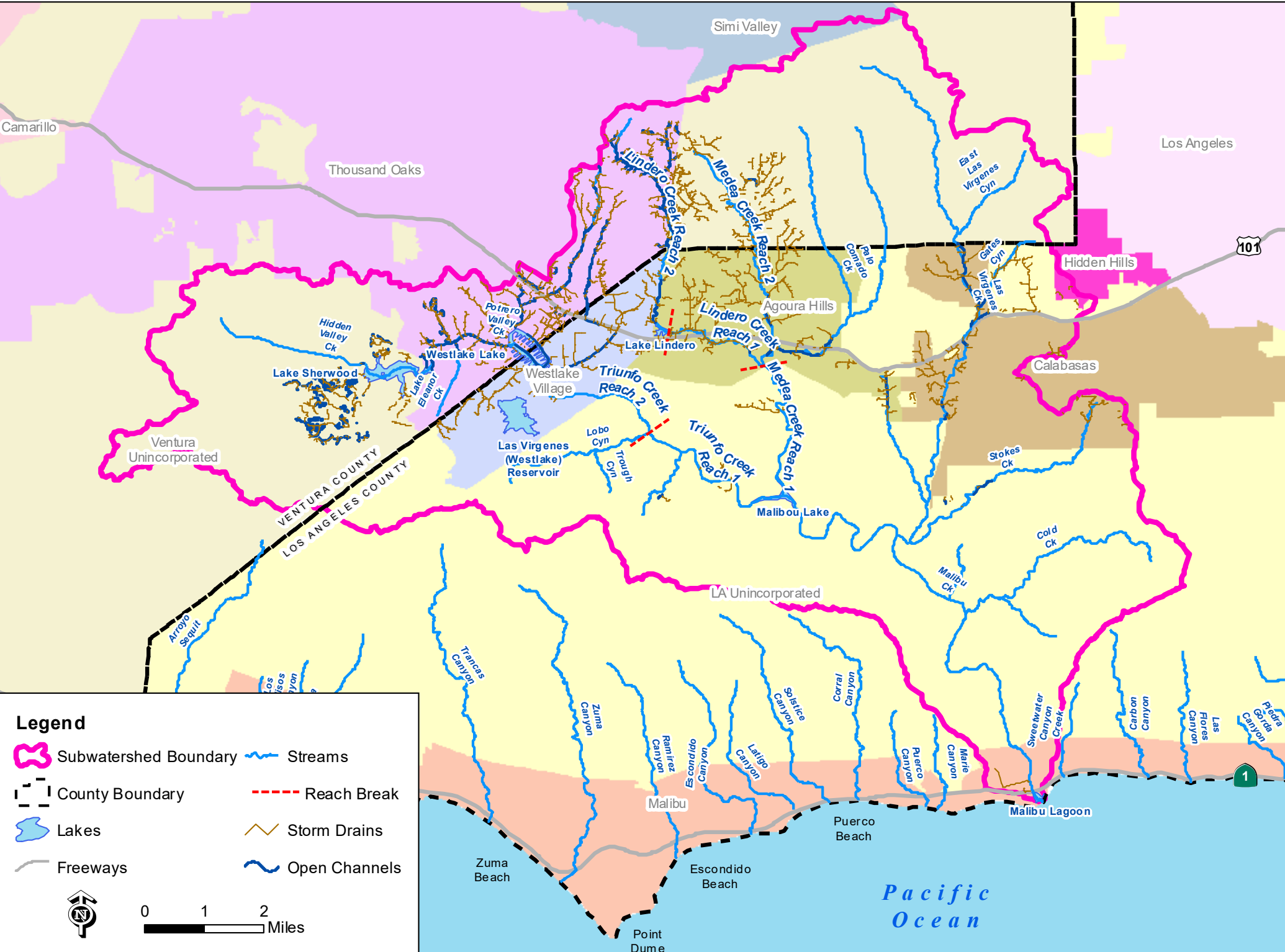


Figure C-6a: Malibu Creek Subwatershed Storm Drain System (Santa Monica Bay WMA).

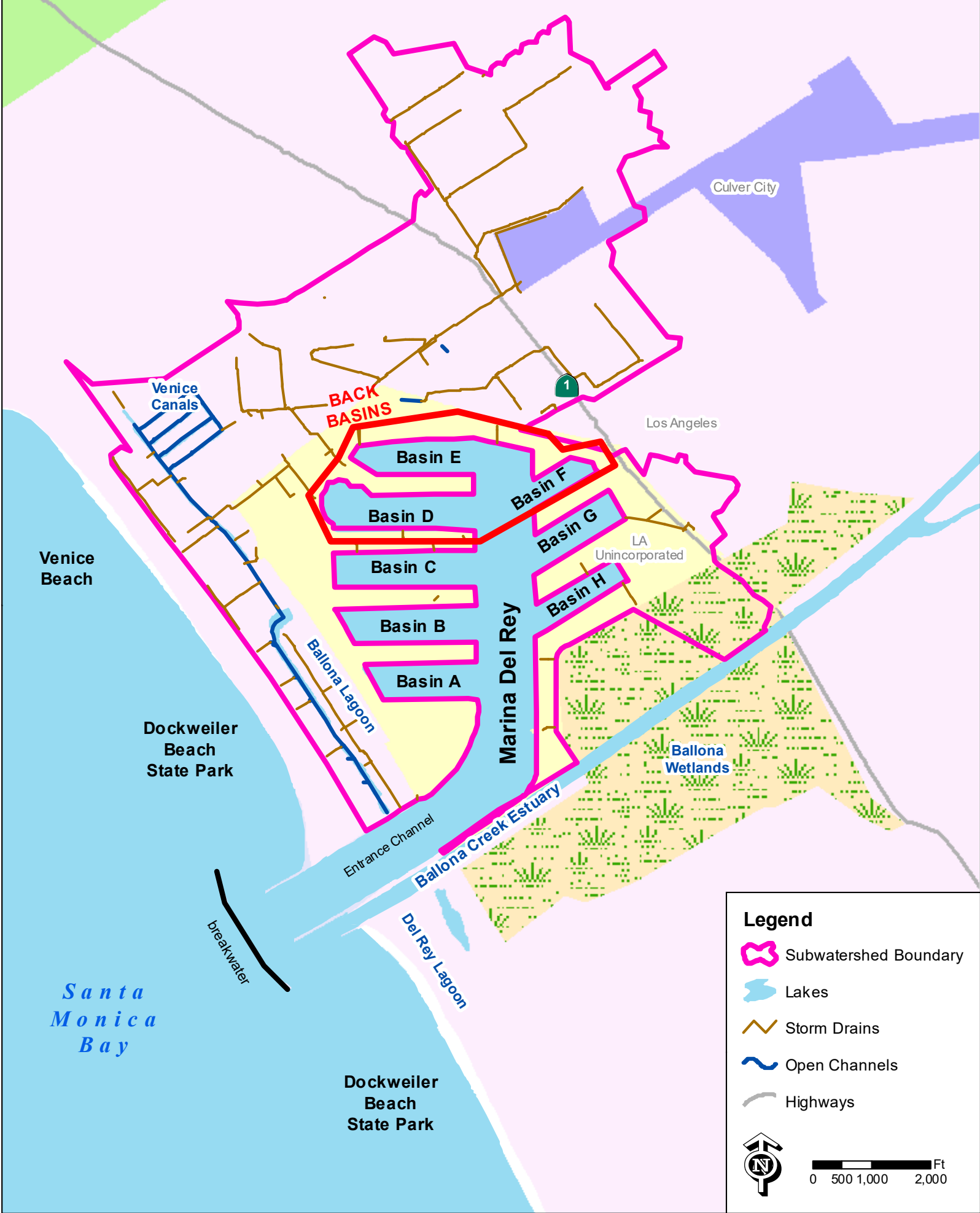


Figure C-6b: Marina del Rey Subwatershed Storm Drain System (Santa Monica Bay WMA).

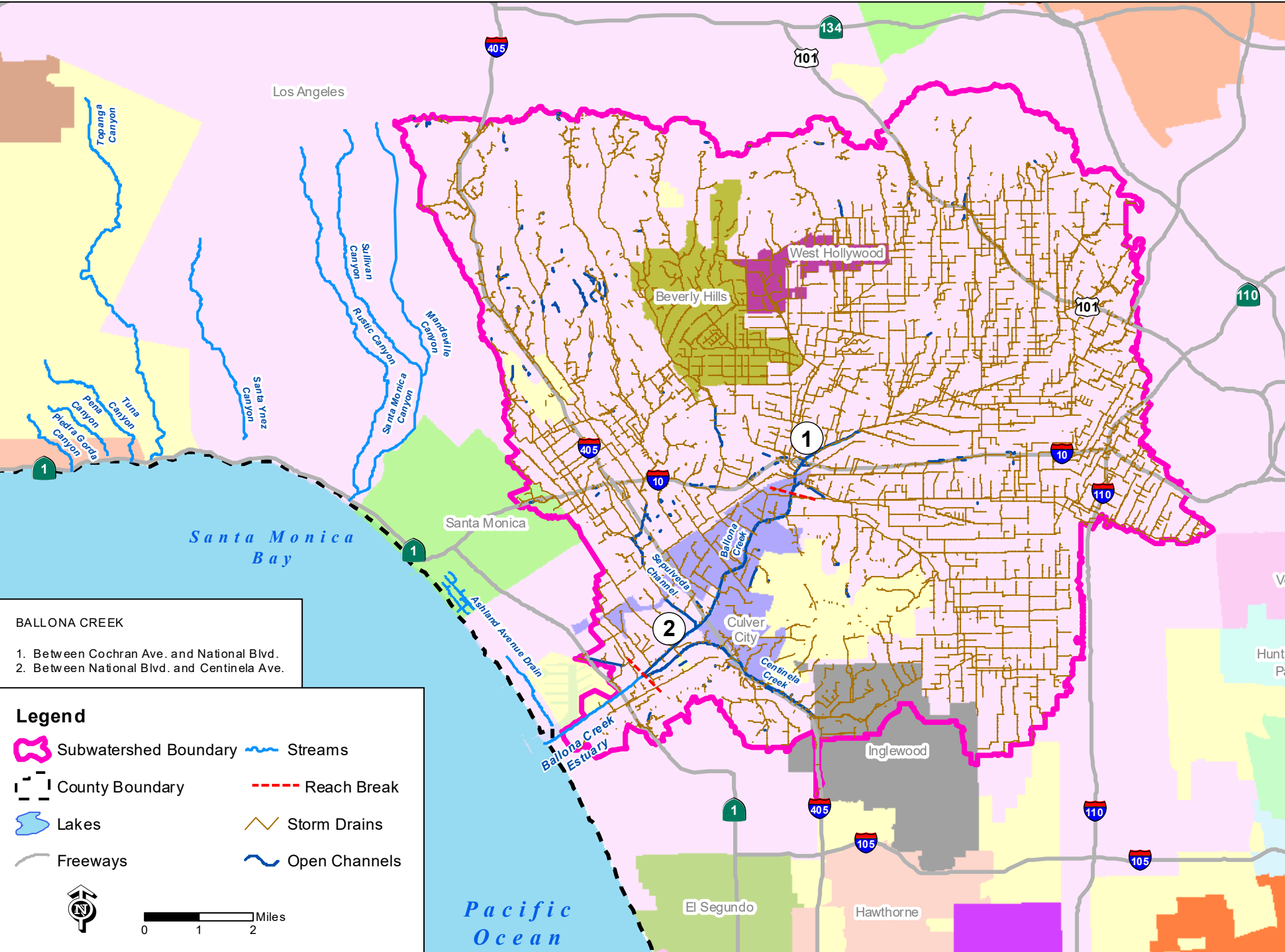


Figure C-6c: Ballona Creek Subwatershed Storm Drain System (Santa Monica Bay WMA).

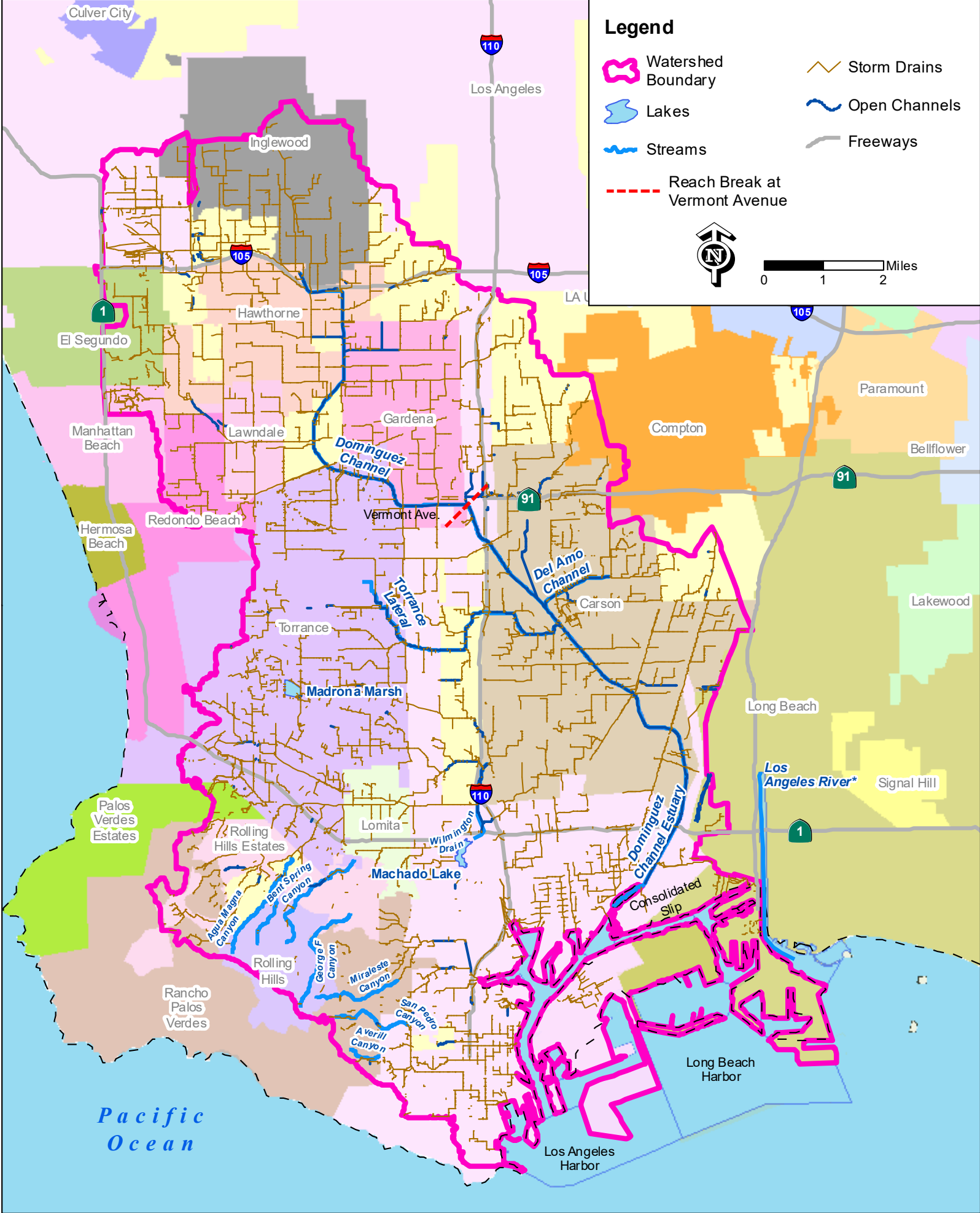


Figure C-7: Dominguez Channel and Los Angeles/Long Beach Harbors Watershed Management Area Storm Drain System.

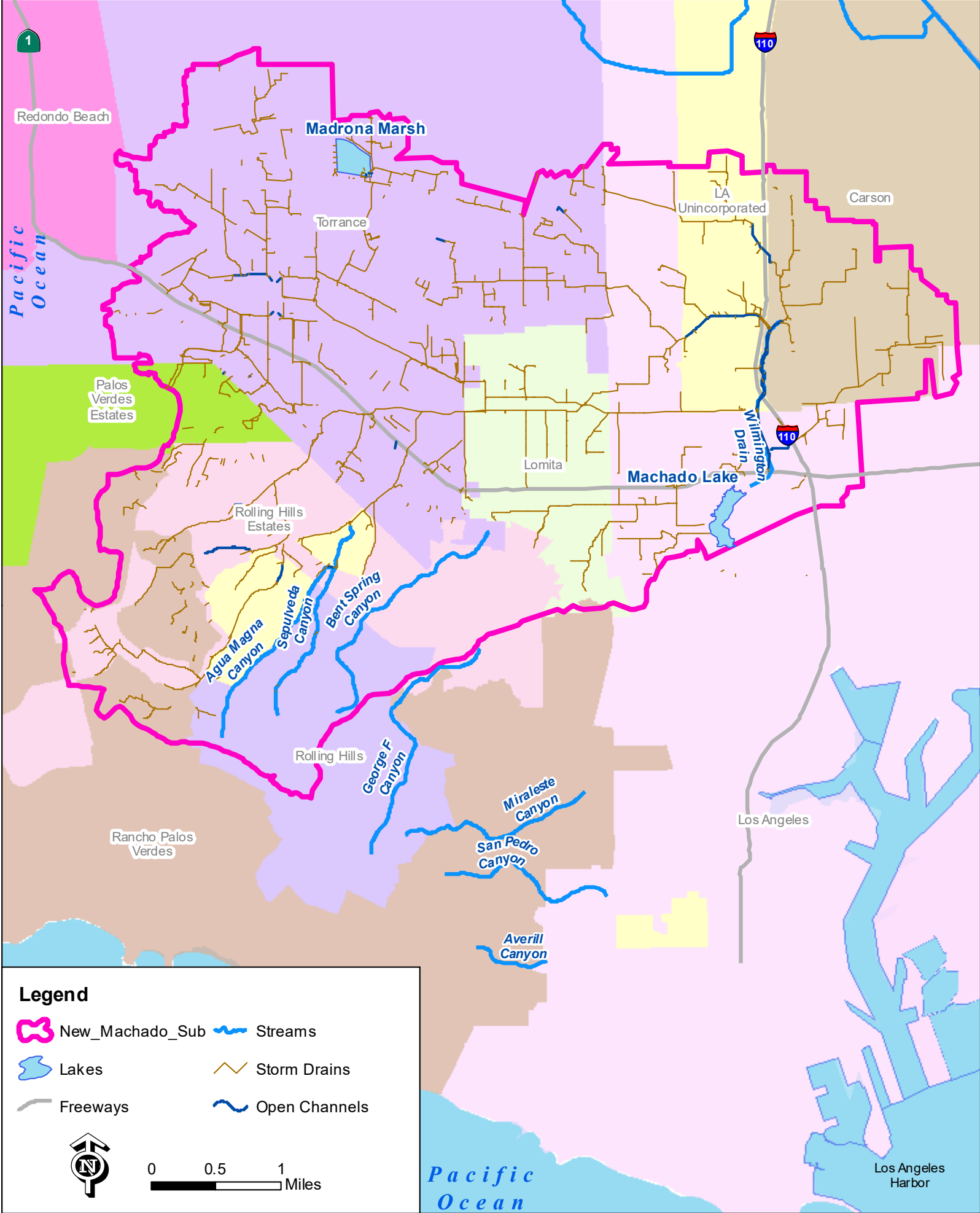
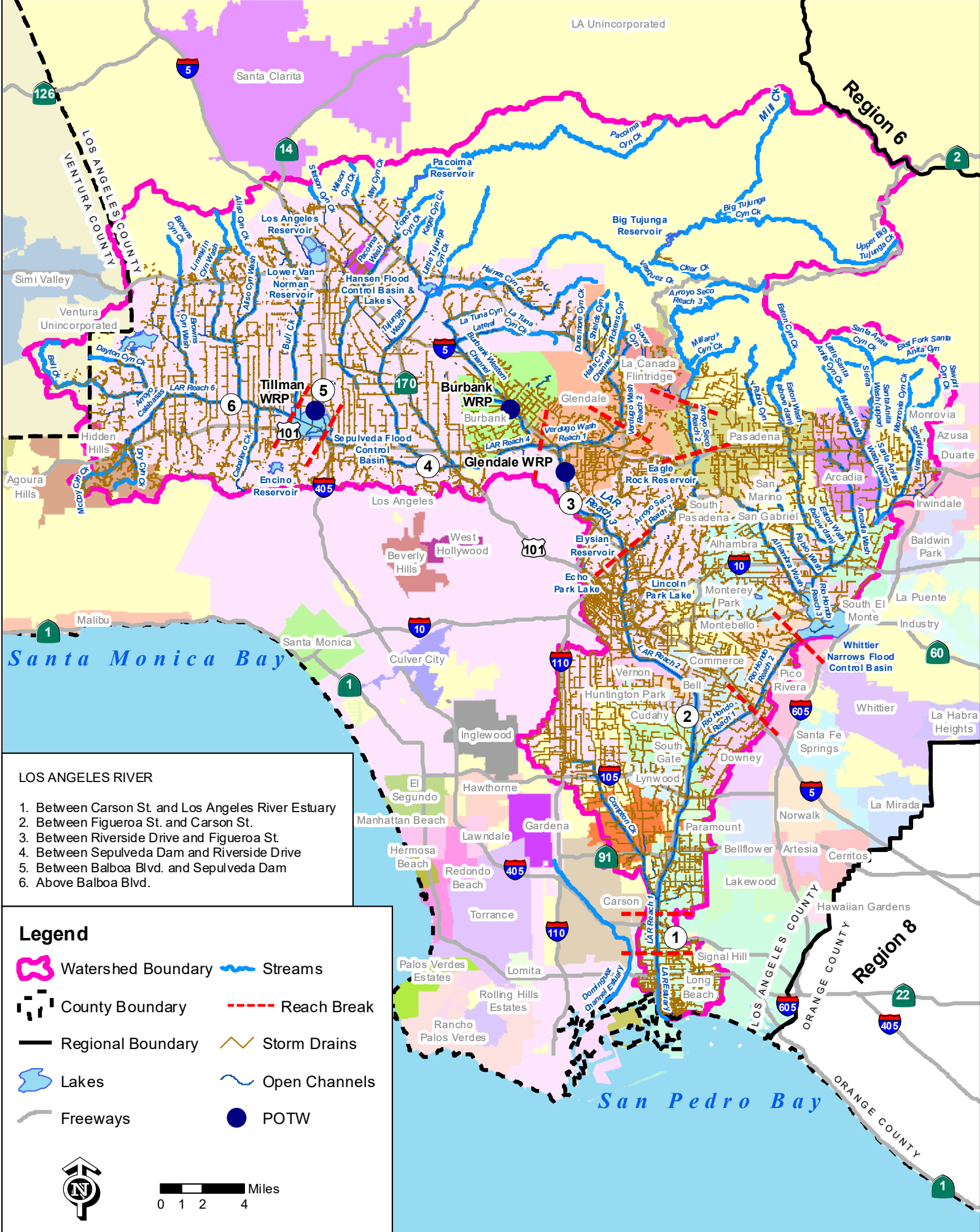


Figure C-7a: Machado Lake Subwatershed Storm Drain System (Dominguez Channel & LA/LB Harbors WMA).



LOS ANGELES RIVER

1. Between Carson St. and Los Angeles River Estuary
2. Between Figueroa St. and Carson St.
3. Between Riverside Drive and Figueroa St.
4. Between Sepulveda Dam and Riverside Drive
5. Between Balboa Blvd. and Sepulveda Dam
6. Above Balboa Blvd.

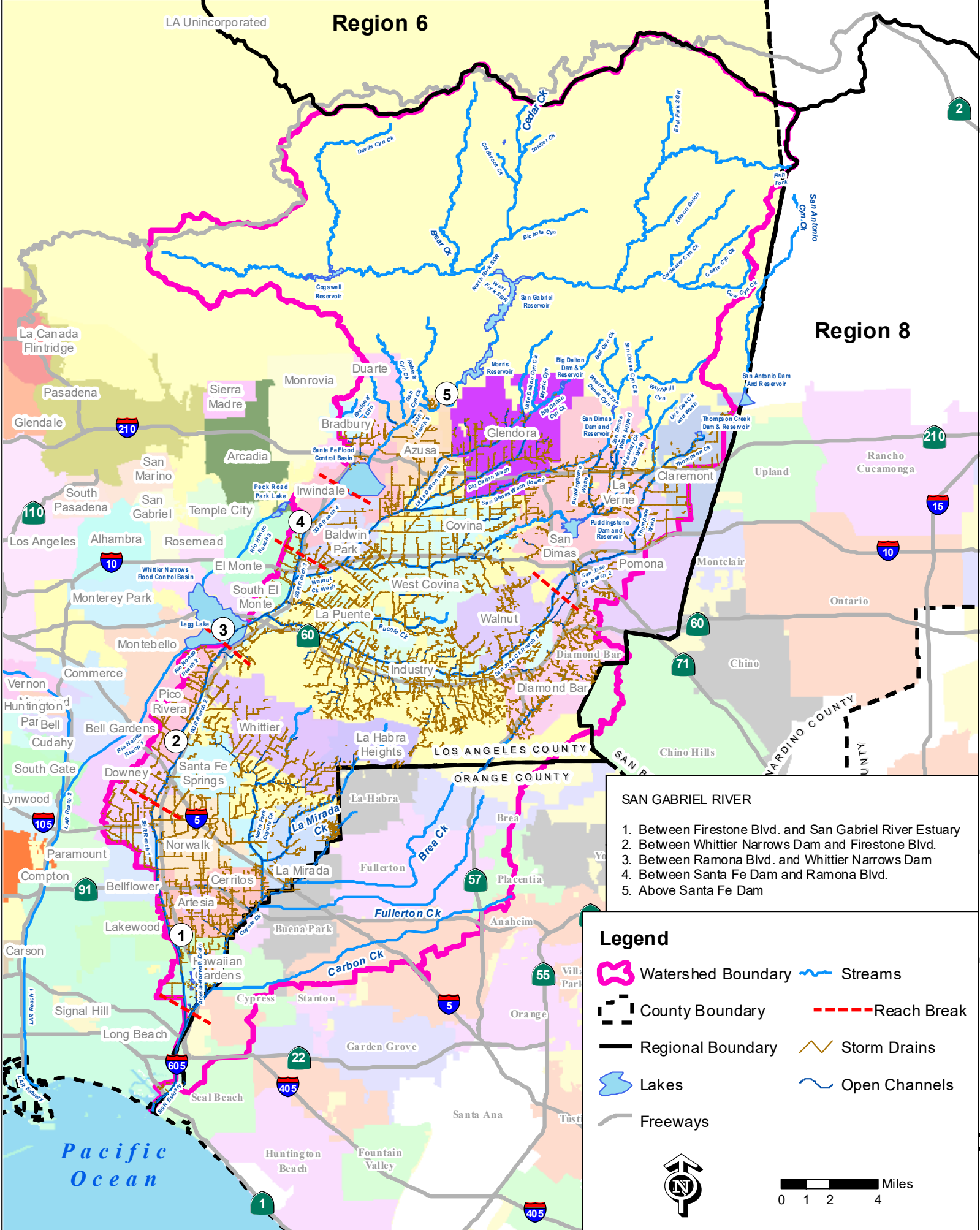
Legend

- Watershed Boundary
- County Boundary
- Regional Boundary
- Lakes
- Freeways
- Streams
- Reach Break
- Storm Drains
- Open Channels
- POTW



0 1 2 4 Miles

Figure C-8: Los Angeles River Watershed Management Area Storm Drain System. C-13



- SAN GABRIEL RIVER**
1. Between Firestone Blvd. and San Gabriel River Estuary
 2. Between Whittier Narrows Dam and Firestone Blvd.
 3. Between Ramona Blvd. and Whittier Narrows Dam
 4. Between Santa Fe Dam and Ramona Blvd.
 5. Above Santa Fe Dam

Legend

- Watershed Boundary
- Streams
- County Boundary
- Reach Break
- Regional Boundary
- Storm Drains
- Lakes
- Open Channels
- Freeways

Miles
0 1 2 4

212
Figure C-9: San Gabriel River Watershed Management Area Storm Drain System. C-14

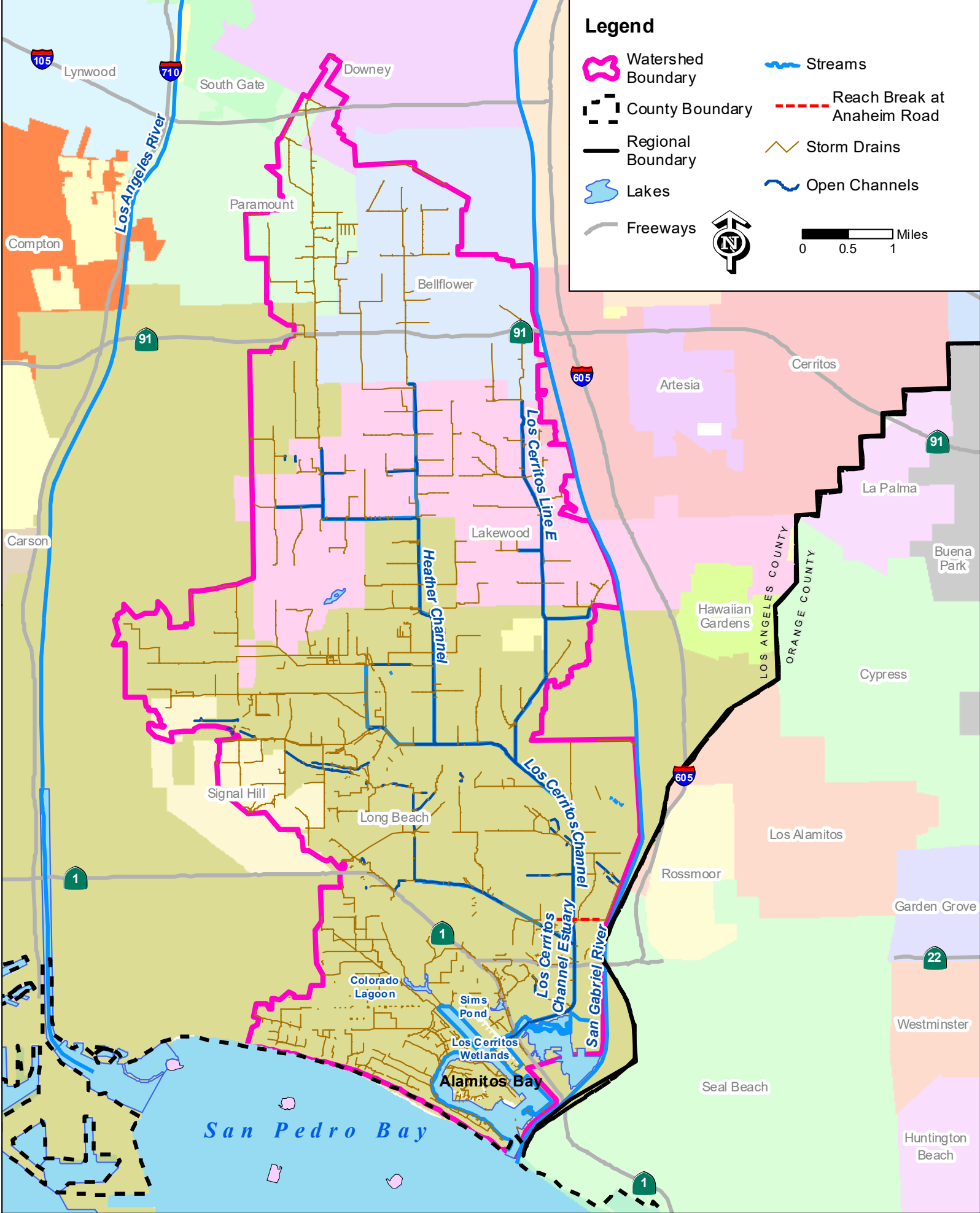
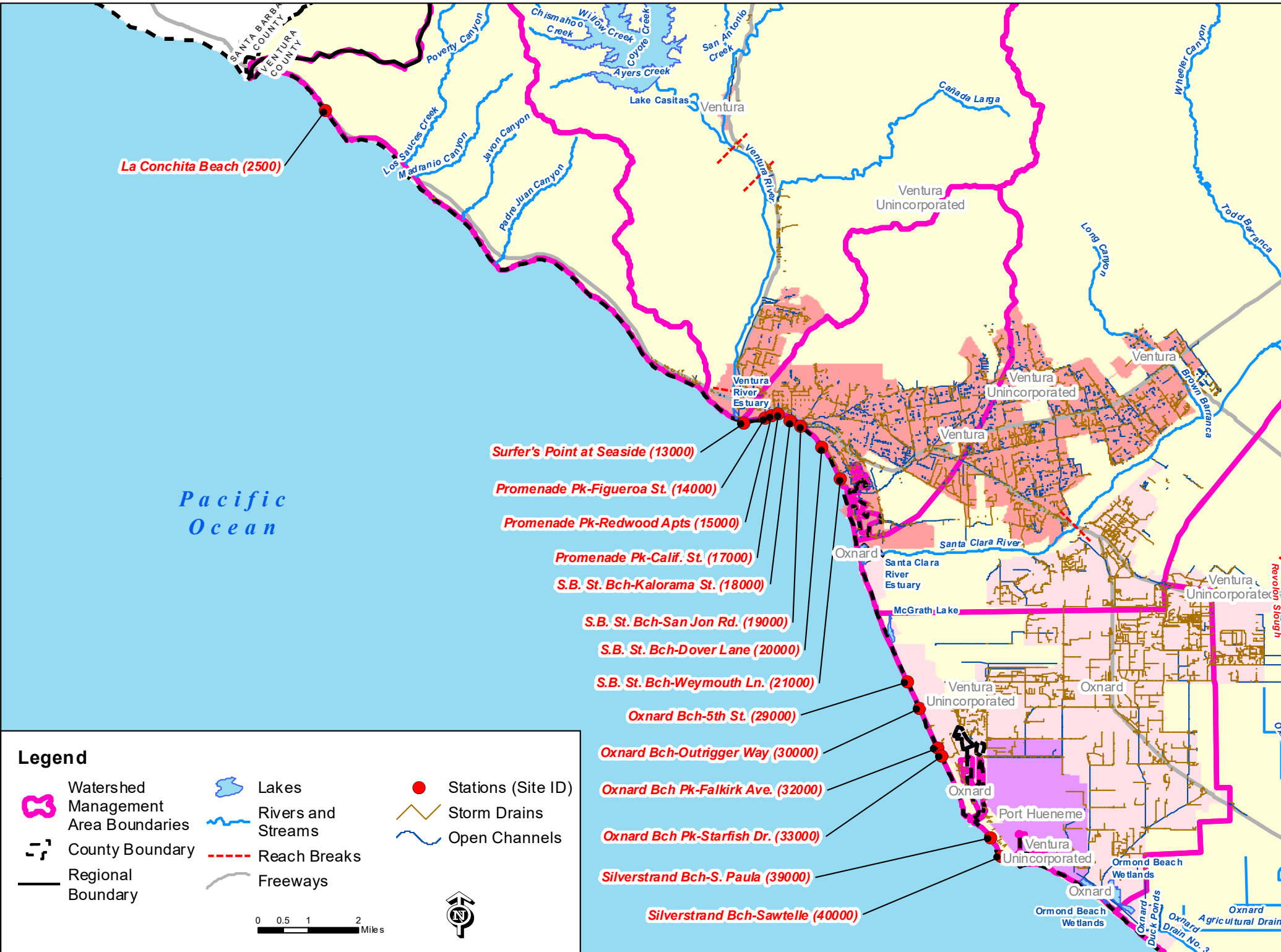


Figure C-10: Los Cerritos Channel and Alamitos Bay Watershed Management Area Storm Drain System.



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Figure C-11: Ventura County Storm Drain System and Monitoring Locations.



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Figure C-12: Ventura County Shoreline Monitoring Locations.

ATTACHMENT D – STANDARD PROVISIONS

I. STANDARD PROVISIONS – PERMIT COMPLIANCE

A. Duty to Comply

1. The Discharger must comply with all of the terms, requirements, and conditions of this Order. Any noncompliance constitutes a violation of the Clean Water Act (CWA) and the California Water Code and is grounds for enforcement action; permit termination, revocation and reissuance, or modification; denial of a permit renewal application; or a combination thereof. (40 C.F.R. § 122.41(a); California Water Code, §§ 13261, 13263, 13265, 13268, 13000, 13001, 13304, 13350, 13385.)
2. The Discharger shall comply with effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if this Order has not yet been modified to incorporate the requirement. (40 C.F.R. § 122.41(a)(1).)

B. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a Discharger 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 Order. (40 C.F.R. § 122.41(c).)

C. Duty to Mitigate

The Discharger shall take all reasonable steps to minimize or prevent any discharge in violation of this Order that has a reasonable likelihood of adversely affecting human health or the environment. (40 C.F.R. § 122.41(d).)

D. Proper Operation and Maintenance

The Discharger 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 Discharger to achieve compliance with the conditions of this Order. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems that are installed by a Discharger only when necessary to achieve compliance with the conditions of this Order. (40 C.F.R. § 122.41(e).)

E. Property Rights

1. This Order does not convey any property rights of any sort or any exclusive privileges. (40 C.F.R. § 122.41(g).)
2. The issuance of this Order does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations. (40 C.F.R. § 122.5(c).)

F. Inspection and Entry

The Discharger shall allow the Los Angeles Water Board, State Water Board, U.S. EPA, and/or their authorized representatives (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents, as may be required by law, to (33 U.S.C. § 1318(a)(4)(B); 40 C.F.R. § 122.41(i); California Water Code, §§ 13267, 13383):

1. Enter upon the Discharger's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this Order (33 U.S.C. § 1318(a)(4)(B)(i); 40 C.F.R. § 122.41(i)(1); California Water Code, §§ 13267, 13383);
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order (33 U.S.C. § 1318(a)(4)(B)(ii); 40 C.F.R. § 122.41(i)(2); California Water Code, §§ 13267, 13383);
3. Inspect and photograph, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order (33 U.S.C. § 1318(a)(4)(B)(ii); 40 C.F.R. § 122.41(i)(3); California Water Code, §§ 13267, 13383); and
4. Sample or monitor, at reasonable times, for the purposes of assuring Order compliance or as otherwise authorized by the CWA or the Water Code, any substances or parameters at any location. (33 U.S.C. § 1318(a)(4)(B); 40 C.F.R. § 122.41(i)(4); California Water Code, §§ 13267, 13383.)

G. Bypass

1. Definitions

- a. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. (40 C.F.R. § 122.41(m)(1)(i).)
 - b. "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 that 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. (40 C.F.R. § 122.41(m)(1)(ii).)
2. **Bypass not exceeding limitations.** The Discharger may allow any bypass to occur which does not cause exceedances of effluent limitations, but only if it is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions listed in Standard Provisions – Permit Compliance Parts I.G.3, I.G.4, and I.G.5 of this Attachment D. (40 C.F.R. § 122.41(m)(2).)
 3. **Prohibition of bypass.** Bypass is prohibited, and the Los Angeles Water Board may take enforcement action against a Discharger for bypass, unless (40 C.F.R. § 122.41(m)(4)(i)):
 - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage (40 C.F.R. § 122.41(m)(4)(i)(A));
 - 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 that occurred during normal periods of equipment downtime or preventive maintenance (40 C.F.R. § 122.41(m)(4)(i)(B)); and
 - c. The Discharger submitted notice to the Los Angeles Water Board as required under Standard Provisions – Permit Compliance Part I.G.5 of this Attachment D. (40 C.F.R. § 122.41(m)(4)(i)(C).)
 4. The Los Angeles Water Board may approve an anticipated bypass, after considering its adverse effects, if the Los Angeles Water Board determines that it will meet the three conditions listed in Standard Provisions – Permit Compliance Part I.G.3 above. (40 C.F.R. § 122.41(m)(4)(ii).)

5. Notice

- a. **Anticipated bypass.** If the Discharger knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass. The notice shall be sent to the Los Angeles Water Board. As of December 21, 2020, all notices must be submitted electronically to the initial recipient defined in Standard Provisions – Reporting Part V.J of this Attachment D. Notices shall comply with 40 C.F.R. part 3, 40 C.F.R. section 122.22, and 40 C.F.R. part 127. (40 C.F.R. § 122.41(m)(3)(i).)”
- b. **Unanticipated bypass.** The Discharger shall submit notice of an unanticipated bypass as required in Standard Provisions - Reporting Part V.E of this Attachment D (24-hour notice). The notice shall be sent to the Los Angeles Water Board. As of December 21, 2020, all notices must be submitted electronically to the initial recipient defined in Standard Provisions – Reporting Part V.J of this Attachment D. Notices shall comply with 40 C.F.R. part 3, 40 C.F.R. section 122.22, and 40 C.F.R. part 127. (40 C.F.R. § 122.41(m)(3)(ii).)”

H. Upset

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 Discharger. 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. (40 C.F.R. § 122.41(n)(1).)

1. **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 Standard Provisions – Permit Compliance Part I.H.2 below 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. (40 C.F.R. § 122.41(n)(2).)
2. **Conditions necessary for a demonstration of upset.** A Discharger who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that (40 C.F.R. § 122.41(n)(3)):
 - a. An upset occurred and that the Discharger can identify the cause(s) of the upset (40 C.F.R. § 122.41(n)(3)(i));
 - b. The permitted facility was, at the time, being properly operated (40 C.F.R. § 122.41(n)(3)(ii));
 - c. The Discharger submitted notice of the upset as required in Standard Provisions – Reporting V.E.2.b below (24-hour notice) (40 C.F.R. § 122.41(n)(3)(iii)); and
 - d. The Discharger complied with any remedial measures required under Standard Provisions – Permit Compliance I.C above. (40 C.F.R. § 122.41(n)(3)(iv).)
3. **Burden of proof.** In any enforcement proceeding, the Discharger seeking to establish the occurrence of an upset has the burden of proof. (40 C.F.R. § 122.41(n)(4).)

II. STANDARD PROVISIONS – PERMIT ACTION

A. General

This Order may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Discharger for modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any Order condition. (40 C.F.R. § 122.41(f).)

B. Duty to Reapply

If the Discharger wishes to continue an activity regulated by this Order after the expiration date of this Order, the Discharger must apply for and obtain a new permit. (40 C.F.R. § 122.41(b).)

C. Transfers

This Order is not transferable to any person except after notice to the Los Angeles Water Board. The Los Angeles Water Board may require modification or revocation and reissuance of the Order to change the name of the Discharger and incorporate such other requirements as may be necessary under the CWA and the Water Code. (40 C.F.R. §§ 122.41(l)(3), 122.61.)

III. STANDARD PROVISIONS – MONITORING

A. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. (40 C.F.R. § 122.41(j)(1).)

B. Monitoring must be conducted according to test procedures approved under 40 C.F.R. part 136 for the analyses of pollutants unless another method is required under 40 C.F.R. chapter 1, subchapter N. Monitoring must be conducted according to sufficiently sensitive test methods approved under 40 C.F.R. part 136 for the analysis of pollutants or pollutant parameters or as required under 40 C.F.R. chapter 1, subchapter N. 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 most stringent effluent limitation established in the permit for the measured pollutant or pollutant parameter, and either the method ML is at or below the level of the most stringent applicable water quality criterion for the measured pollutant or pollutant parameter or the method ML is above the applicable water quality criterion but the amount of the pollutant or pollutant parameter in the facility's discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or
2. The method has the lowest ML of the analytical methods approved under 40 C.F.R. part 136 or required under 40 C.F.R. chapter 1, subchapter N for the measured pollutant or pollutant parameter.

In the case of pollutants or pollutant parameters for which there are no approved methods under 40 C.F.R. part 136 or otherwise required under 40 C.F.R. chapter 1, subchapter N, monitoring must be conducted according to a test procedure specified in this Order for such pollutants or pollutant parameters. (40 C.F.R. §§ 122.21(e)(3), 122.41(j)(4), 122.44(i)(1)(iv).)

IV. STANDARD PROVISIONS – RECORDS

A. The Discharger 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 Order, and records of all data used to complete the application for this Order, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Los Angeles Water Board Executive Officer or U.S. EPA at any time. (40 C.F.R. § 122.41(j)(2); California Water Code § 13383(a))

- B.** Records of monitoring information shall include:
1. The date, exact place, and time of sampling or measurements (40 C.F.R. § 122.41(j)(3)(i));
 2. The individual(s) who performed the sampling or measurements (40 C.F.R. § 122.41(j)(3)(ii));
 3. The date(s) analyses were performed (40 C.F.R. § 122.41(j)(3)(iii));
 4. The individual(s) who performed the analyses (40 C.F.R. § 122.41(j)(3)(iv));
 5. The analytical techniques or methods used (40 C.F.R. § 122.41(j)(3)(v)); and
 6. The results of such analyses. (40 C.F.R. § 122.41(j)(3)(vi).)
- C.** Claims of confidentiality for the following information will be denied (40 C.F.R. § 122.7(b)):
1. The name and address of any permit applicant or Discharger (40 C.F.R. § 122.7(b)(1)); and
 2. Permit applications and attachments, permits and effluent data. (40 C.F.R. § 122.7(b)(2).)

V. STANDARD PROVISIONS – REPORTING

A. Duty to Provide Information

The Discharger shall furnish to the Los Angeles Water Board, State Water Board, or U.S. EPA within a reasonable time, any information which the Los Angeles Water Board, State Water Board, or U.S. EPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order or to determine compliance with this Order. Upon request, the Discharger shall also furnish to the Los Angeles Water Board, State Water Board, or U.S. EPA copies of records required to be kept by this Order. (40 C.F.R. § 122.41(h); California Water Code, §13383.)

B. Signatory and Certification Requirements

1. All applications, reports, or information submitted to the Los Angeles Water Board, State Water Board, and/or U.S. EPA shall be signed and certified in accordance with Standard Provisions – Reporting Parts V.B.2, V.B.3, V.B.4, V.B.5, and V.B.6 below. (40 C.F.R. § 122.41(k).)
2. All permit applications shall be signed by either a principal executive officer or ranking elected official. For purposes of this provision, a principal executive officer of a federal agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of U.S. EPA). (40 C.F.R. § 122.22(a)(3)).
3. All reports required by this Order and other information requested by the Los Angeles Water Board, State Water Board, or U.S. EPA shall be signed by a person described in Standard Provisions – Reporting Part V.B.2 above, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - e. The authorization is made in writing by a person described in Standard Provisions – Reporting V.B.2 above (40 C.F.R. § 122.22(b)(1));
 - f. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus

be either a named individual or any individual occupying a named position.) (40 C.F.R. § 122.22(b)(2)); and

- g.** The written authorization is submitted to the Los Angeles Water Board and State Water Board. (40 C.F.R. § 122.22(b)(3).)
- 4.** If an authorization under Standard Provisions – Reporting Part V.B.3 above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Standard Provisions – Reporting Part V.B.3 above must be submitted to the Los Angeles Water Board and State Water Board prior to or together with any reports, information, or applications, to be signed by an authorized representative. (40 C.F.R. § 122.22(c).)
- 5.** Any person signing a document under Standard Provisions – Reporting Parts V.B.2 or V.B.3 above shall make 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.” (40 C.F.R. § 122.22(d).)
- 6.** Any person providing the electronic signature for documents described in Standard Provisions – Parts V.B.1, V.B.2, or V.B.3 above that are submitted electronically shall meet all relevant requirements of this Standard Provisions – Reporting Part V.B, and shall ensure that all relevant requirements of 40 C.F.R. part 3 (Cross-Media Electronic Reporting) and 40 C.F.R. part 127 (NPDES Electronic Reporting Requirements) are met for that submission. (40 C.F.R. § 122.22(e).)

C. Monitoring Reports

- 1.** Monitoring results shall be reported at the intervals specified in the Monitoring and Reporting Program (Attachment E) in this Order. (40 C.F.R. § 122.41(l)(4).)
- 2.** Monitoring results must be reported on a Discharge Monitoring Report (DMR) form or forms provided or specified by the Los Angeles Water Board or State Water Board. As of December 21, 2016, all reports and forms must be submitted electronically to the initial recipient defined in Standard Provisions – Reporting Part V.J of this Attachment D and comply with 40 C.F.R. part 3, 40 C.F.R. section 122.22, and 40 C.F.R. part 127. (40 C.F.R. § 122.41(l)(4)(i).)
- 3.** If the Discharger monitors any pollutant more frequently than required by this Order using test procedures approved under 40 C.F.R. part 136, or another method required for an industry-specific waste stream under 40 C.F.R. subchapter N, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the Los Angeles Water Board or State Water Board. (40 C.F.R. § 122.41(l)(4)(ii).)
- 4.** Calculations for all limitations, which require averaging of measurements, shall utilize an arithmetic mean unless otherwise specified in this Order. (40 C.F.R. § 122.41(l)(4)(iii).)

D. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this Order, shall be submitted no later than 14 days following each schedule date. (40 C.F.R. § 122.41(l)(5).)

E. Twenty-Four Hour Reporting

1. The Discharger shall report any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the Discharger becomes aware of the circumstances. A written report shall also be provided within five (5) days of the time the Discharger becomes aware of the circumstances. The written 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. (40 C.F.R. § 122.41(l)(6)(i).)

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 (i.e., combined sewer overflow, sanitary sewer overflow, or bypass event), type of overflow structure (e.g., manhole, combined sewer overflow outfall), discharge volume untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the 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 must be submitted to the Los Angeles Water Board and must be submitted electronically to the initial recipient defined in Standard Provisions – Reporting Part V.J of this Attachment D. The reports shall comply with 40 C.F.R. part 3, 40 C.F.R. section 122.22, and 40 C.F.R. part 127. The Los Angeles Water Board may also require the Discharger to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. (40 C.F.R. § 122.41(l)(6)(i).)

2. The following shall be included as information that must be reported within 24 hours under this paragraph (40 C.F.R. § 122.41(l)(6)(ii)):
 - a. Any unanticipated bypass that exceeds any effluent limitation in this Order. (40 C.F.R. § 122.41(l)(6)(ii)(A).)
 - b. Any upset that exceeds any effluent limitation in this Order. (40 C.F.R. § 122.41(l)(6)(ii)(B).)
 - c. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Los Angeles Water Board in this Order [40 CFR Section (l)(6)(ii)(C) and 122.44(g)].
3. The Los Angeles Water Board may waive the above-required written report under this provision on a case by case basis if an oral report has been received within 24 hours. (40 C.F.R. § 122.41(l)(6)(iii).)

F. Planned Changes

The Discharger shall give notice to the Los Angeles Water Board as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required under this provision only when (40 C.F.R. § 122.41(l)(1)):

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR section 122.29(b) (40 C.F.R. § 122.41(l)(1)(i)); or
2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this Order. (40 C.F.R. § 122.41(l)(1)(ii).)

G. Anticipated Noncompliance

The Discharger shall give advance notice to the Los Angeles Water Board of any planned changes in the permitted facility or activity that may result in noncompliance with this Order's requirements. (40 C.F.R. § 122.41(l)(2).)

H. Other Noncompliance

The Discharger shall report all instances of noncompliance not reported under Standard Provisions – Reporting Parts V.C, V.D, and V.E above at the time monitoring reports are submitted. The reports shall contain the information listed in Standard Provision – Reporting V.E above. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in Standard Provision – Reporting Part V.E above and the applicable required data in appendix A to 40 C.F.R. part 127. The Los Angeles Water Board may also require the Discharger to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. (40 C.F.R. § 122.41(l)(7).)

I. Other Information

When the Discharger 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 Los Angeles Water Board, State Water Board, or U.S. EPA, the Discharger shall promptly submit such facts or information. (40 C.F.R. § 122.41(l)(8).)

J. Initial Recipient for Electronic Reporting Data

The owner, operator, or the duly authorized representative is required to electronically submit NPDES information specified in appendix A to 40 C.F.R. part 127 to the initial recipient defined in 40 C.F.R. section 127.2(b). U.S. EPA will identify and publish the list of initial recipients on its website and in the Federal Register, by state and by NPDES data group [see 40 C.F.R. section 127.2(c)]. U.S. EPA will update and maintain this listing. (40 C.F.R. § 122.41(l)(9).)

VI. STANDARD PROVISIONS – ENFORCEMENT

- A. The Los Angeles Water Board is authorized to enforce the terms of this permit under several provisions of the Water Code, including, but not limited to, sections 13268, 13385, 13386, and 13387.
- B. The CWA provides that any person who violates Section 301, 302, 306, 307, 308, 318 or 405 of the CWA, 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 CWA is subject to a civil penalty not to exceed \$25,000 per day for each violation. The CWA provides that any person who negligently violates Sections 301, 302, 306, 307, 308, 318, or 405 of the CWA, or any condition or limitation implementing any of such Sections in a permit issued under Section 402 of the CWA, or any requirement imposed in a pretreatment program approved under Section 402(a)(3) or 402(b)(8) of the CWA, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than one (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 two (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 three (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 six (6) years, or both. Any person who knowingly violates Section 301, 302, 303, 306, 307, 308, 318 or 405 of the CWA, or any permit condition or limitation implementing any of such Sections in a permit issued under Section 402 of the CWA, 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 [40 CFR Section 122.41(a)(2)] [California Water Code Sections 13385 and 13387].

- C. Any person may be assessed an administrative penalty by the Los Angeles Water Board for violating Section 301, 302, 306, 307, 308, 318 or 405 of the CWA, or any permit condition or limitation implementing any of such Sections in a permit issued under Section 402 of the CWA. 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 [40 CFR Section 122.41(a)(3)].
- D. 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 permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than two (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 four (4) years, or both [40 CFR Section 122.41(j)(5)].
- E. 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 Order, including monitoring reports or reports of compliance or noncompliance 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 Section 122.41(k)(2)].

VII. ADDITIONAL STANDARD CONDITIONS APPLICABLE TO SPECIFIC CATEGORIES OF NPDES PERMITS [40 CFR SECTION 122.42]

- A. *Municipal separate storm sewer systems.* The operator of a large or medium MS4 or a municipal separate storm sewer that has been designated by the Los Angeles Water Board or U. S. EPA under 40 CFR section 122.26(a)(1)(v) shall submit an annual report by the anniversary of the date of the issuance of the permit for such MS4. All reports submitted in compliance with 40 CFR section 122.42(c) shall be submitted electronically by the owner, operator, or the duly authorized representative of the MS4 to the initial recipient, as defined in defined in Standard Provisions – Reporting Part V.J of this Attachment D, in compliance with 40 CFR section 122.42 and 40 CFR part 3 (including, in all cases, subpart D to part 3), section 122.22, and 40 CFR part 127. The report shall include [40 CFR section 122.42(c)]:

1. The status of implementing the components of the storm water management program that are established as permit conditions [40 CFR Section 122.42(c)(1)];
2. Proposed changes to the storm water management programs that are established as permit conditions. Such proposed changes shall be consistent with 40 CFR Section 122.26(d)(2)(iii) [40 CFR Section 122.42(c)(2)]; and
3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under 40 CFR Section 122.26(d)(2)(iv) and (d)(2)(v) [40 CFR Section 122.42(c)(3)];
4. A summary of data, including monitoring data, that is accumulated throughout the reporting year [40 CFR Section 122.42(c)(4)];
5. Annual expenditures and budget for year following each annual report [40 CFR Section 122.42(c)(5)];
6. A summary describing the number and nature of enforcement actions, inspections, and public education programs [40 CFR Section 122.42(c)(6)]; and
7. Identification of water quality improvements or degradation [40 CFR Section 122.42(c)(7)].

ATTACHMENT E – MONITORING AND REPORTING PROGRAM

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ATTACHMENT E – MONITORING AND REPORTING PROGRAM (MRP)

Section 308 of the federal Clean Water Act (CWA) and sections 122.41(h), (j)-(l), 122.44(i), and 122.48 of title 40 of the Code of Federal Regulations (40 C.F.R.) require that all NPDES permits specify monitoring and reporting requirements. Federal regulations applicable to large and medium MS4s also specify additional monitoring and reporting requirements. (40 C.F.R. §§ 122.26(d)(2)(i)(F) & (d)(2)(iii)(D), 122.42(c).) California Water Code section 13383 also authorizes the Los Angeles Water Board to establish monitoring, inspection, entry, reporting, and recordkeeping requirements.¹ This MRP establishes monitoring, reporting, and recordkeeping requirements that implement the federal and California laws and/or regulations.

I. PURPOSE AND SCOPE

A. General Objectives

The general objectives of the Monitoring Program are to:

1. Assess the chemical, physical, and biological impacts of discharges from the municipal separate storm sewer system (MS4) on receiving waters.
2. Assess compliance with receiving water limitations and water quality-based effluent limitations (WQBELs) established to implement Total Maximum Daily Loads (TMDLs) during wet weather and dry weather.
3. Characterize pollutant loads in MS4 discharges.
4. Identify sources of pollutants in MS4 discharges.
5. Assess the overall health and evaluate long-term trends in receiving water quality.
6. Measure and improve the effectiveness of pollutant controls implemented under the Order.

B. Purpose

The results of the monitoring requirements outlined below shall be used to refine control measures for the reduction of pollutant loading and the protection and enhancement of the beneficial uses of the receiving waters in the Region. Furthermore, the monitoring program allows Permittees to coordinate monitoring efforts on a watershed or subwatershed basis to leverage monitoring resources in an effort to increase cost-efficiency and effectiveness and to closely align monitoring with TMDL monitoring requirements, and if Permittee(s) are participating, closely align monitoring with Watershed Management Programs.

C. Monitoring Program Elements

The Monitoring Program shall include the following elements:

1. **Receiving water monitoring** shall be performed at previously designated mass emission stations, TMDL receiving water compliance points (as designated in the most recently approved Monitoring Plans as identified in Table E-1 and Table E-2 of this MRP), and additional receiving water locations representative of the impacts from MS4 discharges. The objectives of the receiving water monitoring include the following:

¹ *In the Matter of the Petitions of The City of Oceanside, Fallbrook Public Utilities District, and the Southern California Alliance of Publicly Owned Treatment Works, For Review of WDR Order Nos. R9-2019-0166 [NPDES No. CA0107433] and R9-2019-0169 [NPDES No. CA0108031] (“Fallbrook”), State Water Resource Control Board Order WQ 2021-0005 at pp. 12-13 & n.31 (the plain language of section 13383 alone provides the Board the authority to establish monitoring and reporting requirements for MS4 discharges, and is consistent with the Clean Water Act).*

- a. Determine whether the receiving water limitations are being achieved including receiving water limitations derived from TMDL WLAs that apply in-stream,
 - b. Assess trends in pollutant concentrations over time, or during specified conditions,
 - c. Determine whether the designated beneficial uses are fully supported as determined by water chemistry, as well as aquatic toxicity and bioassessment monitoring.
2. **Stormwater outfall-based monitoring** shall be performed at outfall monitoring locations that are representative of the land uses within the Permittees' jurisdiction, and at TMDL outfall monitoring locations (as designated in the most recently approved Monitoring Plans as identified in Table E-1 and Table E-2 of this MRP). The objectives of the stormwater outfall-based monitoring program include the following:
- a. Determine whether a Permittee's discharge is in compliance with applicable stormwater WQBELs derived from TMDL WLAs that apply at the outfall,
 - b. Determine whether a Permittee's discharge causes or contributes to an exceedance of receiving water limitations that apply in-stream.
3. **Non-stormwater outfall-based monitoring** shall be performed at TMDL outfall monitoring locations (as designated in the most recently approved Monitoring Plans as identified in Table E-1 and Table E-2 of this MRP) and additional outfalls with significant non-stormwater (NSW) discharges that remain unaddressed after source identification. The objectives of the non-stormwater outfall-based monitoring program include the following:
- a. Determine whether a Permittee's discharge is in compliance with applicable non-stormwater WQBELs derived from TMDL WLAs that apply at the outfall,
 - b. Determine whether a Permittee's discharge contributes to or causes an exceedance of receiving water limitations that apply in-stream,
 - c. Assist a Permittee in identifying illicit discharges as described in Part VIII.I of the Order.
4. **Regional studies** are encouraged to further characterize the impact of the MS4 discharges on the beneficial uses of the receiving waters. Appropriate regional studies include the Southern California Stormwater Monitoring Coalition (SMC) Regional Watershed Monitoring Program, Southern California Bight Project, and special studies as specified in this MRP Parts X and XI, and approved TMDLs (see Part XV TMDL Reporting).

II. GENERAL MONITORING PROVISIONS

- A. Monitoring shall be conducted in accordance with the requirements specified in Attachment D of the Order (Part III, Standard Provisions – Monitoring).
- B. Records of monitoring information shall include information required under Attachment D of the Order (Part IV, Standard Provisions – Records).
- C. All applications, reports, plans, or other information submitted to the Los Angeles Water Board, State Water Board, and/or U.S. EPA shall be signed and certified in accordance with Attachment D of the Order (Part V.B, Standard Provisions - Reporting, Signatory and Certification Requirements).
- D. Monitoring results shall be reported in accordance with the requirements specified in Attachment D of the Order (Part V.C, Standard Provisions - Reporting, Monitoring Reports).
- E. All monitoring and reporting shall be conducted in accordance with the Standard Monitoring Provisions specified in Part XIII of this MRP.

- F.** Unless otherwise indicated in this MRP, if the Permittee(s) wishes to modify any monitoring requirements specified in this MRP including an approved Monitoring Program (e.g., reduce or eliminate monitoring of specified pollutants, reduce monitoring frequencies, change monitoring locations), then the Permittee(s) shall submit a written request to the Executive Officer of the Los Angeles Water Board for approval prior to making any modifications. This provision may be waived if the Los Angeles Water Board determines that the modification is (a) minor and (b) does not otherwise violate any applicable provision of law.

G. Sampling Methods

1. Sampling methods shall be implemented as per the Standard Provisions for Monitoring described in Attachment D of the Order and Part XIII of this MRP.
2. Grab samples shall be taken for constituents that are required to be collected as such (e.g., pathogen indicator bacteria, oil and grease, cyanides, and volatile organics); in instances where grab samples are generally expected to be sufficient to characterize water quality conditions (primarily dry weather); and where the sample location limits Permittees' ability to install an automated sampler.
3. At a minimum, a sufficient volume of sample must be collected to perform all the required biological and chemical tests, including TIEs where aquatic toxicity is observed during the sample event.
4. Monitoring methods for trash shall be conducted in accordance with the applicable requirements specified in Part III.B and Part IV.B.3 of the Order.
5. Flow may be estimated using U.S. EPA methods at receiving water monitoring locations, where flow measuring equipment is not in place.
6. Flow may be estimated for stormwater outfall monitoring based on drainage area, impervious cover, and precipitation data.

H. Analytical Procedures

1. All monitoring, sampling, sample preservation, and analyses must be conducted according to sufficiently sensitive test procedures approved under 40 CFR Part 136 for the analysis of pollutants, unless another test procedure is required under 40 CFR subchapter N or is otherwise specified in the Order for such pollutants. (40 CFR section 122.41(j)(4); 40 CFR § 122.21(e)(3); 79 Fed. Reg. 49001 (Aug. 19, 2014).)
2. Suspended-Sediment Concentration (SSC) shall be analyzed per American Society for Testing and Materials (ASTM) Standard Test Method D-3977-97.
3. For polychlorinated biphenyls (PCBs) in aqueous samples, Permittees are encouraged to conduct their analysis using a high-resolution EPA-approved method with recommended Reporting Levels of at least 20 pg/L for ocean waters and 170 pg/L for non-ocean marine waters and freshwater for each congener². At a minimum, PCBs shall be analyzed for all 55 PCB congeners listed in Table A-7 of the Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1, Sediment Quality Provisions.
4. Trash shall be analyzed in accordance with the applicable requirements specified in Part III.B and Part IV.B.3 of the Order.
5. Aquatic toxicity shall be monitored in accordance with Part IX of this MRP.
6. All parameters shall be analyzed according to the Standard Provisions for Monitoring described in Attachment D of the Order and Part XIII of this MRP.

² Non-ocean marine waters include enclosed bay, estuarine, and coastal lagoon waters.

7. Permittees shall use sufficiently sensitive analytical test methods that are consistent with 40 CFR Parts 122 and 136, and 40 CFR chapter I, subchapters N. While attainment of recommended Reporting Levels in Table E-6 of this MRP are not required, Permittees are encouraged to attain these recommended Reporting Levels to ensure that analytical test methods are capable of detecting and measuring constituents at, or below the applicable receiving water limitations and/or WQBELs.
- I. **Laboratory Certification.** Laboratories analyzing monitoring samples shall be certified by the State Water Board's Division of Drinking Water, Environmental Laboratory Accreditation Program (ELAP), and must include quality assurance/quality control (QA/QC) data with their reports. The Permittee shall provide a copy of the laboratory certification to the Los Angeles Water Board with their submittal of the Monitoring Report each time a new certification and/or renewal of the certification is obtained from ELAP.
- J. **Standard Operating Procedures (SOPs).** For any monitoring conducted under this MRP, Permittees shall continue to develop and maintain Standard Operation Procedures (SOP or SOPs). An SOP consists of five elements: Title page, Table of Contents, Procedures, Quality Assurance/Quality Control (QA/QC), and References. The SOP shall:
 1. Briefly describe the purpose of the work or process, including any regulatory information or standards that are appropriate to the process, and the scope to indicate what is covered.
 2. Denote what sequential procedures should be followed, divided into significant sections; e.g., possible interferences, equipment needed, equipment/instrument maintenance and calibration, personnel qualifications, and safety considerations.
 3. Describe QA/QC activities and list any cited or significant references.
 4. Include copies of field form templates.

III. MONITORING PROGRAMS

Los Angeles County Permittees shall continue to implement the most recent version of the monitoring programs specified in Table E-1 of this MRP until those monitoring programs are revised per this MRP. Ventura County Permittees shall develop an Integrated Monitoring Program (IMP) or Coordinated Integrated Monitoring Program (CIMP). Required elements of an IMP and CIMP and a schedule to revise or develop an IMP/CIMP are described below in this Part III.

A. Integrated Monitoring Program (IMP)

1. An Integrated Monitoring Program (IMP) provides flexibility to allow each Permittee to satisfy the monitoring requirements in this MRP. The IMP may leverage monitoring resources by selecting monitoring locations, parameters, or monitoring techniques that will satisfy multiple monitoring requirements.
2. The requirements of an approved TMDL Monitoring Plan may be modified by an IMP that is subsequently approved by the Executive Officer of the Los Angeles Water Board.
3. Where appropriate, the IMP may utilize alternative approaches to meet the General Objectives (Part I.A of this MRP). Sufficient justification shall be provided in the IMP for the alternative approach(es). Such alternative approaches shall be subject to public review and final approval by the Los Angeles Water Board Executive Officer.
4. At a minimum, the IMP must address all TMDL and non-TMDL monitoring requirements in this MRP, including receiving water monitoring, stormwater outfall-based monitoring, non-stormwater outfall-based monitoring, unless otherwise addressed by a separate Monitoring Plan(s).

B. Coordinated Integrated Monitoring Program (CIMP)

1. A Coordinated Integrated Monitoring Program (CIMP) provides flexibility to allow multiple Permittees to collaborate on a watershed or subwatershed basis to satisfy the monitoring requirements in the Order. Permittees are encouraged to coordinate their monitoring programs with other Permittees to develop and implement a CIMP. The CIMP may be county-wide or limited to a single watershed, or sub-watershed.
2. **Benefits of the CIMP Approach**
 - a. The CIMP may leverage monitoring resources by selecting monitoring locations, parameters, or monitoring techniques that will satisfy multiple monitoring requirements.
 - b. The CIMP provides Permittees opportunities to increase the cost efficiency and effectiveness of the monitoring program. The greatest efficiency may be achieved when a CIMP is designed and implemented on a watershed basis.
 - c. If Permittees opt to participate in regional studies, a CIMP may be employed to implement regional studies, where a single Permittee takes the lead in directing the study, and the other Permittees provide funding or in lieu services.
3. The requirements of an approved TMDL Monitoring Plan may be modified by a CIMP that is subsequently approved by the Executive Officer of the Los Angeles Water Board.
4. Where appropriate, the CIMP may utilize alternative approaches to meet the General Objectives (Part I.A of this MRP). Sufficient justification shall be provided in the CIMP for the alternative approach(es). Such alternative approaches shall be subject to public review and final approval by the Los Angeles Water Board Executive Officer.
5. A CIMP shall address all TMDL and non-TMDL monitoring requirements in this MRP, including receiving water monitoring, stormwater outfall-based monitoring, non-stormwater outfall-based monitoring.

C. Monitoring Requirements for IMP and/or CIMP

The IMP and/or CIMP must contain the following information:

1. **General**
 - a. A list of the participating Permittee(s).
 - b. A map (preferably GIS) delineating the geographic boundaries of the monitoring program including the receiving waters, the MS4 catchment drainages and outfalls, subwatershed boundaries (i.e., HUC 12), political boundaries, land use, and the proposed monitoring locations for both dry weather/non-stormwater and wet weather/stormwater monitoring.
 - c. Proposed monitoring locations and an explanation of how and why monitoring at the proposed locations will provide representative measurement of the effects of the MS4 discharges on the receiving water.
 - d. Alternative monitoring proposal(s) for any of the monitoring requirements in this MRP and a rationale for the alternative proposal(s) (e.g., monitoring location, monitoring frequency, wet/dry weather criteria, constituents to monitor).
 - e. A description of how the Permittee(s) is implementing monitoring requirements in this MRP (i.e., TMDL compliance monitoring, receiving water monitoring, stormwater outfall based monitoring, non-stormwater outfall-based screening and monitoring, and aquatic toxicity monitoring).

- f. If monitoring will occur at new locations not previously monitored and a Permittee(s) opts to install new monitoring infrastructure, the Permittee(s) shall propose a time schedule specifying when monitoring will commence at these stations.
- g. Test species sensitivity screening results for aquatic toxicity per Part IX.H.3 of this MRP.

2. TMDLs

- a. A description of how the Permittee(s) is fulfilling its obligations for TMDL compliance monitoring under an IMP, CIMP, or other monitoring plan(s). TMDL compliance monitoring shall be consistent with the recommendations within the TMDL and align with the requirements in Attachments K through S of the Order.
- b. A list of applicable TMDLs and TMDL compliance points, based on approved TMDL Monitoring Plans and/or as identified in the Basin Plan or U.S. EPA established TMDL.
- c. Identification of the proposed monitoring locations that fulfill the TMDL Monitoring Plan(s) requirements.
- d. Shoreline Monitoring Locations shall be monitored for bacterial indicators (e.g., total coliform, fecal coliform (or *E. coli*), and enterococcus) consistent with the applicable bacteria TMDL per the frequency proposed in a Monitoring Plan.

3. Mass Emission/Receiving Water Monitoring

- a. Location and description of receiving water locations,
- b. A description of how the Permittee(s) is contributing to the monitoring of mass emission stations or a discussion of why monitoring at mass emission stations is not being supported.

4. Stormwater Outfall-Based Monitoring

- a. Stormwater discharges from the MS4 shall be monitored at outfalls and/or alternative access points such as manholes or in channels at the Permittee's jurisdictional boundary.
- b. The Permittee(s) shall consider the following criteria when selecting outfalls for stormwater discharge monitoring:
 - i. The stormwater outfall-based monitoring program should ensure representative data by monitoring at least one major outfall per subwatershed (HUC 12) drainage area, within the Permittee's jurisdiction, or alternate approaches as approved in an IMP and/or CIMP.
 - ii. The drainage(s) to the selected outfall(s) shall be representative of the land uses within the Permittee's jurisdiction.
 - iii. If a Permittee is implementing an IMP, to the extent possible, the selected outfalls shall not receive drainage from another jurisdiction. If this is not possible, the Permittee shall conduct "upstream" and "downstream" monitoring as the system enters and exits the Permittee's jurisdiction.
 - iv. The Permittee(s) shall select outfalls with configurations that facilitate accurate flow measurement and in consideration of safety of monitoring personnel.
 - v. The specific location of sample collection may be within the MS4 upstream of the actual outfall to the receiving water if field safety or accurate flow measurement require it.

5. Other Monitoring Requirements

A description of how the Permittee(s) is implementing other monitoring requirements in this MRP (i.e., non-stormwater outfall-based screening and monitoring, aquatic toxicity monitoring, and if applicable, regional studies, and special studies).

D. Schedule for Submitting New/Revised Monitoring Programs

1. Los Angeles County Permittees

- a. Within 18 months of the effective date of the Order, Los Angeles County Permittee(s) with an existing Monitoring Program(s), as listed in Table E-1 of this MRP below, shall submit an updated monitoring program(s) for approval by the Executive Officer of the Los Angeles Water Board. Updates shall be consistent with applicable requirements in this MRP, monitoring provisions in applicable TMDLs, and specifically, with Attachments K through S of the Order.
- b. The cities of Compton and Gardena, which have a Board Directive for monitoring per Table E-1 of this MRP below, shall develop an IMP or join a CIMP. If developing an IMP, the cities shall submit it to the Los Angeles Water Board for Executive Officer approval no later than 18 months after the effective date of the Order. If joining a CIMP, the cities of Compton and Gardena shall notify the Los Angeles Water Board by the effective date of the Order.
- c. Los Angeles County Permittee(s) shall implement the revisions to their monitoring program(s) immediately upon approval, unless otherwise indicated in the approved monitoring program or directed by the Executive Officer of the Los Angeles Water Board.
- d. After adoption of the Order, if there is any change in which Permittees are participating in a CIMP, that Permittee shall notify the Los Angeles Water Board promptly. The Permittee(s) shall then revise/develop their monitoring program as directed by the Los Angeles Water Board.
- e. Monitoring requirements pursuant to Order No. R4-2012-0175 including MRP No. CI-6948 and Order No. R4-2014-0024 including MRP No. CI-8052 and pursuant to the most recently approved version of the Monitoring Programs in Table E-1 of this MRP shall remain in effect until the Executive Officer of the Los Angeles Water Board approves the respective updated Monitoring Program.

Table E-1. Approved Monitoring Programs by WMAs for Los Angeles County Permittees

| Los Angeles County Permittee / Group Name | Monitoring Program | Initial Approval Date |
|--|---------------------------|------------------------------|
| Upper Santa Clara River Watershed Group (Los Angeles County, LACFCD, and city of Santa Clarita) | CIMP | 09/02/2015 |
| Upper Los Angeles River Watershed Group (Los Angeles County, LACFCD, and cities of Alhambra, Burbank, Calabasas, Glendale, Hidden Hills, La Cañada Flintridge, Los Angeles, Montebello, Monterey Park, Pasadena, Rosemead, San Fernando, San Gabriel, San Marino, South El Monte, South Pasadena, and Temple City) | CIMP | 11/03/2015 |
| Los Angeles River Upper Reach 2 Sub Watershed Group (LACFCD and cities of Bell, Bell Gardens, Commerce, Cudahy, Maywood, and Huntington Park, and Vernon) | CIMP | 03/22/2016 |

| Los Angeles County Permittee / Group Name | Monitoring Program | Initial Approval Date |
|---|---------------------------|------------------------------|
| Lower Los Angeles River Watershed Group (LACFCD and cities of Downey, Lakewood, Long Beach, Lynwood, Paramount, Pico Rivera, Signal Hill, and South Gate) | CIMP | 09/16/2015 |
| Rio Hondo/San Gabriel River Water Quality Group (Los Angeles County, LACFCD, and cities of Arcadia, Azusa, Bradbury, Duarte, Monrovia, and Sierra Madre) | CIMP | 09/27/2015 |
| Upper San Gabriel River Group (Los Angeles County, LACFCD, and cities of Baldwin Park, Covina, Glendora, Industry, La Puente, West Covina, and South El Monte) | CIMP | 09/17/2015 |
| East San Gabriel Valley Watershed Management Area Group (cities of Claremont, La Verne, Pomona, and San Dimas) | CIMP | 09/23/2015 |
| Lower San Gabriel River Group (LACFCD, and cities of Artesia, Bellflower, Cerritos, Diamond Bar, Downey, Hawaiian Gardens, La Mirada, Lakewood, Long Beach, Norwalk, Pico Rivera, Santa Fe Springs, and Whittier) | CIMP | 09/16/2015 |
| Los Cerritos Channel Watershed Group (LACFCD, and cities of Bellflower, Cerritos, Downey, Lakewood, Long Beach, Paramount, and Signal Hill) | CIMP | 09/16/2015 |
| Malibu Creek Watershed Group (Los Angeles County, LACFCD, and Agoura Hills, Calabasas, Hidden Hills, and Westlake Village) | CIMP | 04/20/2016 |
| Marina del Rey Group (Los Angeles County, LACFCD, and cities of Culver City and Los Angeles) | CIMP | 08/21/2016 |
| North Santa Monica Bay Coastal Watersheds Group (Los Angeles County, LACFCD, and city of Malibu) | CIMP | 11/03/2015 |
| Santa Monica Bay Watershed Jurisdictions 2 & 3 Group (Los Angeles County, LACFCD, and cities of El Segundo, Los Angeles, and Santa Monica) | CIMP | 10/08/2015 |
| Beach Cities Watershed Management Group (LACFCD and cities of Hermosa Beach, Manhattan Beach, Redondo Beach, and Torrance) | CIMP | 11/23/2015 |
| Palos Verdes Peninsula Watershed Management Group (Los Angeles County, LACFCD, and cities of Palos Verdes Estates, Rancho Palos Verdes, Rolling Hills Estates, and Rolling Hills) | CIMP | 04/20/2016 |
| Ballona Creek Group (Los Angeles County, LACFCD, Beverly Hills, Culver City, Inglewood, Los Angeles, Santa Monica, and West Hollywood) | CIMP | 11/05/2015 |
| Dominguez Channel Watershed Management Area Group (Los Angeles County, LACFCD, and cities of Carson, El Segundo, Hawthorne, Inglewood, Lawndale, Lomita, and Los Angeles) | CIMP | 12/21/2015 |
| Alamitos Bay/Los Cerritos Channel Group (Los Angeles County and LACFCD) | CIMP | 09/22/2015 |

| Los Angeles County Permittee / Group Name | Monitoring Program | Initial Approval Date |
|--|------------------------------------|-----------------------|
| Santa Monica Bay Watershed Jurisdiction 7 Group (LACFCD and city of Los Angeles) | CIMP | 02/20/2017 |
| City of Compton | Board Directive | 09/05/2016 |
| City of El Monte | IMP | 01/20/2016 |
| City of Gardena | Board Directive | 11/21/2016 |
| City of Irwindale | IMP | 02/18/2016 |
| City of La Habra Heights | IMP | 11/02/2015 |
| City of Rolling Hills | NSW Screening & Monitoring Program | 12/08/2014 |
| City of Walnut | IMP | 09/04/2015 |
| City of Long Beach: Nearshore Watersheds (Port) | IMP | 07/06/2016 |
| City of Long Beach: Nearshore Watersheds (Non-Port) | IMP | 12/03/2016 |

2. Ventura County Permittees

- a. Ventura County Permittee(s) shall develop an IMP or CIMP or join an existing CIMP designed to satisfy the monitoring requirements in this MRP. Within 3 months of the effective date of the Order, Ventura County Permittee(s) shall submit a NOI to the Executive Officer of the Los Angeles Water Board describing whether it intends to develop in an IMP or CIMP or join an existing CIMP.
- b. Ventura County Permittee(s) shall submit the new or updated IMP or CIMP to the Executive Officer of the Los Angeles Water Board for approval within 24 months after the effective date of the Order.
- c. Ventura County Permittee(s) shall commence monitoring within 30 days after approval of the IMP, or within 90 days after approval of the CIMP unless otherwise directed by the Executive Officer of the Los Angeles Water Board.
- d. Monitoring requirements pursuant to Order No. 2010-0108 including MRP No. CI-7388 and pursuant to the most recently approved version of the Monitoring Plans in Table E-2 shall remain in effect until the Executive Officer of the Los Angeles Water Board approves the IMP(s) or CIMP(s).

Table E-2. TMDL Monitoring Plans by WMA for Ventura County Permittees

| TMDL | Comment | Date of Final Plan | Los Angeles Water Board Approval Date |
|---|--|--------------------|---------------------------------------|
| Ventura River Watershed Management Area | | | |
| Ventura River and its Tributaries Algae, Eutrophic Conditions, and Nutrients TMDL | Ventura River and Tributaries Algae, Eutrophic Conditions, and Nutrients Total Maximum Daily Load Draft Comprehensive Monitoring Plan for Receiving Waters | June 27, 2014 | October 20, 2014 |
| Ventura River Estuary Trash TMDL | Ventura River Estuary Trash Monitoring and Reporting Plan (TMRP) – Addendum No. 1 | October 22, 2014 | October 23, 2013 |
| Miscellaneous Ventura County Coastal Watershed Management Area | | | |

| TMDL | Comment | Date of Final Plan | Los Angeles Water Board Approval Date |
|---|--|---------------------------|---|
| Harbor Beaches of Ventura County (Kiddie Beach and Hobie Beach) Bacteria TMDL | Ocean Water Quality Monitoring Program by Ventura County Environmental Health | N/A | Board approval not required unless modifying the existing monitoring frequency or location. |
| Santa Clara River Watershed Management Area | | | |
| Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL | Final In-Stream Compliance Monitoring Plan for Santa Clara River Estuary and Reach 3 Bacteria Total Maximum Daily Load | May 10, 2016 | April 11, 2016 |
| Santa Clara River Nitrogen Compounds TMDL | Comprehensive Water Quality Monitoring Plan for the Santa Clara River Watershed | March 2006 | Has not been approved yet |
| Santa Clara River Reach 3 Chloride TMDL | U.S. EPA Established TMDL | N/A | N/A |
| Upper Santa Clara River Chloride TMDL | Monitoring Plan was not required. | N/A | N/A |
| Calleguas Creek Watershed Management Area | | | |
| Calleguas Creek Nitrogen Compounds and Related Effects TMDL | Calleguas Creek Watershed Management Plan Quality Assurance Project Plan Revision No.4 | September 8, 2020 | May 24, 2021 |
| Calleguas Creek, its Tributaries, and Mugu Lagoon OC Pesticides TMDL | Calleguas Creek Watershed Management Plan Quality Assurance Project Plan Revision No.4 | September 8, 2020 | May 24, 2021 |
| Calleguas Creek, its Tributaries, and Mugu Lagoon Toxicity TMDL | Calleguas Creek Watershed Management Plan Quality Assurance Project Plan Revision No.4 | September 8, 2020 | May 24, 2021 |
| Calleguas Creek, its Tributaries, and Mugu Lagoon Metals TMDL | Calleguas Creek Watershed Management Plan Quality Assurance Project Plan Revision No.4 | September 8, 2020 | May 24, 2021 |
| Calleguas Creek Watershed Salts TMDL | Calleguas Creek Watershed Management Plan Quality Assurance Project Plan Revision No.4 | September 8, 2020 | May 24, 2021 |
| Revolon Slough and Beardsley Wash Trash TMDL | Revolon Slough/ Beardsley Wash Trash Monitoring and Reporting Plan (TMRP)- Addendum No. 2 | August 6, 2020 | June 4, 2021 |

| TMDL | Comment | Date of Final Plan | Los Angeles Water Board Approval Date |
|---|---|-----------------------------|--|
| Oxnard Drain TMDL for Pesticides, PCBs, and Sediment Toxicity | U.S. EPA Established TMDL | N/A | N/A |
| Santa Monica Bay Watershed Management Area | | | |
| Santa Monica Beaches Bacteria TMDL (wet and dry) | Santa Monica Bay Beaches Bacteria TMDL Coordinated Shoreline Monitoring Plan | April 7, 2004 | April 28, 2004 |
| Santa Monica Bay Nearshore and Offshore Debris TMDL | Submission for Malibu Creek Watershed Trash TMDL satisfies the requirement for a TMRP | -- | -- |
| | Plastic Pellets Monitoring and Reporting Plan (PMRP) Exemption Request | April 26, 2013 | August 30, 2013 |
| Malibu Creek Subwatershed | | | |
| Malibu Creek and Lagoon Bacteria TMDL | Malibu Creek and Lagoon Bacteria TMDL Compliance Monitoring Plan | February 25, 2008 | April 8, 2008 |
| Malibu Creek Watershed Trash TMDL | Trash Monitoring and Reporting Program Update for the Malibu Creek Watershed Trash TMDL | August 6, 2020 | June 3, 2021 |
| Implementation Plan for the U.S. EPA-Established Malibu Creek Nutrients TMDL and the U.S. EPA-Established Malibu Creek and Lagoon Sedimentation and Nutrients TMDL to Address Benthic Community Impairments | (U.S. EPA Established TMDL) Monitoring Plan due May 16, 2019 | No Monitoring Plan received | -- |

IV. MONITORING LOCATIONS FOR VENTURA COUNTY PERMITTEES

A. Receiving Water Monitoring Locations

1. Inland Receiving Water Monitoring Locations

- a. Ventura County Permittee(s) shall include the following receiving water monitoring³ locations listed below in Table E-3 of this MRP in their IMP or CIMP and continue to monitor at these locations:

³ These receiving water monitoring locations were known as mass emissions stations in the previous Ventura County MS4 Permit Order No. R4-2010-0108.

Table E-3. Receiving Water Monitoring Locations

| Receiving Water | Monitoring Location Name | Monitoring Location Description |
|-------------------|--------------------------|---|
| Ventura River | ME-VR2 | Ventura River at Ojai Valley Sanitation District Latitude: 34.34305° Longitude: - 119.29888° |
| Santa Clara River | ME-SCR | Santa Clara River at Freeman Diversion Latitude: 34.29917° Longitude: -119.10722° |
| Calleguas Creek | ME-CC | Calleguas Creek at Camarillo Street Latitude: 34.17917° Longitude: -119.03889° |

- b. Notwithstanding subpart a above, Ventura County Permittees may propose additional or alternative monitoring locations in their IMP or CIMP as necessary to satisfy the requirements of this MRP.
- c. In the IMP or CIMP, Ventura County Permittee(s) shall propose a receiving water monitoring location in the Malibu Creek subwatershed within Ventura County. This monitoring location shall be representative of the impacts from MS4 discharges.

2. Shoreline Monitoring Locations

Ventura County Permittees shall continue to monitor for indicator bacteria (i.e., fecal coliform (or E. coli) and enterococcus) at the following shoreline monitoring locations listed below in Table E-4 of this MRP and, shall include these monitoring locations in their IMP or CIMP. Sampling for indicator bacteria at shoreline monitoring locations shall be conducted once a week, at a minimum.

Table E-4. Shoreline Monitoring Locations

| Site ID | Site Description | Monitoring Location Latitude (North) | Monitoring Location Longitude (West) | Receiving Water |
|---------|---|--------------------------------------|--------------------------------------|-----------------|
| 2500 | La Conchita Beach | 34.36420° | -119.45010° | Pacific Ocean |
| 13000 | Surfer's Point at Seaside Park – end of the access path via wooden gate | 34.27301° | -119.30503° | Pacific Ocean |
| 14000 | Promenade Park Beach – Figueroa Street | 34.27441° | -119.29764° | Pacific Ocean |
| 15000 | Promenade Park Beach – Redwood Apts | 34.27534° | -119.29548° | Pacific Ocean |
| 17000 | Promenade Park Beach – Calif. Street | 34.27566° | -119.29303° | Pacific Ocean |
| 18000 | San Buenaventura State Beach - Kalorama Street | 34.27362° | -119.28883° | Pacific Ocean |

| Site ID | Site Description | Monitoring Location Latitude (North) | Monitoring Location Longitude (West) | Receiving Water |
|---------|---|--------------------------------------|--------------------------------------|-----------------|
| 19000 | San Buenaventura State Beach – south of drain at San Jon Road | 34.27223° | -119.28518° | Pacific Ocean |
| 20000 | San Buenaventura State Beach – Dover Lane | 34.26587° | -119.27786° | Pacific Ocean |
| 21000 | San Buenaventura State Beach – Waymouth Lane | 34.25690° | -119.27153° | Pacific Ocean |
| 29000 | Oxnard Beach – 5th Street | 34.19789° | -119.24869° | Pacific Ocean |
| 30000 | Oxnard Beach – Outrigger Way | 34.19035° | -119.24458° | Pacific Ocean |
| 32000 | Oxnard Beach Park – Falkrik Avenue | 34.17873° | -119.23846° | Pacific Ocean |
| 33000 | Oxnard Beach Park – Starfish Drive | 34.17652° | -119.23708° | Pacific Ocean |
| 39000 | Silverstrand Beach – S. Paula | 34.15244° | -119.22010° | Pacific Ocean |
| 40000 | Silverstrand Beach - Sawtelle | 34.14739° | -119.21683° | Pacific Ocean |

B. Stormwater Outfall-Based Monitoring Locations

In lieu of monitoring at least one major outfall per subwatershed (HUC 12) drainage area, within the Permittee’s jurisdiction, Ventura County Permittee(s) shall continue to monitor the following monitoring locations in Table E-5 of this MRP and shall include these monitoring locations in their IMP or CIMP. The drainage(s) to the selected stormwater outfall(s) shall be representative of the land uses within the Ventura County Permittee’s jurisdiction:

Table E-5. Stormwater Outfall Monitoring Locations

| Permittee | Major Outfalls / Locations | Monitoring Location Latitude (North) | Monitoring Location Longitude (West) | Receiving Water / Watershed |
|-----------|--------------------------------|--------------------------------------|--------------------------------------|--|
| Camarillo | MO-CAM / Camarillo Hills Drain | 34.219517° | - 119.066053° | Tributary to Revolon Slough / Calleguas Creek Watershed |
| Ojai | MO-OJA / Fox Canyon Drain | 34.444744° | - 119.241219° | Tributary to San Antonio Creek / Ventura River Watershed |

| Permittee | Major Outfalls / Locations | Monitoring Location Latitude (North) | Monitoring Location Longitude (West) | Receiving Water / Watershed |
|-------------------------------|--|--------------------------------------|--------------------------------------|---|
| Unincorporated Ventura County | MO-MEI / Happy Valley Drain | 34.445539° | - 119.290319° | Tributary to Ventura River / Ventura River Watershed |
| Ventura | MO-VEN / Moon Ditch | 34.243561° | - 119.194986° | Tributary to Santa Clara River / Santa Clara River Watershed |
| Fillmore | MO-FIL / North Fillmore Drain | 34.404586° | -118.930686° | Tributary to Sespe Creek / Santa Clara River Watershed |
| Moorpark | MO-MPK / Walnut Canyon Drain | 34.279053° | - 118.905425° | Tributary to Arroyo Las Posas / Calleguas Creek Watershed |
| Oxnard | MO-OXN / El Rio Drain | 34.236139° | - 119.184425° | Tributary to Santa Clara River / Santa Clara River Watershed |
| Port Hueneme | MO-HUE / Hueneme Drain | 34.140808° | - 119.188217° | Tributary to Tsumas Creek ⁴ at the Pacific Ocean / Miscellaneous Ventura County Coastal Watersheds |
| Santa Paula | MO-SPA / 11th Street Drain (Santa Paula Airport) | 34.348608° | - 119.055506° | Tributary to Santa Clara River / Santa Clara River Watershed |
| Simi Valley | MO-SIM / Bus Canyon Drain | 34.272097° | - 118.783736° | Tributary to Arroyo Simi / Calleguas Creek Watershed |
| Thousand Oaks | MO-THO / North Fork Arroyo Conejo | 34.213311° | - 118.921397° | Tributary to Conejo Creek / Calleguas Creek Watershed |

1. Notwithstanding Part IV.B above, Ventura County Permittees may propose additional or alternative monitoring locations in their IMP or CIMP as necessary to satisfy the requirements of this MRP.
2. Ventura County Permittee(s) shall propose an outfall monitoring location in Malibu Creek subwatershed within Ventura County in their IMP or CIMP.

⁴ Tsumas Creek was formerly known as J Street Drain.

V. RECEIVING WATER MONITORING REQUIREMENTS

A. Minimum Wet Weather Receiving Water Monitoring Requirements

All Permittees shall incorporate in their monitoring program the following minimum requirements for monitoring the receiving water during wet weather conditions:

1. Unless required more frequently by an applicable TMDL, the receiving water shall be monitored a minimum of three times per water year during wet weather for all parameters, except aquatic toxicity which must be monitored at least once per water year during wet weather.
2. Monitoring shall be performed in the receiving water during wet weather conditions, defined for the purposes of this monitoring program as follows:
 - a. Monitoring shall occur during wet weather conditions, including targeting the first significant storm event of the water year following the criteria below, and at least two additional wet weather events within the same wet season.
 - i. **First Significant Storm Event.** Permittees shall target the first storm event of the water year with a predicted rainfall of at least 0.25 inch at a seventy percent probability of rainfall at least 24 hours prior to the event start time.
 - ii. **Subsequent Wet Weather Events.** Permittees shall target subsequent storm events that forecast sufficient rainfall and runoff to meet program objectives and site-specific study needs. Wet weather is defined as greater than or equal to 0.1 inch of precipitation, as measured from the nearest Los Angeles County or Ventura County Watershed Protection District controlled rain gauge within the watershed.
 - b. As an alternative to subpart a above, Permittees may propose:
 - i. An alternative precipitation threshold in a Monitoring Program for Los Angeles Water Board Executive Officer approval and/or,
 - ii. A precipitation threshold as defined by applicable TMDLs within the watershed.
 - c. Sampling events shall be separated by a minimum of three days of dry conditions (less than 0.1 inch of rain each day).
3. Receiving water monitoring during wet weather shall be conducted as soon as possible (within 6 hours)⁵ of starting stormwater outfall-based monitoring, to be reflective of potential impacts from MS4 discharges.
4. At a minimum, the following parameters shall be monitored during wet weather unless a surrogate pollutant has been approved by the Executive Officer of the Los Angeles Water Board.
 - a. Flow,
 - b. Pollutants assigned a wet weather receiving water limitation derived from TMDL WLAs (see Attachments K through S of the Order) and parameters to determine compliance with receiving water limitations,

⁵ Marine waters receiving water monitoring where a boat is used to collect samples during wet weather shall be conducted as soon as conditions are safe for small crafts (as defined by the National Oceanic and Atmospheric Administration's) to be reflective of potential impacts from MS4 discharges.

- c. Other pollutants identified on the CWA section 303(d) List for the receiving water or downstream receiving waters. Permittees may propose in a Monitoring Program not to monitor for specific 303(d) listed pollutant(s), if one or more of the following applies:
 - i. If the Permittee(s) demonstrates, using recent monitoring data, that the waterbody is no longer impaired; and/or
 - ii. If the Permittees(s) demonstrates, using relevant information, that there is no MS4 source causing or contributing to the impairment in the receiving water.
 - d. Total Suspended Solids (TSS) and hardness, when metals are monitored,
 - e. Suspended-Sediment Concentration (SSC) if the receiving water is listed on the CWA section 303(d) list for sedimentation, siltation or turbidity,⁶
 - f. Field measurements applicable to inland freshwater bodies only: pH, dissolved oxygen, temperature, and specific conductivity,
 - g. Aquatic Toxicity (once per water year, during first storm event of the water year).
5. Additionally, the screening parameters in Table E-6 of this MRP shall be monitored during wet weather in the first water year during the first significant rain event. If a parameter is at or below the Reporting Level (RL) per Part II.H.7 of this MRP, or the result is below the lowest applicable water quality objective, and is not otherwise identified in subparts 4.a-4.g above, it need not be further analyzed. Otherwise, the parameter shall be analyzed for the remainder of the Order during wet weather at the receiving water monitoring location where the exceedance was found. The Permittee(s) may propose in a Monitoring Program not to monitor for specific constituents in Table E-6 of this MRP if it is not a constituent listed above in subparts 4.a-4.g and the Permittee(s) demonstrates with relevant information that there is no MS4 source causing or contributing to exceedances in the receiving water and/or recent data shows that the result is at or below the RL per Part II.H.7 of this MRP, or below the lowest applicable water quality objective.

B. Minimum Dry Weather Receiving Water Monitoring Requirements

All Permittees shall incorporate the following minimum requirements for monitoring the receiving water during dry weather conditions:

1. Unless required more frequently by an applicable TMDL, the receiving water shall be monitored a minimum of two times per water year during dry weather for all parameters, except aquatic toxicity which must be monitored at least once per water year during dry weather.
 - a. **Historically Driest Month.** One of the dry weather monitoring events shall be during the month with the historically lowest instream flows. Where instream flow data are not available, monitoring shall occur during the historically driest month. Dry weather occurs on days with less than 0.1 inch of rain as measured from the nearest Los Angeles County or Ventura County Watershed Protection District controlled rain gauge within the watershed.
 - b. **Additional Dry Weather Event.** The additional dry weather monitoring event shall occur on days with less than 0.1 inch of rain as measured from the nearest Los Angeles County or Ventura County Watershed Protection District controlled rain gauge within the watershed.

⁶ Gray, John, R., G. Douglas Glysson, Lisa M. Turcios, and Gregory E. Schwarz. 2000. *Comparability of Suspended-Sediment Concentration and Total Suspended Solids Data*. United States Geological Survey. Water Resources Investigations Report 00-4191. August 2000.

- 2.** As an alternative to subpart 1 above, Permittees may propose:
 - a.** An alternative criterion in a Monitoring Program for Los Angeles Water Board Executive Officer approval and/or,
 - b.** A criterion as defined by applicable TMDLs within the watershed.
- 3.** Dry weather sampling shall occur at least three days after a rain event of 0.1 inch or greater.
- 4.** At a minimum the following parameters shall be monitored during dry weather, unless a surrogate pollutant has been approved by the Executive Officer of the Los Angeles Water Board:
 - a.** Flow,
 - b.** Pollutants assigned a dry weather receiving water limitation derived from TMDL WLAs (see Attachments K through S of the Order) and parameters to determine compliance with receiving water limitations,
 - c.** Other pollutants identified on the CWA section 303(d) List for the receiving water or downstream receiving waters. Permittees may propose in a Monitoring Program not to monitor for 303(d) listed pollutant(s) if one or more of the following applies:
 - i.** If the Permittee(s) demonstrates, using recent monitoring data, that the receiving water is no longer impaired by the 303(d) listed pollutant(s); and/or
 - ii.** If the Permittees(s) demonstrates, using relevant information, that there is no MS4 source causing or contributing to the impairment in the 303(d) listed receiving water.
 - d.** TSS and hardness, when metals are monitored,
 - e.** Suspended-Sediment Concentration (SSC) if the receiving water is listed on the CWA section 303(d) list for sedimentation, siltation or turbidity,
 - f.** Field measurements for monitoring of inland freshwater bodies: dissolved oxygen, pH, temperature, and specific conductivity,
 - g.** Aquatic Toxicity (once per water year, during the historically driest month).
- 5.** Additionally, the parameters in Table E-6 shall be monitored during dry weather in the first water year during the historically driest weather event. If a parameter is at or below the Reporting Level (RL) per Part II.H.7 of this MRP, or the result is below the lowest applicable water quality objective, and is not otherwise identified in subparts 4.a-4.g above, it need not be further analyzed. Otherwise, the parameter shall be analyzed for the remainder of the Order during dry weather at the receiving water monitoring location where the exceedance was found. The Permittee(s) may propose in a Monitoring Program not to monitor for specific constituents in Table E-6 of this MRP if it is not a constituent listed above in subparts 4.a-4.g and the Permittee(s) demonstrates with relevant information that there is no MS4 source causing or contributing to exceedances in the receiving water and/or recent data shows that the result is at or below the RL per Part II.H.7 of this MRP, or below the lowest applicable water quality objective.

Table E-6. Core Monitoring Constituents and their Associated Recommended Reporting Levels (RLs)⁷

| CONSTITUENTS | Recommended RLs |
|--|------------------------|
| CONVENTIONAL POLLUTANTS | mg/L |
| Oil and Grease | 5 |
| Total Phenols | 0.1 |
| Cyanide | 0.005 |
| pH | 0-14 units |
| Temperature | N/A |
| Dissolved Oxygen | N/A |
| BACTERIA⁸ | MPN/100ml |
| Enterococcus (marine waters) | 30 |
| Fecal coliform (ocean waters) | 200 |
| E. coli (freshwater) | 100 |
| GENERAL | mg/L |
| Orthophosphate as P (Dissolved) | 0.05 |
| Total Phosphorus | 0.05 |
| Turbidity | 0.1 NTU |
| Total Suspended Solids (TSS) | 2 |
| Total Dissolved Solids (TDS) | 2 |
| Suspended Sediment Concentration (SSC) | 5 |
| Total Organic Carbon (TOC) | 1 |
| Dissolved Organic Carbon (DOC) | 0.2 |
| Total Petroleum Hydrocarbon | 5 |
| Biochemical Oxygen Demand (BOD) | 2 |
| Chemical Oxygen Demand (COD) | 20 |
| Total Ammonia-Nitrogen | 0.1 |
| Total Kjeldahl Nitrogen | 0.1 |
| Nitrate+Nitrite | 0.1 |
| Alkalinity | 2 |
| Specific Conductance | 1 umho/cm |
| Total Hardness | 2 |
| MBAS | 0.5 |
| Chloride | 2 |
| Fluoride | 0.1 |
| Methyl tertiary butyl ether (MTBE) | 0.013 |
| Perchlorate | 0.006 |
| METALS (Dissolved & Total) | µg/L |
| Aluminum | 87 |
| Antimony | 0.5 |
| Arsenic | 1 |
| Beryllium | 0.5 |
| Cadmium | 0.25 |
| Chromium (total) | 0.5 |
| Chromium (Hexavalent) | 2 |
| Copper | 0.5 |

⁷ See Attachment A for RLs, MLs, and MDLs definition.

⁸ See Attachment A for definitions of freshwater, marine waters, and ocean waters.

| CONSTITUENTS | Recommended RLs |
|--|----------------------------|
| Iron | 100 |
| Lead | 0.5 |
| Mercury | 0.04 |
| Nickel | 1 |
| Selenium | 1 |
| Silver | 0.25 |
| Thallium | 0.24 |
| Zinc | 1 |
| SEMIVOLATILE ORGANIC COMPOUNDS - ACIDS | µg/L |
| 2-Chlorophenol | 1 |
| 4-Chloro-3-methylphenol (3-Methyl-4-Chlorophenol) | 1 |
| 2,4-Dichlorophenol | 1 |
| 2,4-Dimethylphenol | 2 |
| 2,4-Dinitrophenol | 4 |
| 2-Nitrophenol | 10 |
| 4-Nitrophenol | 5 |
| Pentachlorophenol | 1 |
| Phenol | 1 |
| 2,4,6-Trichlorophenol | 1 |
| SEMIVOLATILE ORGANIC COMPOUNDS - BASE/NEUTRAL | µg/L |
| Acenaphthene | 1 |
| Acenaphthylene | 1 |
| Anthracene | 1 |
| Benzidine | 5 |
| 1,2 Benzanthracene (benzo[a]anthracene) | 1 |
| Benzo(a)pyrene | 1 |
| Benzo(g,h,i)perylene (1,12-benzoperylene) | 2 |
| 3,4 Benzofluoranthene (benzo[b]fluoranthene) | 1 |
| Benzo(k)fluoranthene | 1 |
| Bis(2-Chloroethoxy) methane | 4.4 |
| Bis(2-Chloroisopropyl) ether | 2 |
| Bis(2-Chloroethyl) ether | 1 |
| Bis(2-Ethylhexyl) phthalate | 5 |
| 4-Bromophenyl phenyl ether | 5 |
| Butyl benzyl phthalate (Benzyl butyl phthalate) | 1 |
| 2-Chloroethyl vinyl ether (Chloroethyl Vinyl Ether, 2) | 1 |
| 2-Chloronaphthalene | 7.5 |
| 4-Chlorophenyl phenyl ether | 5 |
| Chrysene | 1 |
| Dibenzo(a,h)anthracene | 0.1 |
| 1,3-Dichlorobenzene | 1 |
| 1,4-Dichlorobenzene | 1 |
| 1,2-Dichlorobenzene (Dichlorobenzene, 1,2-) | 1 |
| 3,3'-Dichlorobenzidine | 5 |
| Diethyl phthalate | 2 |
| Dimethyl phthalate | 2 |
| di-n-Butyl phthalate | 3 |

| CONSTITUENTS | Recommended RLs |
|---|----------------------------|
| 2,4-Dinitrotoluene | 1 |
| 2,6-Dinitrotoluene | 5 |
| 4,6 Dinitro-2-methylphenol (2-Methyl-4,6-dinitrophenol) | 5 |
| 1,2-Diphenylhydrazine | 1 |
| di-n-Octyl phthalate | 3 |
| Fluoranthene | 0.05 |
| Fluorene | 0.1 |
| Hexachlorobenzene | 1 |
| Hexachlorobutadiene | 1 |
| Hexachloro-cyclopentadiene | 1 |
| Hexachloroethane | 1 |
| Indeno(1,2,3-c,d)pyrene | 0.05 |
| Isophorone | 1 |
| Naphthalene | 0.2 |
| Nitrobenzene | 1 |
| N-Nitrosodimethyl amine | 1 |
| N-Nitrosodiphenyl amine | 1 |
| N-Nitrosodi-n-propyl amine | 1 |
| Phenanthrene | 0.05 |
| Pyrene | 0.05 |
| 1,2,4-Trichlorobenzene | 1 |
| CHLORINATED PESTICIDES | µg/L |
| Aldrin | 0.005 |
| alpha-BHC (alpha-HCH) | 0.01 |
| beta-BHC (beta-HCH) | 0.005 |
| delta-BHC (delta-HCH) | 0.005 |
| gamma-BHC (lindane) (gamma-HCH) | 0.01 |
| alpha-chlordane | 0.025 |
| gamma-chlordane | 0.025 |
| 4,4'-DDD | 0.025 |
| 4,4'-DDE | 0.025 |
| 4,4'-DDT | 0.005 |
| Dieldrin | 0.005 |
| alpha-Endosulfan | 0.02 |
| beta-Endosulfan | 0.01 |
| Endosulfan sulfate | 0.01 |
| Endrin | 0.005 |
| Endrin aldehyde | 0.01 |
| Heptachlor | 0.01 |
| Heptachlor Epoxide | 0.01 |
| Toxaphene | 0.5 |
| POLYCHLORINATED BIPHENYLS (PCBs)^{9, 10} | pg/L |

⁹ For subsequent monitoring after the first water year, PCBs may be monitored once during wet weather and once during dry weather for monitoring locations that are not subject to Toxics TMDLs.

¹⁰ Analysis should include at a minimum, all 55 PCB congeners listed in Table A-7 of the Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1, Sediment Quality Provisions.

| CONSTITUENTS | Recommended RLs |
|--|----------------------------|
| Congeners (ocean waters) | 20 |
| Congeners (non-ocean marine waters & freshwater) ¹¹ | 170 |
| ORGANOPHOSPHATE PESTICIDES | µg/L |
| Atrazine | 1 |
| Chlorpyrifos | 0.01 |
| Cyanazine | 2 |
| Diazinon | 0.01 |
| Malathion | 0.1 |
| Prometryn | 2 |
| Simazine | 2 |
| HERBICIDES | µg/L |
| 2,4-D | 10 |
| Glyphosate | 5 |
| Dacthal (DCPA) | 0.1 |
| 2,4,5-TP(SILVEX) | 0.5 |
| PYRETHROIDS | µg/L |
| Bifenthrin | 0.002 |
| Cyfluthrin | 0.002 |
| Cypermethrin | 0.002 |
| Esfenvalerate | 0.002 |
| Lambda-cyhalothrin | 0.002 |
| Permethrin | 0.005 |
| FIPRINOL AND ITS DEGRADATES | µg/L |
| Fipronil | 0.002 |
| Fipronil Sulfide | 0.002 |
| Fipronil Sulfone | 0.002 |
| Fipronil Desulfinyl | 0.002 |
| NEONICOTINOIDS | µg/L |
| Imidacloprid | 0.5 |

VI. STORMWATER OUTFALL-BASED MONITORING REQUIREMENTS

A. Minimum Wet Weather Stormwater Outfall-based Monitoring Requirements

All Permittees shall incorporate in their monitoring program the following minimum requirements for monitoring stormwater at outfalls:

1. Unless required more frequently by an applicable TMDL, stormwater discharges shall be monitored a minimum of three times per water year for all parameters except aquatic toxicity.
2. Monitoring shall be performed at the outfalls during wet weather conditions, defined for the purposes of this monitoring program as follows:
 - a. Monitoring shall occur during wet weather conditions, including targeting the first significant rain event of the water year following the criteria below, and at least two additional wet weather events within the same wet season.

¹¹ Non-ocean marine waters include enclosed bay, estuarine, and coastal lagoon waters.

- i. **First Significant Rain Event.** Permittees shall target the first storm event of the water year with a predicted rainfall of at least 0.25 inch at a seventy percent probability of rainfall at least 24 hours prior to the event start time.
 - ii. **Subsequent Wet Weather Events.** Permittees shall target subsequent storm events that forecast sufficient rainfall and runoff to meet program objectives and site-specific study needs. Wet weather is defined as greater than or equal to 0.1 inch of precipitation, as determined by the closest rain gauge to the catchment area draining to the outfall.
 - b. As an alternative to subpart a above, Permittees may propose:
 - i. An alternative precipitation threshold in a Monitoring Program for Los Angeles Water Board Executive Officer approval and/or,
 - ii. A precipitation threshold as defined by applicable TMDLs within the watershed.
 - c. Sampling events shall be separated by a minimum of three days of dry conditions (less than 0.1 inch of rain each day).
3. At a minimum, the following parameters shall be monitored unless a surrogate pollutant has been approved by the Executive Officer of the Los Angeles Water Board:
 - a. Flow,
 - b. Pollutants assigned a WQBEL derived from TMDL WLAs (see Attachments K through S of the Order) and parameters to determine compliance with WQBELs,
 - c. Other pollutants identified on the CWA section 303(d) List for the receiving water or downstream receiving waters the outfall discharges to consistent with Part V.A.4.c of this MRP,
 - d. TSS and hardness, when metals are monitored,
 - e. Suspended Sediment Concentration (SSC) if the receiving water the outfall is discharging to is listed on the CWA Section 303(d) list for sedimentation, siltation or turbidity,
 - f. Field measurements applicable to inland freshwater bodies only: pH, dissolved oxygen, temperature, and specific conductivity,
 - g. A toxicant or class of toxicants that is identified through a TIE conducted during wet weather at a receiving water monitoring location. Permittees shall analyze for the toxicant(s) during the next scheduled sampling event in the discharge from the outfall(s) upstream of the receiving water location.
4. Other parameters in Table E-6 of this MRP identified as exceeding the lowest applicable water quality objective in the nearest downstream receiving water monitoring location per Part V.A.5 of this MRP.
5. **Sampling Methods**
 - a. Grab samples may be collected in specific situations as allowed by Part II.G.2 of this MRP.
 - b. For all other constituents, flow-weighted composite samples must be collected such that samples are representative of changes in pollutant concentrations and runoff flows during the stormwater discharge. Permittees shall use the following methods or propose an alternative protocol in their IMP or CIMP:

- i. Flow-weighted composite samples shall be collected during the first 24 hours of the stormwater discharge, or during the entire stormwater discharge if the discharge is less than 24 hours;
- ii. Flow-weighted composite samples shall be collected using a minimum of 3 sample aliquots taken in each hour of the stormwater discharge for the entire stormwater discharge or for the first three hours of the stormwater discharge, with each aliquot collection being separated by a minimum of 15 minutes.
- iii. If Permittees propose an alternative sample aliquot collection frequency, the pacing at which aliquots are collected during the sampling period should be representative of the changes in pollutant concentration and runoff flows during the stormwater discharge.

VII. NON-STORMWATER OUTFALL-BASED SCREENING AND MONITORING REQUIREMENTS

Permittees shall include in their monitoring program a non-stormwater outfall-based screening and monitoring program that documents, with written procedures on how requirements in Part VII of this MRP will be implemented.

A. Objectives of the Non-Stormwater Outfall-Based Screening and Monitoring Program

The Permittee(s) shall implement an outfall-based screening and monitoring program to meet the following objectives:

1. Develop criteria or other means to ensure that all outfalls with significant non-stormwater discharges are identified and assessed during the term of the Order.
2. For outfalls determined to have significant non-stormwater flow, determine whether flows are the result of illicit discharges, authorized or conditionally exempt non-stormwater flows, natural flows, or from unknown sources.
3. Address illicit discharges in accordance with the IDDE Program (Part VIII.I of the Order) for appropriate action.
4. Prioritize monitoring of outfalls considering the potential threat to the receiving water and applicable TMDL compliance schedules.
5. Based on existing screening or monitoring data or other institutional knowledge, assess the impact of non-stormwater discharges (other than identified illicit discharges) on the receiving water.
6. Conduct monitoring and assess the monitoring data to determine the impact of non-stormwater discharges on the receiving water.
7. Conduct monitoring or other investigations to identify the source of pollutants in non-stormwater discharges, consistent with the IDDE Program.
8. Use results of the screening process to evaluate the conditionally exempt non-stormwater discharges identified in Parts III.A.2 and III.A.3 of the Order and take appropriate actions pursuant to Part III.A.5.c of the Order for those discharges that have been found to be a source of pollutants.
9. Maximize the use of Permittee resources by integrating the screening and monitoring process into existing monitoring and/or screening efforts.

B. Screening of Outfalls with Significant Non-Stormwater Discharge

Based on the inventory of outfalls required under Part VIII of this MRP, all Permittee(s) shall develop and implement written procedures explaining the screening criteria to identify outfalls

with significant non-stormwater discharges. Significant non-stormwater discharges may be determined by one or more of the following characteristics:

1. Discharges from major outfalls subject to dry weather TMDLs.
2. Discharges that have caused or have the potential to cause overtopping of downstream diversions.
3. Discharges exceeding a threshold discharge rate as proposed by the Permittee.
4. Discharges from areas where there is evidence of ongoing potential illegal dumping or illicit connections. This shall include evidence gathered from field observations and/or monitoring data.
5. Other characteristics as determined by the Permittee(s) and incorporated within their screening program. If other characteristics are used, the Permittee shall provide a definition or a criterion for how a significant non-stormwater discharge will be determined. If the criterion is field measurements and/or water quality data, thresholds shall be specified in the written procedures.

C. Source Investigation for Outfalls with Significant Non-Stormwater Discharge

Each Permittee shall conduct source investigation for outfalls identified to have significant non-stormwater discharge. The Permittee shall prioritize source investigation with consideration of dry weather TMDL compliance schedules, 303(d) listed waterbodies for dry weather constituents, dry weather receiving water monitoring data with recurring exceedances, geographic location, and other necessary factors. The source investigation shall be conducted as follows:

1. If the source of a significant non-stormwater discharge is determined to be an illicit discharge, then each Permittee shall implement procedures to eliminate the discharge consistent with IDDE requirements.
2. If the source of a significant non-stormwater discharge is determined to be an NPDES permitted discharge, a discharge subject to a Record of Decision approved by U.S. EPA pursuant to section 121 of CERCLA, a conditionally exempt essential non-stormwater discharge, or entirely comprised of natural flows as defined at Part III.A.2 of the Order, then the Permittee shall document the source.
3. If the source of a significant non-stormwater discharge is either unknown or a conditionally exempt, but non-essential, non-stormwater discharge, then each Permittee shall conduct monitoring required in Part VII.E of this MRP.
4. If the significant non-stormwater discharge is comprised of more than one source, then the Permittee shall attempt to quantify the relative contribution from each individual source or group of similar sources (e.g., irrigation overspray) and classify the contributions as authorized, conditionally exempt essential, natural, illicit discharge, conditionally exempt non-essential, or unknown.
5. If the source of a significant non-stormwater discharge is unknown, then the Permittee shall describe the efforts undertaken to identify the source. Methods for identifying the source of non-stormwater discharge may include inspection and/or surveillance, discharge monitoring and data loggers, video or physical inspection, monitoring for indicator parameters (e.g., surfactants, chlorine, pyrethroids), or other means.
6. If a source of a significant non-stormwater discharge originates within an upstream jurisdiction, then the Permittee shall inform in writing both the upstream jurisdiction and the Los Angeles Water Board within 30 days of determination of the presence of the discharge,

all available characterization data, contribution determination efforts, and efforts taken to identify its source.

D. Schedule for Screening and Source Investigation

1. Schedule for Ventura County Permittees

- a. Ventura County Permittees shall screen outfalls for significant non-stormwater discharges and conduct source investigation for no less than 50 percent of the outfalls with significant non-stormwater discharges within 3 years of the effective date of the Order, and 100 percent of the outfalls with significant non-stormwater discharges within 5 years of the effective date of the Order.
- b. Notwithstanding subpart a above, Ventura County Permittees may propose in their IMP or CIMP an alternative source investigation schedule if it can demonstrate an equivalent level of source investigation and abatement.

2. Schedule for Los Angeles County Permittees

- a. Los Angeles County Permittees shall continue monitoring outfalls with significant non-stormwater discharges that were identified in previously approved monitoring programs in Table E-1 of this MRP.
- b. Additionally, Los Angeles County Permittees shall consider dry weather receiving water monitoring data downstream of the outfalls and other relevant information to determine if re-screening is necessary for any of the previously screened outfalls that did not have significant non-stormwater discharge. Where re-screening is needed, the Permittee(s) shall make the necessary changes in its written program documents, re-screen the necessary outfalls for significant non-stormwater discharges, and conduct source investigation for those outfalls within 3 years of the effective date of the Order.
- c. Notwithstanding subpart b above, Los Angeles County Permittees may propose in their IMP or CIMP an alternative source investigation schedule if it can demonstrate an equivalent level of source investigation and abatement.

E. Non-Stormwater Outfall-Based Monitoring

1. For the purposes of this monitoring program, non-stormwater discharges shall be monitored during dry weather when precipitation is less than 0.1 inch and those days not less than 72 hours after a wet day. A wet day is defined as days with 0.1 inch of rain or more.
2. Within 90 days after completing the outfall screening and source investigation for significant non-stormwater discharges or after the Executive Officer of the Los Angeles Water Board approves the IMP or CIMP, whichever is later, each Permittee shall monitor outfalls during dry weather that are 1) comprised of conditionally exempt non-stormwater discharges, 2) continuing discharges attributed to illicit discharges, or 3) from unknown sources. The following parameters shall be monitored:
 - a. Flow,
 - b. Pollutants assigned a WQBEL derived from TMDL WLAs for the respective receiving water, as identified in Attachments K through S of the Order and parameters to determine compliance with WQBELs,
 - c. Other pollutants identified on the CWA section 303(d) List for the receiving water or downstream receiving waters consistent with Part V.B.4.c of this MRP.

- d. A toxicant or class of toxicants that is identified through a TIE conducted during dry weather at a receiving water monitoring location. Permittees shall analyze for the toxicant(s) during the next scheduled sampling event in the discharge from the outfall(s) upstream of the receiving water location.
 - e. Other parameters in Table E-6 of this MRP identified as exceeding the lowest applicable water quality objective in the nearest downstream receiving water monitoring location per Part V.B.5 of this MRP.
3. For outfalls subject to a dry weather TMDL, monitoring frequency shall be as specified in the TMDL or as specified in a monitoring program approved by the Executive Officer of the Los Angeles Water Board.
4. For outfalls not subject to dry weather TMDLs, monitoring frequency shall be four times during the first water year of monitoring, distributed approximately quarterly, during dry weather conditions or as specified in a monitoring program approved by the Executive Officer of the Los Angeles Water Board.
5. If outfall monitoring results during the first water year of monitoring do not exceed a water quality standard, the Permittee may conduct field observations (as described below) for that outfall instead of monitoring per Part VII.E.2 of this MRP.
 - a. When conducting field observations, the Permittee must identify flow estimation (i.e., width of water surface, approximate depth of water, approximate flow velocity, flow rate), odor, color, clarity, floatables, deposits/stains, vegetation condition, structural condition, and biology.
 - b. If there are changes in field observations, the permittee must resume monitoring as described in Parts VII.E.2 and VII.E.5 of this MRP and must implement illicit discharge elimination procedures in Part VIII.I of the Order. Field observations (in lieu of sampling) may resume if the non-stormwater is identified as an illicit discharge and is eliminated or if monitoring results under Part VII.E.2 of this MRP do not exceed water quality standards for one water year.
6. If outfall monitoring results during the first water year of monitoring exceed a water quality standard, the Permittee shall continue to monitor those outfalls for the exceeded parameters two times a year.
7. For all non-stormwater outfall-based monitoring, the Permittee must record general information including conveyance type, dominant watershed land uses, flow estimation, and sensory observations as described in Part VII.E.5.a of this MRP.

VIII. OUTFALL-BASED DATABASE

- A. **Storm Drains, Channels and Outfalls Map(s) and/or Database.** All Permittee(s) shall maintain a map(s) and/or database (GIS preferred) of its MS4 to include the following information:
 1. Surface water bodies within the Permittee(s) jurisdiction
 2. Sub-watershed (HUC 12) boundaries
 3. Land use overlay
 4. Jurisdictional boundaries
 5. The location and length of all open channel and underground storm drain pipes 18 inches in diameter or greater (with the exception of catch basin connector pipes)
 6. The location of all dry weather diversions (e.g., Low Flow Diversions (LFDs))

7. The location of all major MS4 outfalls within the Permittee's jurisdictional boundary. Each major outfall shall be assigned an alphanumeric identifier, which must be noted on the map.
8. Storm drain outfall catchment areas for each major outfall within the Permittee(s) jurisdiction
9. Each mapped MS4 outfall shall be linked to a database to include the following:
 - a. Ownership
 - b. Latitude / Longitude Coordinates
 - c. Physical description of outfall structure including size (e.g., diameter and shape).
 - d. Photographs of the outfall, where possible, to provide baseline information to track operation and maintenance needs over time
 - e. Stormwater and non-stormwater monitoring data
 - f. Notation of outfalls with significant non-stormwater discharges
 - g. If the outfall conveys no significant non-stormwater discharges, include the basis for this determination.
 - h. For outfalls conveying significant non-stormwater discharges:
 - i. Date and time of last visual observation or inspection.
 - ii. Description of receiving water at the point of discharge (e.g., natural, soft-bottom with armored sides, trapezoidal, concrete channel).
 - iii. Parking, access, and safety considerations.
 - iv. Photographs of outfall condition.
 - v. Photographs of significant non-stormwater discharge (or indicators of discharge) unless safety considerations preclude obtaining photographs.
 - vi. Estimation of discharge rate.
 - vii. All diversions either upstream or downstream of the outfall.
 - viii. Observations regarding discharge characteristics such as turbidity, odor, color, presence of debris, floatables, or characteristics that could aid in pollutant source identification.

IX. AQUATIC TOXICITY MONITORING METHODS

- A. Aquatic Toxicity Monitoring shall be conducted according to the procedures described in this Part IX. When the State Water Board's Policy for Toxicity Assessment and Control is fully approved and in effect, the Los Angeles Water Board Executive Officer may direct the Permittee(s) to replace current toxicity program elements with standardized procedures in the policy.
- B. The Permittee(s) shall collect and analyze samples taken from receiving water monitoring locations to evaluate the extent and causes of toxicity in receiving waters.
- C. Toxicity samples may be flow-weighted composite samples, or grab samples, for wet and dry event sampling.
- D. The total sample volume shall be determined both by the specific toxicity test method used and the additional volume necessary for TIE studies. Sufficient sample volume shall be collected to perform both the required toxicity tests and TIE studies.

- E. Holding Times.** All toxicity tests shall be conducted as soon as possible following sample collection. The 36-hour sample holding time for test initiation shall be targeted. However, no more than 72 hours shall elapse before the conclusion of sample collection and test initiation.
- F. Definition of Acute Toxicity.** Acute toxicity measures a lethal effect to experimental test organisms exposed to an effluent or receiving waters compared to that of the control organisms.
- G. Definition of Chronic Toxicity.** Chronic toxicity measures a sublethal effect (e.g., reduced growth, reproduction) to experimental test organisms exposed to an effluent or receiving waters compared to that of the control organisms.
- H. Toxicity Monitoring Program**

- 1. Freshwater Test Species and Methods.** If samples are collected in receiving waters with salinity <1 ppt, or from outfalls discharging to receiving waters with salinity <1 ppt, then the Permittee(s) shall conduct the following critical life stage chronic and acute toxicity tests in Table E-7 of this MRP on undiluted samples in accordance with species and short-term test methods in *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms* (EPA/821/R-02/013, 2002; Table IA, 40 CFR Part 136) and *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms* (EPA/821/R-02/012, 2002; Table IA, 40 CFR Part 136). In no case shall the following test species be substituted with another organism unless written authorization from the Los Angeles Water Board Executive Officer is received:

Table E-7. Freshwater Aquatic Toxicity Species and Analytical Procedures

| Test Species | Test Endpoint(s) | U.S. EPA Method |
|--|----------------------------|------------------------|
| <i>Pimephales promelas</i> (Fathead Minnow) | Larval Survival and Growth | EPA-821-R-02-013 |
| <i>Ceriodaphnia dubia</i> (Freshwater Crustacean) | Survival and Reproduction | EPA-821-R-02-013 |
| <i>Hyalella azteca</i> (Freshwater Amphipod) | Survival | EPA-821-R-02-012 |
| <i>Chironomus dilutus</i> (Midge) | Survival | EPA-821-R-02-012 |

- 2. Non-Ocean Marine Waters¹² Test Species and Methods.** If samples are collected in receiving waters with salinity ≥1 ppt, or from outfalls discharging to receiving waters with salinity ≥1 ppt, then the Permittee(s) shall conduct the following critical life stage chronic toxicity tests in Table E-8 of this MRP on undiluted samples in accordance with species and short-term test methods in *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms* (EPA/600/R-95/136, 1995) or *Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms*, Third Edition, October 2002, (EPA/821-R-02-014). Artificial sea salts shall be used to increase sample salinity. In no case shall the following test species be substituted with another organism unless written authorization from the Los Angeles Water Board Executive Officer is received:

¹² Non-ocean marine waters include enclosed bay, estuarine, and coastal lagoon waters.

Table E-8. Non-Ocean Marine Waters Aquatic Toxicity Species and Analytical Procedures

| Test Species | Test Endpoint(s) | U.S. EPA Method |
|---|----------------------------|-----------------|
| <i>Atherinops affinis</i> ¹³ (Topsmelt) | Larval Survival and Growth | 1006.01 |
| <i>Strongylocentrotus purpuratus</i> (Purple Sea Urchin) | Fertilization | 1008.0 |
| <i>Macrocystis pyrifera</i> (Giant Kelp) | Germination and Growth | 1009.0 |

3. **Test Species Sensitivity Screening.** During the first year of the permit term, Permittees shall conduct a sensitivity screening to determine the most sensitive test species. The Permittees' IMP or CIMP shall include the results of the test species sensitivity screening and identify the most sensitive test species that will be used for aquatic toxicity monitoring. To determine the most sensitive test species, the Permittee(s) shall conduct two wet weather and two dry weather toxicity tests with the species listed for freshwater and non-ocean marine waters, as appropriate. Sensitive species determinations may result in one most sensitive test species for wet weather and a different most sensitive test species for dry weather or the same most sensitive test species for both dry and wet weather. Sensitive test species determinations shall also consider the most sensitive test species used for proximal receiving water monitoring. After this screening period, subsequent aquatic toxicity monitoring required per Parts V.A.4.g and V.B.4.g of this MRP shall be conducted using the most sensitive test species (i.e., 1 chronic and/or acute freshwater species and/or 1 chronic marine and ocean waters species, as appropriate).
4. Toxicity test biological endpoint data shall be analyzed using the Test of Significant Toxicity t-test approach specified in *National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document* (U.S. Environmental Protection Agency, Office of Wastewater Management, Washington, D.C. EPA 833-R-10-003, 2010). For this monitoring program, the critical acute and chronic in-stream waste concentration (IWC) is set at 100% receiving water for receiving water samples and 100% effluent for wet and dry weather outfall samples. A 100% receiving water/outfall effluent sample and a control shall be tested. For *Hyaella* and *Chironomus* acute toxicity test methods, the test result will be considered a "pass," regardless of a TST determination of "fail" if the percent survival in the receiving water is equal to or greater than 90 percent.

I. Quality Assurance

1. If the receiving water or outfall effluent test does not meet all test acceptability criteria (TAC) specified in the test methods manuals (*Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms* (EPA/821/R-02/013, 2002), *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms* (EPA/821/R-02/012, 2002; Table IA, 40 CFR Part 136), and *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms* (EPA/600/R-95/136, 1995)), then the Permittee(s) must re-sample and re-test at the earliest time possible.
2. Control water, including brine controls, shall be laboratory water prepared and used as specified in the test methods manuals.

¹³ If laboratory-held cultures of the topsmelt, *Atherinops affinis*, are not available for testing, then the Permittee(s) shall conduct a static renewal toxicity test with the inland silverside, *Menidia beryllina* (Larval Survival and Growth Test Method 1006.01), found in the third edition of *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms* (EPA-821-R-02-014, 2002; Table IA, 40 CFR part 136).

3. If organisms are not cultured in-house, then concurrent testing with a reference toxicant shall be conducted. If organisms are cultured in-house, then monthly reference toxicant testing is sufficient. Reference toxicant tests and effluent toxicity tests shall be conducted using the same test conditions (e.g., same test duration, etc.).

J. Toxicity Identification Evaluation (TIE)

1. A toxicity test sample is immediately subject to TIE procedures to identify the toxic chemical(s), if either the survival or sublethal endpoint demonstrates a Percent Effect value equal to or greater than 50% at the IWC. Percent Effect is defined as the effect value—denoted as the difference between the mean control response and the mean IWC response, divided by the mean control response—multiplied by 100.
2. A TIE shall be performed to identify the causes of toxicity using the same species and test method and, as guidance, U.S. EPA manuals: *Toxicity Identification Evaluation: Characterization of Chronically Toxic Effluents, Phase I* (EPA/600/6-91/005F, 1992); *Methods for Aquatic Toxicity Identification Evaluations, Phase II Toxicity Identification Procedures for Samples Exhibiting Acute and Chronic Toxicity* (EPA/600/R-92/080, 1993); *Methods for Aquatic Toxicity Identification Evaluations, Phase III Toxicity Confirmation Procedures for Samples Exhibiting Acute and Chronic Toxicity* (EPA/600/R-92/081, 1993); and *Marine Toxicity Identification Evaluation (TIE): Phase I Guidance Document* (EPA/600/R-96-054, 1996).
3. The TIE should be conducted on the test species demonstrating the most sensitive toxicity response at a sampling location. A TIE may be conducted on a different test species demonstrating a toxicity response with the caveat that once the toxicant(s) are identified, the most sensitive test species triggering the TIE shall be further tested to verify that the toxicant has been identified and addressed.
4. A TIE Prioritization Metric (see Appendix 5 in SMC Model Monitoring Program) may be utilized to rank sites for TIEs.
5. Clarification regarding follow-up monitoring requirements in response to observed toxicity in receiving waters can be found in Attachment G of the Order (Aquatic Toxicity: TIE and TRE Requirements).

K. Toxicity Reduction Evaluation (TRE)

1. When a toxicant or class of toxicants is identified through a TIE conducted at a receiving water monitoring location, Permittees shall analyze for the toxicant(s) during the next scheduled sampling event in the discharge from the outfall(s) upstream of the receiving water location.
2. If the toxicant is present in the discharge from the outfall at levels above the applicable limitation, a TRE shall be performed for that toxicant.
3. The TRE shall include all reasonable steps to identify the source(s) of toxicity and discuss appropriate BMPs to eliminate the causes of toxicity. No later than 30 days after the source of toxicity and appropriate BMPs are identified, the Permittee(s) shall submit a TRE Corrective Action Plan to the Los Angeles Water Board Executive Officer for approval. At minimum, the plan shall include a discussion of the following:
 - a. The potential sources of pollutant(s) causing toxicity.
 - b. A list of municipalities and agencies that may have jurisdiction over sources of pollutant(s) causing toxicity.
 - c. Recommended BMPs to reduce the pollutant(s) causing toxicity.

- d. Proposed post-construction control measures to reduce the pollutant(s) causing toxicity.
 - e. Follow-up monitoring to demonstrate that the toxicants have been reduced or eliminated.
4. Participation in a Watershed Management Program that addresses the aquatic toxicity waterbody-pollutant combination shall satisfy the requirement in subpart 3 above to submit a TRE Corrective Action Plan.
 5. The TRE process shall be coordinated with TMDL monitoring and implementation (i.e., if a TMDL for 4,4'-DDD is being implemented when a TRE for 4,4'-DDD is required, then efforts shall be coordinated to avoid overlap).
 6. Clarification regarding follow-up monitoring requirements in response to observed toxicity in receiving waters can be found in Attachment G of the Order (Aquatic Toxicity: TIE and TRE Requirements).

X. REGIONAL STUDIES

A. Southern California Stormwater Monitoring Coalition Watershed Monitoring Program

Each Permittee is encouraged to continue participation in the Southern California Stormwater Monitoring Coalition (SMC) Regional Watershed Monitoring Program's current study design, by supporting the monitoring at the sites within the watershed management area(s) that overlap with the Permittee's jurisdictional area.

B. Southern California Bight Project

Each Permittee is encouraged to continue participation in the Southern California Bight Project (SCBP) monitoring within the watershed management area(s) that overlap with the Permittee's jurisdictional area.

XI. SPECIAL STUDIES

Each Permittee is encouraged to conduct special studies recommended in a TMDL. Optional special studies include:

A. Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL

Permittees may opt to conduct special studies to further refine the site-specific link between sediment pollutant concentrations, depth of bed sediment contamination and fish tissue concentrations; foraging ranges of targeted fish; additional data to refine watershed and hydrodynamic models, additional data on contaminant contributions of the Los Angeles River or San Gabriel River to Greater Harbor waters; stressor identifications; additional diazinon data; and further characterization of direct air deposition loadings for heavy metals and legacy pesticides. If opting to conduct this special study, Permittees shall propose a schedule for monitoring and reporting.

B. Los Angeles Area Lakes TMDL: Legg Lake, Lake Calabasas, Echo Park Lake, Puddingstone Reservoir, and Peck Road Park Lake TMDLs (*U.S. EPA established*)

Permittees may opt to conduct a special study based on the recommendations in the TMDL and propose a schedule for monitoring and reporting.

C. Biotic Ligand Model (BLM) to Establish Site-Specific Objectives for Copper

A Permittee(s) may opt to conduct monitoring at a specific waterbody(ies) and gather monitoring data necessary to establish a site-specific objective for copper using the BLM. If opting to

conduct this monitoring, Permittees shall submit a monitoring and reporting plan in accordance with Los Angeles Water Board recommendations.

XII. REPORTING REQUIREMENT OBJECTIVES

The reporting process is intended to meet the following objectives:

- A.** Present summary information that allows the Los Angeles Water Board to assess:
 - 1. Each Permittee's appropriate participation in one or more Watershed Management Programs if applicable.
 - 2. The impact of each Permittee(s) stormwater and non-stormwater discharges on the receiving water.
 - 3. Each Permittee's compliance with receiving water limitations and numeric water quality-based effluent limitations.
 - 4. The effectiveness of each Permittee(s) control measures in reducing discharges of pollutants from the MS4 to receiving waters.
 - 5. Whether the quality of MS4 discharges and the health of receiving waters is improving, staying the same, or declining as a result of watershed management program efforts, and/or TMDL implementation measures, and implementation of Minimum Control Measures.
 - 6. Whether changes in water quality can be attributed to pollutant controls imposed on new development, re-development, or retrofit projects.
- B.** Present detailed data and information in an accessible format to allow the Los Angeles Water Board to verify conclusions presented in a Permittee's summary information.
- C.** Provide the Permittee(s) a forum to discuss the effectiveness of its past and ongoing control measure efforts and to convey its plans for future control measures.
- D.** Present data and conclusions in a transparent manner to facilitate the review and understanding by the general public.
- E.** Focus each Permittee's reporting efforts on watershed condition, water quality assessment, and an evaluation of the effectiveness of control measures.

XIII. STANDARD MONITORING AND REPORTING PROVISIONS

- A.** All monitoring, reporting, and recordkeeping activities shall be conducted in accordance with requirements specified in Attachments D, E, H and I of the Order.
- B.** In addition to requirements specified in Part IV.B of Attachment D of the Order, the Permittee shall also retain records of monitoring information to include weather conditions, rainfall amount, and data sheets showing toxicity test results.
- C.** Reporting requirements related to the monitoring of trash shall be conducted in accordance with Parts IV.B.3 and III.B of the Order and reported per Attachment H and I of the Order.
- D.** The monitoring data submitted to the Los Angeles Water Board shall specify, for each pollutant, the analytical method used, the applicable Reporting Level (RL), and the current Method Detection Limit (MDL) as determined by the procedure in 40 C.F.R. part 136. For the purpose of reporting compliance with numerical limitations and performance goals, the results of analytical determinations for the presence of chemical constituents in a sample shall be reported using the following reporting protocols:
 - 1. Sample results greater than or equal to the RL shall be reported as measured by the laboratory (i.e., the measured chemical concentration in the sample).

2. Sample results less than the RL, but greater than or equal to the laboratory's MDL, shall be reported as "Detected, but Not Quantified," or DNQ. The estimated chemical concentration of the sample shall also be reported.
 3. For the purposes of data collection, the laboratory shall write the estimated chemical concentration next to DNQ. The laboratory may, if such information is available, include numerical estimates of the data quality for the reported result. Numerical estimates of data quality may be listed as percent accuracy (\pm a percentage of the reported value), numerical ranges (low to high), or any other means considered appropriate by the laboratory.
 4. Sample results less than the laboratory's MDL shall be reported as "Not Detected," or ND.
 5. The Permittee(s) are to instruct laboratories to establish calibration standards so that the RL value (or its equivalent if there is differential treatment of samples relative to calibration standards) is the lowest calibration standard. At no time is the Permittee to use analytical data derived from extrapolation beyond the lowest point of the calibration curve.
- E.** Exceedances of applicable limitations in the Order shall be determined using sample reporting protocols defined in Part XIII.D above and Attachment A (refer to definition for reporting level) of the Order. For purposes of reporting and administrative enforcement by the Los Angeles Water Board and State Water Board, the Permittee(s) shall be out of compliance with applicable limitations if the concentration of the pollutant in the monitoring sample is greater than the applicable limitation and greater than or equal to the Reporting Level (RL) unless otherwise stated in Part X (Compliance Determination) of the Order.
- F.** If no flow occurred during the sampling event, then the Monitoring Report shall so state.
- G.** All monitoring data submitted to the Los Angeles Water Board shall be reported in units consistent to Table E-6 in this MRP or if reporting TMDL monitoring data, consistent to units in Attachments K through S of the Order.
- H.** The Los Angeles Water Board or its Executive Officer, consistent with 40 CFR section 122.41, may approve changes to the Monitoring and Reporting Program, after providing the opportunity for public comment, either:
1. By request of a Permittee or by an interested person after submittal of the Monitoring Report. Such request shall be in writing and filed not later than 60 days after the Monitoring Report submittal date, or
 2. As deemed necessary by the Los Angeles Water Board Executive Officer, following notice to the Permittees.
- I.** Permittees must provide a copy of the Standard Operation Procedures (SOP or SOPs) for any monitoring conducted under this MRP to the Los Angeles Water Board upon request.
- J.** When monitoring cannot be performed to comply with the requirements of the Order due to circumstances beyond a Permittee's control, then within two working days, the following shall be submitted to the Los Angeles Water Board Executive Officer:
1. Statement of situation.
 2. Explanation of circumstance(s) with documentation.
 3. Statement of corrective action for the future.

XIV. REPORTING REQUIREMENTS

Permittees shall comply with all reporting requirements in this Part XIV unless otherwise specified by the Los Angeles Water Board. Furthermore, all items within Attachment H and Attachment I shall serve as reporting requirements for the Order.

A. Program Reports

Permittees shall use the forms provided in Attachments H and I of the Order starting June 15, 2022 or December 15, 2022, per the schedule below. For the 2020-21 fiscal year reporting, Permittees shall continue their annual reporting per the previous permits.

- 1. Annual Report Form.** Each Permittee shall complete and submit an Annual Report using the Annual Report Form (contained in Attachment H) no later than December 15 of each year for the preceding July 1 to June 30 reporting period¹⁴. Unless otherwise specified by the Los Angeles Water Board, each Permittee shall submit its Annual Report to the Los Angeles Water Board in pdf file format via an electronic method (e.g., CD, USB drive, attachment/link in email¹⁵, etc.).
- 2. Watershed Management Program Progress Report Form.** Each Permittee or group of Permittees participating in a Watershed Management Program shall complete and submit a Watershed Management Program Progress Report using the Watershed Management Program Progress Report Form (contained in Attachment H) semi-annually no later than December 15 and June 15 of each year for the preceding January 1 to June 30 and July 1 to December 31 reporting period, respectively. Unless otherwise specified by the Los Angeles Water Board, each Permittee shall submit its Watershed Management Program Report to the Los Angeles Water Board in pdf file format via an electronic method (e.g., CD, USB drive, attachment/link in email¹⁶, etc.). Each Permittee participating in a Watershed Management Program shall make the Watershed Management Program Progress Report readily available to the public through multiple avenues, including direct outreach and posting to its website or a website specifically dedicated for the watershed management group semi-annually. The posting to the website shall be prominent, immediately identifiable, and readily available to visitors to the website. The Watershed Management Program Progress Report shall be easily understandable to the general public. For the web-posting, each Permittee participating in a Watershed Management Program shall extract the progress summary included in Section 1.1 of Attachment H and post it on the website with a link to the full Watershed Management Program Progress Report. The extracted progress summary shall be translated, in a culturally relevant manner, into languages other than English based on community demographics and considering information on linguistic isolation (e.g., Cal EnviroScreen).
- 3. Trash Reporting Forms.** Permittees shall annually report on compliance with Trash TMDLs and Trash Discharge Prohibitions using the Trash TMDL Reporting Form and/or Trash Discharge Prohibition Reporting Form (contained in Attachment I or a revised form approved by the Los Angeles Water Board) and submit completed forms as attachments to the Annual Report Form.
- 4.** In the Annual Report Form, each Permittee is required to report on implementation of the Order including not limited to expenditures, funding sources, and progress on implementing the following programs: Non-Stormwater Discharge Prohibitions, Minimum Control Measures, the Non-Stormwater Outfall-Based Screening and Monitoring Program, Trash TMDLs, and Trash Discharge Prohibitions. The Watershed Management Program Progress Report shall be used to report on progress in implementing the WMP.

¹⁴ e.g., the Annual Report due on December 15, 2022 must cover the activities from July 1, 2021 to June 30, 2022.

¹⁵ Email to MS4stormwaterRB4@waterboards.ca.gov.

¹⁶ Ibid.

B. Monitoring Report

1. Each Permittee or group of Permittees shall submit a Monitoring Report per the schedule indicated in Table E-9 below (e.g., the Monitoring Report due on December 15, 2021 must cover the monitoring period from January 1, 2021 to June 30, 2021).

Table E-9. Monitoring Results Reporting Schedule

| Items to Submit | Reporting Frequency | Preceding Monitoring Period | Monitoring Report Due Date |
|---|---------------------|-----------------------------|----------------------------|
| Monitoring Results (Part XIV.B.2.a) and Certification (Part XIV.B.2.b) | Semi – Annual | January 1 through June 30 | December 15 |
| Monitoring Results (Part XIV.B.2.a) and Certification (Part XIV.B.2.b) | Semi – Annual | July 1 through December 31 | June 15 |
| Certification (Part XIV.B.2.b), Summary of Sampling Events (Part XIV.B.2.c), QA/QC (Part XIV.B.2.d), Summary of Exceedances (Part XIV.B.2.e), and Summary of Aquatic Toxicity Monitoring (Part XIV.B.2.f) | Annual | July 1 through June 30 | December 15 |

2. **Monitoring Report Content:** Unless otherwise specified by the Los Angeles Water Board, each Permittee or group of Permittees shall submit Monitoring Reports to the Los Angeles Water Board via an electronic method (e.g., CD, USB drive, attachment/link in email¹⁷, etc.). The Monitoring Report shall include the following items per Table E-9 above:
 - a. **Monitoring Results.** An electronic copy of all receiving water and outfall monitoring results in Excel or CSV file format and in the California Environmental Data Exchange Network (CEDEN) data entry template format,¹⁸ or in a format specified by the Los Angeles Water Board. Data files shall use CEDEN controlled vocabulary terms and the SWAMP standard list of analyte, matrix and unit combinations (available at https://www.waterboards.ca.gov/water_issues/programs/swamp/swamp_iq/). Any data that is not CEDEN compatible (e.g., photographic evidence, rain data, qualitative data, and narrative data) shall be provided in a format deemed appropriate by the Permittee(s) or as specified by the Los Angeles Water Board.
 - b. **Certification.** Certification and signature per Part V.B of Attachment D of the Order.
 - c. **Summary of Sampling Events.** For each sampling event, provide the following information:
 - i. Date
 - ii. Site ID (i.e., station ID or monitoring location ID)
 - iii. Monitoring Location Type (i.e., outfall or receiving water)
 - iv. Sample Media (e.g., water column, bed sediment, fish tissue, storm-borne sediment)
 - v. For receiving water monitoring locations, indicate the Site ID of the upstream outfall.

¹⁷ Ibid.

¹⁸ CEDEN data entry templates are available on the website: <http://ceden.org/>.

- vi. For outfall monitoring locations, indicate the receiving water the outfall discharges to and if being monitored, the Site ID of the receiving water monitoring location.
 - vii. Missed monitoring events and justification (e.g., no discharge, unsafe conditions, holding time exceeded due to lab business hours).
 - viii. Weather Condition (i.e., wet or dry). If there are applicable TMDLs with a specific definition, indicate so and indicate the weather condition per the TMDL.
 - ix. Station ID of rain gage station(s) and/or flow gage station(s) used to determine the weather condition.
 - x. For each wet weather sampling event, provide the following information:
 - (a) Date
 - (b) Storm start time
 - (c) Storm duration (hours)
 - (d) Highest storm intensity – 15 minutes (inches/hour)
 - (e) Total storm volume (inches)
 - (f) Did the sample event occur during the first significant storm?
 - (g) Was the sampling event preceded by at least three days of dry weather (less than 0.1 inches of rain each day)?
 - xi. For each dry weather sampling event, provide the following information:
 - (a) Date
 - (b) Did the sample event occur during the historically driest month?
 - (c) Did the sampling event occur at least three days after a rain event of 0.1 inches or greater?
 - xii. Information in (i)-(xi) above for additional monitoring events (e.g., accelerated monitoring for bacteria)
- d. **Quality Assurance/Quality Control (QA/QC).** Summarize QA/QC results and actions to address any QA/QC issues that arose (e.g., holding time, contamination, precision). This may include a summary of qualified data if necessary.
- e. **Summary of Exceedances.** Summarize exceedances of applicable WQBELs, receiving water limitations, and aquatic toxicity thresholds for all test results, with corresponding sampling dates, monitoring site IDs, and weather conditions (i.e., dry weather or wet weather). Quantitatively describe trends¹⁹ in water quality (e.g., improving, staying the same, declining) in the receiving water and outfalls, using statistical analysis and/or graphical presentation of data, for wet and dry weather conditions. Where the Permittee determines that outfall discharges are causing or contributing to receiving water exceedances, provide a summary of efforts taken to address these exceedances.

¹⁹ Use available monitoring data since July 8, 2010 for Ventura County Permittees, since March 28, 2014 for the City of Long Beach, and since December 28, 2012 for other Los Angeles County Permittees.

- f. Summary of Aquatic Toxicity Monitoring.** Provide the following:
- i.** If aquatic toxicity was confirmed and a TIE was conducted, identify the toxic chemicals as determined by the TIE. Include all relevant data to allow the Los Angeles Water Board to review the adequacy and findings of the TIE. This shall include, but not be limited to, the sample(s) date, sample(s) start and end time, sample type(s) (flow-weighted composite, grab, or field measurement), sample location(s), the parameters, the analytical results, and the applicable limitation.
 - ii.** A full laboratory report for each toxicity test prepared according to the appropriate test methods manual chapter on Report Preparation, including:
 - (a)** The toxicity test results for the t-test, reported as “Pass” or “Fail”, and the “Percent Effect”,
 - (b)** The dates of sample collection and initiation of each toxicity test,
 - (c)** Test species with biological endpoint values for each concentration tested,
 - (d)** Reference toxicant test results,
 - (e)** Water quality measurements for each toxicity test (e.g., pH, dissolved oxygen, temperature, conductivity, hardness, salinity, chlorine, ammonia),
 - (f)** TRE/TIE testing results, and
 - (g)** A printout of CETIS (Comprehensive Environmental Toxicity Information System) program results.
 - iii.** TIEs (Phases I, II, and III) that have been completed or are being conducted, by monitoring location.
 - iv.** The development, implementation, and results for each TRE Corrective Action Plan, beginning the water year following the identification of each pollutant or pollutant class causing toxicity.

C. Receiving Water Limitations Compliance Report

- 1.** If a Permittee is not addressing receiving water limitations per Part V.C (Receiving Water Limitations) of the Order, or if it is determined by the Permittee or the Los Angeles Water Board that discharges from the MS4 are causing or contributing to an exceedance of an applicable receiving water limitation, then the Permittee shall submit a Receiving Water Limitations Compliance Report that:
 - a.** Describes the BMPs that are currently being implemented by the Permittee and additional BMPs, including modifications to current BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedances of receiving water limitations; and
 - b.** Includes an implementation schedule for implementing the BMPs that is as short as possible.
- 2.** The Permittee shall submit the Receiving Water Limitations Compliance Report concurrently with their Annual Report per the schedule and submittal method indicated in Part XIV.A.1 of this MRP for approval by the Los Angeles Water Board Executive Officer.
- 3.** Consistent with Part V.D of the Order, so long as the Permittee has complied with the procedures set forth in Part V.C of the Order and is implementing its approved Receiving Water Limitations Compliance Report, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations

unless directed by the Los Angeles Water Board to modify current BMPs or develop additional BMPs.

4. **Watershed Management Program Exemption.** Per Part IX.B.9.c.(iv) of the Order, implementation of actions to address water quality priorities in a Watershed Management Program related to addressing exceedances of receiving water limitations in Part V (Receiving Water Limitations) of the Order which is not otherwise addressed by TMDLs in Part IV of the Order and Attachments K through S, fulfills the requirements in Part V.C of the Order to prepare a Receiving Water Limitations Compliance Report.

XV. TMDL REPORTING

Permittees shall report on compliance with all TMDLs in Attachments K through S in their Program Reports and Monitoring Reports per Part XIV.A-C of this MRP. Notable TMDL-specific reporting requirements are as follows:

A. Santa Monica Bay Nearshore and Offshore Debris TMDL

Permittees shall notify the Los Angeles Water Board promptly if there is future development of MS4 infrastructure in the Santa Monica Bay WMA within Ventura County but outside of the Malibu Creek subwatershed. After notification, the Los Angeles Water Board may require an updated Trash Monitoring and Reporting Plan (TMRP) and Plastic Pellet Monitoring and Reporting Plan (PMRP) to be submitted.

B. Upper Santa Clara River Chloride TMDL and Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL

Ventura County Permittees shall notify the Los Angeles Water Board promptly if there is future development of MS4 infrastructure within Ventura County that discharges to Santa Clara River Reaches 4B and 5. After notification, the Los Angeles Water Board may require an updated TMDL monitoring and implementation plan to be submitted.

C. Metals and Selenium in the Calleguas Creek, its Tributaries, and Mugu Lagoon TMDL

Board Briefing: By March 27, 2023 and every 2 years thereafter, Permittees shall provide a verbal update to the Los Angeles Water Board, including progress toward meeting the TMDL, water quality data, and a summary of implementation activities completed to date.

D. Boron, Chloride, Sulfate, and TDS (Salts) in the Calleguas Creek Watershed TMDL

Optional Special Studies Results: If participating in an optional special study, Permittees shall submit the results of the special studies 2 years after special study workplan approval by the Los Angeles Water Board Executive Officer.

E. Implementation Plan for the U.S. EPA-Established Malibu Creek Nutrients TMDL and the U.S. EPA-Established Malibu Creek and Lagoon Sedimentation and Nutrients TMDL to Address Benthic Community Impairments

1. **Nutrient Implementation Plan:** If Los Angeles County Permittees have not already submitted a nutrient implementation plan, they shall update their existing Watershed Management Program per the schedule in Part IX.G of the Order, if participating in a Watershed Management Program.
2. **Sediment Implementation Plan:** If Los Angeles County Permittees below Malibu Lake have not already submitted a sediment implementation plan, they shall update their existing Watershed Management Program per the schedule in Part IX.G of the Order, if participating in a Watershed Management Program.
3. **Nutrient Implementation Plan:** If Ventura County Permittees have not already submitted a nutrient implementation plan, they shall address this requirement as part of their

Watershed Management Program per the schedule in Part IX.F of the Order, if participating in a Watershed Management Program.

F. Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL

1. **Phase II Implementation Report:** Permittees shall report in writing on the status of implementation and scope, and schedule of remaining Phase II implementation actions to the Los Angeles Water Board by March 23, 2022.
2. Los Angeles County Permittees responsible for the Los Angeles River Metals TMDLs are responsible for conducting and reporting water and sediment monitoring above the Los Angeles River Estuary to determine the Los Angeles River’s contribution to the impairments in the Greater Los Angeles and Long Beach Harbor waters.
3. Los Angeles County Permittees responsible for the San Gabriel River Metals TMDLs are responsible for conducting and reporting water and sediment monitoring at the mouth of the San Gabriel River to determine the San Gabriel River’s contribution to the impairments in the Greater Los Angeles and Long Beach Harbor waters.

G. Los Angeles River Watershed Bacteria TMDL

1. **Load Reduction Strategy (LRS):** For dry weather, Permittees opting to implement an LRS may submit a stand-alone LRS for Los Angeles Water Board Executive Officer approval or may opt to submit the LRS as part of a Watershed Management Program per the deadlines indicated in Attachment Q (Los Angeles River Watershed TMDL Provisions), Table Q-1 of the Order. Table E-10 is a list of LRS submittals received to date.
2. **Implementation Plan:** By March 23, 2022, Permittees shall submit an Implementation Plan for wet weather with interim milestones for Los Angeles Water Board Executive Officer approval or may opt to address this requirement as part of a Watershed Management Program.

Table E-10. LRS Submittals

| Load Reduction Strategy | Submitted By | Document Date | Approval Date |
|--|--|----------------------|---------------------------|
| Arroyo Seco Load Reduction Strategy | Upper Los Angeles River Watershed Group | March 2016 | Has not been approved yet |
| Compton Creek Load Reduction Strategy | Upper Los Angeles River Watershed Group | March 2018 | Has not been approved yet |
| Compton Creek Load Reduction Strategy | Lower Los Angeles River Watershed Group | March 2018 | Has not been approved yet |
| Rio Hondo Load Reduction Strategy | Upper Los Angeles River Watershed Group, Los Angeles River Upper Reach 2 Sub Watershed Group, Lower Los Angeles River Watershed Group, City of El Monte, City of Irwindale | March 2016 | Has not been approved yet |
| Rio Hondo Load Reduction Strategy Addendum | Upper Los Angeles River Watershed Group, Los Angeles River Upper Reach 2 Sub Watershed Group, Lower Los Angeles River Watershed Group, City of El Monte, City of Irwindale | September 2017 | Has not been approved yet |
| Segment A Load Reduction Strategy | Lower Los Angeles River Watershed Group | September 2016 | Has not been approved yet |

| Load Reduction Strategy | Submitted By | Document Date | Approval Date |
|-----------------------------------|---|----------------------|---------------------------|
| Segment B Load Reduction Strategy | Lower Los Angeles River Watershed Group | September 2014 | Has not been approved yet |
| Segment B Load Reduction Strategy | Upper Los Angeles River Watershed Group as part of the EWMP | June 2015 | April 20, 2016 |
| Segment B Load Reduction Strategy | Los Angeles River Upper Reach 2 Sub Watershed Group | December 2014 | Has not been approved yet |
| Segment E Load Reduction Strategy | Upper Los Angeles River Watershed Group | September 2017 | Has not been approved yet |

H. Los Angeles River and Tributaries Metals TMDL

Permittees shall conduct and report additional receiving water monitoring to verify that water quality conditions are similar to those of the 2008 and 2014 copper WER study periods. The copper WER evaluation monitoring will consist of receiving water monitoring for key chemical parameters needed for estimates of WERs utilizing the Biotic Ligand Model (BLM). Monitoring shall be conducted at the locations sampled in the 2008 and 2014 copper WER studies, as well as additional locations in upstream portions of tributaries. The upstream tributary monitoring may be discontinued or reduced if it is shown that downstream tributary monitoring locations are representative of the entire tributary. Monitoring of sediment chemistry shall be conducted at one site immediately above the Los Angeles River Estuary and one site within the Estuary annually for analysis of general sediment quality constituents and metals.

Permittees will include criteria in their monitoring plan for determining what constitutes a significant change in BLM-predicted WERs. If BLM-predicted WERs significantly change, then Permittees shall submit a plan for Executive Officer approval to conduct WER toxicity testing in the applicable reaches or tributaries to reassess WERs.

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ATTACHMENT F – FACT SHEET

As described in Part II of the Order, the Los Angeles Water Board incorporates this Fact Sheet as findings of the Los Angeles Water Board supporting the issuance of the Order. This Fact Sheet sets forth the principal facts and the significant factual, legal, methodological, and policy and technical rationale that serve as the basis for the requirements of the Order.

I. PERMIT INFORMATION

The following table summarizes administrative information related to the facility and the Dischargers.

Table F-1. Facility Information

| | |
|--|--|
| WDID No.¹ | Various (see Table 2 and Table 3 of the Order) |
| Dischargers | The Los Angeles County Flood Control District (LACFCD), the County of Los Angeles, the 85 incorporated cities within the coastal watersheds of Los Angeles County, the Ventura County Watershed Protection District (VCWPD), the County of Ventura, and the 10 incorporated cities within Ventura County (see Table 2 and Table 3 of the Order) ² |
| Name of Facility | Municipal Separate Storm Sewer Systems (MS4s) ³ within the coastal watersheds of Los Angeles and Ventura counties |
| Facility Contacts, Titles, Addresses, and Phone Numbers | Available through the Stormwater Multiple Application and Report Tracking System (SMARTS) ⁴ at https://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.xhtml |
| Mailing Addresses | Refer to SMARTS |
| Billing Addresses | Refer to SMARTS |
| Type of Facility | Large Municipal Separate Storm Sewer System (MS4) |
| Major or Minor Facility | Major |
| Discharge Points | Locations throughout the Los Angeles Region |
| Discharge Description | Stormwater and Non-Stormwater Discharges |
| Receiving Waters | Various (see Part II.A of this Fact Sheet) |

¹ WDID No. stands for “Waste Discharge Identification” Number, which is a unique identifier given to a specific facility and regulatory measure (e.g., NPDES permit). In the case of the Order, each Discharger has a unique WDID number associated with its coverage under the Order.

² Note that the cities of Palmdale and Lancaster, though in Los Angeles County, are not within the coastal watersheds of Los Angeles County and, therefore, are not under the jurisdiction of the Los Angeles Water Board. These two cities are under the jurisdiction of the Lahontan Water Board.

³ See Attachment A of the Order for definitions of terms, acronyms, and abbreviations used in the Order, including this Fact Sheet and all other attachments.

⁴ SMARTS provides a platform where dischargers, regulators, and the public can enter, manage, and view stormwater data including permit applications and compliance and monitoring data associated with NPDES permits for stormwater discharges issued by the State of California. SMARTS is compliant with U.S. EPA’s Cross-Media Electronic Reporting Rule, which sets requirements for electronic reporting of NPDES permit-related submittals.

| | |
|-----------------------------|--|
| Receiving Water Type | Inland surface waters, estuarine waters, and marine waters, including but not limited to, lakes, rivers, estuaries, lagoons, harbors, bays, beaches, and the Pacific Ocean |
|-----------------------------|--|

A. Dischargers

The 99 municipalities listed in Table 2 and Table 3 of the Order are the owners and/or operators⁵ of Municipal Separate Storm Sewer Systems within the Los Angeles Region (hereinafter Facility or MS4). For the purposes of the Order, the entities listed in Table 2 and Table 3 of the Order are hereinafter referred to separately as “Permittees” and jointly as the “Dischargers.” References to “discharger” or “permittee” or “co-permittee” or “municipality” in applicable federal and state laws, regulations, plans, or policy are held to be equivalent to references to the Dischargers or Permittees herein.

References to “Los Angeles County MS4 Permittees” or “Los Angeles County Permittees” refer to LACFCD, the County of Los Angeles, and the 85 incorporated cities within Los Angeles County, excluding Lancaster and Palmdale which are not within the Los Angeles Water Board’s jurisdiction. References to “Ventura County MS4 Permittees” or “Ventura County Permittees” refers to VCWPD, the County of Ventura, and the 10 incorporated cities within Ventura County. Furthermore, reference to “Los Angeles Region” is defined per California Water Code section 13200(d) as follows: “Los Angeles region, which 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.”

B. Discharges

Information about the Facility’s stormwater and non-stormwater discharges to waters of the United States is summarized in Table F-1 above. Permittees were previously regulated by (1) Order No. R4-2010-0108 and National Pollutant Discharge Elimination System (NPDES) Permit No. CAS004002, effective on July 8, 2010, (2) Order No. R4-2012-0175 and NPDES No. CAS004001, effective on December 28, 2012, and (3) Order No. R4-2014-0024 and NPDES No. CAS004003, effective on March 28, 2014. Attachment A of the Order lists definitions, abbreviations, and acronyms of terms used in the Order and all other attachments. Attachment B of the Order provides a map depicting each major Watershed Management Area (WMA), its subwatersheds, and the major receiving waters therein to which the Facility discharges. Attachment C of the Order depicts the major MS4-related infrastructure within the Los Angeles Region and monitoring locations for Ventura County Permittees.

C. Permit Scope

The Order regulates discharges of stormwater and non-stormwater from the Permittees’ MS4s. Section 122.26(b)(8) of title 40 of the Code of Federal Regulations (CFR)⁶ defines an MS4 as “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade

⁵ Owner or operator means the owner or operator of any facility or activity subject to regulation under the NPDES program (40 CFR § 122.2).

⁶ All further statutory references are to title 40 of the Code of Federal Regulations unless otherwise indicated.

channels, or storm drains): (i) [o]wned 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, 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 a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii) [d]esigned or used for collecting or conveying storm water; (iii) [w]hich is not a combined sewer; and (iv) [w]hich is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.”

Stormwater discharges consist of those discharges that originate from precipitation events. Federal regulations define “storm water” as “storm water runoff, snow melt runoff, and surface runoff and drainage.” (40 CFR § 122.26(b)(13)). While “surface runoff and drainage” is not defined in federal law, U.S. EPA’s preamble to its final stormwater regulations demonstrates that the term is related to precipitation events such as rain and/or snowmelt. (*55 Fed. Reg. 47990, 47995-96* (Nov. 16, 1990)).

Non-stormwater discharges consist of all discharges through an MS4 that do not originate from precipitation events. Non-stormwater discharges through an MS4 are prohibited unless authorized under a separate NPDES permit; authorized by U.S. EPA pursuant to Sections 104(a) or 104(b) of CERCLA; composed of natural flows; the result of emergency firefighting activities; or conditionally exempted in the Order.

A permit issued to more than one Permittee for MS4 discharges may contain separate stormwater management programs for particular Permittees or groups of Permittees. (40 CFR § 122.26(d)(2)(iv)). Given LACFCD’s and VCWPD’s limited land use authorities, they are not subject to the Industrial/Commercial Facilities Program and the Planning and Land Development Program. However, as owners and operators of a MS4, LACFCD and VCWPD remain subject to the Public Information and Participation Program, Illicit Discharge Detection and Elimination Program, Public Agency Activities Program, and Construction Program. LACFCD and VCWPD are also subject to all other requirements of the Order, including but not limited to the discharge prohibitions, receiving water limitation provisions, TMDL provisions, monitoring and reporting provisions, and standard provisions.

D. Rationale for Issuance of a Regional Phase I MS4 Permit

The Los Angeles Water Board retains the discretion as the permitting authority to determine whether to issue permits for discharges from MS4s on a system-wide or jurisdiction-wide basis. Clean Water Act section 402(p)(3)(B)(i) and implementing regulations at 40 CFR section 122.26, subdivisions (a)(1)(v), (a)(3)(ii), and (a)(3)(iv) allow the permitting authority to issue permits for MS4 discharges on a system-wide or jurisdiction-wide basis taking into consideration a variety of factors. Such factors include the location of the discharge with respect to waters of the United States, the size of the discharge, the quantity and nature of the pollutants discharged to waters of the United States, and other relevant factors. Federal regulations at 40 CFR section 122.26(a)(3)(ii) identify a variety of possible permitting structures, including one system-wide permit covering all MS4 discharges or distinct permits for appropriate categories of MS4 discharges including, but not limited to, all discharges owned or operated by the same municipality, located within the same jurisdiction, all discharges within a system that discharge to the same watershed, discharges within a MS4 that are similar in nature, or

for individual discharges from MS4s. Consistent with CWA 402(p)(3)(B)(i), the Los Angeles Water Board is issuing the Order for its entire Los Angeles Region.

Additionally, the Los Angeles Water Board is issuing the Order to implement the State Water Board's guiding principles for MS4 permit development by all regional water boards, which is provided in Order WQ 2015-0075.⁷ Specifically, the State Water Board declared:

“Phase I MS4 permits should (1) continue to require compliance with water quality standards in accordance with our Order WQ 99-05; (2) allow compliance with TMDL requirements to constitute compliance with receiving water limitations; (3) provide for a compliance alternative that allows permittees to achieve compliance with receiving water limitations over a period of time as described above; (4) encourage watershed-based approaches, address multiple contaminants, and incorporate TMDL requirements; (5) encourage the use of green infrastructure and the adoption of low impact development principles; (6) encourage the use of multi-benefit regional projects that capture, infiltrate, and reuse storm water; and (7) require rigor, accountability, and transparency in identification and prioritization of issues in the watershed, in proposal and implementation of control measures, in monitoring of water quality, and in adaptive management of the program.”

The application of these principles on a region-wide basis results in improved consistency and uniformity, where warranted, in Phase I MS4 permit requirements, while providing Permittees the flexibility to tailor their implementation through watershed management programs in consideration of socio-economic, land use, and geographic characteristics.

Two of the three Phase I MS4 permits issued by the Los Angeles Water Board, including Los Angeles County and the City of Long Beach, already incorporate these principles. With regard to Ventura County MS4 Permittees, the previous Order, No. R4-2010-0108, was structured as a single permit whereby all 12 Permittees were assigned uniform requirements, with additional requirements for the Principal Permittee. With the issuance of the Los Angeles County MS4 Permit (Order No. R4-2012-0175) as amended by State Water Board Order WQ 2015-0075, the Los Angeles Water Board created a new permitting framework based on Watershed Management Areas to address MS4 discharges and water quality protection in the region. This framework

⁷ On April 21, 2021, the Los Angeles County Superior Court issued a final judgment in the case of Natural Resources Defense Council, Inc. and Los Angeles Waterkeeper v. State Water Resources Control Board and California Regional Water Quality Control Board, Los Angeles Region (Super. Ct. Los Angeles County, No. BS156962 (NRDC)). At issue was plaintiffs' challenge to the adequacy of the Water Boards' antidegradation analysis in the 2012 Los Angeles County MS4 Order. The trial court ruled that the Water Boards' antidegradation analysis for any high quality waters was not supported by adequate findings. In furtherance of the judgment, the court will issue a writ ordering the State Water Board to set aside Order WQ 2015-0075. As of June 1, 2021, the court has not issued the writ and the State Water Board has taken no action to set aside Order WQ 2015-0075. As such, Order WQ 2015-0075 remains in effect and relevant to the analysis of many of the matters discussed herein. Even if Order WQ 2015-0075 is ultimately set aside, the trial court's ruling was based solely on the antidegradation analysis for high quality waters and did not call into question the propriety of the State Water Board's other holdings on the 2012 Los Angeles County MS4 Permit. Because these holdings have not been disturbed by the NRDC case, and because these holdings address matters relevant to the Regional MS4 Order, this Fact Sheet continues to cite and discuss Order WQ 2015-0075, as appropriate, for matters other than antidegradation concerning high quality waters.

intended to provide a comprehensive and integrated strategy toward water resource protection, enhancement, and restoration within a hydrologically defined drainage basin or watershed while considering watershed specific characteristics in order to develop and implement a cost-effective program to achieve compliance. The Ventura County Permittees' reapplication package supported the inclusion of the Watershed Management Program as an optional alternative compliance pathway in Ventura County. Additionally, the reapplication package assumed that the future permit would follow the structure of the Los Angeles County MS4 Permit in Order No. R4-2012-0175 and therefore, the Permittees framed their proposals for changes to the permit accordingly. As a result, the Los Angeles Water Board finds that the framework and principal elements of a MS4 permit need not differ between counties and/or Permittees in the Los Angeles Region. A Regional Phase I MS4 Permit, which incorporates a watershed-based approach, provides regional consistency, while allowing Permittees the opportunity to customize their stormwater management programs considering unique watershed characteristics.

The Los Angeles Water Board also considered the nature of most Permittees' MS4s, which comprise a large interconnected system particularly in Los Angeles County where the discharges from these entities frequently commingle in the MS4 prior to discharge to receiving waters. Additionally, the City of Long Beach, which was previously regulated under its own permit, is geographically located at the base of 4 out of 10 of the watersheds within Los Angeles County and therefore has frequent commingling of its MS4 discharges with MS4 discharges of upstream Permittees in these watersheds.

The Los Angeles Water Board also considered the location of discharges and the nature of the receiving waters (see 40 CFR 122.26(b)(4)(iii) and (b)(7)(iii)). For example, while the MS4s in Los Angeles and Ventura County do not interconnect, they do discharge to some shared receiving waters (e.g., Malibu Creek, Santa Monica Bay, Santa Clara River). The City of Thousand Oaks (within Ventura County) and the City of Agoura Hills (within Los Angeles County) both discharge to Malibu Creek. Likewise, the cities of Ventura (within Ventura County) and Santa Clarita (within Los Angeles County) both discharge to Santa Clara River. The same is true within Ventura County where for example, the City of Ojai and the City of Ventura, both discharge to receiving waters in the Ventura River Watershed. Having one permit for MS4 discharges to the same receiving waters across Los Angeles and Ventura Counties allows to the Board to address water quality in a consistent manner.

Further necessitating a watershed framework is the requirement to implement 45 largely watershed-based TMDLs in the Order. Most Permittees have already established jurisdictional groups on a watershed or subwatershed basis for TMDL implementation. (See Attachment J of the Order for a matrix of these TMDLs and Permittees by WMA.) Some of the TMDLs apply to both Los Angeles County and Ventura County Permittees for the reason discussed above. These TMDLs also address multiple watersheds and the jurisdictional areas of multiple Permittees. Having separate permits makes implementation of the TMDLs more cumbersome.

Based on an evaluation of these factors, the Los Angeles Water Board determined that, because of the complexity and networking of the MS4 within the Los Angeles Region, that one system-wide permit is appropriate. In order to provide individual Permittees with specific requirements, the Order regulates the MS4 discharges of all 99 Permittees with some sections devoted to universal requirements for all Permittees. Some sections are devoted to distinct requirements for Los Angeles County Permittees and Ventura County Permittees and other sections devoted to requirements specific to each WMA,

including TMDL implementation provisions. This structure is supported by section 402(p) of the Clean Water Act and 40 CFR sections 122.26, subdivisions (a)(1)(v), (a)(3)(ii), and (a)(3)(iv). A single permit will ensure consistency and equitability in regulatory requirements within the Los Angeles Region, while watershed-based requirements within the single permit will provide flexibility to tailor permit provisions to address distinct watershed characteristics and water quality issues. Additionally, an internal watershed-based structure comports with the Los Angeles Water Board's Watershed Management Initiative and its watershed-based TMDL requirements. Watershed-based requirements will help promote watershed-wide solutions to address water quality problems, which in many cases are the most efficient and cost-effective means to address stormwater and urban runoff pollution. Further, watershed-based requirements may encourage collaboration among permittees to implement regional integrated water resources approaches such as stormwater capture and re-use to achieve multiple benefits.

II. FACILITY DESCRIPTION

A. Description of Receiving Waters and Watershed Management Areas

The area under the jurisdiction of the Los Angeles Water Board (Los Angeles Region) is 4,447 square miles in size. It contains 120 miles of coastline, 18,839 acres of lakes, and 1,704 miles of rivers and streams. Major Watershed Management Areas in the Los Angeles Region are shown on Figure B-1 of Attachment B of the Order and described below.

B. Geographic Coverage and Watershed Management Areas

The municipal stormwater and non-stormwater discharges from the MS4 enter receiving waters in the major Watershed Management Areas of the Ventura River Watershed; Miscellaneous Ventura County Coastal Watersheds; Santa Clara River Watershed; Calleguas Creek Watershed; Santa Monica Bay Watershed, including Malibu Creek Subwatershed, Ballona Creek Subwatershed, and Marina del Rey Subwatershed; Dominguez Channel and Greater Los Angeles and Long Beach Harbors Watershed, including Machado Lake Subwatershed; Los Angeles River Watershed; San Gabriel River Watershed; and Los Cerritos Channel and Alamitos Bay Watershed. The receiving waters within these WMAs include those identified in Tables 2-1, 2-1a, 2-3, 2-3a, 2-4, 2-4a, and Appendix 1 Table 1, Table A2-1, Table A2-3 and Table A2-4 of the *Water Quality Control Plan – Los Angeles Region (Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties)*, and other unidentified tributaries to these surface waters.

The Order defines WMAs consistent with the delineations used by the Los Angeles Water Board. Permittees included in each of the major WMAs are listed in Attachment J of the Order. Maps depicting each WMA, its subwatersheds, and the major receiving waters therein are included in Attachment B of the Order.

Ventura River Watershed Management Area. The Ventura River and its tributaries drain a coastal watershed in western Ventura County. The watershed covers a fan-shaped area of 235 square miles (150,400 acres), which is located within the western Transverse Ranges (the only major east-west mountain ranges in the continental U.S.) (Attachment B Figure B-2). From the upper slopes of the Transverse Ranges, the surface water system in the Ventura River watershed generally flows in a southerly direction to an estuary, located at the mouth of the Ventura River. Groundwater basins are highly interconnected with the surface water system and are recharged or depleted

according to surface flow conditions. The surface waters that drain the watershed have very steep gradients, ranging from 40 feet per mile at the mouth to 150 feet per mile at the headwaters. Precipitation in the watershed varies widely and mostly occurs as rainfall during a few storms between November and March. Summer and fall months are typically dry. Although snow occurs at higher elevations, melting snowpack does not sustain significant runoff in warmer months. The unpredictable weather pattern, coupled with the steep gradients throughout most of the watershed, result in high flow velocities with most runoff reaching the ocean.

Land use in the watershed is predominantly open space with a mix of residential, agriculture, commercial and industrial uses along the mainstem of the river. The MS4s of the incorporated cities of Ojai and Ventura along with unincorporated areas of Ventura County discharge to the Ventura River system. Residents and agricultural interests in this watershed are entirely dependent on local surface water and groundwater and there is no connection to the State Water Project to deliver imported water.

Migratory steelhead trout ascend upstream in the Ventura River and into San Antonio Creek and may utilize areas above the Robles Diversion Dam via a fish passageway. A limited resident population of rainbow trout occurs above Robles Diversion Dam and in San Antonio Creek and the lower Ventura River. Multiple interested agencies, including Ventura County and other entities, have recognized the potential for the restoration and enhancement of steelhead populations in the Ventura River through the removal of Matilija Dam, which is in the upper watershed and blocks access to a large area of prime spawning habitat.

Wetlands are found at the Ventura River estuary as well as along the river and bordering lakes. The wetland at the mouth of the Ventura River is considered a significant biological resource by Ventura County due to its ability to provide habitat for thousands of biota that include endangered, rare, or threatened species. The mainstem of the river as well as San Antonio Creek are also listed as significant biological resources due to their use by steelhead trout. "Critical" condor habitat exists in three areas in Ventura County, including Matilija Creek.

Water quality in the upper reaches is good but quality in the lower reaches is influenced by a combination of municipal wastewater discharges, agricultural activities, livestock, MS4 discharges, and oil industry discharges among other sources of pollutants. Excessive algae occurs at many locations and most water quality problems involve eutrophication. Total Maximum Daily Loads (TMDLs) have been established (as required by the federal Clean Water Act) to address water quality impairments due to trash, nutrients, eutrophic conditions and algae in the watershed.

Stakeholders in the watershed have formed several long-range water planning groups and have developed Integrated Regional Water Management (IRWM) Plans under Propositions 50 and 84. These Plans address the future water needs of each IRWM Region in terms of reliability of the water supply, improvement to water quality (including implementing TMDLs), increases in habitat and open space (additionally serving as areas for recharge of stormwater), and replacement of water-related infrastructure as needed. The stakeholders also propose projects to help implement the Plan's goals; applicants may pursue funding through a variety of sources including grant funding available through bond programs. Ventura County Permittees within this watershed also participated in the development of a Storm Water Resource Plan pursuant to Water Code section 10563 et seq. in order to be eligible to apply for state funding for stormwater and dry weather runoff projects to improve water quality.

Miscellaneous Ventura County Coastal Watershed Management Area. The Miscellaneous Ventura County Coastal WMA is composed of four separate coastal drainage areas located between the Los Angeles Water Board's boundary with the Central Coast Water Board and the Ventura River, Santa Clara River, Calleguas Creek, and Santa Monica Bay WMAs (Attachment B Figure B-3). The drainage areas are typified by beaches, small coastal streams, coastal lakes, and harbors such as Ventura Harbor, Channel Islands Harbor, and Port Hueneme. The WMA encompasses an area that historically consisted of extensive coastal wetlands that were connected to the Pacific Ocean. Many unique habitats, including coastal wetlands and lagoons, such as McGrath Lake and Ormond Beach Wetlands, and the nearby coastal dunes remain in the WMA. They are identified as significant biological resources by Ventura County. These areas provide habitats for many fish, birds, invertebrates, sea lions, and other marine and estuarine species

Land use in this WMA trends heavily to either open space or urban uses. The MS4s of the incorporated cities of Port Hueneme, Oxnard, and Ventura along with unincorporated areas of Ventura County discharge to these miscellaneous Ventura County Coastal Watersheds. Some of these waterbodies receive runoff from urban areas through sizable drains and pollutants associated with MS4 discharges will be found. The water quality problems found in the harbors in the WMA generally involve elevated bacteria, metals, and legacy pesticides. While residents and commercial/agricultural interests in this WMA utilize some local groundwater, they are highly dependent on imported water.

Channel Islands Harbor: Channel Islands Harbor is located south of the Santa Clara River and is in the immediate vicinity of considerable residential development and some agricultural land. Kiddie Beach and Hobie Beach, near the mouth of the harbor, are on the 2014/2016 Clean Water Act section 303(d) list due to impairment by indicator bacteria.

Port Hueneme Harbor: Port Hueneme Harbor is a medium-sized deep-water harbor located in Ventura County, north of Mugu Lagoon. The construction of most of the harbor was completed in 1975. A U.S. Navy Construction Battalion historically operated part of it. The rest of the harbor serves as a commercial port operated by the Oxnard Harbor District. Two endangered bird species may use the harbor, the California Brown Pelican, and the California Least Tern. The harbor is on the 2014/2016 Clean Water Act section 303(d) list for DDT and PCBs in fish/shellfish tissue. The DDT and PCB impairments in fish/shellfish tissue are being addressed through an action other than a TMDL (i.e., dredging).

Ventura Marina: Ventura Marina is a small craft harbor located between the mouths of the Ventura and Santa Clara Rivers. It is home to numerous small boats and two boatyards. The "Ventura Keys" area of the marina is a residential area situated along three canals. The marina is surrounded by agricultural land and a large unlined ditch drains into the Keys area. The marina and Ventura Keys area are on the 2014/2016 Clean Water Act section 303(d) list for indicator bacteria. In 2018, the Los Angeles Water Board re-evaluated the 303(d) listing for Ventura Keys and concluded that the waterbody should remain on the 303(d) list. The area around the jetties is listed as impaired for DDT and PCBs. The nearby Arundell Barranca is an open drain carrying mostly agricultural, commercial, and residential runoff, which flows into the marina.

McGrath Lake: McGrath Lake is a small brackish waterbody located just south of the Santa Clara River. The lake is located partially on State Parks land and partially on privately-owned oilfields in current production. A number of agricultural ditches drain into the lake. The MS4 does not discharge into McGrath Lake. A state beach is located off the coastal side of the lake. The habitat around the lake is quite unique and it is utilized by a large number of overwintering migratory birds. The lake is on the 2014/2016 Clean Water Act section 303(d) list for several legacy pesticides.

Open Coastline: A major feature of the coastline north of Mugu Lagoon is Ormond Beach and Ormond Beach Wetlands. The ocean immediately off the coast was part of the Bight '03, Bight '98, and the 1994 Southern California Bight Regional Monitoring Program. The Ormond Beach Wetlands has been extensively characterized as part of a wetlands restoration planning process being led by the Coastal Conservancy. The Ormond Beach Task Force was formed in 1993 and meets as needed to address issues and projects that may affect the beach and wetlands. Major ongoing activities include work by U.S. EPA to characterize and clean up the Halaco Superfund site adjacent to Ormond Beach Wetlands and wetlands restoration planning being undertaken by the State Coastal Conservancy. Additionally, the open coastline has numerous beaches. Several of these were historically listed on the 303(d) list as impaired due to bacteria. The Los Angeles Water Board re-evaluated these listings in 2019 and, based on the data analysis, recommended removing Ormond Beach, Peninsula Beach, Point Mugu Beach, Port Hueneme Beach Park, Rincon Parkway Beach, San Buenaventura Beach and Surfer's Point at Seaside (also known as Seaside Park Beach) from the 303(d) list. The Los Angeles Water Board recommended keeping Rincon Beach on the 303(d) list due to an ongoing bacteria impairment.

TMDLs have been developed for many of the impairments in the Miscellaneous Ventura County Coastal Watersheds. TMDLs in effect include those for bacteria at Kiddie Beach and Hobie Beach, bacteria at McGrath Beach, and PCBs, pesticides, and sediment toxicity at McGrath Lake.

Santa Clara River Watershed Management Area. The Santa Clara River and its tributaries drain a watershed area of 1,620 square miles (1,036,800 acres) (Attachment B Figure B-4). At approximately 100 miles (161 kilometers) in length, the Santa Clara River is the largest river system in southern California that remains in a relatively natural state. The river originates on the northern slope of the San Gabriel Mountains in Los Angeles County, traverses Ventura County, and flows into the Pacific Ocean between the cities of Ventura and Oxnard. Santa Clara River Reaches 1, 2, 3, 4A, 4B and major tributaries Santa Paula, Sespe and Piru Creeks are in Ventura County. Santa Clara River Reach 5 lies between Ventura County and Los Angeles County. Santa Clara River Reaches 6, 7, 8 and major tributaries Castaic, San Francisquito, and Bouquet Canyon Creeks are in Los Angeles County. About 40% of the watershed, the Upper Santa Clara River, is in Los Angeles County and about 60% of the watershed, the Lower Santa Clara River, is in Ventura County.

Land use in the watershed is predominately open space, most of which is National Forest or condor sanctuary. Residential, agriculture, and some industrial land uses occur along the mainstem. Portions of the MS4s of the incorporated cities of Santa Clarita, Fillmore, Santa Paula, Ventura and Oxnard and unincorporated areas of both counties discharge to the Santa Clara River system.

Significant biological resources described in Ventura County's General Plan include the extensive patches of high-quality riparian habitat that are present along the length of the river and its tributaries. Also considered significant are areas such as the wetlands found at the Santa Clara River estuary, along the river, and bordering lakes. One of the largest of Santa Clara River's tributaries, Sespe Creek, contains most of the Santa Clara River's remnant run of the steelhead trout. Piru and Santa Paula Creeks, two other tributaries of the Santa Clara River, also support good habitat for steelhead, although both contain barriers to migration. Additionally, the Santa Clara River has populations of unarmored three-spined stickleback (endangered), Santa Ana sucker, arroyo toad, and California least Bell's vireo. San Francisquito Canyon, Placerita Canyon, Soledad Canyon, Castaic, and Elizabeth Canyon Creeks are smaller tributaries that all provide valuable habitat. The Santa Clara River also serves as an important wildlife corridor. A lagoon exists at the mouth of the river and supports a large variety of wildlife.

Various reaches of the Santa Clara River are on the 2014/2016 Clean Water Act section 303(d) list of impaired water bodies for pesticides, metals, indicator bacteria, salts, and trash, among other pollutants. The elevated bacterial indicator densities are causing impairment of the REC-1 and REC-2 designated beneficial uses for the Santa Clara River Estuary and Reaches 3, 5, 6, and 7. The Estuary is also listed for toxaphene and residual amounts of other legacy pesticides (ChemA) in fish tissue. The excessive levels of chloride are impairing the AGR and GWR designated beneficial uses of Santa Clara River Reaches 3, 4A, 4B, 5 and 6. The trash in Lake Elizabeth is causing impairments to the WARM, WILD, RARE, REC-1 and REC-2 designated beneficial uses. TMDLs have been developed for these impairments in the watershed.

Stakeholders within the area under the jurisdiction of the Los Angeles Water Board have formed several long-range water planning groups and have developed IRWM Plans under Propositions 50 and 84. Stakeholders in the Los Angeles County portion of the Santa Clara River Watershed joined together to develop the IRWM Plan for the Upper Santa Clara River. They work closely with the IRWM group in the lower watershed, led by the Watersheds Coalition for Ventura County, which has a Santa Clara River Watershed Committee for IRWM Plan implementation in that watershed. Permittees within this watershed also participated in the development of a Storm Water Resource Plan pursuant to Water Code section 10563 et seq. in order to be eligible to apply for state funding for stormwater and dry weather runoff projects to improve water quality.

Calleguas Creek Watershed Management Area. Calleguas Creek and its major tributaries: Revolon Slough, Conjeo Creek, Arroyo Conejo, Arroyo Santa Rosa, and Arroyo Simi, drain a watershed area of 343 square miles (219,520 acres) in southern Ventura County and a small portion of western Los Angeles County (Attachment B Figure B-5). The northern boundary is formed by the Santa Susana Mountains, South Mountain, and Oak Ridge; the southern boundary is formed by the Simi Hills and Santa Monica Mountains. Land uses vary throughout the watershed. Urban development is generally restricted to the city limits of Simi Valley, Moorpark, Thousand Oaks, and Camarillo. Although some residential development has occurred along the slopes of the watershed, most upland areas are still open space. Agricultural activities, primarily cultivation of orchards and row crops, are spread out along valleys and on the Oxnard Plain.

Mugu Lagoon, located at the mouth of the watershed, is one of the few remaining significant saltwater wetland habitats in southern California. The Point Mugu Naval Air Base is located in the immediate area. The surrounding Oxnard Plain supports a large variety of agricultural crops. The lagoon borders on an Area of Special Biological

Significance (ASBS) and supports a great diversity of wildlife including several endangered birds and one endangered plant species. Except for the military base, the lagoon area is relatively undeveloped.

Various reaches of the Calleguas Creek Watershed are on the 2014/2016 Clean Water Act section 303(d) list of impaired water bodies for ammonia, chlordane, chloride, legacy pesticides, metals, bacteria, nutrients, and trash, among other pollutants.

Stakeholders within the area under the jurisdiction of the Los Angeles Water Board have formed several long-range water planning groups and have developed IRWM Plans under Propositions 50 and 84. Permittees within this watershed also participated in the development of a Storm Water Resource Plan pursuant to Water Code section 10563 et seq. in order to be eligible to apply for state funding for stormwater and dry weather runoff projects to improve water quality.

Santa Monica Bay Watershed Management Area. The Santa Monica Bay Watershed Management Area encompasses an area of 414 square miles (264,960 acres) (Attachment B Figure B-6). Its borders reach from the crest of the Santa Monica Mountains on the north and from the Ventura-Los Angeles County line to downtown Los Angeles. From there it extends south and west across the Los Angeles plain to include the area east of Ballona Creek and north of the Baldwin Hills. A narrow strip of land between Playa del Rey and Palos Verdes drains to the Bay south of Ballona Creek. The WMA includes several subwatersheds, the two largest being Malibu Creek to the northwest and Ballona Creek to the south. The Malibu Creek area contains mostly undeveloped mountain areas, large acreage residential properties, and many natural stream reaches, while Ballona Creek is predominantly channelized and drains a highly developed watershed.

Many of the Santa Monica Bay beaches are identified on the 2014/2016 Clean Water Act section 303(d) list of impaired water bodies for indicator bacteria. Santa Monica Bay offshore and nearshore is on the 2014/2016 Clean Water Act section 303(d) list of impaired water bodies for trash, DDTs, PCBs, arsenic, and mercury. The elevated bacterial indicator densities during both dry and wet weather are causing impairments of the REC-1 and REC-2 designated beneficial uses of the Santa Monica Bay beaches. The debris and elevated concentrations of DDT and PCBs are causing impairments to the IND, NAV, REC-1, REC-2, COMM, EST, MAR, BIOL, MIGR, WILD, RARE, SPWN, SHELL, and WET designated beneficial uses of the Santa Monica Bay. One of the impacts in marine habitats is sediment contamination and damage to marine life that the contaminants cause when they are released from the sediment (through natural fluctuations or through disturbance of the sediment) into the food chain. Bioaccumulation of DDT in white croaker, Dover sole, and California brown pelicans are well-known examples of the impacts caused by sediment contamination.

Malibu Creek subwatershed: The Malibu Creek subwatershed drains an area of about 109 square miles (69,760 acres) (Attachment B Figure B-6a). Approximately two-thirds of this subwatershed lies in Los Angeles County and the remaining third lies in Ventura County. Much of the land is part of the Santa Monica Mountains National Recreation Area and is under the purview of the National Parks Service. The watershed borders the eastern portion of Ventura County to the northwest and the Los Angeles River watershed to the east. Major tributaries include Cold Creek, Lindero Creek, Las Virgenes Creek, Medea Creek, and Triunfo Creek. The Malibu Creek watershed also includes lakes such as Lake Sherwood, Westlake Lake, Malibou Lake, and Lake Lindero. Located at the end of and receiving flows from

Malibu Creek is the 40-acre Malibu Lagoon. The Malibu Creek subwatershed land uses are 88% open space, 3% commercial/light industry, 9% residential, and less than 1% public.

Malibu Lagoon supports two important plant communities, the coastal salt marsh and coastal strand, and is an important refuge for migrating birds (over 200 species of birds have been observed). Perennial streams in Malibu Canyon support oak and riparian woodlands. Malibu Creek is also the southernmost watercourse in California where steelhead trout continue to spawn in relatively large numbers.

The Malibu Creek Watershed is on the 2014/16 Clean Water Act section 303(d) list of impaired water bodies for bacteria, nutrients, selenium, sulfates, sediment/siltation, and trash. Elevated bacterial indicator densities are causing impairment of the REC-1 and REC-2 designated beneficial uses of Malibu Creek, Malibu Lagoon, and the adjacent beaches. Excess nutrients and sedimentation/siltation are causing impairments to the REC-1, REC-2, WARM, COLD, EST, MAR, WILD, RARE, MIGR, and SPWN designated beneficial uses of waterbodies in the Malibu Creek Watershed. Selenium is causing impairments to the WARM designated beneficial uses of waterbodies in the Malibu Creek Watershed. Trash is causing impairments to the REC-1, REC-2, WARM, COLD, MIGR, WILD, RARE, SPWN, and WET designated beneficial uses of the waterbodies in the Malibu Creek Watershed.

Marina del Rey subwatershed: The Marina del Rey subwatershed is approximately 2.7 square miles (1,728 acres) located adjacent to the mouth of Ballona Creek (Attachment B, Figure B-6b). The Marina del Rey subwatershed is highly developed at 80%; the remaining 20% is split between water and open/recreation land uses.

Marina del Rey is on the 2014/2016 Clean Water Act section 303(d) list for bacteria and sediment concentrations of copper, lead, zinc, DDT, PCBs, chlordane, and sediment toxicity. The elevated bacterial indicator densities are causing impairment of the REC-1 and REC-2 designated beneficial uses at Marina del Rey Harbor Mothers' Beach and back basins. The toxic pollutants are causing impairments to the REC-1, MAR, WILD, COMM, and SHELL designated beneficial uses of the Marina del Rey Harbor.

Ballona Creek subwatershed: Ballona Creek and its tributaries drain a subwatershed of about 128 square miles (81,920 acres) (Attachment B, Figure B-6c). Ballona Creek is the largest drainage tributary to Santa Monica Bay and discharges to the ocean adjacent to the entrance of the Marina del Rey Harbor. The watershed boundary extends in the east from the crest of the Santa Monica Mountains southward and westward to the vicinity of central Los Angeles and thence to Baldwin Hills. Tributaries of Ballona Creek include Centinela Creek, Sepulveda Canyon Channel, Benedict Canyon Channel, and numerous other storm drains. Ballona Creek is concrete lined upstream of Centinela Boulevard. All of its tributaries are either concrete channels or covered culverts. The channel downstream of Centinela Boulevard is trapezoidal composed of grouted rip-rap side slopes and an earth bottom. The urbanized areas of Ballona Creek account for 80% of the watershed; the partially developed foothill and mountains make up the other 20%.

The watershed encompasses an area that historically consisted of extensive wetlands. The current-day Ballona Wetlands are located near the mouth of the

creek and represents one of the few remaining regionally significant coastal wetlands along Santa Monica Bay. The complex of wetlands is a mixture of habitats dominated by coastal salt marsh; several special status species are supported there including Belding's Savannah Sparrow. In 2004, the State of California acquired ownership of this remaining wetland area (600 acres (243 hectares) in total).

Ballona Creek and Ballona Creek Estuary are on the 2014/2016 Clean Water Act section 303(d) list for trash, toxicity, bacteria, historic pesticides, PCBs, PAHs, and metals. The Ballona Creek Wetlands is on the 2014/2016 Clean Water Act section 303(d) list for trash, exotic vegetation, habitat alterations, and reduced tidal flushing. Trash is causing impairments to the REC-1, REC-2, WARM, WILD, EST, MAR, RARE, MIGR, SPWN, COMM, WET, and COLD designated beneficial uses of Ballona Creek. The metals, pesticides, PCBs, and PAHs in sediments and dissolved copper, dissolved lead, and dissolved zinc, are causing impairments to the REC-1, REC-2, EST, MAR, WILD, RARE, MIGR, SPWN, COMM, and SHELL designated beneficial uses of Ballona Creek Estuary, Ballona Creek, and Sepulveda Channel. The elevated bacterial indicator densities are causing impairment of the REC-1, LREC-1, and REC-2 designated beneficial uses of Ballona Creek, Sepulveda Channel, and Ballona Estuary. The excess sediment and invasive non-native vegetation are causing impairments to the EST, MIGR, RARE, REC-1, REC-2, SPWN, WET, and WILD designated beneficial uses of the Ballona Creek Wetlands.

Dominguez Channel and Greater Harbor Waters Watershed Management Area.

The Dominguez Channel and Los Angeles/Long Beach Harbors Watershed Management Area (Dominguez WMA) is in the southern portion of the Los Angeles Basin (Attachment B Figure B-7). It covers an area of approximately 121 square miles (77,440 acres). Los Angeles Harbor is 7,500 acres and the Long Beach Harbor is 7,600 acres; together they have an open water area of approximately 8,128 acres. Along the northern portion of San Pedro Bay is a natural embayment formed by a westerly extension of the coastline which contains both harbors, with the Palos Verdes Hills the dominant onshore feature. The 15-mile-long Dominguez Channel drains a densely urbanized area to Inner Los Angeles Harbor. Despite its industrial nature, contaminant sources, disrupted wetlands habitat, and low flushing ability, the inner harbor area supports diverse fish and benthic populations and provides a protected nursery area for juvenile fish. The California least tern, an endangered species, nests in one part of the harbor complex. Some wetlands persist in the Machado Lake area. The outer part of both harbors (the greater San Pedro Bay within the breakwaters) has been less disrupted and supports a great diversity of marine life and a large population of fish. It is also open to the ocean at its eastern end and receives much greater flushing than the inner harbors.

Various reaches of the Dominguez WMA are on the 2014/2016 Clean Water Act section 303(d) list of impaired water bodies for metals, DDT, PCBs, PAHs, historic pesticides, coliform, and sediment toxicity. The elevated bacteria indicator densities are causing impairments to the SHELL, REC-1, and REC-2 designated beneficial uses of Los Angeles Harbor. The elevated levels of metals and organics are causing impairments to beneficial uses designated in these waters to protect aquatic life, including MAR and RARE. In addition, the elevated levels are causing impairments in the estuaries, which are designated with SPWN, MIGR, and WILD beneficial uses. Dominguez Channel also has an existing designated use of WARM and the Los Angeles River Estuary has the

designated use of WET. Beneficial uses associated with human use of these waters that are impaired due to the elevated concentrations of metals and organics include REC-1, REC-2, IND, NAV, COMM, and SHELL.

Machado Lake subwatershed: Machado Lake is a subwatershed of the Dominguez Channel Watershed (Attachment B, Figure B-7a). Wilmington Drain discharges into Machado Lake from the north; the channel is concrete lined from its origin south of Sepulveda Boulevard (between Normandie and Vermont Avenues) to where it crosses under the Harbor Freeway north of Lomita Boulevard. South of this point it changes to a soft bottom with natural side banks to where it empties into Machado Lake. Habitat in this part of the drain includes mature riparian woodland, riparian scrub, freshwater marsh, and weedy vegetation. The area is well-utilized by birds

Machado Lake is listed on the 2014/2016 Clean Water Act section 303(d) list for trash, nutrients, PCBs and historic pesticides. Trash, nutrients and toxic pollutants are causing impairments to the WARM, WET, RARE, WILD, REC-1 and REC-2 designated beneficial uses of Machado Lake. TMDLs have been adopted by the Los Angeles Water Board for trash, nutrients, PCBs and pesticides for Machado Lake. The point sources of trash and nutrients into Machado Lake are stormwater and non-stormwater discharges from the MS4. Stormwater discharges occur through the following sub-drainage systems: Drain 553, Wilmington Drain, Project 77/510, and Waleria Lake Retention Basin.

Los Angeles River Watershed Management Area. The Los Angeles River Watershed Management Area drains a watershed of 824 square miles (527,360 acres) (Attachment B Figure B-8) in Los Angeles County and a small portion of south eastern Ventura County. Approximately 1.2 acres of Simi Valley, which is in Ventura County, drains to the Los Angeles River Watershed and is mainly undeveloped. The Los Angeles River WMA is one of the largest in the Los Angeles Region and is also one of the most diverse in terms of land use patterns. Approximately 324 square miles of the watershed are covered by forest or open space land including the area near the headwaters, which originate in the Santa Monica, Santa Susana, and San Gabriel Mountains. The remainder of the watershed is highly developed. There are approximately 205 miles of engineered channels within the Los Angeles River Watershed. A 6.8-mile (11-kilometer) long reach in the narrows area (in the middle portion of the river system), where ground water rises into the streambed, is mostly unlined along the stream bottom and provides natural habitat for fish and other wildlife in an otherwise concrete conveyance. The river flows through the San Fernando Valley past heavily developed residential and commercial areas. Major tributaries to the river in the San Fernando Valley are the Pacoima Wash, Tujunga Wash (both drain portions of the Angeles National Forest in the San Gabriel Mountains), Burbank Western Channel, and Verdugo Wash (both drain the Verdugo Mountains). From the Arroyo Seco, north of downtown Los Angeles, to the confluence with the Rio Hondo, the river flows through industrial and commercial areas and is bordered by rail yards, freeways, and major commercial and government buildings. The river is hydraulically connected to the San Gabriel River Watershed by the Rio Hondo through the Whittier Narrows Reservoir. Flows from the San Gabriel River and Rio Hondo merge at this reservoir during larger flood events and thus flows from the San Gabriel River Watershed may impact the Los Angeles River. From the Rio Hondo to the Pacific Ocean, the river flows through industrial, residential, and commercial areas. The Los Angeles River tidal prism/estuary begins in Long Beach at

Willow Street and runs approximately three miles before joining with Queensway Bay. The channel has a soft bottom in this reach with concrete-lined sides.

A number of lakes are also part of the Los Angeles River WMA, including Legg Lake, Peck Road Park, Belvedere Park, Hollenbeck Park, Lincoln Park, and Echo Park Lakes as well as Lake Calabasas. These lakes are heavily used for recreational purposes.

Various reaches and lakes within the Los Angeles River WMA are on the 2014/2016 Clean Water Act section 303(d) list of impaired water bodies for trash, nitrogen compounds and related effects (ammonia, nitrate, nitrite, algae, pH, odor, and scum), metals (copper, cadmium, lead, zinc, aluminum and selenium), bacteria, and historic pesticides. Beneficial uses impaired by trash are REC-1, REC-2, WARM, WILD, EST, MAR, RARE, MIGR, SPWN, COMM, WET and COLD. The excess nitrogen compounds are causing impairments to the REC-1, REC-2, WARM, COLD, and WILD beneficial uses. Excess metals and historic pesticides are causing impairments to the WILD, RARE, WARM, WET, and GWR beneficial uses. Elevated indicator bacteria densities are causing impairments to the REC-1 and REC-2 beneficial uses.

San Gabriel River Watershed Management Area. The San Gabriel River Watershed (SGR WMA) receives drainage from a 689-square mile (440,960 acre) area of eastern Los Angeles County (Attachment B, Figure B-9). The main channel of the San Gabriel River is approximately 58 miles long. Its headwaters originate in the San Gabriel Mountains with the East, West, and North Forks. The river empties to the Pacific Ocean at the Los Angeles and Orange Counties boundary in Long Beach. The main tributaries of the river are Big Dalton Wash and Little Dalton Wash, San Dimas Wash, Walnut Creek, San Jose Creek, Fullerton Creek, and Coyote Creek. Part of the Coyote Creek subwatershed is in Orange County and is under the authority of the Santa Ana Water Board.⁸ A number of lakes and reservoirs are also part of the SGR WMA, including Puddingstone Reservoir. Land use in the watershed is diverse and ranges from

⁸ The Orange County portion of the Coyote Creek subwatershed comprises 86 square miles. MS4 discharges within the Orange County portion of the Coyote Creek subwatershed are within the jurisdiction of the Santa Ana Water Board and are not covered by the Order. These MS4 discharges, which drain into Coyote Creek, eventually reach the San Gabriel River within the boundaries of the Los Angeles Water Board's jurisdiction. Sources of MS4 discharges from Orange County to the San Gabriel River include the following. The Orange County Flood Control District (OCFCD) owns and operates the Los Alamitos Retarding Basin and Pumping Station (Los Alamitos Retarding Basin). The Los Alamitos Retarding Basin is within the San Gabriel River Watershed and is located adjacent to the Los Angeles and Orange County boundary. The majority of the 30-acre Los Alamitos Retarding Basin is in Orange County; however, the northwest corner of the facility is in Los Angeles County. Stormwater and non-stormwater discharges, which drain to the Los Alamitos Retarding Basin, are pumped to the San Gabriel River Estuary (SGR Estuary) through pumps and subterranean piping. The pumps and discharge point are in Los Angeles County. The OCFCD pumps the water within the Los Alamitos Retarding Basin to the SGR Estuary through four discharge pipes, which are covered by tide gates. The discharge point is located approximately 700 feet downstream from the 2nd Street Bridge in Long Beach. The total pumping capacity of the four pumps is 800 cubic feet per second (cfs). There is also a 5 cfs sump pump that discharges nuisance flow continuously to the SGR Estuary through a smaller diameter uncovered pipe. The discharge from the Los Alamitos Retarding Basin is covered under the Orange County Municipal NPDES Storm Water Permit (NPDES Permit No. CAS618030, Santa Ana Regional Water Quality Control Board Order No. R8-2009-0030), which was issued to the County of Orange, Orange County Flood Control District and Incorporated Cities on May 22, 2009. The Orange County MS4 Permit references the San Gabriel River Metals and Selenium TMDL (Metals TMDL). The waste load allocations listed in the Metals TMDL for Coyote Creek are included in the Orange County MS4 Permit. However, the Orange County MS4 Permit does not contain the dry weather copper waste load allocations assigned to the Estuary.

predominantly open space in the upper watershed to urban land uses in the middle and lower parts of the watershed.

The watershed consists of extensive areas of undisturbed riparian and woodland habitats in its upper reaches. Much of the watershed of the West Fork and East Fork of the river is set aside as a wilderness area; other areas in the upper watershed are subject to heavy recreational use. The upper watershed also contains a series of flood control dams. The watershed is hydraulically connected to the Los Angeles River through the Whittier Narrows Reservoir (normally only during high storm flows). The lower part of the river flows through a concrete-lined channel in a heavily urbanized portion of the Los Angeles Coastal Plain, before becoming a soft bottom channel once again near the ocean in the City of Long Beach. Flow in these lower reaches is dominated by effluent from several municipal wastewater treatment facilities and MS4 discharges.

Various reaches and lakes of the SGR WMA are on the 2014/2016 Clean Water Act section 303(d) list of impaired water bodies due to bacteria, trash, nitrogen, phosphorus, historic pesticides, PCBs, and metals (copper, lead, selenium, and zinc). Beneficial uses impaired by trash are REC-1, REC-2, WARM, COLD, and WILD. Metals and historic pesticides loadings are causing impairments of the WILD, WARM, COLD, RARE, EST, MAR, MIGR, SPWN, WET, MUN, IND, AGR, GWR, and PROC beneficial uses. The excess nitrogen and phosphorus are causing impairments to the REC-1, REC-2, WARM, COLD, and WILD beneficial uses. Elevated indicator bacteria densities are causing impairments to the REC-1 and REC-2 beneficial uses.

Los Cerritos Channel and Alamitos Bay Watershed Management Area. The Los Cerritos Channel is concrete-lined above the tidal prism and drains a small but densely urbanized area of east Long Beach (Attachment B, Figure B-10). The watershed covers an area of approximately 37 square miles (23,680 acres) out of which 5 square miles (3,200 acres) is Alamitos Bay. The Los Cerritos WMA is located between the Los Angeles and San Gabriel Rivers and drains to the same general area as the San Gabriel River. There is also a minor hydraulic connection between the lower San Gabriel River and Los Cerritos Channel due to the location of a power plant intake within the Long Beach Marina; the discharge from this facility is into the San Gabriel River estuary. The Los Cerritos Channel's tidal prism starts at Anaheim Road and connects with Alamitos Bay through the Marine Stadium; the wetlands connect to the Channel a short distance from the lower end of the Channel. The wetland, and portion of the channel near the wetland, is an overwintering site for a great diversity of birds despite its small size. An endangered bird species, the Belding's Savannah Sparrow, may nest there and an area adjacent to the wetlands is a historic least tern colony site. A small marina is located in the channel, which is also used by rowing teams and is a popular fishing area. Alamitos Bay is composed of the Marine Stadium, a recreation facility built in 1932; Long Beach Marina; a variety of public and private berths; and the Bay proper. A small bathing lagoon, Colorado Lagoon located entirely in Long Beach, has a tidal connection with the Bay and is used by overwintering migratory birds. The majority of land use in this WMA is high density residential.

Los Cerritos Channel is on the 2014/2016 Clean Water Act section 303(d) List of impaired water bodies for metals (copper, zinc, and lead), trash, ammonia, pH, chlordane, and bacteria. Alamitos Bay is on the 2014/2016 Clean Water Act section 303(d) List of impaired water bodies for bacteria and dissolved oxygen. Beneficial uses impaired by these constituents in the Los Cerritos Channel include WILD, REC2 and WARM.

Middle Santa Ana River Watershed Management Area. The Middle Santa Ana River Watershed Management Area (MSAR WMA) covers approximately 488 square miles (312,320 acres) and lies mostly in San Bernardino and Riverside counties; however, a small part of Los Angeles County is also included. The area of Los Angeles County, which lays in the MSAR WMA, includes portions of the cities of Pomona (12.3 square miles), Claremont (8.4 square miles), and Diamond Bar (0.7 square miles) and unincorporated Los Angeles County (12.3 square miles). The MSAR WMA is comprised of three subwatersheds. The subwatershed that includes portions of Pomona and Claremont is the Chino Basin Subwatershed. Surface drainage from Pomona and Claremont is generally southward toward San Antonio Creek, which is tributary to Chino Creek, which feeds into the Prado Flood Control Basin.

Various reaches of the MSAR WMA, including Chino Creek, are listed on the 2014/16 Clean Water Act section 303(d) list for bacteria. Elevated bacterial indicator densities are causing impairments of the REC-1 and REC-2 beneficial uses for the Santa Ana River Reach 3, Chino Creek Reaches 1 and 2, Mill Creek (Prado Area), Cucamonga Creek Reach 1, and Prado Park Lake.

The Santa Ana River Watershed is a major WMA within the Santa Ana Water Board jurisdiction. However, 30.5 square miles of the Santa Ana River Watershed falls within the Los Angeles Water Board's jurisdiction and therefore will be addressed in the Order except as follows. Per an agreement between the Los Angeles Water Board and the Santa Ana Water Board dated May 31, 2013, the Santa Ana Water Board is designated as the regulator of discharges of bacteria by the cities of Claremont and Pomona through their MS4s to receiving waters within the Santa Ana River Watershed addressed by the Middle Santa Ana River Watershed Bacterial TMDL.⁹ Per this agreement, both the Santa Ana Water Board and Los Angeles Water Board have the authority to enforce the terms of any MS4 permit issued to the cities of Claremont and Pomona if the MS4 discharges occur with the Los Angeles Water Board's geographic jurisdiction.

C. Description of the Permittees' MS4s

The Permittees' MS4s, like many MS4s in the nation, are based on regional floodwater management systems that use both natural and altered water bodies to achieve flood management goals. Most Permittees' MS4s comprise a large interconnected system used by multiple municipalities. This extensive system conveys stormwater and non-stormwater across municipal boundaries where it is commingled within the MS4 and then discharged to receiving water bodies.

The area covered under the Order contains an extensive drainage network that serves incorporated and unincorporated areas in every Watershed Management Area within the Los Angeles Region. The Los Angeles 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. (California Water Code § 13200(d)). Maps depicting the major drainage infrastructure within the area covered under the Order are included in Attachment C. Rough estimates based on GIS data and other information from Permittees indicate that the Los Angeles Region has

⁹ Attachment D to Order No. R8-2013-0043.

an over 7,300-mile subsurface network of MS4 infrastructure (including main storm drain lines, lateral lines, and culverts). Table F-2 below provides approximated information on the extent of select Permittees' MS4-related infrastructure based on available information carried over from the previous permits, information provided by Ventura County Permittees upon request, GIS data, and annual reports.

Table F-2. Select Permittees' MS4-Related Infrastructure¹⁰

| Permittee | Area (Square Miles) | Catch Basins | Storm Drain Length (miles) | Open Channel Length (miles) |
|--|------------------------------------|-------------------------|---|--|
| Ventura County Watershed Protection District | 8.9 | 0 | 59.5 | 219 |
| Ventura County | 32.4 | 1421 | 35.6 | 0.01 |
| Camarillo | 19.86 | 1521 | 60 | 5.78 |
| Fillmore | 3.2 | 208 | 18.2 | 5 |
| Moorpark | 12.5 | 737 | 57.0 | 0 |
| Ojai | 4.4 | 172 | 4.1 | 6 |
| Oxnard | 27.1 | 3644 | 167.3 | 10.62 |
| Port Hueneme | 4.5 | 234 | 6.4 | 3 |
| Santa Paula | 5.5 | 520 | 18.5 | 1 |
| Simi Valley | 42.3 | 1783 | 107.5 | 3 |
| Thousand Oaks | 55.4 | 3293 | 205.4 | 2 |
| Ventura | 22.2 | 1847 | 139.6 | 9 |
| Long Beach | 47.7 | 3800 | 180 | 49 |
| LACFCD / Los Angeles County | 3100 | 88000 | 3500 | 500 |
| City of Los Angeles | 469 | 30000 | 1600 | 31 |
| El Monte | 10 | 316 | 11 | 0.4 |
| Glendale | 30.6 | 1045 | 136.7 | 14.4 |
| Inglewood | 9 | 1157 | 12 | 0 |
| Pasadena | 26 | 1050 | 30 | 7.3 |

¹⁰ All numbers in this table are the Permittees' best estimates based on knowledge of their storm drainage system; these estimates do not include all conveyances subject to the definition of an MS4 under federal regulations. Estimates can vary due to definition of terms, and GIS categorization and mapping accuracy. These are subject to change as data is field verified and new infrastructure is constructed or decommissioned by Permittees.

| Permittee | Area (Square Miles) | Catch Basins | Storm Drain Length (miles) | Open Channel Length (miles) |
|------------------|------------------------------------|-------------------------|---|--|
| Santa Monica | 8.3 | 850 | 68.3 | 0.5 |
| Torrance | 20 | 2000 | 20 | 3 |

Additionally, there are numerous stormwater treatment facilities, including stormwater retention basins and stormwater detention basins, within the region. Some examples of existing stormwater treatment facilities include the Santa Monica Urban Runoff Recycling Facility (SMURRF) (City of Santa Monica), Marie Canyon (City of Malibu), and Paradise Cove (City of Malibu). Some examples of existing stormwater retention/detention basins include Oxford Basin (County of Los Angeles), Amie Retention Basin (Torrance), and Louie Pompei Park (Glendora).

Stormwater and non-stormwater are conveyed through the MS4s and ultimately discharge into receiving waters of the Los Angeles Region. MS4s subject to the Order receive stormwater and non-stormwater flows from various sources, including conveyances owned by the Permittees covered by the Order and other public agencies, NPDES permitted discharges, discharges authorized by the U.S. EPA (including discharges subject to a decision document approved pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)), rising ground water, and natural flows.

The volume of stormwater and non-stormwater conveyed through the MS4s can be estimated by looking at impervious area data. Detailed data on impervious area is unavailable for Ventura County Permittees at the time of this permit development. However, per the permit reapplication package (or Report of Waste Discharge, also known as the ROWD), Ventura County has 200,000 acres of developed land. Specific data for Los Angeles County, however, is available through the Safe, Clean Water Program (Measure W) information provided by Los Angeles County and LACFCD and is presented in Table F-3 below.

Table F-3. Los Angeles County Impervious Area

| Permittee | Impervious Area (ac) |
|------------------|-----------------------------|
| Agoura Hills | 840 |
| Alhambra | 2,066 |
| Arcadia | 2,361 |
| Artesia | 491 |
| Azusa | 1,526 |
| Baldwin Park | 1,717 |
| Bell | 755 |
| Bell Gardens | 757 |
| Bellflower | 1,936 |
| Beverly Hills | 1,290 |
| Bradbury | 143 |
| Burbank | 3,407 |

| Permittee | Impervious Area (ac) |
|-----------------------|-----------------------------|
| Calabasas | 1,089 |
| Carson | 6,432 |
| Cerritos | 2,363 |
| Claremont | 1,388 |
| Commerce | 2,974 |
| Compton | 2,855 |
| County of Los Angeles | 28,769 |
| Covina | 1,757 |
| Cudahy | 416 |
| Culver City | 1,280 |
| Diamond Bar | 2,060 |
| Downey | 3,406 |
| Duarte | 604 |
| El Monte | 2,714 |
| El Segundo | 2,059 |
| Gardena | 1,982 |
| Glendale | 3,939 |
| Glendora | 2,160 |
| Hawaiian Gardens | 300 |
| Hawthorne | 1,903 |
| Hermosa Beach | 372 |
| Hidden Hills | 235 |
| Huntington Park | 1,001 |
| Industry | 4,278 |
| Inglewood | 2,386 |
| Irwindale | 1,164 |
| La Cañada Flintridge | 914 |
| La Habra Heights | 417 |
| La Mirada | 2,275 |
| La Puente | 816 |
| La Verne | 1,430 |
| Lakewood | 2,597 |
| Lawndale | 537 |
| Lomita | 535 |
| Long Beach | 11,150 |
| Los Angeles | 87,031 |
| Lynwood | 1,351 |
| Malibu | 1,035 |
| Manhattan Beach | 995 |
| Maywood | 407 |

| Permittee | Impervious Area (ac) |
|-----------------------|-----------------------------|
| Monrovia | 1,247 |
| Montebello | 2,286 |
| Monterey Park | 1,803 |
| Norwalk | 2,634 |
| Palos Verdes Estates | 603 |
| Paramount | 1,586 |
| Pasadena | 3,613 |
| Pico Rivera | 2,278 |
| Pomona | 4,598 |
| Rancho Palos Verdes | 1,643 |
| Redondo Beach | 1,738 |
| Rolling Hills | 282 |
| Rolling Hills Estates | 448 |
| Rosemead | 1,395 |
| San Dimas | 1,467 |
| San Fernando | 642 |
| San Gabriel | 1,057 |
| San Marino | 540 |
| Santa Clarita | 8,301 |
| Santa Fe Springs | 3,636 |
| Santa Monica | 1,903 |
| Sierra Madre | 354 |
| Signal Hill | 686 |
| South El Monte | 1,065 |
| South Gate | 2,419 |
| South Pasadena | 590 |
| Temple City | 1,057 |
| Torrance | 5,738 |
| Vernon | 2,592 |
| Walnut | 1,163 |
| West Covina | 3,213 |
| West Hollywood | 630 |
| Westlake Village | 565 |
| Whittier | 2,853 |
| Grand Total | 275,290 |

The Order applies to all 99 Permittees within the nine major coastal WMAs under the jurisdiction of the Los Angeles Water Board. These 99 Permittees include 95 cities, two counties, and two flood control districts. The two flood control districts are described in more detail, below, as the nature and scope of their authorities is different from the other 97 Permittees.

D. Description of Flood Control District Permittees

In 1915, the California Legislature enacted the Los Angeles County Flood Control Act, establishing the Los Angeles County Flood Control District (LACFCD). The objectives and purposes of the Act are to provide for the control and conservation of flood, storm and other waste waters within the flood control district. Among its other powers, LACFCD also has the power to preserve, enhance, and add recreational features to lands or interests in lands contiguous to its properties for the protection, preservation, and use of the scenic beauty and natural environment for the properties or the lands. LACFCD is governed, as a separate entity, by the County of Los Angeles Board of Supervisors.

LACFCD's system includes the majority of drainage infrastructure within incorporated and unincorporated areas of Los Angeles County in every watershed, including approximately 500 miles of open channel, 3,500 miles of underground drains, and an estimated 88,000 catch basins. Portions of LACFCD's current system were originally unmodified natural rivers and water courses. LACFCD's system conveys both storm and non-stormwater throughout Los Angeles County. Other Permittees' MS4s within Los Angeles County connect and discharge to LACFCD's system.

The Ventura County Watershed Protection District (VCWPD) was formed, in part, to provide for the control and conservation of flood and stormwaters, and for the protection and maintenance of watercourses, watersheds, and life and property within the VCWPD from damage or destruction from storm flows or flooding. The VCWPD was originally established on September 12, 1944 as the "Ventura County Flood Control District." On January 1, 2003, per California Water Code Appendix, Chapter 46, the name was changed to the Ventura County Watershed Protection District to reflect changes in community values, regulatory requirements, and funding opportunities. The change in name also reflected VCWPD's desire to emphasize integrated watershed management and to solve flood control problems with environmentally sound approaches.

VCWPD's system includes infrastructure within incorporated and unincorporated areas of Ventura County in every watershed. VCWPD owns/operates approximately 219 miles of open channel and 60 miles of storm drains.

Unlike other Permittees, including the counties of Los Angeles and Ventura, LACFCD and VCWPD do not own or operate any municipal sanitary sewer systems, public streets, roads, or highways. LACFCD and VCWPD also have no planning, zoning, development permitting or other land use authority over industrial or commercial facilities, or new developments or re-development projects located in any incorporated or unincorporated areas within their service area. Nonetheless, as owners and operators of MS4s, LACFCD and VCWPD are required by federal law to control pollutant discharges into and from their MS4s, including but not limited to the ability to control through interagency agreements among co-Permittees and other owners of MS4s the contribution of pollutants from one portion of the MS4 to another portion of the MS4.

Under Order No. R4-2010-0108, VCWPD was designated the Principal Permittee. However, in the Order, the role of Principal Permittee has been eliminated, since the Order applies to Permittees in both Los Angeles and Ventura Counties. Furthermore, under Order No. R4-2012-0175, LACFCD was prescribed separate requirements for minimum control measures. The Order generally does not include separate requirements for LACFCD or VCWPD; however, it notes where certain provisions do not apply (e.g., provisions relating to the industrial and commercial facilities inspection

programs, planning and land development programs, and new development and re-development projects within their jurisdictional boundaries).

E. Nature of MS4 Discharges as a Source of Pollutants to Receiving Waters and Need for Regulation

Stormwater and non-stormwater discharges consist of surface runoff generated from various land uses, which is conveyed via the MS4 and ultimately discharge to surface waters throughout the region. Discharges of stormwater and non-stormwater through the MS4s within the Los Angeles Region convey pollutants to surface waters.

The quality of stormwater and non-stormwater discharges from MS4s is fundamentally important to public health, the health of the environment, and the quality of life in Southern California. Polluted stormwater and non-stormwater discharges from MS4s are a leading cause of water quality impairment in the Los Angeles Region. Stormwater and non-stormwater discharges are often contaminated with pesticides, fertilizers, fecal indicator bacteria and associated pathogens, trash, oil and other automotive byproducts, and many other toxic substances generated by activities in the urban environment. Water that flows over streets, parking lots, construction sites, and industrial, commercial, residential, and municipal areas convey these pollutants through the MS4 directly into receiving waters of the Region.

The water quality impacts and resulting ecosystem impacts and increased public health risks from MS4 discharges that affect receiving waters nationwide and throughout the jurisdiction of the Los Angeles Water Board, including its coastline, are well documented. One of the seminal studies on stormwater impacts was the National Urban Runoff Program (NURP) Study (U.S. EPA 1983), which showed that MS4 discharges from residential, commercial, and light industrial areas contain significant loadings of total suspended solids and other pollutants. The NURP Study also found that pollutant levels from illicit discharges were high enough to significantly degrade receiving water quality, and threaten aquatic life, wildlife, and human health. Many studies since continue to support the conclusions of the NURP Study. The general findings and conclusions of the NURP Study are reiterated in the more recent 2008 National Research Council report "Urban Runoff Management in the United States" as well as in a regional study, "Sources, Patterns and Mechanisms of Storm Water Pollutant Loading from Watersheds and Land Uses of the Greater Los Angeles Area, California," SCCWRP Technical Report 510 (2007), funded in large part by the Los Angeles Water Board.

Some of the conclusions of the 2007 regional study, which largely remain true today (as demonstrated by an analysis of monitoring data collected under the three previous permit terms), were as follows:

- *Storm water runoff from watershed and land use-based sources is a significant contributor of pollutant loading and often exceeds water quality standards.* High pollutant concentrations were observed throughout the study at both mass emission (ME) and land use (LU) sites. Pollutant concentrations frequently exceeded water quality standards.
- *Storm water Event Mean Concentrations (EMCs), fluxes and loads were substantially lower from undeveloped open space areas when compared to developed urbanized watersheds.* Storms sampled from less developed watersheds produced pollutant EMCs and fluxes that were one to two orders of magnitude lower than comparably sized storms in urbanized watersheds.

Furthermore, the higher fluxes from developed watersheds were generated by substantially less rainfall than the lower fluxes from the undeveloped watersheds, presumably due to increased impervious surface area in developed watersheds.

- *The Los Angeles region contributed a similar range of storm water runoff pollutant loads as that of other regions of the United States.* Comparison of constituent concentrations in storm water runoff from land use sites from this study reveal median EMCs that are comparable to U.S. averages reported in the National Stormwater Quality Database (NSQD; Pitt et al., 2003). Comparison to the NSQD data set provides insight to spatial and temporal patterns in constituent concentrations in urban systems. Similarities between levels reported in the NSQD and this study suggest that land-based concentrations in southern California storm water are generally comparable to those in other parts of the country.
- *Peak concentrations for all constituents were observed during the early part of the storm.* Constituent concentrations varied with time over the course of storm events. For all storms sampled, the highest constituent concentrations occurred during the early phases of storm water runoff with peak concentrations usually preceding peak flow. Although the pattern of an early peak in concentration was comparable in both large and small developed watersheds, the peak concentration tended to occur later in the storm and persist for a longer duration in the smaller developed watersheds. Therefore, monitoring programs must capture the early portion of storms and account for intra-storm variability in concentration in order to generate accurate estimates of EMC and contaminant loading. Programs that do not initiate sampling until a flow threshold has been surpassed may severely underestimate storm EMCs.
- *Highest constituent loading was observed early in the storm season with intra-annual variability driven more by antecedent dry period than amount of rainfall.* Seasonal differences in constituent EMCs and loads were consistently observed at both ME and LU sites. In general, early season storms (October - December) produce significantly higher constituent EMCs and loads than late season storms (April - May), even when rainfall quantity was similar. This suggests that the magnitude of constituent load associated with storm water runoff depends, at least in part, on the amount of time available for pollutant build-up on land surfaces. The extended dry period that typically occurs in arid climates such as southern California maximizes the time for constituents to build-up on land surfaces, resulting in proportionally higher concentrations and loads during initial storms of the season.

The Natural Resources Defense Council (NRDC) 1999 Report, "Stormwater Strategies, Community Responses to Runoff Pollution" identifies two main causes of the storm water pollution problem in urban areas. Both causes are directly related to development in urban and urbanizing areas:

- *Increased volume and velocity of surface runoff.* There are three types of human-made impervious covers that increase the volume and velocity of runoff: (i) rooftop, (ii) transportation imperviousness, and (iii) non-porous (impervious) surfaces. As these impervious surfaces increase, infiltration will decrease, forcing more water to run off the surface, picking up speed and pollutants.

- *The concentration of pollutants in the runoff.* Certain activities, such as those from industrial sites, are large contributors of pollutant concentrations to the MS4.

The report also identified several activities causing stormwater pollution from urban areas, including practices of homeowners, businesses, and government agencies.

Studies conducted by the United States Geological Survey (USGS) through its National Water Quality Assessment (NAWQA) program confirm the link between urbanization and water quality impairments in urban watersheds due to contaminated stormwater runoff (USGS, 2001).

Furthermore, the water quality impacts of urbanization and urban stormwater discharges have been examined and described by many researchers and summarized by U.S. EPA in a 1997 publication titled "Urbanization and Streams: Studies of Hydrologic Impacts". Urbanization causes changes in hydrology and increases pollutant loads which adversely impact water quality and impair the beneficial uses of receiving waters. Increases in population density and imperviousness result in changes to stream hydrology including:

- increased peak discharges compared to predevelopment levels;
- increased volume of storm water runoff with each storm compared to pre-development levels;
- decreased travel time to reach receiving water;
- increased frequency and severity of floods;
- reduced stream flow during prolonged periods of dry weather due to reduced levels of infiltration;
- increased runoff velocity during storms due to a combination of effects of higher discharge peaks, rapid time of concentration, and smoother hydraulic surfaces from channelization; and
- decreased infiltration and diminished ground water recharge.

The 2016 National Water Quality Inventory (CWA Section 305(b) Report) showed that urban runoff/storm water discharges contribute to the impairment of 49,330 miles of streams, to the impairment of 759,483 acres of lakes, to the impairment of 316 miles of coastal shoreline, and to the impairment of 16,773 square miles of estuaries in the United States.

Permittees in Ventura County and Los Angeles County have conducted monitoring to, among other objectives:

- assess the overall health and trends in receiving water quality;
- assess impacts of MS4 discharges on receiving waters;
- identify sources of pollutants;
- assess compliance with receiving water limitations and water quality-based effluent limitations derived from TMDL waste load allocations; and
- measure and improve the effectiveness of measures implemented to comply with their MS4 permits.

Monitoring by Permittees in the Los Angeles Region indicates that concentrations of pathogen indicators (fecal coliform, total coliform, and enterococcus), heavy metals (such as Pb, Cu, Zn, Cd, As, Ni, Ag) and pesticides (such as diazinon, malathion, lindane, total chlordane) among others exceed water quality standards in receiving waters. Receiving water impacts studies found that stormwater discharges from urban watersheds exhibit toxicity attributable to heavy metals. Bioassessments of the benthic communities showed bioaccumulation of toxicants. Sediment analysis showed higher concentrations of pollutants, such as Pb and PAHs, in urban watersheds than in rural watersheds (2 to 4 times higher). In addition, toxicity of dry weather, non-stormwater flows was observed with the cause of toxicity undetermined. Other studies have documented concentrations of pollutants that exceed water quality standards in storm drains flowing to the ocean during dry weather, and adverse health impacts from swimming near flowing storm drains (LARWQCB, 2020; Haile et al., 1999).

Trash is also a serious and pervasive water quality problem in the Los Angeles Region and statewide. In 2015, during development of the Amendment to the Water Quality Control Plan for Ocean Waters of California (Ocean Plan) for Trash Provisions and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries (collectively referred to as “the Trash Amendments”), the State Water Board conducted a comprehensive assessment of the impacts of trash on beneficial uses of surface waters throughout the state, including impacts to aquatic habitat and aquatic life, public health, contact and non-contact water recreation, commercial and sport fishing, navigation, and Native American culture.¹¹ Trash in waterways causes significant water quality problems. Small and large floatables inhibit the growth of aquatic vegetation, decreasing habitat and spawning areas for fish and other living organisms. Wildlife living in rivers and in riparian areas can be harmed by ingesting or becoming entangled in floating trash. Except for large items, settleables are not always obvious to the eye. They include glass, cigarette butts, rubber, and construction debris, among other things. Settleables can be a problem for bottom feeders and can contribute to sediment contamination. Some debris (e.g., diapers, medical and household waste, and chemicals) are a source of bacteria and toxic substances. Floating debris that is not trapped and removed will eventually end up on the beaches or in the open ocean, keeping visitors away from our beaches and degrading coastal waters. Through periodic surface water quality assessments pursuant to Clean Water Act section 305(b) and identification of impaired waters pursuant to Clean Water Act section 303(d), the Los Angeles Water Board has determined that current levels of trash exceed the existing water quality objectives contained in the Basin Plan that are necessary to protect the beneficial uses of many surface waters. Los Angeles Water Board staff regularly observes trash in surface waters throughout the Los Angeles Region. Non-profit organizations such as Heal the Bay, Friends of the Los Angeles River (FoLAR) and others organize volunteer clean-ups periodically and document the amount of trash collected. Significant strides have been made by a number of Permittees in addressing this problem through the implementation of control measures to achieve waste load allocations established in trash TMDLs.

As discussed above, pollutants in stormwater and non-stormwater have damaging effects on both human health and aquatic ecosystems. Water quality assessments

¹¹ 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: Final Staff Report Appendix A “Trash Background.”

conducted by the Los Angeles Water Board have identified impairment of beneficial uses of water bodies in the Los Angeles Region caused or contributed by pollutants in MS4 discharges. As a result of these impairments, there are beach postings, fish consumption advisories, ecosystem and recreational impacts from trash and debris, and toxic conditions for aquatic life, among others. Forty-five TMDLs established by the Los Angeles Water Board and U.S. EPA identify MS4 discharges as one of the pollutant sources causing or contributing to the water quality impairments of the myriad waterbodies addressed by the TMDLs.

The Ventura County Permittees' January 2015 Report of Waste Discharge identifies a number of pollutants of concern in Table 3-25, including indicator bacteria, trash, sedimentation/siltation, pesticides (diazinon, chlorpyrifos, dieldrin, chlordane, DDT compounds, toxaphene, and bifenthrin), minerals (boron, chloride, sulfate, TDS), PCBs, metals (copper, nickel, mercury, aluminum), selenium, nutrients and nutrient related effects (total nitrogen, total phosphorus, algal biomass, algal percent cover, dissolved oxygen), toxicity, and temperature among others. Ventura County Permittees' Annual Reports (2009/2010 – 2018/2019) confirm these pollutants of concern, reporting *E. coli*, chloride, total dissolved solids (TDS), selenium and metals, including dissolved copper and total aluminum as some of the pollutants in MS4 discharges. Additionally, the Los Angeles Water Board has also identified nutrients, pesticides, heavy metals, and trash as pollutants of concern in various areas of Ventura County and, through TMDL development, has identified MS4 discharges as one of the sources of these pollutants. An analysis of monitoring data relative to TMDL implementation in Ventura County is summarized below.

The Los Angeles Water Board, based on monitoring data collected during the term of Order No. R4-2012-0175 (2012/2013 – 2016/2017) has identified bacteria, nutrients, pesticides, metals, and trash among others as pollutants of concern in various areas of Los Angeles County and, through TMDL development, has identified MS4 discharges as one of the sources of these pollutants. An analysis of monitoring data analysis relative to TMDL implementation in Los Angeles County is also summarized below.

1. Mass Emission Stations

Permittees have historically monitored receiving waters throughout the Los Angeles Region at a set of receiving water monitoring stations referred to as “mass emission stations.” These stations were established to assess compliance with the Los Angeles County MS4 Permit and the Ventura County MS4 Permit. The mass emission stations are generally located at the base of watersheds and are intended to monitor the quality of water discharged from large mixed land use areas. Results from the mass emission monitoring are also used to estimate pollutant loads and to analyze long term water quality trends. Monitoring at these stations provides a high-level look at the impacts of MS4 discharges on receiving waters during storm events and during dry weather conditions.

a. Wet Weather Mass Emission Station Monitoring

The table below highlights the frequency that select constituents exceeded wet weather TMDL targets and/or Basin Plan water quality objectives at each mass emission station during the period of the permit terms for Order No. R4-2010-0108 and Order No. R4-2012-0175 from 2009 to 2017. This table shows that bacteria and metals are not achieving objectives during storm events throughout the Los Angeles Region. *E. coli* exceeded TMDL targets and/or Basin Plan objectives in more than 25% of wet weather samples. Additionally,

eight of ten stations had metals that exceeded TMDL targets and/or Basin Plan objectives in more than 25% of wet weather samples. Nutrients had exceedances in two of the ten stations.

Table F-4. Summary of Major Constituents Exceeding TMDL Targets and/or Basin Plan Water Quality Objectives at Mass Emission Stations During Wet Weather Conditions (2009-2017)

| Mass Emission Station | Condition | 1% - 10% of Samples Exceeded TMDL Target/Basin Plan Objective | 11% - 25% of Samples Exceeded TMDL Target/Basin Plan Objective | > 25% of Samples Exceeded TMDL Target/Basin Plan Objective |
|---------------------------|-----------|---|--|--|
| Ballona Creek | Wet | - | Total Lead | <i>E. coli</i> , Total Copper, Total Zinc |
| Calleguas Creek | Wet | - | - | <i>E. coli</i> |
| Coyote Creek | Wet | - | - | <i>E. coli</i> , Total Copper, Total Zinc |
| Dominguez Channel | Wet | - | Total Lead | <i>E. coli</i> , Total Copper, Total Zinc |
| Los Angeles River | Wet | - | Total Lead | <i>E. coli</i> , Total Copper, Total Zinc |
| Malibu Creek | Wet | - | - | <i>E. coli</i> , Total Nitrogen, Total Phosphorus |
| San Gabriel River | Wet | - | Total Zinc | <i>E. coli</i> , Total Copper |
| Santa Clara River (Lower) | Wet | Nitrate + Nitrite | - | <i>E. coli</i> , Total Copper, Total Zinc |
| Santa Clara River (Upper) | Wet | Total Lead | Total Zinc | <i>E. coli</i> , Total Copper |
| Ventura River | Wet | - | - | <i>E. coli</i> |

b. Dry Weather Mass Emission Station Monitoring

The table below similarly shows the frequency that the same set of constituents exceeded dry weather TMDL targets and/or Basin Plan water quality objectives at each mass emissions station. *E. coli* exceeded TMDL targets and/or Basin Plan objectives in six of ten stations. Metals exceeded targets and limitations in two of ten stations. Nutrients exceeded targets and limitations in two of ten stations.

Table F-5. Summary of Major Constituents Exceeding TMDL Targets and/or Basin Plan Water Quality Objectives at Mass Emission Stations During Dry Weather Conditions (2009-2017)

| Mass Emission Station | Condition | 1% - 10% of Samples Exceeded TMDL Target/Basin Plan Objective | 11% - 25% of Samples Exceeded TMDL Target/Basin Plan Objective | > 25% of Samples Exceeded TMDL Target/Basin Plan Objective |
|---------------------------|-----------|---|--|--|
| Ballona Creek | Dry | Total Copper, Total Zinc | <i>E. coli</i> | - |
| Calleguas Creek | Dry | - | <i>E. coli</i> | - |
| Coyote Creek | Dry | - | - | <i>E. coli</i> |
| Dominguez Channel | Dry | - | Total Copper | <i>E. coli</i> |
| Los Angeles River | Dry | - | - | <i>E. coli</i> |
| Malibu Creek | Dry | - | - | Total Nitrogen, Total Phosphorus |
| San Gabriel River | Dry | - | Nitrate + Nitrite | - |
| Santa Clara River (Lower) | Dry | - | - | - |
| Santa Clara River (Upper) | Dry | - | - | - |
| Ventura River | Dry | - | <i>E. coli</i> | - |

2. Bacteria

Indicator bacteria (e.g., *E. coli*, total coliform, fecal coliform, and *Enterococcus*) are monitored to indicate the likelihood of pathogens in surface waters. The Los Angeles Water Board’s Basin Plan establishes water quality objectives for indicator bacteria to protect water contact recreation (REC-1) and non-contact water recreation (REC-2) beneficial uses. Permittees have monitored bacteria to implement bacteria TMDLs in the Los Angeles Region and to implement beach water quality monitoring requirements under Health and Safety Code sections 115880, 115885, and 115915.

a. Wet Weather Bacteria Monitoring

The tables below summarize wet weather bacteria monitoring at receiving water and outfall monitoring stations. Data from 2012 to 2017 was analyzed for Los Angeles County. Data from 2009 through 2017 was analyzed for Ventura County. Indicator bacteria consistently exceeded water quality objectives at receiving water monitoring stations. In several watersheds, the frequency of samples exceeding objectives was more than 50%. Outfalls have also consistently exceeded applicable *E. coli* effluent limitations. In some watersheds, all outfalls samples exceeded effluent limitations.

Table F-6. Summary of Wet Weather Bacteria Monitoring at Receiving Water Stations

| Watershed | TMDL | # of Stations | # of Exceedances | # of Samples | % Exceed |
|----------------------------------|--|----------------------|-------------------------|---------------------|-----------------|
| Ballona Creek | Ballona Creek Bacteria TMDL | 8 | 155 | 203 | 76% |
| Dominguez Channel | Los Angeles Harbor Bacteria TMDL | 3 | 164 | 385 | 43% |
| Los Angeles River | Los Angeles River Bacteria TMDL | 7 | 26 | 45 | 58% |
| Los Angeles River | Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDL | 12 | 175 | 330 | 53% |
| Malibu Creek | Malibu Creek and Lagoon Bacteria TMDL | 14 | 127 | 198 | 64% |
| Marina del Rey | Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL | 13 | 367 | 733 | 50% |
| Misc. Ventura Coastal Watersheds | Harbor Beaches of Ventura County Bacteria TMDL | 2 | 43 | 135 | 32% |
| San Gabriel River | San Gabriel River Bacteria TMDL | 10 | 48 | 51 | 94% |
| Santa Clara River | Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL | 4 | 30 | 37 | 81% |
| Santa Monica Bay | Santa Monica Bay Beaches Bacteria TMDL | 68 | 1174 | 3770 | 31% |
| Alamitos Bay | (non-TMDL areas) | 4 | 82 | 149 | 55% |
| Calleguas Creek | (non-TMDL areas) | 1 | 21 | 22 | 95% |
| Colorado Lagoon | (non-TMDL areas) | 2 | 27 | 70 | 39% |
| Dominguez Channel | (non-TMDL areas) | 2 | 19 | 19 | 100% |
| Los Cerritos Channel | (non-TMDL areas) | 3 | 18 | 18 | 100% |
| Ventura River | (non-TMDL areas) | 1 | 23 | 26 | 88% |

Table F-7. Summary of Wet Weather Bacteria Monitoring at Outfall Stations

| Watershed | TMDL | # of Stations | # of Exceedances | # of Samples | % Exceed |
|----------------------|--|----------------------|-------------------------|---------------------|-----------------|
| Ballona Creek | Ballona Creek Bacteria TMDL | 2 | 9 | 9 | 100% |
| Los Angeles River | Los Angeles River Bacteria TMDL | 12 | 17 | 37 | 46% |
| Malibu Creek | Malibu Creek and Lagoon Bacteria TMDL | 3 | 6 | 6 | 100% |
| Marina del Rey | Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL | 1 | 3 | 3 | 100% |
| San Gabriel River | San Gabriel River Bacteria TMDL | 12 | 53 | 58 | 91% |
| Santa Clara River | Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL | 11 | 91 | 103 | 88% |
| Alamitos Bay | (non-TMDL areas) | 1 | 3 | 3 | 100% |
| Dominguez Channel | (non-TMDL areas) | 4 | 9 | 9 | 100% |
| Los Cerritos Channel | (non-TMDL areas) | 1 | 3 | 3 | 100% |

b. Dry Weather Bacteria Monitoring

The tables below summarize dry weather bacteria monitoring at receiving water and outfall monitoring stations. Data from 2012 to 2017 was analyzed for Los Angeles County. Data from 2009 through 2017 was analyzed for Ventura County. Compared to wet weather, there were fewer exceedances of water quality objectives at receiving water stations. Outfalls consistently exceeded applicable *E. coli* effluent limitations.

Table F-8. Summary of Dry Weather Bacteria Monitoring at Receiving Water Stations

| Watershed | Associated TMDL | Weather Condition | # of Stations | # of Exceedances | # of Samples | % Exceed |
|-------------------|----------------------------------|--------------------------|----------------------|-------------------------|---------------------|-----------------|
| Ballona Creek | Ballona Creek Bacteria TMDL | Dry | 8 | 950 | 1763 | 54% |
| Dominguez Channel | Los Angeles Harbor Bacteria TMDL | Dry (Winter) | 3 | 159 | 899 | 18% |
| Dominguez Channel | Los Angeles Harbor Bacteria TMDL | Dry (Summer) | 3 | 269 | 1618 | 17% |
| Los Angeles River | Los Angeles River Bacteria TMDL | Dry | 25 | 293 | 513 | 57% |

| Watershed | Associated TMDL | Weather Condition | # of Stations | # of Exceedances | # of Samples | % Exceed |
|----------------------------------|--|--------------------------|----------------------|-------------------------|---------------------|-----------------|
| Los Angeles River | Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDL | Dry (Winter) | 12 | 59 | 796 | 7% |
| Los Angeles River | Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDL | Dry (Summer) | 12 | 170 | 1507 | 11% |
| Malibu Creek | Malibu Creek and Lagoon Bacteria TMDL | Dry | 15 | 346 | 1447 | 24% |
| Marina del Rey | Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL | Dry (Winter) | 13 | 353 | 1479 | 24% |
| Marina del Rey | Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL | Dry (Summer) | 13 | 338 | 2722 | 12% |
| Misc. Ventura Coastal Watersheds | Harbor Beaches of Ventura County Bacteria TMDL | Dry (Winter) | 2 | 21 | 219 | 10% |
| Misc. Ventura Coastal Watersheds | Harbor Beaches of Ventura County Bacteria TMDL | Dry (Summer) | 2 | 26 | 469 | 6% |
| San Gabriel River | San Gabriel River Bacteria TMDL | Dry | 10 | 17 | 38 | 45% |
| Santa Clara River | Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL | Dry | 3 | 0 | 15 | 0% |
| Santa Monica Bay | Santa Monica Bay Beaches Bacteria TMDL | Dry (Winter) | 68 | 938 | 7839 | 12% |
| Santa Monica Bay | Santa Monica Bay Beaches Bacteria TMDL | Dry (Summer) | 68 | 746 | 14094 | 5% |
| Alamitos Bay | (non-TMDL areas) | Dry | 4 | 57 | 980 | 6% |

| Watershed | Associated TMDL | Weather Condition | # of Stations | # of Exceedances | # of Samples | % Exceed |
|----------------------|------------------------|--------------------------|----------------------|-------------------------|---------------------|-----------------|
| Calleguas Creek | (non-TMDL areas) | Dry | 1 | 1 | 9 | 11% |
| Colorado Lagoon | (non-TMDL areas) | Dry | 2 | 14 | 475 | 3% |
| Dominguez Channel | (non-TMDL areas) | Dry | 2 | 7 | 12 | 58% |
| Los Cerritos Channel | (non-TMDL areas) | Dry | 1 | 2 | 3 | 67% |
| Ventura River | (non-TMDL areas) | Dry | 1 | 1 | 9 | 11% |

Table F-9. Summary of Dry Weather Bacteria Monitoring at Outfall Stations

| Watershed | Associated TMDL | # of Stations | # of Exceedances | # of Samples | % Exceed |
|----------------------|--|----------------------|-------------------------|---------------------|-----------------|
| Malibu Creek | Malibu Creek and Lagoon Bacteria TMDL | 1 | 1 | 1 | 100% |
| San Gabriel River | San Gabriel River Bacteria TMDL | 3 | 6 | 17 | 35% |
| Santa Clara River | Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL | 9 | 37 | 60 | 62% |
| Los Cerritos Channel | (non-TMDL areas) | 1 | 1 | 1 | 100% |

3. Metals

Permittees have monitored metals at several receiving water and outfall monitoring stations. This reflects the number of metals TMDLs and metals impairments throughout the Los Angeles Region. Copper, lead, and zinc are the primary metals of concern in the region as concentrations of these metals have exceeded water quality objectives for protection of aquatic life, which are established in the California Toxics Rule (CTR). Zinc and copper have often been identified as “limiting pollutants” in Watershed Management Programs established under the Los Angeles County and City of Long Beach MS4 Permits.

a. Wet Weather Metals Monitoring

The tables below summarize Permittees’ wet weather metals monitoring in select watersheds during the previous permit term (2009-2017 in Ventura County and 2012-2017 in Los Angeles County). Copper and/or zinc exceedances were observed at many receiving water stations when monitoring results were compared to CTR acute criteria for both total metals and dissolved metals.

Where outfall monitoring was conducted, many outfalls exceeded applicable effluent limitations for copper and zinc during wet-weather monitoring. Exceedances for these two constituents were observed at outfall stations in Calleguas Creek, Santa Clara River, Los Angeles River, Ballona Creek, San Gabriel River, and Los Cerritos Channel. Lead exceedances were also observed; however, these occurred at a far lower frequency.

**Table F-10. Summary of Wet Weather Metals Receiving Water Monitoring Exceeding Criteria by Watershed
(Exceedances / Samples)**

| Parameter | Ballona Creek | Calleguas Creek | Dominguez Channel | Los Angeles River | Los Cerritos Channel | San Gabriel River | Santa Clara River | Ventura River |
|---------------------|---------------|-----------------|-------------------|-------------------|----------------------|-------------------|-------------------|---------------|
| Cadmium (Total) | -- | -- | -- | 3/48 | -- | -- | -- | -- |
| Cadmium (Dissolved) | -- | -- | -- | 0/42 | -- | -- | -- | -- |
| Copper (Total) | 104/109 | 5/24 | 21/21 | 64/100 | 30/30 | 82/91 | 17/37 | 0/26 |
| Copper (Dissolved) | 84/109 | 0/25 | -- | 19/94 | 30/30 | 34/91 | -- | -- |
| Lead (Total) | 41/109 | 0/22 | 4/21 | 13/104 | 16/19 | 9/91 | 2/32 | 0/26 |
| Lead (Dissolved) | 0/109 | -- | -- | 1/98 | 6/19 | 0/91 | -- | -- |
| Mercury (Total) | -- | 7/27 | -- | -- | -- | -- | -- | -- |
| Nickel (Total) | -- | 0/24 | -- | -- | -- | -- | -- | -- |
| Nickel (Dissolved) | -- | 0/24 | -- | -- | -- | -- | -- | -- |
| Selenium | 0/80 | -- | -- | -- | -- | 0/67 | -- | -- |
| Zinc (Total) | 102/109 | -- | 21/21 | 83/102 | 19/19 | 74/93 | 10/37 | 0/26 |
| Zinc (Dissolved) | -- | 0/22 | -- | 20/96 | 17/19 | 20/93 | -- | -- |

**Table F-11. Summary of Wet Weather Metals Outfall Monitoring Exceeding Criteria by Watershed
(Exceedances / Samples)**

| Parameter | Ballona Creek | Calleguas Creek | Dominguez Channel | Los Angeles River | Los Cerritos Channel | San Gabriel River | Santa Clara River | Ventura River |
|--------------------|--------------------------|----------------------------|------------------------------|------------------------------|---------------------------------|----------------------------------|----------------------------------|--------------------------|
| Cadmium (Total) | -- | -- | -- | 4/62 | -- | -- | -- | -- |
| Copper (Total) | 8/9 | 26/43 | 0/6 | 27/65 | -- | 3/7 | -- | -- |
| Lead (Total) | 2/9 | -- | 0/6 | 1/65 | -- | 0/38 | -- | -- |
| Mercury (Total) | -- | 8/26 | -- | -- | -- | -- | -- | -- |
| Nickel (Total) | -- | 0/43 | -- | -- | -- | -- | -- | -- |
| Selenium | 0/2 | -- | -- | -- | -- | -- | -- | -- |
| Zinc (Total) | 8/9 | -- | 0/6 | 39/62 | -- | 3/7 | -- | -- |

b. Dry Weather Metals Monitoring

The tables below summarize Permittees' dry weather metals monitoring in select watersheds during the previous permit term (2009-2017 in Ventura County and 2012-2017 in Los Angeles County). Compared to wet weather, there were fewer exceedances of dry weather effluent limitations at outfalls and receiving water limitations at receiving water stations. For several constituent and waterbodies, no exceedances were observed.

**Table F-12. Summary of Dry Weather Metals Receiving Water Monitoring Exceeding Criteria by Watershed
(Exceedances / Samples)**

| Parameter | Ballona Creek | Calleguas Creek | Dominguez Channel | Los Angeles River | Los Cerritos Channel | San Gabriel River | Santa Clara River | Ventura River |
|------------------------|------------------|--------------------|----------------------|-------------------------|----------------------------|-------------------------|-------------------------|------------------|
| Cadmium (Total) | -- | -- | -- | 0/18 | -- | -- | -- | -- |
| Cadmium (Dissolved) | -- | -- | -- | 0/14 | -- | -- | -- | -- |
| Copper (Total) | 8/150 | 0/10 | 2/10 | 5/255 | 4/8 | 1/34 | 0/19 | 0/9 |
| Copper (Dissolved) | 1/150 | 0/10 | -- | 2/251 | 4/8 | 0/34 | -- | -- |
| Lead (Total) | 0/150 | 0/9 | 0/10 | 3/164 | -- | 0/31 | 0/16 | 0/9 |
| Lead (Dissolved) | 0/150 | -- | -- | 0/160 | -- | 0/31 | -- | -- |
| Mercury (Total) | -- | 0/11 | -- | -- | -- | -- | -- | -- |
| Nickel (Total) | -- | 0/10 | -- | -- | -- | -- | -- | -- |
| Nickel (Dissolved) | -- | 0/10 | -- | -- | -- | -- | -- | -- |
| Selenium | 0/78 | 0/10 | -- | -- | -- | 2/26 | -- | -- |
| Zinc (Total) | 0/150 | 0/9 | 0/10 | 1/225 | -- | 0/35 | 0/19 | 0/9 |
| Zinc (Dissolved) | 0/150 | -- | -- | 0/221 | -- | 0/35 | -- | -- |

**Table F-13. Summary of Dry Weather Metals Outfall Monitoring Exceeding Criteria by Watershed
(Exceedances / Samples)**

| Parameter | Ballona Creek | Calleguas Creek | Dominguez Channel | Los Angeles River | Los Cerritos Channel | San Gabriel River | Santa Clara River | Ventura River |
|--------------------|--------------------------|----------------------------|------------------------------|----------------------------------|-------------------------------------|----------------------------------|----------------------------------|--------------------------|
| Cadmium (Total) | -- | -- | -- | -- | -- | -- | -- | -- |
| Copper (Total) | 1/8 | 9/17 | -- | 0/2 | -- | -- | -- | -- |
| Lead (Total) | 0/8 | -- | -- | 0/2 | -- | -- | -- | -- |
| Mercury (Total) | -- | 0/9 | -- | -- | -- | -- | -- | -- |
| Nickel (Total) | -- | 0/15 | -- | -- | -- | -- | -- | -- |
| Selenium | -- | 0/8 | -- | -- | -- | 0/4 | -- | -- |
| Zinc (Total) | 0/8 | -- | -- | -- | -- | -- | -- | -- |

4. Nutrients

Permittees have monitored nutrients at several receiving water and outfall monitoring stations in waterbodies with nutrient and nutrient-related impairments. Data from 2012 to 2017 was analyzed for Los Angeles County. Data from 2009 through 2017 was analyzed for Ventura County. Although discharges from municipal wastewater treatment plants (also known as publicly owned treatment works or POTWs) have often been identified as major sources of impairments in some TMDLs, MS4 discharges have been identified as a source of impairment during wet weather and dry weather in several TMDLs. The tables below summarize nutrient monitoring at some select river systems with nutrient TMDLs. Permittees also monitor nutrients in lake systems as there are several lakes in the Los Angeles Region that have nutrient TMDLs.

Table F-14. Summary of Nutrients Receiving Water Monitoring Exceeding Criteria by Watershed (Exceedances / Samples)

| Limitation | Calleguas Creek | Los Angeles River | Malibu Creek (Summer) | Malibu Creek (Winter) | Santa Clara River |
|----------------------|-----------------|-------------------|-----------------------|-----------------------|-------------------|
| Ammonia (1 Hr Avg) | 0/546 | 0/57 | -- | -- | 1/41 |
| Ammonia (30 Day Avg) | 0/511 | 0/57 | -- | -- | 1/35 |
| Nitrate | 176/546 | 1/65 | -- | -- | 1/35 |
| Nitrite | 1/516 | 2/57 | -- | -- | -- |
| Nitrate + Nitrite | 179/542 | 5/65 | 5/13 | 1/43 | -- |
| Total Phosphorus | -- | -- | 12/14 | -- | -- |

Table F-15. Summary of Nutrients Outfall Monitoring Exceeding Criteria by Watershed (Exceedances / Samples)

| Limitation | Calleguas Creek | Los Angeles River | Malibu Creek (Summer) | Malibu Creek (Winter) | Santa Clara River |
|----------------------|-----------------|-------------------|-----------------------|-----------------------|-------------------|
| Ammonia (1 Hr Avg) | 0/108 | 0/28 | -- | -- | 2/38 |
| Ammonia (30 Day Avg) | 1/100 | 0/28 | -- | -- | 2/28 |
| Nitrate | 0/1 | 0/21 | -- | -- | -- |
| Nitrite | -- | 2/21 | -- | -- | -- |
| Nitrate + Nitrite | 1/109 | 1/28 | 2/2 | 0/6 | 0/28 |
| Total Phosphorus | -- | -- | 2/2 | -- | -- |

5. Salts

Permittees have monitored for salts at receiving water and outfall monitoring stations in waterbodies with salt impairments. Data from 2012 to 2017 was analyzed for Los Angeles County. Data from 2009 through 2017 was analyzed for Ventura County. The tables below summarize monitoring conducted for the Calleguas Creek Watershed Salts TMDL and Santa Clara River Chloride TMDL.

Both watersheds show continued exceedances of TMDL targets and/or receiving water limitations. The monitoring results for Santa Clara River is separated by the

weather condition at sample collection. Dry weather receiving water and outfall samples exceeded more frequently than wet weather samples. For example, 12 of 19 (63%) dry weather outfall samples exceeded applicable limitations compared to 1 of 60 (2%) wet weather outfall samples.

Table F-16. Summary of Salts Monitoring at Receiving Water Stations

| Watershed | Constituent | Weather Condition | # of Stations | # of Exceedances | # of Samples | % Exceed |
|-------------------|-------------|-------------------|---------------|------------------|--------------|----------|
| Calleguas Creek | Boron | -- | 6 | 8 | 34 | 24% |
| Calleguas Creek | Chloride | -- | 6 | 4 | 44 | 9% |
| Calleguas Creek | Sulfate | -- | 6 | 8 | 36 | 22% |
| Calleguas Creek | TDS | -- | 6 | 8 | 44 | 18% |
| Santa Clara River | Chloride | Wet | 3 | 9 | 44 | 20% |
| Santa Clara River | Chloride | Dry | 3 | 12 | 20 | 60% |

Table F-17. Summary of Salts Monitoring at Outfall Stations

| Watershed | Constituent | Weather Condition | # of Stations | # of Exceedances | # of Samples | % Exceed |
|-------------------|-------------|-------------------|---------------|------------------|--------------|----------|
| Calleguas Creek | Chloride | -- | 4 | 10 | 24 | 42% |
| Calleguas Creek | Sulfate | -- | 4 | 1 | 7 | 14% |
| Calleguas Creek | TDS | -- | 4 | 7 | 24 | 29% |
| Santa Clara River | Chloride | Wet | 8 | 1 | 60 | 2% |
| Santa Clara River | Chloride | Dry | * | 12 | 19 | 63% |

6. Toxic Pollutants

Toxic pollutants include pesticides, PCBs, PAHs, and metals. Toxic pollutants can bioaccumulate in fish and other aquatic organisms, which is harmful for both the organisms as well as organisms that consume these species (including humans). The Los Angeles Water Board's Basin Plan establishes a narrative water quality objective to address bioaccumulation, which states "Toxic pollutants shall not be present at levels that will bioaccumulate in aquatic life to levels which are harmful to aquatic life or human health." The State Water Board has established Sediment Quality Objectives for enclosed bays and estuaries, which state:

- Pollutants in sediments shall not be present in quantities that, alone or in combination are toxic to benthic communities in bays and estuaries of California;
- Pollutants shall not be present in sediments at levels that will bioaccumulate in aquatic life to levels that are harmful to human health in bays and estuaries of California; and

- Pollutants shall not be present in sediment at levels that alone or in combination are toxic to wildlife and resident finfish by direct exposure or bioaccumulate in aquatic life at levels that are harmful to wildlife or resident finfish by indirect exposure in bays and estuaries of California.

There are several TMDLs addressing impairments due to toxic pollutants in the Los Angeles Region. These TMDLs address impairments in estuaries, harbors, lakes, and other waterbodies where toxic pollutants can accumulate in the sediment. Permittees have been monitoring toxic pollutants in several waterbodies throughout the Los Angeles Region. This monitoring includes sediment monitoring at estuaries, lakes, and bays; stormborne sediment during rain events; and fish tissue monitoring at receiving waters. Data from 2012 to 2017 was analyzed for Los Angeles County. Data from 2009 through 2017 was analyzed for Ventura County. The table below summarizes some of the toxic pollutant monitoring conducted by Permittees. Due to the complexity of toxics TMDLs, which often include interim limitations and the analysis of multiple lines of evidence, it should be noted that the information in the table is a simplification of receiving water conditions.

Table F-18. Summary of Toxic Pollutants Receiving Water Monitoring Exceeding Criteria by Watershed (Exceedances / Samples)

| Parameter | Sample Type | Ballona Estuary | Calleguas Creek and Mugu Lagoon | Colorado Lagoon | Dominguez Channel Estuary | Santa Monica Bay |
|-----------|---------------------|-----------------|---------------------------------|-----------------|---------------------------|------------------|
| 4,4-DDD | Sediment | -- | 0/66 | -- | -- | -- |
| 4,4-DDE | Sediment | -- | 0/66 | -- | -- | -- |
| 4,4-DDT | Sediment | -- | 1/66 | -- | -- | -- |
| Cadmium | Stormborne Sediment | 2/13 | -- | -- | -- | -- |
| Chlordane | Fish Tissue | -- | -- | 4/4 | -- | -- |
| Chlordane | Sediment | -- | 1/66 | 10/12 | -- | -- |
| Chlordane | Stormborne Sediment | 14/20 | -- | -- | -- | -- |
| Copper | Sediment | -- | -- | -- | 3/22 | -- |
| Copper | Stormborne Sediment | 2/13 | -- | -- | -- | -- |
| DDTs | Fish Tissue | -- | -- | -- | 4/4 | -- |
| DDTs | Sediment | -- | -- | -- | 3/22 | 3/3 |
| DDTs | Stormborne Sediment | 14/20 | -- | 11/12 | -- | -- |
| Dieldrin | Fish Tissue | -- | -- | 2/4 | -- | -- |
| Dieldrin | Sediment | -- | 0/66 | 11/12 | -- | -- |
| Lead | Sediment | -- | -- | 8/12 | 3/22 | -- |
| Lead | Stormborne Sediment | 2/13 | -- | -- | -- | -- |
| PAHs | Fish Tissue | -- | -- | 2/4 | -- | -- |

| Parameter | Sample Type | Ballona Estuary | Calleguas Creek and Mugu Lagoon | Colorado Lagoon | Dominguez Channel Estuary | Santa Monica Bay |
|-----------|---------------------|-----------------|---------------------------------|-----------------|---------------------------|------------------|
| PAHs | Sediment | -- | -- | 0/12 | 1/22 | -- |
| PAHs | Stormborne Sediment | 5/20 | -- | -- | -- | -- |
| PCBs | Fish Tissue | -- | -- | 4/4 | -- | -- |
| PCBs | Sediment | -- | 0/66 | 7/12 | 2/22 | 3/3 |
| PCBs | Stormborne Sediment | 12/18 | -- | -- | -- | -- |
| Silver | Stormborne Sediment | 0/13 | -- | -- | -- | -- |
| Toxaphene | Sediment | -- | 0/66 | -- | -- | -- |
| Zinc | Sediment | -- | -- | 8/12 | 3/22 | -- |
| Zinc | Stormborne Sediment | 2/13 | -- | -- | -- | -- |

F. History of the Previous Permits

Prior to the issuance of the Order, the Los Angeles Water Board issued Permittees in Ventura County, Permittees within the coastal watersheds of Los Angeles County (with the exception of the City of Long Beach), and the City of Long Beach their own respective Phase I MS4 Permits.

Ventura County MS4 Permit

The first MS4 Permit for Ventura County and the incorporated areas therein was Order No. 94-082, issued by the Los Angeles Water Board on August 22, 1994. Between 1994 and 2010, several iterations of this permit were issued. Order No. 94-082 was superseded by Order No. 00-108, issued by the Los Angeles Water Board on July 27, 2000. On May 7, 2009, the Los Angeles Water Board issued Order No. 09-0057, which superseded Order No. 00-108. On July 8, 2010, the Los Angeles Water Board issued Order No. R4-2010-0108, which superseded Order No. 09-0057, to address perceived procedural issues raised by the Building Industry Legal Defense Foundation and others in a petition to the State Water Board.

Prior to the issuance of the Order, Order No. R4-2010-0108 served as the NPDES permit for MS4 stormwater and non-stormwater discharges within the watersheds of Ventura County. The requirements of Order No. R4-2010-0108 applied to the Ventura County Watershed Protection District, County of Ventura, and the cities of Camarillo, Fillmore, Moorpark, Ojai, Oxnard, Port Hueneme, San Buenaventura (Ventura), Santa Paula, Simi Valley, and Thousand Oaks.

Working together under the Ventura County MS4 Permit, the VCWPD joined together with the County of Ventura and 10 incorporated cities to form the Ventura Countywide Stormwater Quality Management Program. VCWPD was designated as the Principal Permittee. The Principal Permittee coordinated and facilitated activities necessary to comply with the requirements of Order No. R4-2010-0108 but was not responsible for ensuring compliance of any of the other Permittees. As noted earlier, the designation of

a Principal Permittee has not been carried over from Order No. R4-2010-0108 to the Order.

Los Angeles County MS4 Permit

The first MS4 permit for Los Angeles County and the incorporated areas therein was Order No. 90-079, issued by the Los Angeles Water Board on June 18, 1990. Order No. 96-054 was issued by the Los Angeles Water Board on July 15, 1996, which superseded Order No. 90-079. Order No. 96-054 was superseded by Order No. 01-182, which was issued by the Los Angeles Water Board on December 13, 2001. Order No. 01-182 was amended on September 14, 2006 by Order No. R4-2006-0074, on August 9, 2007 by Order No. R4-2007-0042, on December 10, 2009 by Order No. R4-2009-0130, and on October 19, 2010 and April 14, 2011 pursuant to a peremptory writ of mandate in Los Angeles County Superior Court Case No. BS122724. As discussed below, Order No. 01-182 did not regulate MS4 discharges originating from the City of Long Beach.

On November 8, 2012, the Los Angeles Water Board issued Order No. R4-2012-0175, which superseded Order No. 01-182, as amended. Thereafter, several Los Angeles County MS4 Permittees and environmental organizations filed 37 petitions with the State Water Board challenging various provisions of Order No. R4-2012-0175. On June 16, 2015, the State Water Board adopted Order WQ 2015-0075, which generally upheld Order No. R4-2012-0175 but with a number of revisions to the findings and provisions. Two cities and two environmental organizations subsequently filed three lawsuits (petitions for writ of mandate) against the Los Angeles Water Board and State Water Board challenging various aspects of Los Angeles Water Board Order No. R4-2012-0175 and State Water Board Order WQ 2015-0075. These lawsuits have the following brief background and status:

- Natural Resources Defense Council (NRDC) and Los Angeles Waterkeeper's primary contention is that allowing permittees to implement approved watershed management programs (WMPs) in lieu of strictly complying with receiving water limitations violates federal NPDES anti-backsliding requirements and state and federal anti-degradation requirements. In January 2017, the Los Angeles County Superior Court denied the petition for writ of mandate and upheld Order No. R4-2012-0175. Upon appeal by NRDC and Los Angeles Waterkeeper, on December 24, 2018, the Second District Court of Appeal issued an unpublished, mixed decision.¹² On the anti-backsliding claim, the Court of Appeal affirmed the conclusions of the State Water Board and the trial court that the anti-backsliding provisions did not apply when the 2012 permit authorized WMPs as an alternative means of compliance with receiving water limitations. As for the anti-degradation claim, the Court of Appeal reversed and remanded the trial court's anti-degradation ruling on procedural grounds. The Court of Appeal held that the trial court applied the wrong standard of review, but did affirm that a simple anti-degradation analysis applied to the permit. On remand, the Superior Court ruled that the Water Boards' anti-degradation analysis in Order No. R4-2012-0175 pertaining to high quality waters only was not supported by adequate findings and issued a judgment on April 21, 2021, stating that the court will issue a writ of mandate ordering the Water Boards to set aside Order No. R4-2012-0175. Following issuance of the writ, the Los Angeles Water Board will have 180 days to comply with the court's writ. Alternatively, if the Water Boards file a notice of appeal, they may also file a petition

¹² *Natural Res. Defense Council Inc. et al. v. State Water Res. Control Board et al.* (Dec. 24, 2018) Cal. Court of Appeal, Second Appellate District, Div. Five, Case No. B282016 [nonpub. opn.].

for writ of supersedeas with the Court of Appeal to seek to keep the 2012 permit in effect pending appeal. Unless and until the Los Angeles Water Board supersedes the 2012 permit through issuance of this Order or otherwise acts to set aside the 2012 permit, the 2012 permit remains in effect.¹³

- In two separate but related cases, the cities of Duarte and Gardena challenged various aspects of Order No. R4-2012-0175, including alleging that the Los Angeles Water Board failed to properly consider economic considerations under Water Code section 13241 before imposing numeric effluent limitations (NELs). In September 2019, the Orange County Superior Court issued writs of mandate in both cases requiring the Los Angeles Water Board to set aside all NELs in the 2012 permit and to reconsider the permit in light of the court's ruling. The court ruled that the Water Boards were required to consider costs under Water Code section 13241, as it had determined that incorporation of NELs in the 2012 permit exceeded federal Clean Water Act requirements, and that the Water Boards failed to adequately do so. The court declined to address the cities' other contentions as it found the NEL issue dispositive. The Water Boards disagreed with the court's ruling and appealed the decision. On January 28, 2021, the Court of Appeal issued a unanimous, published decision in the *City of Duarte* case and a companion unpublished decision in the *City of Gardena* case reversing the trial court's rulings in both cases. The Court of Appeal did not decide whether NELs were more stringent than required by federal law. Assuming without deciding that they were more stringent and required considering of the Water Code section 13241 factors, the Court of Appeal concluded that "The Regional Board developed an economic analysis of the Permit's requirements, consistent with Water Code section 13241." (*City of Duarte v. State Water Resources Control Board et al.* (2021) 60 Cal.App.5th 258, as modified on denial of rehearing (Feb. 19, 2021); *City of Gardena v. State Water Resources Control Board et al.* (2021) Cal. Court of Appeal, Fourth Appellate Dist., Div. Three, Case No. G058540, as modified on denial of rehearing (Feb 19, 2021) [nonpub. opn.].) On April 28, 2021, the California Supreme Court denied the cities' Petitions for Review, leaving the appellate court's rulings in place. The Court of Appeal has directed the trial court to deny the cities' petitions for writ of mandate and to enter judgments in favor of the Water Boards.

The Los Angeles Water Board further amended Order No. R4-2012-0175 on September 8, 2016 (Order No. R4-2012-0175-A01) incorporating provisions consistent with the revised Ballona Creek Watershed Trash TMDL and the revised Los Angeles River Watershed Trash TMDL. Additionally, on July 9, 2018, the Los Angeles Water Board Executive Officer modified Table E-2 of Attachment E (Monitoring and Reporting Program) to Order No. R4-2012-0175 to remove fecal coliform from the freshwater monitoring requirements.

Prior to the issuance of the Order, Order No. R4-2012-0175, as amended, served as the NPDES permit for MS4 stormwater and non-stormwater discharges within the coastal watersheds of Los Angeles County. The requirements of Order No. R4-2012-0175 applied to the Los Angeles County Flood Control District, the unincorporated areas of Los Angeles County under Los Angeles County's jurisdiction, and 84 cities within the coastal watersheds of Los Angeles County except for the City of Long Beach.

¹³ *Natural Res. Defense Council, Inc. et al. v. State Wat. Res. Control Bd. et al.*, Los Angeles County Superior Court, Case No. BS156962 (March 29, 2021). Judge Beckloff's ruling did not change the Court of Appeals' anti-backsliding analysis.

City of Long Beach MS4 Permit

The Los Angeles Water Board regulated discharges from the City of Long Beach's MS4 from 1990 through 1999 under the Los Angeles countywide MS4 requirements contained in Order No. 90-079 and Order No. 96-054 issued on June 18, 1990 and July 15, 1996, respectively.

In 1999, the Los Angeles Water Board issued a separate MS4 Permit, Order No. 99-060, to the City of Long Beach for discharges originating from its MS4. Order No. 99-060 was superseded by Order No. R4-2014-0024, which was issued by the Los Angeles Water Board on February 6, 2014. The Los Angeles Water Board amended Order No. R4-2014-0024 on September 8, 2016 (Order No. R4-2014-0024-A01) incorporating provisions consistent with the revised Los Angeles River Watershed Trash TMDL. Additionally, on July 9, 2018, the Los Angeles Water Board Executive Officer modified Table E-2 of Attachment E (Monitoring and Reporting Program) to Order No. R4-2014-0024 to remove fecal coliform from freshwater monitoring requirements.

Order No. R4-2014-0024, as amended, served as the NPDES permit for MS4 stormwater and non-stormwater discharges for the City of Long Beach prior to the issuance of the Order.

Regional MS4 Permit

Except for enforcement purposes, the Order supersedes the previous orders for Permittees in Ventura County, Permittees within the coastal watersheds of Los Angeles County (excepting the City of Long Beach), and the City of Long Beach to cover all Phase I MS4 Permittees within the coastal watersheds of the Los Angeles Region with one regionwide Phase I MS4 Permit (Regional MS4 Permit).

G. Summary of Requirements in Previous Permits

Ventura County

The Ventura County MS4 Permit was last reissued in 2010 as Order No. R4-2010-0108. Order No. R4-2010-0108 expired on July 8, 2015, but was administratively continued pursuant to federal and state regulations. Order No. R4-2010-0108 was organized under the following seven parts and included several attachments. The description below briefly summarizes key permit parts and attachments in Order No. R4-2010-0108.

Part 1 – Discharge Prohibitions

As required by section 402(p)(3)(B)(ii) of the Clean Water Act, Part 1 requires permittees to effectively prohibit non-stormwater discharges into the MS4 and receiving waters, except where such discharges: originate from a State, Federal, or other source for which they are pre-empted from regulating by State or federal law; are covered by a separate NPDES permit or conditional waiver of waste discharge requirements (WDRs) for irrigated lands; are flows from firefighting activities; or fall within one of thirteen categories of flows that are conditionally exempted from the discharge prohibition. These exempted flows fall under certain categories of natural flows and flows incidental to urban activities (i.e., landscape irrigation, sidewalk rinsing). These non-stormwater flows may be exempted so long as they are not a source of pollutants that exceed water quality standards and permittees meet all conditions where specified.

Part 2 – Receiving Water Limitations

Pursuant to State Water Board Order WQ 99-05, Part 2 prohibits discharges from the MS4 that cause or contribute to a violation of water quality standards. In addition, discharges from the MS4 of stormwater or non-stormwater, for which a Permittee is responsible, may not cause or contribute to a condition of nuisance. Part 2.3 requires permittees to comply with receiving water limitations through timely implementation of control measures and other actions to reduce pollutants in the stormwater discharges. If exceedances persist, the Permittee shall ensure compliance with receiving water limitations by following a list of procedures such as submitting a report to the Los Angeles Water Board Executive Officer that describes what additional BMPs are being implemented to address the exceedances. Part 2.4 requires Permittees to annually report the effectiveness of BMPs in reducing exceedances of receiving water limitations.

Part 3 – Stormwater Quality Management Program (SQMP) Implementation

Under Part 3, each Permittee shall, at a minimum, adopt and implement applicable terms of the permit within its jurisdictional boundary. As Principal Permittee, VCWPD shall be responsible for program coordination as described in the permit, as well as compliance with applicable portions of the permit within its jurisdiction. Each Permittee shall also comply with the requirements of 40 CFR section 122.26(d)(2) and implement programs and control measures so as to reduce the discharges of pollutants in stormwater to the maximum extent practicable (MEP) and achieve water quality standards. Part 3 also requires each Permittee to achieve treatment BMP performance standards identified in Attachment C for an 85th percentile 24-hour runoff event.

With regards to TMDLs, Part 3 requires each Permittee to implement programs and measures to comply with TMDL WLAs assigned to MS4 discharges as specified in Part 5. The WLAs are expressed numerically in Part 5 as water quality-based effluent limitations and Permittees are expected to attain the WLAs by implementing BMPs. Additionally, permittees are required to submit an Annual Budget Summary that provides the estimated expenditures to implement the permit for the upcoming report year.

Part 3 also sets forth specific responsibilities of the Principal Permittee and other Permittees such as participation in committee meetings and intra-agency coordination and requirements regarding each Permittee's legal authority.

Part 4 – Special Provisions

Part 4 sets forth provisions for watershed initiative participation, public information and participation program, industrial/commercial facilities control program, planning and land development program, development construction program, public agency activities program, and illicit connections and illicit discharges elimination program. These programs are termed "minimum control measures" and have been in place since the inception of the MS4 NPDES permitting program, as required by federal regulations.

As part of general requirements, Part 4 allows Permittees to propose site-specific Best Management Practice (BMP) Substitution for Los Angeles Water Board Executive Officer approval. Part 4 also sets forth requirements for the Reporting Program in Attachment I.

Part 5 – Total Maximum Daily Load (TMDL) Provisions

As required by 40 CFR section 122.44(d)(1)(vii)(B), the permit incorporated TMDL WLAs, expressed numerically in a manner consistent with the assumptions and requirements of the TMDL from which they were derived. In permit terms, these TMDL WLAs are water quality-based effluent limits. Part 5 requires permittees to comply with applicable WLAs and lists 13 TMDLs applicable to MS4 discharges within Ventura County with the WLAs assigned to MS4 discharges and compliance options.

Part 6 – Definitions

Part 6 includes definitions for terms used within the permit.

Part 7 – Standard Provisions

Part 7 includes standard provisions relating to implementation of the programs required by the permit. Such provisions include, but are not limited to, the duty to comply, the duty to mitigate, inspection and entry requirements, proper operation and maintenance requirements, monitoring and reporting requirements, and the duty to provide information. Most of these provisions are required by 40 CFR sections 122.41 or 122.42 and apply to all NPDES permits.

Attachment A – Watershed Management Areas

Attachment A includes a table that lists the Watershed Management Areas and their respective major surface waterbodies, hydrologic units, Clean Water Act section 303(d) listed pollutants, and permittees.

Attachment B – Pollutants of Concern for Calleguas Creek, Santa Clara River, and Ventura River Watersheds

Attachment B includes pollutants of concern for Calleguas Creek, Santa Clara River, and Ventura River Watershed based on 2003-2007 data from mass emissions stations, receiving water sites, and land use monitoring sites.

Attachment C – Treatment BMP Performance Standards and Effluent Concentrations as Median Values

Attachment C provides treatment BMP performance standards which includes a table of parameters and their respective effluent concentrations for various categories of BMPs.

Attachment D – Critical Sources Categories

Attachment D lists facilities and their Standard Industrial Classification (SIC) codes for critical sources.

Attachment E – Determination of Erosion Potential

Attachment E includes formulas to determine erosion potential.

Attachment F – Monitoring Program

Attachment F has self-monitoring requirements, which include: (1) monitoring of “mass emissions” at three mass emission monitoring stations; (2) monitoring of major outfalls specified in Attachment I; (3) Dry Weather Analytical Monitoring; (4) Aquatic Toxicity Monitoring; (5) Beach Water Quality Monitoring; (6) TMDL Monitoring; (7) Bioassessment; and (8) Special Studies.

Attachment G – Storm Water Monitoring Program’s Constituents and Associated Minimum Levels

Attachment G includes a table listing the required stormwater monitoring program constituents and their associated minimum levels.

Attachment H – Storm Water Monitoring Program’s Major Outfall Stations

Attachment H includes a table listing the required major outfall monitoring sites and the responsible permittees.

Attachment I – Reporting Program Requirements

Attachment I has reporting requirements where an annual report includes: (1) monitoring of “mass emissions” at three mass emission monitoring stations; (2) monitoring of major outfalls specified in Attachment H; (3) Dry Weather Analytical Monitoring; (4) Aquatic Toxicity Monitoring; (5) Beach Water Quality Monitoring; (6) TMDL Monitoring; (7) Bioassessment; and (8) Special Studies. Permittees are also required to submit an Annual Monitoring Program Report, which answers a set of questions on discharge prohibitions and receiving water limitations. Additionally, Permittees are required to include in their Annual Report answers to a set of questions on the SQMP and special provisions of the Order.

Fact Sheet/Staff Report

The Fact Sheet/Staff Report provides an overview of the Ventura County MS4 Permit and explains the significant factual, legal, methodological, technical, and policy rationale that serve as the basis for the permit requirements.

Los Angeles County

The Los Angeles County MS4 Permit was last reissued in 2012 as Order No. R4-2012-0175 and was amended as described above. Order No. R4-2012-0175 expired on December 28, 2017 but was administratively continued pursuant to federal and state regulations. Order No. R4-2012-0175 is organized under six parts and includes several attachments. The description below summarizes key permit parts and attachments in Order No. R4-2012-0175.

Part III. Discharge Prohibitions

As required by section 402(p)(3)(B)(ii) of the Clean Water Act, Part III requires Permittees to prohibit non-stormwater discharges through the MS4 to receiving waters except for non-stormwater discharges regulated under a separate NPDES permit, temporary non-stormwater discharges authorized by U.S. EPA, authorized non-stormwater discharges from emergency firefighting activities, natural flows, and certain conditionally exempt discharges.

Part IV. Effluent Limitations and Discharge Specifications

Part IV requires each Permittee to comply with technology based effluent limitations by reducing pollutants in stormwater discharges from the MS4 to the maximum extent practicable (MEP). Part IV also requires Permittees to comply with applicable water quality-based effluent limitations (WQBELs) as set forth in Part VI.E of the permit.

Part V. Receiving Water Limitations

Pursuant to State Water Board Order WQ 99-05, Part V prohibits discharges from the MS4 that cause or contribute to a violation of receiving water limitations. In

addition, discharges from the MS4 of stormwater or non-stormwater, for which a Permittee is responsible, shall not cause or contribute to a condition of nuisance. Part V.3 requires permittees to comply with receiving water limitations through timely implementation of control measures and other actions to reduce pollutants in the discharges. If exceedances persist, the Permittee shall ensure compliance with receiving water limitations by following a list of procedures, such as submitting an Integrated Monitoring Compliance Report to the Los Angeles Water Board Executive Officer that describes what additional BMPs are being implemented to address the exceedances.

Part VI. Provisions

Part VI includes requirements for standard provisions, monitoring and reporting, watershed management programs, stormwater management program minimum control measures (MCMs), and Total Maximum Daily Loads (TMDLs).

Standard provisions include requirements to comply with Attachment D, ensure each Permittee has the necessary legal authority to prohibit non-stormwater discharges through the MS4 to receiving waters, as well as possess adequate legal authority to develop and enforce stormwater and non-stormwater ordinances for its jurisdiction. It also lists responsibilities of Permittees and requires Permittees to conduct a fiscal analysis and report it in their annual report. There are also provisions for public review and Los Angeles Water Board review, permit reopener and modification provisions, and enforcement provisions including enforcement of water quality-based effluent limitations for trash.

The monitoring and reporting provisions require compliance with Attachment E (Monitoring and Reporting Program) and also describe compliance determination for commingled discharges.

The watershed management program provisions in Part VI.C describe a voluntary alternative compliance pathway allowing permittees to individually or collaboratively develop a Watershed Management Program (WMP) or an Enhanced Watershed Management Program (EWMP). The WMP or EWMP allows Permittee(s) the flexibility to customize strategies, control measures, and BMPs to meet the requirements of the permit. Part VI.C describes compliance determination for participation in a WMP or EWMP, timelines for WMP or EWMP development and implementation, requirements to conduct a Reasonable Assurance Analysis (RAA), and provisions for an adaptive management process.

Part VI.D includes general requirements, progressive enforcement and interagency coordination provisions, and six MCMs that are the Public Information and Participation Program (PIPP), Industrial/Commercial Facilities Program, Planning and Land Development Program, Development Construction Program, Public Agency Activities Program, and Illicit Connections and Illicit Discharges Elimination Program (IC/IDE). Part VI.D.4 lists MCM provisions applicable to LACFCD.

Part VI.E includes TMDL provisions including compliance with applicable WQBELs and/or receiving water limitations contained in Attachments L through R, compliance determination for TMDLs, timelines for compliance with U.S. EPA TMDLs, and provisions for compliance with trash TMDLs.

Attachment A – Definitions

Attachment A includes acronyms, abbreviations, and definitions for terms used within the permit.

Attachment B – Watershed Management Area Maps

Attachment B depicts each Watershed Management Area, its subwatersheds, and the major receiving waters.

Attachment C – MS4 Maps by Watershed Management Area

Attachment C depicts the major drainage infrastructure with the area covered under the permit by WMAs.

Attachment D – Standard Provisions

Attachment D includes standard provisions relating to implementation of the programs required by the permit. Such provisions include, but are not limited to, the duty to comply, the duty to mitigate, inspection and entry requirements, proper operation and maintenance requirements, monitoring and reporting requirements, and the duty to provide information. Most of these provisions are required by 40 CFR section 122.41, which applies to all NPDES permits, or section 122.42, which sets forth additional conditions applicable to specified categories of NPDES permits, including MS4 permits.

Attachment E – Monitoring and Reporting Program

Attachment E establishes monitoring, reporting, and recordkeeping requirements. Attachment E allows for an integrated monitoring approach where a Permittee can submit an Integrated Monitoring Program (IMP) or a group of Permittees can coordinate monitoring efforts on a watershed or subwatershed basis to submit a Coordinated Integrated Monitoring Program (CIMP) for Los Angeles Water Board Executive Officer approval. The IMP or CIMP must contain the following elements: (1) receiving water monitoring; (2) stormwater outfall-based monitoring; (3) non-stormwater outfall-based monitoring; (4) new-development/re-development effectiveness tracking; and (5) regional studies. Furthermore, Attachment E specifies monitoring data and annual report submittal timelines and describes key elements to report on.

Attachment F – Fact Sheet

The Fact Sheet provides an overview of the Los Angeles County MS4 Permit and explains the significant factual, legal, methodological, technical, and policy rationale that serve as the basis for the requirements of the permit.

Attachment G – Non-Storm Water Action Levels and Municipal Action Levels

Corresponding to Part III (Discharge Prohibitions) of the permit and non-stormwater outfall monitoring per Attachment E, Attachment G lists non-stormwater action levels for waterbodies. Additionally, Attachment G lists hardness-based action levels for metals. Municipal Action Levels listed in Attachment G apply to stormwater outfall monitoring conducted per Attachment E.

Attachment H – Bioretention/Biofiltration Design Criteria

Corresponding to the Planning and Land Development MCM in the permit, Attachment H describes design specification requirements for bioretention and biofiltration systems.

Attachment I – Developer Technical Information and Guidelines

Attachment I requires Permittees to make available certain reference information and recommended guidelines to the development community. This information may include but is not limited to hydromodification control criteria, low impact development (LID) principles and specifications, and construction BMPs.

Attachment J – Determination of Erosion Potential

Corresponding to the Planning and Land Development MCM in the permit, Attachment J defines erosion potential and provides equations to calculate erosion potential.

Attachment K – Permittees and TMDLs Matrix

Attachment K provides a comprehensive list of TMDLs by Watershed Management Area and the Permittees subject to each TMDL.

Attachment L – TMDL Provisions for the Santa Clara River Watershed Management Area

Attachment L specifies four TMDLs incorporated in the permit with their WQBELs and/or receiving water limitations and compliance options.

Attachment M – TMDL Provisions for Santa Monica Bay Watershed Management Area (including Malibu Creek, Ballona Creek, and Marina del Rey Subwatersheds)

Attachment M specifies 13 TMDLs incorporated in the permit with their WQBELs and/or receiving water limitations and compliance options.

Attachment N – TMDL Provisions for Dominguez Channel and Greater Harbor Waters Watershed Management Area (including Machado Lake Subwatershed)

Attachment N specifies five TMDLs incorporated in the permit with their WQBELs and/or receiving water limitations and compliance options.

Attachment O – TMDL Provisions for Los Angeles River Watershed Management Area

Attachment O specifies seven TMDLs incorporated in the permit with their WQBELs and/or receiving water limitations and compliance options.

Attachment P – TMDL Provisions for the San Gabriel River Watershed Management Area

Attachment P specifies two TMDLs incorporated in the permit with their WQBELs and/or receiving water limitations and compliance options.

Attachment Q – TMDL Provisions for Los Cerritos Channel and Alamitos Bay Watershed Management Area

Attachment Q specifies two TMDLs incorporated in the permit with their WQBELs and/or receiving water limitations and compliance options.

Attachment R – TMDL Provisions for Middle Santa Ana River Watershed Management Area

Attachment R specifies one TMDL incorporated in the permit with its WQBELs and/or receiving water limitations and compliance options.

City of Long Beach

The City of Long Beach MS4 Permit was last reissued in 2014 as Order No. R4-2014-0024 and was amended as described above. Order No. R4-2014-0024 expired on March 28, 2019 but was administratively continued pursuant to federal and state regulations. Order No. R4-2014-0024 is organized under the following eight parts and includes several attachments. The description below summarizes key permit parts and attachments in Order No. R4-2014-0024.

Part III. Discharger Responsibilities

Part III requires the City of Long Beach to comply with provisions in the permit including attachments. It also requires the City of Long Beach to submit complete and timely reports and participate in intra-agency coordination.

Part IV. Discharge Prohibitions

Part IV requires the City of Long Beach to prohibit any discharge of toxic substances from the MS4 into surface waters in concentrations acutely or chronically toxic to animal or plant life. As required by section 402(p)(3)(B)(ii) of the Clean Water Act, Part IV also prohibits non-stormwater discharges through the MS4 to receiving waters except for non-stormwater discharges regulated under an NPDES permit, temporary non-stormwater discharges authorized by U.S. EPA, authorized non-stormwater discharges from emergency firefighting activities, natural flows, and certain conditionally exempt discharges.

Part V. Effluent Limitations and Discharge Specifications

Part V requires the City of Long Beach to comply with technology based effluent limitations by reducing pollutants in stormwater discharges from the MS4 to the maximum extent practicable (MEP). Part V also requires the City of Long Beach to comply with WQBELs as set forth in Part VIII of the permit.

Part VI. Receiving Water Limitations

Pursuant to State Water Board Order WQ 99-05, Part VI prohibits discharges from the MS4 that cause or contribute to a violation of receiving water limitations. In addition, discharges from the MS4 of stormwater or non-stormwater, for which the City of Long Beach is responsible, shall not cause or contribute to a condition of nuisance. Part VI.3 requires the City of Long Beach to comply with receiving water limitations through timely implementation of control measures and other actions to reduce pollutants in the discharges. If exceedances persist, the City of Long Beach shall ensure compliance with receiving water limitations by following a list of procedures such as submitting an Integrated Monitoring Compliance Report to the Los Angeles Water Board Executive Officer that describes what additional BMPs are being implemented to address the exceedances.

Part VII. Provisions

Part VII includes standard provisions, monitoring and reporting requirements, provisions for watershed management programs, and stormwater management program MCMs such as PIPP, Industrial/Commercial Facilities Program, Planning and Land Development Program, Construction Program, Public Agency Activities Program, and IC/IDE Program. Monitoring and reporting provisions require compliance with Attachment E.

Standard provisions include requirements to comply with Attachment D to ensure that the City of Long Beach has the necessary legal authority to prohibit non-stormwater discharges through the MS4, as well as possess adequate legal authority to develop and enforce stormwater and non-stormwater ordinances for its jurisdiction. It also requires the City of Long Beach to conduct a fiscal analysis and discuss it in their annual report. Other provisions include public review and Los Angeles Water Board review provisions, permit reopener and modification provisions, and enforcement provisions including enforcement of trash water quality-based effluent limitations.

The watershed management program provisions in Part VII.C describe a voluntary alternative compliance pathway allowing the City of Long Beach to individually or collaboratively with other MS4 Permittees develop a Watershed Management Program (WMP) or an Enhanced Watershed Management Program (EWMP). The WMP or EWMP allows the City of Long Beach flexibility to customize strategies, control measures, and BMPs to meet the requirements of the permit. It describes compliance determination for participation in a WMP or EWMP, timelines for WMP or EWMP development and implementation, requirements to conduct a Reasonable Assurance Analysis (RAA), and provisions for an adaptive management process.

Part VIII. Total Maximum Daily Loads

Part VIII lists TMDL provisions including compliance determination for TMDLs, timelines for compliance with U.S. EPA TMDLs, and provisions for compliance with trash TMDLs. It also requires the City of Long Beach to comply with applicable WQBELs to implement 9 TMDLs.

Attachment A – Definitions

Attachment A includes acronyms, abbreviations, and definitions for terms used within the permit.

Attachment B – Watershed Management Areas within the City of Long Beach

Attachment B depicts the four WMAs within the City of Long Beach.

Attachment C – City of Long Beach MS4

Attachment C depicts the MS4 within the City of Long Beach.

Attachment D – Standard Provisions

Attachment D includes standard provisions relating to implementation of the programs required by the permit. Such provisions include, but are not limited to, the duty to comply, the duty to mitigate, inspection and entry requirements, proper operation and maintenance requirements, monitoring and reporting requirements, and the duty to provide information. Most of these provisions are required by 40 CFR section 122.41, which applies to all NPDES permits, and section 122.42, which sets forth additional conditions applicable to specified categories of NPDES permits, including MS4 permits.

Attachment F – Fact Sheet

The Fact Sheet provides an overview of the City of Long Beach MS4 Permit and explains the significant factual, legal, methodological, technical, and policy rationale that serve as the basis for the requirements of the permit.

Attachment E – Monitoring and Reporting Program

Attachment E establishes monitoring, reporting, and recordkeeping requirements. Attachment E allows for an integrated monitoring approach where the City of Long Beach can submit an Integrated Monitoring Program (IMP) or the City of Long Beach with other MS4 Permittees can coordinate monitoring efforts on a watershed or subwatershed basis to submit a Coordinated Integrated Monitoring Program (CIMP) for Los Angeles Water Board Executive Officer approval. The IMP or CIMP must contain the following elements: (1) receiving water monitoring; (2) stormwater outfall-based monitoring; (3) non-stormwater outfall-based monitoring; (4) new-development/re-development effectiveness tracking; and (5) regional studies. Furthermore, Attachment E specifies monitoring data and annual report submittal timelines and describes key elements to report on.

Attachment G – Non-Storm Water Action Levels and Municipal Action Levels

Corresponding to Part IV (Discharge Prohibitions) of the permit and non-stormwater outfall monitoring per Attachment E, Attachment G lists non-stormwater action levels for waterbodies. Additionally, Attachment G lists hardness-based action levels for metals. Municipal Action Levels listed in Attachment G apply to stormwater outfall monitoring conducted per Attachment E.

Attachment H – Bioretention / Biofiltration Design Criteria

Corresponding to the Planning and Land Development MCM in the permit, Attachment H describes design specification requirements for bioretention and biofiltration systems.

Attachment I – Developer Technical Information and Guidelines

Attachment I requires the City of Long Beach to make available certain reference information and recommended guidelines to the development community. This information may include but not limited to hydromodification control criteria, LID principles and specifications, and construction BMPs.

Notably, all three previous MS4 permits required outfall and receiving water monitoring for a suite of constituents commonly found in stormwater and non-stormwater discharges and addressed by applicable TMDLs. Therefore, Part II.E of this Fact Sheet summarizes water quality in the Los Angeles Region based on existing monitoring for TMDLs and other categories of pollutants.

H. Permit Applications

1. Ventura County Permittees

On January 9, 2015, 180 days prior to the expiration of Order No. R4-2010-0108, all 12 Ventura County Permittees filed a joint reapplication package also known as a Report of Waste Discharge (ROWD) to apply for renewal of their waste discharge requirements that serve as an NPDES permit to discharge stormwater and authorized and conditionally exempt non-stormwater through their MS4 to surface waters. Specifically, the reapplication package was submitted on behalf of the Ventura Countywide Stormwater Quality Management Program, which consists of the Ventura County Watershed Protection District, the County of Ventura, and the incorporated cities of Camarillo, Fillmore, Moorpark, Ojai, Oxnard, Port Hueneme, Ventura, Santa Paula, Simi Valley, and Thousand Oaks.

The Los Angeles Water Board evaluated the Ventura County Permittees' reapplication package and deemed it complete per federal stormwater regulations contained in the U.S. EPA Interpretive Policy Memorandum on Reapplication Requirements for Municipal Separate Storm Sewer Systems; Final Rule, August 9, 1996 (*61 Fed Reg. 41697*).

2. Los Angeles County Permittees

By July 3, 2017, 180 days prior to the expiration of Order No. R4-2012-0175 as amended by State Water Board Order WQ 2015-0075 and Los Angeles Water Board Order No. R4-2012-0175-A01, the 86 Los Angeles County Permittees submitted a total of 29 reapplication packages to discharge stormwater and authorized and conditionally exempt non-stormwater through their MS4 to surface waters. Out of the 29 reapplication packages, 19 were submitted by groups of Permittees and 10 were submitted individually.

The Los Angeles Water Board evaluated these 29 reapplication packages and deemed them complete per federal stormwater regulations contained in the U.S. EPA Interpretive Policy Memorandum on Reapplication Requirements for Municipal Separate Storm Sewer Systems; Final Rule, August 9, 1996 (*61 Fed Reg. 41697*).

3. City of Long Beach

On October 1, 2018, 180 days prior to the expiration of Order No. R4-2014-0024 as amended by Los Angeles Water Board Order No. R4-2014-0024-A01, the City of Long Beach submitted a reapplication package to discharge stormwater and authorized and conditionally exempt non-stormwater through its MS4 to surface waters.

The Los Angeles Water Board evaluated the City of Long Beach's reapplication package and deemed it complete per federal stormwater regulations contained in the U.S. EPA Interpretive Policy Memorandum on Reapplication Requirements for Municipal Separate Storm Sewer Systems; Final Rule, August 9, 1996 (*61 Fed Reg. 41697*).

III. APPLICABLE FEDERAL AND STATE LAWS, REGULATIONS, PLANS, AND POLICIES

The provisions contained in the Order are based on the requirements and authorities described in the Order's Findings and below. These include the federal Clean Water Act and implementing regulations, the California Water Code, and applicable statewide and regional water quality control plans and policies.

A. Municipal Separate Storm Sewer System Requirements

The 1972 Clean Water Act (CWA)¹⁴ established the NPDES Program to regulate the discharge of pollutants from point sources to waters of the United States. However, pollution from stormwater and dry-weather urban runoff was largely unabated for over a decade. In response to the 1987 Amendments to the Clean Water Act, U.S. EPA developed Phase I of the NPDES Storm Water Permitting Program in 1990, which established a framework for regulating municipal, industrial, and construction discharges of stormwater and non-stormwater. The Phase I program addressed sources of stormwater and dry-weather urban runoff that had the greatest potential to

¹⁴ Federal Water Pollution Control Act; 33 U.S.C. § 1251 et seq., which, as amended in 1977, is commonly known as the Clean Water Act.

negatively impact water quality. In particular, under Phase I U.S. EPA required NPDES permit coverage for discharges from medium and large MS4s with populations of 100,000 or more. Operators of MS4s regulated under the Phase I NPDES Storm Water Program were required to obtain permit coverage for discharges of stormwater and non-stormwater from their MS4s to waters of the United States.

In 1990, pursuant to 40 CFR section 122.26(b)(4), the Los Angeles Water Board designated the MS4s owned and/or operated by the incorporated cities and Ventura County within the watersheds of Ventura County, and by the incorporated cities and Los Angeles County within the coastal watersheds of Los Angeles County as a large MS4 due to the total populations of Los Angeles County and Ventura County and the interconnected nature of the Permittees' MS4s. The total population of the cities and unincorporated areas in Ventura County covered by the Order was approximately 823,318 in 2010 and has increased by approximately 3.3% to 850,967 in 2018 according to the United States Census. The total population of the cities and unincorporated areas in Los Angeles County covered by the Order was approximately 9,505,484 in 2010 and has increased by approximately 2.9% to 9,786,075 in 2018, according to the United States Census.

B. Water Quality Control Plans

The CWA requires the Los Angeles Water Board to establish water quality standards for each water body in its region. Water quality standards include beneficial uses, water quality objectives that are established at levels sufficient to protect those beneficial uses, and an antidegradation policy to prevent degrading high-quality waters unless specific circumstances apply.

1. Water Quality Control Plan - Los Angeles Region

The Los Angeles Water Board's *Water Quality Control Plan - Los Angeles Region* (hereinafter Basin Plan) designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters in the Los Angeles Region. Pursuant to CWC Section 13263(a), the requirements of the Order implement the Basin Plan. The beneficial uses applicable to the surface water bodies that receive discharges from the Permittees' MS4 are identified in Chapter 2 of the Basin Plan and generally include Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Industrial Process Supply (PROC); Ground Water Recharge (GWR); Freshwater Replenishment (FRSH); Navigation (NAV); Hydropower Generation (POW); Water Contact Recreation (REC-1); Limited Contact Recreation (LREC-1); Non-Contact Water Recreation (REC-2); Commercial and Sport Fishing (COMM); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Estuarine Habitat (EST); Preservation of Areas of Special Biological Significance (BIOL); Wildlife Habitat (WILD); Preservation of Rare and Endangered Species (RARE); Marine Habitat (MAR); Wetland Habitat (WET); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN); and Shellfish Harvesting (SHELL).

2. Ocean Plan

In 1972, the State Water Board adopted the Water Quality Control Plan for Ocean Waters of California (Ocean Plan). Since the adoption of Order No. R4-2010-0108, Order No. R4-2012-0175, and Order No. R4-2014-0024, the State Water Board adopted various amendments to the Ocean Plan. One of the most recent

amendments that has become effective was adopted on August 7, 2018 to incorporate bacteria provisions and a water quality standards variance policy. OAL approved it on February 4, 2019 and U.S. EPA approved it on March 22, 2019. Additionally, on April 2, 2019, the State Water Board further revised the Ocean Plan through Resolution No. 2019-0015 (incorporating state wetland definition and procedures for discharges of dredged or fill material to waters of the state). OAL approved it on August 28, 2019 and it became effective on May 28, 2020. The Ocean Plan is applicable, in its entirety, to the ocean waters of the State. To protect beneficial uses, the Ocean Plan establishes water quality objectives and a program of implementation. Pursuant to California Water Code section 13263(a), the requirements of the Order implement the Ocean Plan. The Ocean Plan identifies beneficial uses of ocean waters of the State to be protected, which include Industrial Water Supply (IND); Water Contact (REC-1) and Non-Contact Recreation (REC-2), including aesthetic enjoyment; Navigation (NAV); Commercial and Sport Fishing (COMM); Mariculture; Preservation and Enhancement of Designated Areas of Special Biological Significance (ASBS); Rare and Endangered Species (RARE); Marine Habitat (MAR); Fish Migration (MIGR); Fish Spawning (SPWN); and Shellfish Harvesting (SHELL). All MS4 discharges into the Pacific Ocean must protect the existing and designated uses identified in the Ocean Plan and Basin Plan.

3. Inland Surface Waters, Enclosed Bays, and Estuaries Plan (ISWEBE)

Since the adoption of Order No. R4-2010-0108, Order No. R4-2012-0175, and Order No. R4-2014-0024, the State Water Board adopted various provisions, which make up, collectively, the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries (ISWEBE) of California. Part 1 Trash Provisions was adopted by the State Water Board on April 7, 2015 through Resolution No. 2015-0019. OAL approved it on December 2, 2015 and U.S. EPA approved it on January 12, 2016. Part 2 Tribal Subsistence Beneficial Uses and Mercury Provisions was adopted by State Board on May 2, 2017 through Resolution No. 2017-0027. OAL approved it on June 28, 2017 and U.S. EPA approved it on July 14, 2017. Part 3 Bacteria Provisions and Variance Policy was adopted by State Board on August 7, 2018 through Resolution No. 2018-0038. OAL approved it on February 4, 2019 and U.S. EPA approved it on March 22, 2019. The State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State was adopted by State Board on April 2, 2019 through Resolution No. 2019-0015. OAL approved it on August 28, 2019 and it became effective on May 28, 2020. The Toxicity Provisions were adopted by the State Water Board on December 1, 2020. The Toxicity Provisions are not yet in effect. The Toxicity Provisions will take effect upon approval by the California Office of Administrative Law for purposes of state law and upon approval by the U.S. Environmental Protection Agency for purposes of federal law. The ISWEBE is applicable to various discharges in the Order.

4. Statewide Trash Provisions

To control trash, the State Water Board on April 7, 2015, adopted an Amendment to the Water Quality Control Plan for Ocean Waters of California (Ocean Plan) for Trash Provisions and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries. Together, they are collectively referred to as “the Trash Amendments.” The Trash Amendments do the following: (1) establish a narrative water quality objective for trash, (2) establish corresponding applicability, including an exception for those 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,¹⁵ (3) establish a prohibition on the discharge of trash, (4) provide implementation requirements for permitted storm water and other discharges, (5) set a time schedule for compliance, and (6) provide a framework for monitoring and reporting requirements. The Los Angeles Water Board is required to implement the new Trash Provisions through NPDES permits issued pursuant to Federal Clean Water Act section 402(p), including MS4 permits. 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 United States Code section 1312, 40 Code of Federal Regulations section 131.) This water quality standard was specifically approved by U.S. EPA following adoption by the State Water Board and approval by the Office of Administrative Law. Further, the water quality standard expected to be achieved pursuant to the Trash Provisions may allow each waterbody subsequently determined to be impaired by trash to not be placed on the Clean Water Act section 303(d) list, obviating the need for the development of a TMDL for trash for each of those waterbodies. (33 United States Code section 1313(c); 40 Code of Federal Regulations section 130.7.). In those cases, the specific actions that will be carried out by the Permittee substitute for some or all the actions that would otherwise be required consistent with a waste load allocation in a trash TMDL. (40 Code of Federal Regulations section 122.44, subdivision (d)(1)(vii)(B).) The Trash Amendments are applicable to various discharges in the Order and the Order implements the Trash Amendments.

5. Sediment Quality

In 2008, the State Water Board adopted the Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1, Sediment Quality Provisions. It is was most recently amended on June 5, 2018 and became effective on March 11, 2019. This plan supersedes other narrative sediment quality objectives and establishes new sediment quality objectives and related implementation provisions for specifically defined sediments in most bays and estuaries. Requirements of the Order implement sediment quality objectives of this plan.

C. National Toxics Rule (NTR) and California Toxics Rule (CTR)

U.S. EPA adopted the National Toxics Rule (NTR)¹⁶ on December 22, 1992, and later amended it on May 4, 1995 and November 9, 1999. About forty criteria in the NTR applied in California. On May 18, 2000, U.S. EPA adopted the California Toxics Rule (CTR).¹⁷ The CTR promulgated new toxics criteria for California and, in addition, incorporated the previously adopted NTR criteria that were applicable in the state. The CTR was amended on February 13, 2001. The CTR was most recently amended on November 15, 2018 to withdraw the freshwater criteria for lead applicable to certain waters of California because the State of California adopted, and the U.S. EPA approved a site-specific objective for lead for the Los Angeles River and its tributaries.

¹⁵ The exception includes the following watersheds and waterbodies: 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.

¹⁶ 40 CFR § 131.36.

¹⁷ Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California, (65 Federal Register 31682-31719 (May 18, 2000)), adding 40 CFR § 131.38.

(83 *Fed. Reg.* 52163-52168 (Oct. 16, 2018)). These rules contain federal water quality criteria for priority pollutants. The requirements of the Order are consistent with the NTR (40 CFR section 131.36) and CTR (40 CFR section 131.38).

D. Endangered Species Acts

The Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (CESA, Fish and Game Code, §§ 2050 to 2089.25) or the federal Endangered Species Act (ESA, 16 U.S.C.A., §§ 1531 to 1544). The requirements of the Order are designed to maintain water quality and prevent a condition of pollution, contamination, or nuisance in waters of the United States. Permittees remain independently responsible for meeting all applicable requirements under CESA and ESA.

E. NPDES Electronic Reporting Rule (e-Rule)

40 Code of Federal Regulations part 127 requires NPDES permittees to electronically report information and also requires authorized states implementing the NPDES program to ensure that the required minimum set of data in part 127, Appendix A, is electronically transferred to U.S. EPA in a “timely, accurate, complete and nationally consistent manner fully compatible with U.S. EPA’s national NPDES data system.” The rule does not add new reporting requirements on NPDES regulated entities; rather it substitutes paper-based filings with electronic transmission. The State’s existing electronic reporting system for stormwater discharges (Stormwater Multiple Application and Report Tracking System (SMARTS)), which is compliant with U.S. EPA’s Cross-Media Electronic Reporting Rule (40 Code of Federal Regulations part 3), does not currently accommodate the collection from MS4 dischargers and reporting to U.S. EPA of all applicable Appendix A data in a “nationally consistent manner fully compatible with U.S. EPA’s national NPDES data system.” Electronic reporting requirements for those data will be implemented when the State develops an approved system. On April 30, 2019, U.S. EPA proposed changes to the NPDES e-Rule, in Appendix A, to update data elements applicable to regulated MS4s to be consistent with existing MS4 regulations. On February 28, 2020, U.S. EPA proposed the “Phase 2 Extension Rule,” extending the December 21, 2020 deadline to December 21, 2025 for electronic submittal of annual reports.¹⁸

F. Monitoring and Reporting

Section 308(a) of the federal CWA, and 40 CFR sections 122.41(h), (j)-(l), 122.41(i), and 122.48, require that all NPDES permits specify monitoring and reporting requirements. Federal regulations applicable to large and medium MS4s also specify additional monitoring and reporting requirements. These monitoring requirements for MS4 discharges are prescriptive and require the permitting agency to include requirements for both stormwater and non-stormwater effluent sampling at representative outfalls, representative receiving water monitoring, sampling of specific pollutants, monitoring at specified intervals (e.g., at least three storm events per year), use of analytical methods specified in 40 CFR Part 136, and use of field collection methods. (40 CFR §§ 122.26(d)(2)(i)(F) & (d)(2)(iii)(D), 122.42(c).) California Water Code Section 13383 authorizes the Los Angeles Water Board to establish monitoring, inspection, entry, reporting, and recordkeeping requirements. The Monitoring and

¹⁸ 80 Federal Register pp. 64064-64158; 84 Federal Register pp. 18200-182-5; 85 Federal Register pp. 11909-11927.

Reporting Program in the Order requires monitoring, reporting, and recordkeeping requirements that implement the federal and state laws and/or regulations. This Monitoring and Reporting Program is provided in Attachment E of the Order.

G. Standard Provisions

Standard Provisions, which apply to all NPDES permits in accordance with 40 CFR section 122.41, and additional conditions applicable to specified categories of permits in accordance with 40 CFR section 122.42, are provided in Attachment D of the Order. Permittees must comply with all standard provisions and with those additional conditions that are applicable under 40 CFR section 122.42 provided in Attachment D of the Order. Part VI of the Order also includes various provisions applicable to the Permittees. The rationale for the provisions contained in Part VI of the Order is provided in Part VIII of this Fact Sheet.

H. Antidegradation Policy

Federal regulations at 40 CFR section 131.12 require that state water quality standards include an antidegradation policy consistent with federal requirements. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16 ("Statement of Policy with Respect to Maintaining High Quality of Waters in California"). Where the federal antidegradation policy is applicable, the State Water Board has interpreted Resolution No. 68-16 to incorporate the federal antidegradation policy.¹⁹ The Los Angeles Water Board's Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. The permitted discharge must be consistent with the antidegradation provision of 40 CFR section 131.12 and State Water Board Resolution No. 68-16. Resolution No. 68-16 and 40 CFR section 131.12 require that high quality waters be maintained unless degradation is justified based on specific findings. The Los Angeles Water Board finds that the permitted discharges authorized by this Order are consistent with the antidegradation provision of 40 CFR section 131.12 and State Water Board Resolution No. 68-16, as set forth herein.

In the context of the Order, a federal NPDES permit, compliance with the federal antidegradation policy requires consideration of the following. First, the Los Angeles Water Board must ensure that "existing instream uses and the level of water quality necessary to protect the existing uses" are maintained and protected.²⁰ Second, if the baseline quality of a waterbody for a given constituent "exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected" through the requirements of the Order unless the Los Angeles Water Board makes findings that: (1) any lowering of the water quality is "necessary to accommodate important economic or social development in the area in which the waters are located"; (2) "water quality adequate to protect existing uses fully" is assured; and (3) "the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control" are achieved.²¹ Under this second tier review, the Board may identify the waters for protection through the public process of a permitting action, as it is here. Before allowing any lowering of high quality water, the Board must

¹⁹ State Water Board Order WQ 86-17 (*Fay*), pp. 16-19.

²⁰ 40 CFR § 131.12(a)(1). This provision has been interpreted to mean that, "[i]f baseline water quality is equal to or less than the quality as defined by the water quality objective, water quality shall be maintained or improved to a level that achieves the objectives." (State Water Board, Administrative Procedures Update, Antidegradation Policy Implementation for NPDES Permitting, 90-004 (APU 90-004), p. 4.)

²¹ 40 CFR § 131.12(a)(2).

conduct an analysis of alternatives that evaluates practicable alternatives that would prevent or lessen the degradation associated with the discharges permitted. In the context of 40 CFR § 131.12(a)(2)(ii), practicable means “technologically possible, able to be put into practice, and economically viable.”²²

The Order must also comply with any requirements of State Water Board Resolution No. 68-16 beyond those imposed through incorporation of the federal antidegradation policy.²³ Resolution No. 68-16 requires findings that any lowering of water quality is “consistent with the maximum benefit to the people of the State” and “will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies” and further that the discharge is subject to “waste discharge requirements which will result in the best practicable treatment or control of the discharge.”²⁴ The baseline quality considered in making the appropriate findings is the best quality of the water since 1968, the year of adoption of Resolution No. 68-16, or a lower level if that lower level was allowed through a permitting or other regulatory action, such as establishing a water quality objective, that was consistent with the federal and state antidegradation policies.²⁵ The following analysis assumes, without deciding, that the baseline for antidegradation analysis is 1968.²⁶

²² 40 CFR § 131.3(n).

²³ See State Water Board Order WQ 86-17 (*Fay*), p. 23, fn. 11.

²⁴ State Water Board Resolution No. 68-16, Resolve 2. Best practicable treatment or control is not defined in Resolution No. 68-16; however, the State Water Board has evaluated what level of treatment or control is technically achievable using “best efforts.” (See State Water Board Orders WQ 81-5 (*City of Lompoc*), WQ 82-5 (*Chino Basin Municipal Water District*), WQ 90-6 (*Environmental Resources Protection Council*).) A Questions and Answers document on Resolution No. 68-16 by the State Water Board states as follows: “To evaluate the best practicable treatment or control method, the discharger should compare the proposed method to existing proven technology; evaluate performance data, e.g. through treatability studies; compare alternative methods of treatment or control; and/or consider the method currently used by the discharger or similarly situated dischargers . . . The costs of the treatment or control should also be considered . . .” (Questions and Answers, Resolution No. 68-16, State Water Board (Feb. 16, 1995), pp. 5-6.)

²⁵ APU 90-004, p.4. The baseline for application of the federal antidegradation policy is 1975, which is the date used in 40 CFR § 131.3(e) to define existing uses of a waterbody. For state antidegradation requirements, see also *Asociacion de Gente Unida por el Agua (AGUA) v. Central Valley Water Board* (2012) 210 Cal.App.4th 1255,1270. The baseline for the application of the state antidegradation policy is generally the highest water quality achieved since 1968, the year the policy was adopted.

²⁶ The baseline may be later than 1968 for two reasons. First, the appropriate baseline is determined by the date on which a policy establishing the level of water quality to protect was effective. (Resolution 68-16, Resolve 1.) The Region’s Basin Plan has been updated and amended several times since 1971, when it was first adopted, to include new or revised water quality objectives. Second, a permitting action with appropriate antidegradation findings allowing degradation may establish a new baseline consistent with the level of water quality achieved under that permit. The Los Angeles Water Board has regulated the Permittees’ MS4 discharges in the past through permits issued in 1990, 1996, 2001, and 2012 for Los Angeles County; 1999 and 2014 for City of Long Beach; and 1994, 2000, 2009, and 2010 for Ventura County. APU 90-004 acknowledges that no antidegradation analysis is required where the regional water board has no expectation that water quality will be reduced by the permitting action; here, if the water quality achieved under the prior permits had been used as the baseline, arguably, no antidegradation analysis would have been required. (APU 90-004, p. 2.) Nevertheless, this is a new regional permit for Permittees in *both* Los Angeles and Ventura Counties, and for ease of analysis, 1968 is used herein as the baseline.

The Board Is Not Required to Make Waterbody by Waterbody and Pollutant by Pollutant Antidegradation Findings:

The Los Angeles Water Board finds that it is not required to conduct a waterbody by waterbody and pollutant by pollutant antidegradation analysis for this Order. The Los Angeles Water Board makes this finding for two reasons. First, the Administrative Procedures Update, Antidegradation Policy Implementation for NPDES Permitting, 90-004 (APU 90-004), which specifies a waterbody by waterbody and pollutant by pollutant analysis for some permitting actions, does not address permitting for diffuse MS4 discharges. Second, APU 90-004 itself indicates that a waterbody by waterbody and pollutant by pollutant analysis is only required when conducting a “complete” antidegradation analysis; a complete analysis, in turn, is not required where any reduction in water quality is temporally limited and would not result in any long-term deleterious effects on water quality.”²⁷ Here, the Order requires compliance with the non-stormwater discharge prohibition, Receiving Water Limitations and Numeric Effluent Limitations derived from TMDLs designed to bring MS4 discharges and receiving waters into compliance with water quality objectives. The discussion below elaborates on these two reasons.

APU 90-004 is a State Water Board internal guidance document establishing methods for implementing the federal and state antidegradation policies in NPDES permits. APU 90-004 suggests that an antidegradation analysis requires a pollutant by pollutant and waterbody by waterbody analysis in certain contexts, specifically where the discharge at issue is a discrete discharge from a singular facility. However, APU 90-004 has limited value when considering antidegradation in the context of MS4 discharges from diffuse sources, conveyed through multiple outfalls, with multiple pollutants impacting multiple water bodies within region.²⁸ This interpretation is sensible for this Order, given that reliable data on the baseline water quality is not readily available since 1968 for a region that spans 4,447 square miles and includes 120 miles of coastline, 18,839 acres of lakes, and 1,704 miles of rivers and streams. The Los Angeles Water Board estimates that, there are over 850,000 combinations of waterbodies and pollutants that could potentially require individual consideration in the Region.²⁹ The antidegradation analysis for this Order instead relies on a general assessment of the existing water quality data that is reasonably available to the Los Angeles Water Board and makes findings regarding the social and economic benefits and costs of permitting stormwater and non-stormwater MS4 discharges in accordance with the Order terms.

The Los Angeles Water Board additionally finds that, even if APU 90-004 applies to the issuance of this Order, it requires at most a “simple” antidegradation analysis. APU 90-

²⁷ APU 90-004, p. 2.

²⁸ The State Water Board held so in Order WQ 2015-0075. In *Natural Resources Defense Council v. State Water Resources Control Board*, the superior court did not invalidate this particular conclusion. (Super. Ct. Los Angeles County, No. BS156962, Order, March 29, 2021). The State Water Board’s interpretation of its own guidance is entitled to deference. See also State Water Board Order WQ 2018-0002, p. 77 (reaching the same conclusion for agricultural discharges).

²⁹ See, https://www.waterboards.ca.gov/water_issues/programs/water_quality_goals/; the tributary table [MasterTribTable.xls \(ca.gov\)](#); and the Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (Basin Plan), Ch. 2, Tables 2-1 through 2-4a and Beneficial Uses Figures; and Chapter 3. The number could easily be higher if the Los Angeles Water Board incorporated CEDEN data and other information to determine the exact number of waterbodies and waterbody pollutant combinations. If it could be done at all, a pollutant by pollutant, waterbody by waterbody antidegradation analysis would be extremely time consuming and take years to complete.

004 contemplates that a “simple” antidegradation analysis is appropriate under specified circumstances. In particular, as stated above, APU 90-004 states that a simple antidegradation analysis is allowed when a “Regional Board determines the reduction in water quality is temporally limited and will not result in any long-term deleterious effects on water quality” or where a “Regional Board determines the proposed action will produce minor effects which will not result in a significant reduction of water quality.”³⁰ Here, the Order continues the requirements of the previous permits or imposes equivalent or more protective requirements such that the water quality established under the prior permits is expected to be maintained and improved. Generally, the prior permits instituted controls such as a prohibition on non-stormwater discharges that are a source of pollutants through the MS4s, receiving water limitations, WQBELs based on TMDLs, and monitoring programs to help ensure that water quality will be maintained at the level it is now, or improve it, and this new Order institutes further controls such as additional TMDL-based WQBELs and receiving water limitations. Therefore, any degradation permitted while controls are continuing to be developed will be temporally limited and will not result in any long-term deleterious effects on water quality.³¹ Such a finding would not be appropriate if, for example, the Order declined to require long-term compliance with water quality objectives, but that is not the case here.

APU 90-004 does not provide guidance on the scope and content of a simple antidegradation analysis. Nor does it define the terms “temporally limited” or “long term.” Those terms must therefore be interpreted in the context of the types of discharges being permitted and with deference to the best professional judgment of the Los Angeles Water Board.³² The Los Angeles Water Board determines that the findings made below

³⁰ APU 90-004, p. 2. In an unpublished decision, the Second District Court of Appeal affirmed that a simple antidegradation analysis applied to the 2012 Los Angeles County MS4 permit. (*Natural Resources Defense Council v. State Water Resources Control Board* (2018) 2018 WL 6735201, at *6).

³¹ See, Order, Part IX.A.4.b, k; B.8; E; G.3

³² During the hearing to consider adoption of this Order on July 16, 2021, NRDC, Heal the Bay, and Los Angeles Waterkeeper (together, the “Environmental Groups”) asserted that if the Los Angeles Water Board adopted the Order with the alternative compliance path outlined in Part X.B.1.b of the Order (referred to in the antidegradation analysis, *infra*, as “Alternative 5,”), then a simple antidegradation analysis is not appropriate. They asserted that a complete antidegradation analysis is necessary because, since the WMPs were first approved (2015), there is no evidence that there has been any significant improvement in water quality. The Los Angeles Water Board disagrees and finds that water quality effects during a period of multiple years, spanning more than one permit term, are still “temporally limited” and not “long term” in the context of the regulation of MS4 discharges.

MS4 discharges are fundamentally different from those specifically discussed in the APU, such as discharges from discrete point sources like publicly owned treatment works, or POTWs. MS4 discharges are diffuse discharges conveyed through multiple outfalls, with multiple pollutants impacting multiple water bodies within the region. To effectively control and abate pollution to surface waters from MS4 discharges, permittees testified during the hearing on this Order that they need time to plan and implement solutions that are projected to bring impaired waters into attainment. This kind of pollution control and abatement would take time even if WMPs with deemed in compliance provisions were not part of the proposed solutions. The Board, and permittees, understand and expect that more than one permit term may be necessary to adequately plan and construct BMPs or implement other solutions to ensure that impaired waters will be restored.

Furthermore, it is not surprising that, after only one permit term, water quality data do not show marked improvement, because as many permittees testified, the first generation of projects in approved WMPs are only being completed just now. For example, Paul Alva, Principal Engineer at the Los Angeles County

meet the requirements of a simple antidegradation analysis and are also consistent with an antidegradation analysis done at a generalized level, as appropriate for this Order. With these findings, based on the information available to it and using its best professional judgment, the Los Angeles Water Board concludes that the discharge will not be adverse to the intent and purpose of the State and federal antidegradation policies. Regardless of APU 90-004's application, however, the below analysis is consistent with the generalized antidegradation analysis appropriate for this Order and complies with both the federal antidegradation regulations, and with the State antidegradation policy.

The Los Angeles Water Board Makes the Following Antidegradation Findings:

The discharges permitted in the Order are consistent with the antidegradation provisions of 40 CFR section 131.12 and Resolution No. 68-16. The Los Angeles Water Board's conclusion that the terms and conditions of the Order are consistent with the antidegradation policies is based on the following analysis.

1. Water bodies that do not meet water quality objectives (water bodies that are not high quality):

Most of the receiving waters within the area covered by the Order are not meeting water quality objectives for multiple pollutants associated with MS4s, meaning that they are not attaining water quality objectives necessary to protect beneficial uses.³³ This is evidenced in part by the fact that many of these waterbodies are listed on the State's Clean Water Act section 303(d) List of impaired waters and, additionally, either the Los Angeles Water Board or the U.S. EPA has established numerous TMDLs to address many of the impairments.³⁴ The source assessment for these TMDLs identify MS4 discharges as a source of the impairments. Under both federal and state antidegradation policies, these receiving waters are not considered "high quality" waters for these pollutants. To the extent that data are

Department of Public Works, testified on July 16, 2021 that multi-benefit WMP projects such as Magic Johnson Park, Ladera Park, Carriage Crest Park, and Gates Park have either just been completed or will be completed soon. Once those projects are fully operational, and once other, similar projects are built, the Board expects to see measurable improvements in receiving water quality. Indeed, the evidence already indicates WMPs with deemed in compliance are achieving results. As illustrated in Mr. Alva's presentation to the Board on July 16, 2021, the landscape of water quality has and will continue to vastly improve all over the County, and not just in certain communities, due to WMP construction and implementation.

In summary, the time to plan, construct, and see results from the projects built is a temporal limitation that is as short as practicable and it is appropriate given the nature of the discharges at issue. This is especially true since most of the deemed in compliance provisions have an end point and will expire. (See Order, Part X.B.)

³³ This is certainly true of the receiving waters in the more urbanized watersheds throughout the Region during wet weather. See, staff presentations at MS4 Workshops regarding monitoring data, dated 9/13/2018 (Ventura County data); and 7/12/2018 and 5/10/2018 (Los Angeles County data).

³⁴ It should be noted that impaired waters, or waters that are not high quality, are not confined to those listed only on the 303(d) List. There are several reasons for this, including (but not limited to) the fact that the most recent 303(d) List for the Los Angeles Region is based on available data through August 2010. Accordingly, the 303(d) List itself does not reflect all of the waterbodies in the Region that are impaired or fail to meet water quality standards.

available from 1968, there were few high quality receiving waters in the more urbanized watersheds in the Los Angeles Region even at that time.³⁵

For receiving waters that are not high quality waters, the federal antidegradation policy requires that regulatory actions ensure that existing instream uses and the level of water quality necessary to protect the existing uses is maintained and protected. (40 CFR § 131.12(a)(1).) The Order ensures that existing instream (beneficial) uses and the level of water quality necessary to protect the existing uses is maintained and protected through requirements to not cause or contribute to exceedances of water quality objectives in the receiving water and to restore impaired water bodies.³⁶ This is achieved through the following provisions:

- a. The Order requires compliance with receiving water limitations to meet water quality standards in the receiving water either by demonstrating compliance pursuant to Part V of the Order and the Permittee's monitoring and reporting program pursuant to Part VII of the Order or by implementing an approved Watershed Management Program (WMP) pursuant to Part IX of the Order. Watershed Management Programs must specify structural and non-structural stormwater and non-stormwater controls that are demonstrated to have a reasonable assurance of achieving compliance with receiving water limitations and that must be implemented in accordance with an approved compliance schedule. The reasonable assurance analysis, or RAA, is

³⁵ See e.g., Water Resources Control Board, State of California, Toxic Substances Monitoring Program, Ten Year Summary Report 1978-1987 (August 1990) (Administrative Record, Order No. 01-082, R0044666 - 44669); The Santa Monica Bay Restoration Project, An Assessment of Inputs of Fecal Indicator Organisms and Human Enteric Viruses from Two Santa Monica Storm Drains (June 1990) (Administrative Record, Order No. 01-082, R0047130 - 47174); Santa Monica Bay Restoration Project, Pathogens and Indicators in Storm Drains Within the Santa Monica Bay Watershed (June 1992) (Administrative Record, Order No. 01-082, R0047688 - 47748); Santa Monica Bay Restoration Project, Storm Drains as a Source of Surf Zone Bacterial Indicators and Human Enteric Viruses to Santa Monica Bay (August 1991) (Administrative Record, Order No. 01-082, R004779 - 47780); James M. Danza, Water Quality and Beneficial Use Investigation of the Los Angeles River: Prospects for Restored Beneficial Use (1994) (Administrative Record, Order No. 01-082, R0048073 - 48204); Southern California Coastal Water Research Project, Annual Report (1987) (Administrative Record, Order No. 01-082, R0048205 - 48304); National Research Council, Monitoring Southern California's Coastal Waters (1990) (Administrative Record, Order No. 01-082, R0048306 - 48473); Southern California Coastal Water Research Project, Annual Report (1988-89) (Administrative Record, Order No. 01-082, R0048476 - 48482); City of Los Angeles, Wastewater Program Management Division, Santa Monica Bay Stormwater Pollutant Reduction Study (December 1987) (Administrative Record, Order No. 01-082, R0048485 - 48561); Santa Monica Bay Restoration Project, Santa Monica Bay Characterization Study Chapter 7, Urban Runoff (1993) (Administrative Record, Order No. 01-082, R0048714 - 48733); To California Regional Water Quality Control Board, Stormwater Runoff in Los Angeles and Ventura Counties (June 1988) (Administrative Record, Order No. 01-082, R0050795 - 50888); Heal the Bay's State of the Marina Report, Marina del Rey (July 9, 1993) (Administrative Record, Order No. 01-082, R0050999 - 0051022); County of Los Angeles, Department of Beaches and Harbors, The Marine Environment of Marina del Rey (October 1991 - June 1992) (Administrative Record, Order No. 01-082, R0051023 - 51344); Prepared for American Oceans Campaign, Chemical Contaminant Release into the Santa Monica Bay, A Pilot Study (June 12, 1993) (Administrative Record, Order No. 01-082, R0051345 - 51557); Report to the Department of Beaches and Harbors, County of Los Angeles, The Marine Environment of Marina del Rey, October 1989 to September 1990 (March 1991) (Administrative Record, Order No. 01-082, R0052394 - 52721).

³⁶ These actions also ensure that discharges will not unreasonably affect present and anticipated beneficial uses and will not result in water quality less than water quality objectives, as required by Resolution No. 68-16.

quantitative and generally conducted using industry accepted computer modeling to show that proposed WMPs will achieve applicable WQBELs and will not cause or contribute to exceedances of receiving water limitations. This Order requires objective technical demonstrations that any proposed controls, and those controls already in the process of being developed, will address pollutants in MS4 discharges sufficient to meet water quality standards. Additionally, the Order requires a comprehensive evaluation and update, through the required adaptive management process, of the WMP during the permit term to ensure progress toward achieving WQBELs and receiving water limitations.

- b.** The Order requires Permittees to comply with WQBELs and/or receiving water limitations consistent with the assumptions and requirements of TMDL WLAs assigned to MS4 discharges established in 45 TMDLs applicable to water bodies within the Los Angeles Region to restore water quality sufficient to protect the beneficial uses of the impaired water bodies.
- c.** The Order requires Permittees to develop and implement stormwater management programs consisting of six major program elements (MCMs), and effectively prohibit non-stormwater discharges that are a source of pollutants through the MS4 to receiving waters.
- d.** The Order includes requirements for extensive monitoring and reporting designed to identify changes in water quality at hundreds of outfall monitoring sites.

These provisions are collectively designed to halt any further degradation of impaired water bodies and improve the quality of such waters to a level protective of existing uses over a time schedule that is as short as possible. The antidegradation policies do not explicitly or implicitly override the authority and discretion the Clean Water Act and the Water Code grant to the Los Angeles Water Board as to how it structures a permit to ensure water quality necessary to protect beneficial uses. The law does not require immediate restoration of impaired water bodies nor does it require an immediate prohibition of discharges that contribute to an exceedance in the waterbody. Rather, federal regulations at 40 CFR section 122.47 allow NPDES permits, including MS4 permits, to have compliance schedules. Similarly, Water Code section 13263, subdivision (c), authorizes the Los Angeles Water Board to include a time schedule for achieving water quality objectives in waste discharge requirements. Where a TMDL has been established, Water Code section 13242 states that the TMDL implementation plan, as incorporated into the water quality control plan, shall include a time schedule for actions to be taken. When issuing waste discharge requirements, Water Code section 13263 requires regional boards to implement any relevant water quality control plans that have been adopted. Certainly, water quality objectives must be achieved; but the law, as cited above, recognizes and allows for the fact that it can take time to restore or achieve the objectives.³⁷ In this regard, some impaired

³⁷ Additionally, and as discussed elsewhere in this Fact Sheet, while MS4 permits must include a technology-based standard of effectively prohibiting non-storm water discharges through the MS4 and reducing pollutants in the discharge to the MEP, requiring strict compliance with water quality standards (e.g., by requiring immediate compliance with receiving water limitations or water quality based effluent limitations) is at the discretion of the permitting agency (33 U.S.C. § 1342(p)(3)(B); *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, 1166-67). This Order imposes numeric water quality based

water bodies may stagnate or, rarely, continue to degrade³⁸ for a period of time before showing improvement. This period of time may be as long as multiple years. This is not contrary to the authorities for compliance schedules stated above and is not contrary to the antidegradation policies.³⁹

2. High quality water bodies:

Some of the waterbodies within the area covered by the Order may be high quality waters with regard to some pollutants. Some of these waterbodies may be currently high quality as compared to currently applicable objectives.⁴⁰ Others of these waterbodies may be currently impaired but may be classified as high quality waters because they were historically high quality for certain pollutants. MS4 discharges of stormwater and non-stormwater into such water bodies may have resulted in lowering of the quality of the water bodies since 1968 with regard to the pollutants in the discharge.

For high quality water bodies,⁴¹ the Los Angeles Water Board finds as follows:

- a. Practicable Alternatives: The Los Angeles Water Board has evaluated a range of practicable alternatives that would prevent or lessen any degradation

effluent limitations to implement TMDL WLAs and requires compliance with receiving water limitations for all constituents in the MS4 discharges. The fact that the Board also allows reasonable time schedules to achieve compliance with the numeric effluent limitations and receiving water limitations is not contrary to the law for this additional reason.

³⁸ Certain commenters have argued that any further degradation of water bodies not meeting objectives violates the antidegradation policies and that such further degradation has occurred under the 2012 Los Angeles County MS4 Order. As a matter of fact and science, the Los Angeles Water Board generally disagrees with assertions made that water bodies not meeting water quality objectives have continued to degrade (or that they are accelerating) under the 2012 Los Angeles County MS4 Order or will continue to degrade under this Order. However, even if these assertions were true, the law does not preclude limited and temporary further degradation while a permittee works to implement measures in compliance with a compliance schedule, as set forth above.

³⁹ With regard to waterbodies that are not high quality, the antidegradation policies do not require socioeconomic findings justifying any continued degradation of such waterbodies that may occur while the Permittees implement requirements in accordance with a compliance schedule. Even if such findings were required, the Los Angeles Water Board finds that this potential, limited, and temporary further lowering of water quality is justified for the same reasons articulated in the Section titled, "High Quality Water Bodies," Part III.H.2 of this Fact Sheet, *infra*.

⁴⁰ See, staff presentations at MS4 Workshops regarding monitoring data (dated 9/13/2018 (Ventura County data); and 7/12/2018 and 5/10/2018 (Los Angeles County data)), which summarize and evaluate data collected under the three prior MS4 permits. For example, at the mass emissions stations in the Ventura River, Calleguas Creek, and Malibu Creek watersheds, concentrations of copper, lead and zinc in wet weather are below water quality objectives, or TMDL numeric targets where applicable.

⁴¹ The quality of some currently high quality waters that are close to or at objectives may degrade below water quality objectives temporarily while Permittees plan for, develop, and implement appropriate controls in accordance with the compliance schedules in the Order and some historically high quality waters may stagnate or continue to degrade below water quality objectives during the same period. The Los Angeles Water Board finds that the potential, limited, and temporary lowering of water quality below the objectives is authorized by 40 CFR § 122.47 and the time schedule provisions of the Water Code set out in the Section titled, "Water bodies that do not meet the water quality objectives (water bodies that are not high quality)" Part III.H.1 of this Fact Sheet, *supra*, and, to the extent any findings are required under the antidegradation policies, is justified for the same reasons articulated in this Part III.H.2 of this Fact Sheet, "High quality water bodies."

associated with permitted MS4 discharges to high quality waters. These alternatives are discussed below.

- i. Alternative 1 - Complete prohibition on some or all pollutants in MS4 non-stormwater discharges to high quality waters: This alternative would prohibit MS4 discharges of some or all pollutants in non-stormwater to high quality receiving waters. By eliminating these discharges, pollutants from non-stormwater discharges would not reach high quality receiving waters during dry weather and thus not cause any degradation. In high quality water areas, this alternative could require the permittees to either divert all non-stormwater to a facility for treatment, or retain all non-stormwater through retention basins, infiltration galleries, and other controls that would prevent non-stormwater from reaching surface waters through storage, infiltration, or reuse. Alternatively, Permittees could install specific pollutant control measures that prevent specific pollutants from being discharged through the MS4.
- ii. Alternative 2 - Complete prohibition on some or all pollutants in MS4 stormwater discharges to high quality waters: This alternative would prohibit MS4 discharges of some or all pollutants in stormwater to high quality receiving waters. By eliminating these discharges, pollutants from stormwater would not reach high quality receiving waters during wet weather and not cause any degradation. As wet weather will always occur, this alternative could require the permittees to either divert all stormwater in the MS4 to a facility for treatment, or retain all stormwater through retention basins, infiltration galleries, and other controls that would prevent stormwater from reaching surface waters through storage, infiltration, or reuse. Permittees could also install pollutant control measures that are specific to preventing specific pollutants from being discharged through the MS4.
- iii. Alternative 3 - Stricter Pollutant Controls for New Development and Redevelopment in areas with high quality waters: This alternative would subject new development and redevelopment projects to more stringent water quality and runoff reduction criteria, such as retention of the 95th percentile, 24-hour storm volume instead of the 85th percentile, 24-hour storm volume. This alternative would hold new developments and redevelopments to more stringent performance criteria that would eliminate stormwater discharges from most storms.
- iv. Alternative 4 - Watershed Management Program alternative compliance option without deemed compliance with Receiving Water Limitations for any high quality waters: This alternative would allow the permittees to implement approved WMPs, with customized control measures, to achieve Receiving Water Limitations, WQBELs, and other requirements. With this alternative, a permittee would not be deemed in compliance with Receiving Water Limitations for high quality waters while they are fully and timely implementing an approved WMP.
- v. Alternative 5 - Watershed Management Program alternative compliance option with deemed compliance with Receiving Water Limitations for some high quality waters: This alternative would allow the permittees to implement approved WMPs, with customized control measures, to

achieve Receiving Water Limitations, WQBELs, and other requirements. With this alternative, a permittee would be deemed in compliance with Receiving Water Limitations for some high quality waters, primarily those waters that may have been high quality historically but are not currently high quality,⁴² while they are fully and timely implementing an approved WMP.⁴³ This alternative was incorporated as a set of terms in the 2012 Los Angeles MS4 permit and the 2014 City of Long Beach MS4 permit.

- vi. Alternative 6 - Establishment of WQBELs for MS4 discharges to high quality waters: This alternative includes the Board establishing WQBELs for MS4 discharges of certain pollutants to high quality waters. These WQBELs would apply to both stormwater and non-stormwater discharges. The 2010 Ventura County, 2012 Los Angeles County, and 2014 City of Long Beach MS4 permits only include WQBELs where they are based on TMDL wasteload allocations applicable to MS4 discharges (i.e., for impaired waters and not high quality waters). This alternative would require the Board to establish WQBELs where no TMDLs have been established.

- b. Economic and Social Development Considerations and Consistency with Maximum Benefit to the People of the State: The Board incorporated Alternative 5 and aspects of Alternatives 1 and 2 into the Order. These alternatives may allow limited degradation of high quality water bodies by MS4 discharges, but these alternatives ultimately require MS4 discharges to meet and not fall below water quality standards.

Such degradation of high quality waters is necessary to accommodate important economic or social development in the area and is consistent with the maximum benefit to the people of the state for the following reasons:

- i. Alternatives 1 and 2, if implemented as full prohibitions, would hamper important social and economic development.
 - (a) The MS4 discharges of stormwater and non-stormwater in certain circumstances are to the maximum benefit to the people of the state because they may be necessary for flood control and public safety.⁴⁴ MS4 discharges also can assist with maintaining instream flows that support beneficial uses.⁴⁵ In addition, complete diversion or

⁴² See, discussion *infra* at Parts III.H.1.d and III.H.2.b of this Fact Sheet.

⁴³ Under this alternative, and in accordance with WQ-2020-0038, Permittees must develop compliance schedules for WMPs that (among other things) include a final date for achieving receiving water limitations as soon as possible. (State Board Order WQ-2020-0038 at p. 77; see, also, Order, Part IX.B.9.c.iii.c; Part X, generally.)

⁴⁴ SCCWRP Technical Report 520, Concept Development: Design Storm for Water Quality in the Los Angeles Region, October 2007; LASGRWC. Storm Water: Asset not Liability. [n.d.] [Noting at p. 1 the potential trade-offs between water quality and ensuring public safety, including protecting property from flood damage and maintaining passable roadways.]

⁴⁵ For instance, the [Los Angeles River Flows Project](#) studied the impacts of reduced flows on beneficial uses in the Los Angeles River as a pilot application of the [California Environmental Flows Framework](#). At the beginning of this project, Los Angeles Water Board staff presented on the importance of minimum flows for recreation and wildlife in both concrete and soft-bottom channels of the river (https://www.waterboards.ca.gov/water_issues/programs/docs/lar/002_r4_la_river_info_item_20171103rev.pdf). Wading shorebirds, for example, rest and feed in the shallow waters of the concrete lined portion of the lower Los Angeles River. The final report for the project, "[Process and Decision Support](#)

retention of MS4 discharges that would reach the MS4 and receiving water would require extensive structural controls that are not technologically feasible in many locations.⁴⁶

- (b) The vast majority of the Permittees are cities and counties that provide essential and valuable public services. Part XIII of this Fact Sheet considers economics, including Permittees' compliance costs associated with meeting the requirements of the Order. Controlling stormwater discharges to the point that there is no potential degradation of any potentially high quality waters by requiring complete diversion or retention would be an enormous opportunity cost that could preclude MS4 permittees from spending substantial funds on other important social and economic needs. This may manifest itself in the reduction of some public services or prevent other public services from being provided in the first place. Permittees have previously provided public comments (on the Tentative Order and during consideration of the 2012 Los Angeles County MS4 Permit) that spending limited municipal resources on immediately addressing all pollutants in MS4 discharges (all stormwater and non-stormwater discharges) will adversely impact municipal budgets, such as fire and police protection, as well as other social services.⁴⁷
- (c) As another example, and specifically in response to comments received, the Los Angeles Water Board conducted an analysis (based on cited sources in footnote no. below), that estimates the equivalent public benefit that may be provided through affordable housing and services if full retention and diversion is not required. The results of the analysis support the finding that the social and economic benefits of a society where there would be significantly fewer unhoused residents would be far greater than the additional benefits created by taking water quality from the point where water quality standards are achieved to a level of higher quality that may only be achieved with full retention.⁴⁸ The same funds that would

[Tools for Evaluating Flow Management Targets to Support Aquatic Life and Recreational Beneficial Uses of the Los Angeles River.](#)" quantified the flow ranges associated with different species, habitats, and recreational uses in the river and evaluated the impacts of various combinations of reductions in wastewater, stormwater, and non-stormwater discharges. In general, if all discharges were eliminated, there would not be enough flow to protect beneficial uses including habitat for local plant and animal species.

⁴⁶ Southern California Coastal Water Research Project. *Concept Development: Design Storm for Water Quality in the Los Angeles Region, Technical Report 520*. October 1, 2007.

⁴⁷ See, e.g., City of South El Monte comment letter on 2012 Los Angeles MS4 Permit, July 23, 2012 (prior to the time the deemed in compliance pathway was included in the permit) ("The City is dedicated to the protection and enhancement of water quality. The City, however, has other functions that require funding as well. If this Permit is adopted as proposed, even in the best case scenario, spending cuts to other crucial services such as police, fire, and public works are certain. The permittee dwindling general funds simply cannot take the financial hit the Permit is poised to impose on them.").

⁴⁸ In 2012, Los Angeles County projected that it would cost \$120B, or \$134.8B in 2019 dollars, for complete diversion or retention of MS4 discharges, whereas the cost of implementing EWMPs, which require addressing the 85th percentile, 24-hour storm event or otherwise reducing or treating stormwater discharges to attain water quality standards, was estimated by Board staff to be \$21.0B-\$21.3B (see Section XIII, Economic Considerations). Instead of using this cost differential of \$113.5B-\$113.8B to further improve

have to be used to prevent all MS4 discharges (as opposed to only 85% of those discharges) could be invested instead in addressing homelessness, and could support affordable housing and several decades of supportive services for a significant number of residents at-risk of being unhoused.⁴⁹

- (d) The significantly higher cost of complete stormwater diversion or retention could lead to increased fees for residents with little benefit

waters that would already have achieved water quality standards, thereby already being able to support designated beneficial uses, this money could be better spent addressing the homeless problem in the region. In 2020, there were an estimated 66,436 unhoused residents in Los Angeles County. (Los Angeles Homeless Services Authority. 2021. 2020 Greater Los Angeles Homeless Count – Total Point-In-Time Homeless Population by Geographic Areas. <https://www.lahsa.org/documents?id=4692-2020-greater-los-angeles-homeless-count-total-point-in-time-homeless-population-by-geographic-areas.pdf>.) The median cost in Los Angeles County of constructing a permanent housing unit for the homeless is about \$531,000. (Galperin, Ron. 2019. The High Cost of Homeless Housing: Review of Proposition HHH. Ron Galperin LA Controller. <https://lacontroller.org/audits-and-reports/high-cost-of-homeless-housing-hhh/>.) Supportive services to address the homeless housing gap were estimated in 2016 to be \$428.8M per year, or \$455.3M in 2019 dollars. (Los Angeles Homeless Services Authority. 2016. Report on Homeless Housing Gaps in the County of Los Angeles. <https://homeless.lacounty.gov/wp-content/uploads/2019/02/Report-on-Homeless-Housing-Gaps-in-the-County-of-Los-Angeles-1-2016-1....pdf>) Adjusting for the increase in the homeless population since then yields an estimated annual cost in supportive services of \$1.2B in 2019 dollars. (Assuming the same supportive services cost per person estimated in 2016, multiplied by the number of homeless residents in LA County in 2020.) The stormwater capture cost differential could build enough units to house every homeless person in Los Angeles County and pay for supportive services for the next 67 years, even with the conservative assumption of one person per housing unit. Housing a homeless person in Los Angeles County results in average cost savings of about \$2,731 per person per month in 2019 dollars in terms of reduced need for public services, such as medical and policing expenses. (Economic Roundtable. 2008. Where We Sleep: Costs when Homeless and Housed in Los Angeles. https://economicrt.org/wp-content/uploads/2009/11/Where_We_Sleep_2009.pdf) This means that there would be annual cost savings of about \$2.2B from housing all homeless residents in Los Angeles County, and over 67 years the cost savings would be about \$145.1B-\$145.8B, greater than the stormwater capture cost differential of \$113.5B-\$113.8B. An analysis of Ventura County finds similar results where each of its 1,743 unhoused residents could be provided permanent housing for at least 55 years with its stormwater capture cost differential, assuming that Ventura County's cost of full capture would be their estimated MS4 compliance costs multiplied by the same ratios of Los Angeles County's E/WMP costs to cost of full stormwater capture, yielding cost differentials ranging from \$2.5B-\$23.4B (<https://www.vcstar.com/story/news/2020/12/12/covid-ventura-county-continuum-of-care-2021-homeless-count/3868785001/>). This analysis was also based on an average cost per unit of \$480,000 for housing the homeless in Ventura County in 2019 and the same supportive services cost per person as in LA County (<https://humanimpact.org/wp-content/uploads/2020/10/HIP-Ventura-County-Lets-Invest-Sources-2020.pdf>). Detailed calculations can be found in the administrative record. It can be expected that there would be substantial additional benefits for these housed residents and for the local economy from being more fully able to engage in society.

⁴⁹ Contrary to what the Environmental Groups asserted during their closing statement to the Board on July 16, 2021, this discussion is only an example used to show how different permit requirements could affect municipal spending, and it is not a finding that the funds not expended on MS4 controls would in fact be spent on ending homelessness or that in deciding whether to approve the permit with deemed compliance provisions that the board is presented with a zero sum choice—housing or water quality. Municipalities' budgets are not unlimited, so when one slice of the budget pie gets bigger, another slice may get smaller. Permittees who testified during the hearings on July 8, 9, and 16, 2021, and those who testified during the 2012 Los Angeles County MS4 hearings, have identified certain services that would be cut, such as police and fire, if they were required to immediately comply with all receiving water limitations.

in return after water quality standards have been met, or beyond the requirement to address the 85th percentile, 24-hour storm event. The literature is sparse on the impact of MS4 project costs on user fees, but Kea et al. (2016) found higher rates of user fee establishment in the years directly before and after MS4 permit deadlines,⁵⁰ indicating that utilities often rely on user fees to meet permit requirements.

It is also possible that higher costs could be passed down to residents through increased housing prices driven by higher impact fees, which cities often charge developers to help fund public services, or higher construction costs. The literature finds that overall impact fees lead to higher home prices.⁵¹ Requiring complete stormwater diversion or retention from properties could also lead to higher construction costs for housing, which is one of the drivers of higher home prices.⁵² There is extensive literature showing that higher housing prices are associated with proximity to cleaner waterbodies,⁵³ which provide benefits to society. However, higher housing prices driven by higher impact fees or construction costs that do not contribute toward discernible improvements in water quality would likely provide lower marginal benefits compared to a scenario where residents could avoid additional housing costs by not having to pay higher impact fees or construction costs in a region where housing costs are already high, or a scenario where this cost could be spent on more pressing public services or societal problems (see, for example, footnote , *supra*.)

- ii. However, aspects of Alternatives 1 and 2 are practicable and have been incorporated into this Order. The Order generally implements a prohibition on trash discharges through the installation of full capture systems or controls to achieve full capture equivalency, or alternative

⁵⁰ Kea, Kandace, Randel Dymond, Warren Campbell. 2016. An Analysis of Patterns and Trends in United States Stormwater Utility. *Journal of the American Water Resources Association*, 52(6). See, also, Comment Letter on 2012 Los Angeles MS4 Permit from City of Lakewood, Lisa A. Rapp, Director of Public Works, July 23, 2012, Comment Letter from City of La Verne, Daniel W. Keeseey, Director of Public Works, July 23, 2012, and Comment Letter from LA Permit Group, July 23, 2012 (discussing the need to, and difficulty of, levying additional special taxes to pay for the permit).

⁵¹ Mathur, Shishir, Paul Waddell, and Hilda Blanco. 2004. The Effect of Impact Fees on the Price of New Single-family Housing. *Urban Studies*, 41(7); Ihlanfeldt, Keith R. and Timothy M. Shaughnessy. 2004. An empirical investigation of the effects of impact fees on housing and land markets. *Regional Science and Urban Economics*, 34(6); Mathur, Shishir. 2013. Do All Impact Fees Affect Housing Prices the Same? *Journal of Planning Education and Research*, 33(4).

⁵² Emmons, William R. 2019, Sept. 5. Construction Costs, Not Another Housing Bubble, Are Driving House Prices Higher. St. Louis Fed On the Economy Blog. <https://www.stlouisfed.org/on-the-economy/2019/september/construction-costs-housing-bubble-driving-housing-prices-higher>

⁵³ See e.g. Guignet, Dennis, Matthew T. Heberling, Michael Papenfus, Olivia Griot, and Ben Holland. 2020. Property values, water quality, and benefit transfer: A nationwide meta-analysis. Working Papers 20-04, Department of Economics, Appalachian State University. <https://ideas.repec.org/p/apl/wpaper/20-04.html>

compliance option, e.g., the mass-balance approach.⁵⁴ The Order also largely prohibits the discharge of non-stormwater into and through the MS4 to receiving waters. While there are some limited exceptions where the non-stormwater discharge is expected not to be a source of pollutants, where the discharge is determined to be a source of pollutants it must be prohibited. The Order also supports efforts to maximize the capture of stormwater through retention basins, infiltration galleries, and other controls.

- iii. Alternative 3, if implemented, would create heightened water quality related performance requirements for new developments and redevelopments that discharge to high quality water. Holding new developments and redevelopments to more stringent criteria may be practicable for some projects; however, the benefit to water quality is expected to be marginal as compared to the requirements already imposed on projects designated as “Priority Development Projects” in the Order. (See Part VIII.F.1.a of the Order.) Whenever feasible, these projects must implement structural BMPs to remove, reduce, beneficially reuse, and/or retain stormwater on-site. These structural BMPs must be designed to address the 85th percentile, 24-hour runoff volume. When on-site measures are technically infeasible (e.g., infill development), the projects are required to mitigate off-site. These requirements apply whether or not the receiving water is considered high-quality and are expected to improve water quality for a greater number of people. Further, because waterbodies may be high quality for some pollutants and not others it is difficult, if not impossible, to designate specific areas as high quality waters.
- iv. Both Alternatives 4 and 5, if implemented, could result in limited degradation of high quality water bodies. Any degradation that would occur under either alternative is consistent with the maximum benefit to the people of the state because the structural controls built through these programs will ultimately be more effective at maintaining and restoring water quality protective of beneficial uses than ongoing programmatic controls. The WMP permit terms of Alternatives 4 and 5 require implementation of objective technical solutions that have been demonstrated to be designed to meet water quality standards. Such controls necessarily take time to design and construct, but it is to the maximum benefit of the people of the state that such controls be designed and implemented properly so as to be protective of water quality in the long run. These measures that control impacts from stormwater and non-stormwater discharges in the Order are typically effective across multiple pollutants. The alternatives would concurrently address other constituents of concern that may not be causing impairment but may still be leading to degradation, resulting in improvements in levels of all pollutants, including those for which the receiving water may be high quality.

⁵⁴ Where there are no applicable trash TMDLs, the Order requires compliance with the Statewide Trash Amendments in Priority Land Uses (PLU), alternative land use areas, and designated land use areas. See, Part III.B (Trash Discharge Prohibitions), Order; and Part IV.B.3 (WQBELs for Trash), Order.

- v. Alternatives 4 and 5 avoid the high economic and social costs associated with decreased public services analyzed above in Parts III.H.2.b.i.(b)-(d) of this antidegradation analysis.⁵⁵ At the same time, Alternatives 4 and 5 provide additional economic and social benefits to the people of the state by incentivizing and incorporating multi-benefit projects that include benefits beyond water quality protection such as increased local water supplies, beautified streets, plazas, and parking areas, and facilities that support habitat and recreation. For example, the MacArthur Lake Rehabilitation Project in the City of Los Angeles is projected to capture about 130 acre-feet of stormwater per year while improving the habitat and recreational value of the park by improving lake water quality and adding bioswales and wetlands. The master plan for the project was completed in 2017, and it is estimated that the project will be completed between 2024 to 2026.⁵⁶
- vi. Multi-benefit projects – that is, projects that fund stormwater capture that provide multiple benefits like those emphasized in WMPs – are actively encouraged by the State of California, which administers Proposition 1 funds (\$200 million in grant funds) for such multi-benefit projects. For example, the Piru Stormwater Capture for Groundwater Recharge Project in Ventura County, which is estimated to capture about 17 acre-feet per year while also augmenting local water supply through groundwater recharge.⁵⁷ Table F-19 provides further examples of multi-benefit projects funded by Proposition 1, many of which were funded to build WMP projects in Los Angeles County. While Prop 1 funding has been expended, construction of multi-benefit projects from approved WMPs will likely qualify for these types of grant monies in the future. Additionally, the construction of these projects also creates good-paying jobs that do not require advanced degrees, accessible to those in disadvantaged communities.⁵⁸

⁵⁵ See footnote nos. - and sources cited therein.

⁵⁶ Deets, Deborah, Gilbert A. Cedillo, Enrique C. Zaldivar, and Shahram Kharaghani. 2020. MacArthur Lake Rehabilitation Project. PowerPoint presentation. https://drive.google.com/file/d/1wOoTBkZE4amsEoOtwKOxxa_gAzSQISUu/view

⁵⁷ Ventura County Public Works. 2020. In the News: Completed Project for Groundwater Recharge Captures Stormwater amid dry months of January and February. Ventura County Public Works. <https://www.vcpublicworks.org/2020/08/25/piru-stormwater/> While Ventura County's current 2010 MS4 Permit does not have provisions to implement WMPs as a compliance alternative, this project is included in the Ventura Countywide Municipal Stormwater Resource Plan prepared for the Ventura Countywide Stormwater Quality Management Program, dated September 20, 2016. This plan identifies projects that are expected to contribute towards meeting MS4 permit requirements, including TMDL-related provisions, in addition to achieving other benefits, including augmenting local water supplies. In this way, it has many similarities to WMPs. It is expected that these types of multi-benefit projects will be incentivized further by this Order, as they were in Los Angeles County following the issuance of the 2012 Los Angeles County MS4 Permit.

⁵⁸ Building on the findings by Economic Roundtable, Los Angeles Alliance for a New Economy estimated that over 30 years, the Safe, Clean Water Program (Measure W) will create about 6,530 construction jobs and 1,347 O&M jobs, as well as about 1,559 annual indirect and induced jobs. This would yield about \$14B in overall regional economic benefits from \$9B in investment. Furthermore, many of these jobs created would be good-paying jobs that do not require an advanced degree, accessible to those in disadvantaged communities. (Los Angeles Alliance for a New Economy (LAANE). [Liquid Assets. How Stormwater Infrastructure Builds Resilience, Health, Jobs, and Equity](#). March 2018.)

Table F-19. Multi-benefit projects funded through Proposition 1 To Date

| Project Name | Project Proponent | Water supply benefit | Water quality benefit | Flood management benefit | Environmental benefit | Community benefit | Benefit to DAC |
|--|--|--|--|--|-----------------------|--|---|
| South Gate Urban Orchard Demonstration Project | City of South Gate | Increased water supply reliability | Nonpoint source pollution control | -- | -- | Enhanced and/or created recreational and public use areas | Y - City of South Gate and Thunderbird Villa Mobile Home Park |
| San Fernando Regional Park Project (Planning only) | City of San Fernando | Increased water supply reliability | -- | Decreased flood risk by reducing runoff rate and/or volume | -- | Enhanced and/or created recreational and public use areas / Public education | -- |
| Tujunga Spreading Grounds Enhancement Project | City of Los Angeles DWP | Increased water supply reliability | Reestablished natural water drainage and treatment | Decreased flood risk by reducing runoff rate and/or volume | -- | -- | Y - The communities of Arleta and Sun Valley |
| Central-Jefferson High Green Alley Network Storm Water Capture Project | The Trust for Public and City of Los Angeles | Increased water capture and conservation | Increased filtration and treatment of runoff | -- | -- | Enhanced and/or created recreational and public use areas | Y - South Los Angeles |
| John Anson Ford Park Infiltration Cistern | Gateway Water Management Authority | Increased water supply reliability | Reestablished natural water drainage and treatment | Decreased flood risk by reducing runoff rate and/or volume | -- | -- | Y - Cities of Bell Gardens and Commerce |

| Project Name | Project Proponent | Water supply benefit | Water quality benefit | Flood management benefit | Environmental benefit | Community benefit | Benefit to DAC |
|--|------------------------|------------------------------------|--|--|---|---|----------------------------|
| Ladera Park Stormwater Capture Project | LA County | Increased water supply reliability | Reestablished natural water drainage and treatment | -- | Environmental and habitat protection and improvement | -- | N |
| Gates Canyon Park Project | LA County | Increased water conservation | Nonpoint source pollution control | -- | Environmental and habitat protection and improvement | -- | N |
| East Los Angeles Sustainable Median Stormwater Capture Project | LA County | Increased water supply reliability | Nonpoint source pollution control | -- | -- | Enhanced and/or created recreational and public use areas | Y - East Los Angeles |
| Walnut Storm Water Capture and Groundwater Replenishment Basin | City of Torrance | Increased water supply reliability | Nonpoint source pollution control | Decreased flood risk by reducing runoff rate and/or volume | -- | Public education | Y |
| Piru Stormwater Capture for Groundwater Recharge | Ventura County | Increased water supply reliability | Increased filtration and/or treatment of runoff | -- | -- | -- | Y - Piru |
| Merced Avenue Greenway Improvement Project | City of South El Monte | -- | Increased filtration and treatment of runoff | -- | Reduced energy use, greenhouse gas emissions, or provides a carbon sink | Improved public health | Y - City of South El Monte |

| Project Name | Project Proponent | Water supply benefit | Water quality benefit | Flood management benefit | Environmental benefit | Community benefit | Benefit to DAC |
|---|-------------------------|------------------------------------|--|--------------------------|-----------------------|---|---------------------|
| Walnut Park Pocket Park and Stormwater Infiltration Project | LA County | Increased water conservation | Increased filtration and treatment of runoff | Decreased flood risk | -- | -- | Y - Huntington Park |
| Stormwater Harvesting & Treatment Project For Groundwater Injection | City of Santa Monica | Increased water supply reliability | Nonpoint source pollution control / Increased filtration and treatment of runoff | -- | -- | -- | N |
| Alondra Park Multi-Benefit Stormwater Capture Park | LA County | Increased water supply | Increased filtration and treatment of runoff | -- | -- | Enhanced and/or created recreational and public use areas | N |
| Valley Village Park Stormwater Capture Project | City of Los Angeles DWP | Increased water supply reliability | Increased filtration and treatment of runoff | -- | -- | Enhanced and/or created recreational and public use areas | -- |

vii. Alternative 4 is nevertheless not to the maximum benefit of the people of the state because it is less likely than Alternative 5 to result in the anticipated economic and social development described in Part III.H.2.b, subsection v, immediately above. As many of the permittees testified during the hearing on this Order, WMPs with the broader deemed compliance option (Alternative 5) better incentivize building and investing in long-term structural and non-structural controls that will improve water quality in the long run for multiple constituents and with multiple benefits.⁵⁹ There are several reasons for this. Deeming Permittees in compliance with receiving water limitations while they are building and investing in these multi-benefit projects is necessary to accommodate the public bidding process (which many municipalities must go through to initiate construction) and the construction process, which takes approximately 5-7 years.⁶⁰ Deeming Permittees in compliance while they are implementing their WMP projects allows Permittees to focus on constructing multi-benefit projects and long-term water sustainability planning, instead of focusing immediately (and spending money) on fixing violations or defending litigation related to those violations that might occur *before* their projects are completed. Having determined that water quality is most effectively protected by requiring Permittees to take a thoughtful proactive watershed management approach to discharges, which also encourages water supply augmentation and has environmental benefits, the Los Angeles Water Board finds that fairness and good public policy also advises against requiring them to comply with all effluent and receiving water limitations immediately (and potentially penalizing them for not doing so). The Order is designed to facilitate cooperation and coordination between the State and Permittees, local government entities. For example, Paul Alva, Principal Engineer for the Los Angeles County Department of Public Works, testified on July 16, 2021, that the 2012 Los Angeles County MS4 Permit structure, with deemed in compliance, has enabled the County to form new partnerships with entities like Caltrans and Los Angeles Department of Water and Power, and that it has fostered collaboration with other permittees as well. Allowing local governments to be deemed in compliance while implementing and constructing WMP projects strengthens this important public policy goal. Without the deemed compliance approach, Permittees are expected to shift at least some of their limited resources budgeted for planned, comprehensive, long-term, multi-benefit projects, to measures that are reactive, short-term, and ultimately less effective or protective of water quality in the long run.⁶¹ Importantly, the deemed compliance approach does not mean that the Los Angeles Water Board cannot take

⁵⁹ See, Table F-20. Testimony from Los Angeles County Department of Public Works staff, and representatives from the Lower Los Angeles River Watershed and Lower San Gabriel River Watershed E/WMP groups on July 16, 2021 also supports this.

⁶⁰ Testimony provided by Los Angeles County Public Works staff and other permittees at Board meetings and workshops in 2020 states that TMDL implementation projects (incorporated into WMPs) can take from five to seven years per project from design to completion (January 7, 2020 workshop and May 14, 2020 Board meeting).

⁶¹ See, footnote nos. - and citations therein.

enforcement to ensure implementation of the Order requirements. Of course, Permittees are required to be pursuing and implementing their WMP controls as expeditiously as possible according to approved time schedules, and they can be separately subject to enforcement if they are not. Similarly, they may be subject to third-party citizen suits for violations of these terms.

- viii. Alternative 5 is necessary to accommodate important economic and social development and to the maximum benefit of the people of the state because coupling the WMP framework with deemed compliance also incentivizes collaboration to implement the most cost-effective controls. For example, Permittees in the County of Los Angeles were able to leverage the water supply and water quality benefits of the WMPs with deemed in compliance benefits to pass funding measures such as Measure W and Measure CW. Table F-20 documents the Measure W projects funded in 2020 and 2021,⁶² the majority of which were also proposed in an E/WMP. Table F-20 also documents another important fact that also demonstrates that Alternative 5 results in social and economic development that would not be achieved under Alternative 4. The kinds of projects built under the WMP framework with deemed in compliance has facilitated investment and construction of multi-benefit projects that include parks, infiltration, and low impact development (among other things) in communities that might not have seen that investment without the Board's adoption of the Los Angeles County MS4 Permit in 2012 incorporating the alternative compliance pathway of WMPs with deemed in compliance. This is not speculation. Mr. Alva from the County of Los Angeles explained to the Board on July 16, 2021, that the landscape of water quality has and will continue to vastly improve all over the County, and not just in certain communities, due to WMP construction and implementation. Under the 2001 Permit, which did not include deemed in compliance provisions for RWLs, only about two dozen coastal projects for low flow diversions were built to achieve water quality objectives. The 2012 Permit facilitated a shift in the building of projects from the limited number of coastal projects under the 2001 permit, to the planning, approval and beginning construction of many multi-benefit projects all over the County, including in disadvantaged, inland communities. All of Los Angeles County benefits from the multi-benefit projects now – which include multi-benefit projects and nature-based solutions that take into account current pressing challenges of drought and climate change and allow change to occur in an equitable fashion, in communities where they would not have occurred otherwise. Mr. Alva testified that this paradigm shift, towards building multi-benefit projects across the region and not just at the coast, would not have happened without the current compliance pathway, WMPs with deemed in compliance. Alternative 5, compared to Alternative 4, has thus already resulted in and is expected to continue to result in important economic and social development and are to the maximum benefit to the people of the state.

⁶² Los Angeles County. Safe Clean Water Program – 2020-21 Stormwater Investment Plans for nine Watershed Area Steering Committees. <https://safecleanwaterla.org/projects2/>

Table F-20. Measure W Funded Projects (2020-2021)

| Project Name | Project Developer | Project Type | Watershed Area | WMP/EWMP Area | Proposed in E/WMP? | DAC? | Natural Based Solution | Water Supply | Community Benefits | Primary Pollutant Addressed |
|--|--|-------------------------------------|-------------------------|---------------|--------------------|------|--|------------------------------------|---|-----------------------------|
| Active Transportation Rail to River Corridor Project - Segment A | Los Angeles Metropolitan Transit Authority (Metro) | LID | Upper Los Angeles River | ULAR | No | Yes | Mimic Natural Processes/Uses Natural Material | Connect to Aquifer/Use Onsite | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Improve Flood Protection/ Improve Waterway Access/ Enhance Habitat or Park Space/ Enhance Green Space in Schools | Bacteria |
| Adventure Park Multi Benefit Stormwater Capture Project | Los Angeles County Public Works | Capture and diversion to sewer; LID | Upper San Gabriel River | USGR | Yes | Yes | Mimic Natural Processes/ Uses Natural Material | Connect to WWTP | Reduce Heat Island/Provide Recreational Opportunities/ Provide Shade/ Improve Flood Protection/ Enhance Habitat or Park Space | Other |
| Alondra Park Multi Benefit Stormwater Capture Project | Los Angeles County | Capture and diversion to sewer; LID | South Santa Monica Bay | DC | Yes | Yes | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer/Connect to WWTP | Reduce Heat Island/Provide Recreational Opportunities/ Provide Shade/ Improve Flood | Other |

| Project Name | Project Developer | Project Type | Watershed Area | WMP/EWMP Area | Proposed in E/WMP? | DAC? | Natural Based Solution | Water Supply | Community Benefits | Primary Pollutant Addressed |
|--|--|--------------|-------------------------|---------------|--------------------|------|--|--------------------|--|-----------------------------|
| | | | | | | | | | Protection/Enhance Habitat or Park Space | |
| Baldwin Lake and Tule Pond Restoration Project | Los Angeles County Public Works/Flood Control District | Enhancement | Rio Hondo | RH-SGR | Yes | Yes | Mimic Natural Processes/Uses Natural Material | Connect to Aquifer | Provide Recreational Opportunities/ Improve Flood Protection/ Improve Waterway Access/ Enhance Habitat or Park Space | Other |
| Barnes Park | City of Baldwin Park | Infiltration | Upper San Gabriel River | USGR | Yes | Yes | Mimic Natural Processes/ Uses Natural Material | -- | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Improve Flood Protection/ Enhance Habitat or Park Space | Zn |
| Bassett High School Stormwater Capture Multi-Benefit Project | Los Angeles County | Infiltration | Upper San Gabriel River | USGR | Yes* | Yes | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Improve Flood Protection/ Enhance | Zn |

| Project Name | Project Developer | Project Type | Watershed Area | WMP/EWMP Area | Proposed in E/WMP? | DAC? | Natural Based Solution | Water Supply | Community Benefits | Primary Pollutant Addressed |
|---|--------------------------------------|----------------------------|--------------------------|---------------|--------------------|------|--|--------------------------------|--|-----------------------------|
| | | | | | | | | | Habitat or Park Space/Enhance Green Space in Schools | |
| Beverly Hills Burton Way Green Street and Water Efficient Landscape Project | City of Beverly Hills (Derek Nguyen) | Green Street/ Infiltration | Central Santa Monica Bay | Ballona Creek | No | No | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer/Use Onsite | Reduce Heat Island/ Provide Shade/ Improve Flood Protection/ Enhance Habitat or Park Space | Zn |
| Bolivar Park | City of Lakewood | O&M | Lower San Gabriel River | LCC | Yes | Yes | Uses Natural Material | Connect to Aquifer/ Use Onsite | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Enhance Habitat or Park Space/ Enhance Green Space in Schools | Zn |
| Caruthers Park | City of Bellflower | O&M | Lower San Gabriel River | LCC | Yes | Yes | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer/ Use Onsite | Reduce Heat Island/Provide Recreational Opportunities/Provide Shade/Improve Flood Protection/Enhance | Other |

| Project Name | Project Developer | Project Type | Watershed Area | WMP/EWMP Area | Proposed in E/WMP? | DAC? | Natural Based Solution | Water Supply | Community Benefits | Primary Pollutant Addressed |
|--|---|--------------------|-------------------------|---------------|--------------------|------|--|--------------------|--|-----------------------------|
| | | | | | | | | | Habitat or Park Space | |
| City of San Fernando Regional Park Infiltration Project | City of San Fernando (Kenneth Jones) | Infiltration | Upper Los Angeles River | ULAR | Yes | Yes | Mimic Natural Processes | Connect to Aquifer | Provide Shade/ Improve Flood Protection/ Enhance Habitat or Park Space | Zn |
| Culver City Mesmer Low Flow | City of Culver City | Low Flow Diversion | Central Santa | Ballona Creek | Yes | No | -- | Connect to WWTP | -- | Other |
| East Los Angeles Sustainable Median Stormwater Capture Project | Los Angeles County | Infiltration; LID | Rio Hondo | ULAR | Yes* | Yes | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Improve Flood Protection/ Enhance Habitat or Park Space | Other |
| Echo Park Lake Rehabilitation | City of Los Angeles, Bureau of Sanitation | O&M | Upper Los Angeles River | ULAR | No | No | Mimic Natural Processes /Uses Natural Material | Use Onsite | Provide Recreational Opportunities/ Improve Flood Protection/ Enhance Habitat or Park Space | Nitrogen |

| Project Name | Project Developer | Project Type | Watershed Area | WMP/EWMP Area | Proposed in E/WMP? | DAC? | Natural Based Solution | Water Supply | Community Benefits | Primary Pollutant Addressed |
|--|---|---------------------|-------------------------|---------------|--------------------|------|--|-----------------------------|---|-----------------------------|
| El Dorado Regional Project | City of Long Beach | Planning and Design | Lower San Gabriel River | LSGR | No | Yes | Mimic Natural Processes /Uses Natural Material | Connect to WWTP /Use Onsite | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Improve Flood Protection/ Improve Waterway Access/ Enhance Habitat or Park Space | Zn |
| Encanto Park Stormwater Capture Project | City of Monrovia | Infiltration | Upper San Gabriel River | RH-SGR | Yes | Yes | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer | Reduce Heat Island/ Provide Shade/ Improve Flood Protection/ Enhance Habitat or Park Space | Zn |
| Fernangeles Park Stormwater Capture Project | Los Angeles Department of Water and Power (LADWP) | Infiltration | Upper Los Angeles River | ULAR | Yes* | Yes | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Improve Flood Protection/ Improve Waterway Access/ Enhance Habitat or Park Space | Zn |
| Franklin D. Roosevelt Park Regional Stormwater Capture Project | Los Angeles County | Infiltration | Upper Los Angeles River | ULAR | Yes | Yes | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Improve Flood Protection/ Enhance | Zn |

| Project Name | Project Developer | Project Type | Watershed Area | WMP/EWMP Area | Proposed in E/WMP? | DAC? | Natural Based Solution | Water Supply | Community Benefits | Primary Pollutant Addressed |
|---|---------------------------------|--------------|-------------------------|---------------|--------------------|------|---|-------------------------------|--|-----------------------------|
| | | | | | | | | | Habitat or Park Space | |
| Garvey Avenue Grade Separation Drainage Improvement Project | City of El Monte | Infiltration | Upper San Gabriel River | El Monte | Yes* | Yes | Mimic Natural Processes | Connect to Aquifer | Improve Flood Protection | Zn |
| Hasley Canyon Park Stormwater Improvements Project | Los Angeles County Public Works | Infiltration | Santa Clara River | USCR | Yes | No | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer | Provide Recreational Opportunities/ Improve Flood Protection/ Enhance Habitat or Park Space | Nitrogen |
| Hermosillo Park | City of Norwalk | Infiltration | Lower San Gabriel River | LSGR | Yes* | Yes | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer/Use Onsite | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Improve Flood Protection/ Enhance Habitat or Park Space | Zn |
| John Anson Ford Park Infiltration Cistern | City of Bell Gardens | Infiltration | Lower Los Angeles River | LAR-UR2 | Yes | Yes | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Improve Flood | Zn |

| Project Name | Project Developer | Project Type | Watershed Area | WMP/EWMP Area | Proposed in E/WMP? | DAC? | Natural Based Solution | Water Supply | Community Benefits | Primary Pollutant Addressed |
|---|---|---------------------|--------------------------|---------------|--------------------|------|--|--------------------------------|---|-----------------------------|
| | | | | | | | | | Protection/ Improve Waterway Access/ Enhance Habitat or Park Space | |
| Ladera Park Stormwater Improvements Project | Los Angeles County Public Works | Infiltration Wells | Central Santa Monica Bay | Ballona Creek | Yes | No | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer/ Use Onsite | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Enhance Habitat or Park Space | Zn |
| Lankershim Boulevard Local Area Urban Flow Management Network Project | City of Los Angeles, Bureau of Sanitation | Infiltration | Upper Los Angeles River | ULAR | Yes* | Yes | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer | Reduce Heat Island/ Provide Shade/ Improve Flood Protection | Zn |
| Long Beach Municipal Urban Stormwater Treatment (LB MUST) - Phase 1 | City of Long Beach | Treatment and reuse | Lower Los Angeles River | LLAR | Yes | Yes | Mimic Natural Processes/ Uses Natural Material | Use Onsite | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Improve Flood Protection/ Improve Waterway Access/ Enhance Habitat or Park Space | Other |

| Project Name | Project Developer | Project Type | Watershed Area | WMP/EWMP Area | Proposed in E/WMP? | DAC? | Natural Based Solution | Water Supply | Community Benefits | Primary Pollutant Addressed |
|---|---|---|--------------------------|---------------|--------------------|------|--|-----------------------------|--|-----------------------------|
| MacArthur Lake Rehabilitation Project | City of Los Angeles, Bureau of Sanitation | Capture and reuse; Recreation enhancement | Central Santa Monica Bay | Ballona Creek | Yes | Yes | Mimic Natural Processes/ Uses Natural Material | Connect to WWTP/ Use Onsite | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Improve Flood Protection/ Enhance Habitat or Park Space/ Enhance Green Space in Schools | Zn |
| Mayfair Park | City of Lakewood | O&M | Lower San Gabriel River | LCC | Yes | Yes | Mimic Natural Processes/ Uses Natural Material | Connect to WWTP/ Use Onsite | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Enhance Habitat or Park Space | Other |
| Monteith Park and View Park Green Alley Stormwater Improvements Project | Los Angeles County Public Works | Infiltration Wells | Central Santa Monica Bay | Ballona Creek | No | Yes | Mimic Natural Processes/ Uses Natural Material | -- | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Enhance Habitat or Park Space | Zn |
| Newhall Park Infiltration | Dan Duncan, Oliver Cramer | Infiltration | Santa Clara River | USCR | Yes | Yes | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer | Provide Recreational Opportunities/ Provide Shade/ Improve Flood Protection/ Enhance Habitat or Park Space/ Enhance Green Space in Schools | Bacteria |

| Project Name | Project Developer | Project Type | Watershed Area | WMP/EWMP Area | Proposed in E/WMP? | DAC? | Natural Based Solution | Water Supply | Community Benefits | Primary Pollutant Addressed |
|--|---|---------------------------------|-------------------------|---------------|--------------------|------|---|--------------------|--|-----------------------------|
| Oro Vista Local Area Urban Flow Management Project | City of Los Angeles, Bureau of Sanitation | Infiltration; LID | Upper Los Angeles River | ULAR | Yes* | No | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer | Reduce Heat Island/ Provide Shade/ Improve Flood Protection | Zn |
| Pedley Spreading Grounds | East San Gabriel Valley Watershed Management Group (City of San Dimas, City of Claremont, City of Pomona, City of La Verne) | Infiltration | Upper San Gabriel River | ESGV | No | No | Mimic Natural Processes | Connect to Aquifer | Improve Flood Protection/ Enhance Habitat or Park Space | Other |
| Rory M. Shaw Wetlands Park Project | Los Angeles Flood Control District | Detention pond/ infiltration | Upper Los Angeles River | ULAR | Yes* | Yes | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Improve Flood Protection/ Improve Waterway Access/ Enhance Habitat or Park Space | Nitrogen |

| Project Name | Project Developer | Project Type | Watershed Area | WMP/EWMP Area | Proposed in E/WMP? | DAC? | Natural Based Solution | Water Supply | Community Benefits | Primary Pollutant Addressed |
|--|---|---------------------------------------|--------------------------|---------------|--------------------|------|---|--|--|-----------------------------|
| Skylinks Golf Course at Wardlow Stormwater Capture Project | City of Long Beach | Infiltration | Lower San Gabriel River | LCC | Yes | No | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer/ Use Onsite | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Improve Flood Protection/ Improve Waterway Access/ Enhance Habitat or Park Space | Zn |
| Strathern Park North Stormwater Capture Project | Los Angeles Department of Water and Power (LADWP) | Infiltration | Upper Los Angeles River | ULAR | Yes* | Yes | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/Improve Flood Protection/ Improve Waterway Access/ Enhance Habitat or Park Space | Zn |
| Sustainable Water Infrastructure Project | City of Santa Monica | Capture, advance treatment, and reuse | Central Santa Monica Bay | SMB J2-J3 | Yes | Yes | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer/ Connect to WWTP/ Use Onsite | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Improve Flood Protection/ Improve Waterway Access/ Enhance Habitat or Park Space/ Enhance Green Space in Schools | Bacteria |

| Project Name | Project Developer | Project Type | Watershed Area | WMP/EWMP Area | Proposed in E/WMP? | DAC? | Natural Based Solution | Water Supply | Community Benefits | Primary Pollutant Addressed |
|---|---|--------------------------------------|-------------------------|---------------|--------------------|------|---|--------------------|--|-----------------------------|
| The Distributed Drywell System Project | City of Glendale | Infiltration | Upper Los Angeles River | ULAR | Yes | Yes | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer | Reduce Heat Island/ Provide Shade/ Improve Flood Protection | Zn |
| Torrance Airport Storm Water Basin Project, Phase 2 | City of Torrance | Capture and divert to sanitary sewer | South Santa Monica Bay | Beach Cities | Yes | Yes | -- | Connect to WWTP | Improve Flood Protection | Other |
| Valley Village Park Stormwater Capture Project | Los Angeles Department of Water and Power (LADWP) | Infiltration | Upper Los Angeles River | ULAR | Yes | Yes | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Improve Flood Protection/ Improve Waterway Access/ Enhance Habitat or Park Space | Other |
| Walnut Park Pocket Park Project | County of Los Angeles | Infiltration | Upper Los Angeles River | ULAR | Yes* | Yes | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Enhance Habitat or Park Space | Zn |

| Project Name | Project Developer | Project Type | Watershed Area | WMP/EWMP Area | Proposed in E/WMP? | DAC? | Natural Based Solution | Water Supply | Community Benefits | Primary Pollutant Addressed |
|--|---|---|--------------------------|---------------|--------------------|------|--|-----------------------------|---|-----------------------------|
| Washington Boulevard Stormwater and Urban Runoff Diversion | City of Culver City | Capture and divert to sanitary sewer | Central Santa Monica Bay | MdR | Yes | No | Mimic Natural Processes/ Uses Natural Material | Connect to WWTP/ Use Onsite | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Improve Flood Protection | Other |
| Wilmington Q Street Local Urban Area Flow Management Project | City of Los Angeles, Bureau of Sanitation | Green Street/ Infiltration | South Santa Monica Bay | DC | Yes* | Yes | Mimic Natural Processes/ Uses Natural Material | -- | Reduce Heat Island/ Provide Shade/ Improve Flood Protection/ Enhance Green Space in Schools | Zn |
| Wingate Park Regional EWMP Project | City of Covina | Planning and design of Infiltration project | Upper San Gabriel River | USGR | Yes | Yes | Mimic Natural Processes/ Uses Natural Material | Connect to Aquifer | Reduce Heat Island/ Provide Recreational Opportunities/ Provide Shade/ Improve Flood Protection/ Improve Waterway Access/ Enhance Habitat or Park Space | Zn |

* This specific project was not identified in the E/WMP, but this type of project was identified.

Similarly, Permittees in both Los Angeles and Ventura Counties have been able to utilize Proposition 1 funding to develop multi-benefit stormwater management projects such as those set forth in Table F-20, *supra*, which are exactly the type of projects that WMPs contemplate.⁶³ And, as discussed immediately above, this alternative provides important socioeconomic benefits such as creation of new jobs, increased local water supplies, beautified streets, plazas, and parking areas, and facilities that support habitat and recreation, while allowing the local governments to maintain important public services. This alternative therefore has the greatest chance of success, within the shortest time frame, and furthers the goal of maintaining and achieving water quality standards.

- ix. Further, Alternative 5 does not create a framework where there is a deemed in compliance pathway for all receiving water limitations. Alternative 5 does not relieve Permittees of the requirement to effectively prohibit non-stormwater discharges. The non-stormwater discharge prohibitions are not afforded deemed compliance status through the WMP provisions. Rather, the WMPs provide alternative compliance pathways only for particular waterbody-pollutant combinations: Those addressed by TMDLs (highest priority); those that are listed on the Clean Water Act Section 303(d) List as impaired and for which MS4 discharges may be causing or contributing to the impairment (high priority); or for which there are insufficient data to indicate water quality impairment in the receiving water according to the State's Listing Policy, but which exceed applicable receiving water limitations contained in this Order and for which MS4 discharges may be causing or contributing to the exceedance within the last five years (medium priority).⁶⁴ None of these water bodies are high quality waters currently. As explained in State Water Board Order WQ 2020-0038, Permittees must be clear about which waterbody-pollutant combinations and receiving water limitations they will address in their WMPs.⁶⁵ "Deemed compliance is not a right; it is an accommodation based on the time and effort required to undertake the complex planning and implementation efforts needed to improve water quality. It is meant to encourage significant investment in collaborative regional - and watershed-based BMP implementation, leading eventually to all receiving waters meeting final receiving water limitations."⁶⁶

⁶³ See, Table F-21, *supra*.

⁶⁴ As such, many of the waters to which the deemed in compliance allowance provisions will be applied are not high quality waters in the first place (see Order, Part IX.A.4; IX.B.1-3) and subject instead to the antidegradation analysis under Part III.H.1 of this Fact Sheet. The findings above are made only to the extent these waterbodies are considered high quality based on a historic baseline. To the extent that the WMP alternative compliance pathways do allow for pollutants to be discharged into otherwise high quality waters, the period to achieve receiving water limitations where there are exceedances must be as short as possible.

⁶⁵ See, e.g., WQ 2020-0038 at p. 11.

⁶⁶ WQ 2020-0038 at p. 10.

- x. Alternative 5 may result in limited degradation of high quality waters, in particular currently impaired waters that may nevertheless be considered high quality waters based on a historic baseline.⁶⁷ The federal antidegradation policy does not require consideration of economic and social costs associated with degradation; it only requires findings that “allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located.” The state antidegradation policy does not define the exact factors that must be considered in determining “maximum benefit to the people of the state.” APU 90-004 states that factors to be considered in a complete antidegradation analysis include economic and social costs of the discharge compared to its benefits, but this Order is subject only to a simple antidegradation analysis.⁶⁸ The Los Angeles Water Board has nevertheless considered the costs associated with water quality degradation that may occur under Alternative 5, but has done so necessarily at a generalized level. Specifically, in choosing Alternative 5 over Alternative 4, the Los Angeles Water Board finds as follows:
- (a) There are significant environmental, public health, and economic costs associated with exceedances of water quality objectives. Southern California’s local economy thrives on a healthy environment, as does the health of its population. By way of example, the failure to control stormwater runoff (which would result in exceedances of water quality objectives) would, among other things, negatively impact ocean water quality, which would negatively impact the coastal economy, including tourism and the fishing industry. Similarly, the failure to meet water quality objectives in ocean waters would negatively impact recreation and public health of beachgoers. These costs are discussed in detail in Part XIII.D.4 of this Fact Sheet and are incorporated into these findings by reference.
 - (b) The considered costs are associated with exceedances of water quality objectives rather than limited degradation of high quality waters to a level that remains better than objectives. This is because the objectives are set to protect beneficial uses in the first place.
 - (c) Where Alternative 5 may allow a currently high quality waterbody to degrade below water quality objectives, or where it will allow a currently impaired, but historically high quality waterbody to stagnate or worsen in quality, even for multiple years, this allowance is for a finite period of time defined by the compliance schedule specified in the permit. The Los Angeles Water Board finds that the temporary degradation is justified based on the social and economic benefits discussed in findings Part III.H.2.b of this Fact Sheet.

⁶⁷ The WMPs are designed to provide deemed in compliance only for pollutants for which the waterbody is impaired or there are exceedances of receiving water limitations and the Order is not written to allow currently high quality waterbodies to be degraded for those pollutants for which deemed compliance is not provided.

⁶⁸ Outside of the complete antidegradation analysis context, APU 90-004 states only that the “findings should indicate . . . [t]he socioeconomic and public benefits that result from lowered water quality.” (APU 90-004, p. 1.)

associated with Alternative 5, notwithstanding the potential costs of degradation. In particular, the Los Angeles Water Board anticipates that the structural controls that are designed and built over a longer timeframe are more likely to lead to water quality improvements than other measures.

- (d) Alternative 4 could potentially avoid some of the costs discussed in subsection (a), above, because some Permittees may correct some exceedances earlier if required to comply immediately with receiving water limitations. From a practical perspective, however, the Los Angeles Water Board finds that immediate compliance, particularly for those waters that may have been high quality historically but are not high quality currently, is unrealistic even if required, given the technical and financial constraints faced by Permittees. Since Permittees will not be able to afford to comply immediately, any costs avoided would be minimal.⁶⁹
- xi. Regarding Alternative 6, WQBELs are for the most part set to be protective of beneficial uses, which is the floor of the level of protection required under the antidegradation policies and may not be protective of water quality higher than necessary to protect beneficial uses. Therefore, this alternative is not more protective of high quality water bodies than requiring compliance with receiving water limitations, which already require permittees' MS4 discharges to not cause or contribute to exceedances of water quality objectives. This alternative would impose a significant analytical hurdle on development and adoption of a permit by requiring the Los Angeles Water Board to spend extensive efforts to analyze hundreds of thousands of waterbody-pollutant combinations and then further conduct an infeasible set of reasonable potential analyses to determine whether the permittees' discharges are impacting high quality waters and for what pollutants. Ultimately, the alternative would divert staff resources from oversight of the implementation of potentially more effective and practical permit requirements, as well diverting staff from the Board's other programs.
- xii. For all of the reasons set forth above, the Los Angeles Water Board finds that any lowering of high quality waters under this Order's structure, which is consistent with Alternative 5 and components of Alternatives 1 and 2, is necessary to accommodate important economic or social development in the Region and is to the maximum benefit of the people of the State.
- c. Requirement for Highest Statutory and Regulatory Requirements and Best Practicable Treatment and Control: The Order requires the highest statutory

⁶⁹ See, e.g., Testimony from Arne Anselm, Ventura County, Transcript, October 15, 2020 Board Workshop, at p. 55:12-14 ("And certainly funding plays a big part of that, and getting a funding plan together, and developing that source of money. It's hard to do everything without that money. If we're limited to just the funds we have, not much will get done."); Chris Minton, Larry Walker and Associates, on behalf of the Malibu Creek Watershed EWMP Group, Transcript, February 11, 2021 Board Meeting, at p. 83:8-14 ("One reason we asked for more time is that it does take money to build projects. Under no cashflow scenario is it possible for us to receive or borrow enough money in the next five years to cover the cost of all of our projects. Even if our EWMP cost estimates are off by 50-percent, we still won't receive enough funds."). See, also, references cited in footnote , *supra*.

and regulatory requirements and requires that the Permittees meet best practicable treatment or control.

- i. The Order prohibits all non-stormwater discharges, with a few enumerated exceptions, through the MS4 to all receiving waters.
- ii. As required by 40 CFR section 122.44(a), the Permittees must comply with the “maximum extent practicable” technology-based standard set forth in CWA section 402(p)(3)(B)(iii) and implement control measures under six program elements of a stormwater management program.
- iii. As required by CWA section 402(p)(3)(B)(iii) and 40 CFR section 122.44(d)(1)(vii)(B), the Permittees must comply with applicable WQBELs based on TMDL WLAs established for waters in the Los Angeles Region.
- iv. The Order also contains provisions to encourage, wherever feasible, retention of stormwater from the 85th percentile, 24-hour storm event. This stormwater retention design standard is based on robust engineering and technical evaluations to determine state-of-the-art design standards for post-construction site scale BMPs and catchment scale regional BMPs.⁷⁰
- v. The measures that control impacts from stormwater and non-stormwater discharges in the Order are typically effective across multiple pollutants. For example, retention basins, low-impact development controls, and low flow diversions avert stormwater and non-stormwater from reaching the receiving water at all—preventing degradation to the receiving water from all types of constituents. The Watershed Management Program provisions contained in the Order are designed to achieve water quality standards for those constituents that are impairing the receiving water, as well as to address other constituents of concern that may not be causing impairment as defined in CWA section 303(d) and State policy. The Watershed Management Programs developed pursuant to these provisions will likely result in improvements in levels of all pollutants, including those for which the receiving water may be high quality.

As a final backstop against degradation, the Order includes an extensive monitoring and reporting program, including concurrent monitoring of MS4 discharges at representative outfalls and in receiving waters for all pollutants of concern in the particular receiving water; monitoring during both wet weather and dry weather conditions; and analysis of toxicity in receiving waters and, if toxicity is observed, follow-up monitoring of MS4 discharges among other monitoring requirements. Monitoring data must be submitted semi-annually, and the Order also includes reopener provisions to allow modification of the Order as necessary to add preventative provisions if a threat of degradation is suspected. The monitoring and reporting requirements are sufficient to identify and address changes in water quality.⁷¹

⁷⁰ See, for example, State Water Board Order WQ 2000-11, the “LA SUSMP Order” and Concept Development: Design Storm For Water Quality in the Los Angeles Region (SCCWRP, Technical Report 520, October 2007).

⁷¹ In *AGUA*, 210 Cal.App.4th 1255, the Court of Appeal held that a dairy general non-NPDES permit violated the State antidegradation policy in part because the permit relied on a prohibition of degradation to assert that the antidegradation policy was not implicated by the discharges without incorporating any additional

I. Anti-Backsliding Requirements

Sections 402(o) and 303(d)(4) of the CWA and federal regulations at 40 C.F.R. section 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 permits, with some exceptions where limitations may be relaxed. In general, the effluent limitations in the Order are at least as stringent as the effluent limitations in Order No. R4-2010-0108 (Ventura County), Order No. R4-2012-0175 (Los Angeles County), and Order No. R4-2014-0024 (Long Beach). However, certain of the effluent limitations in the Order are not identical to the effluent limitations in the previous MS4 permits because the Order implements revisions to TMDLs that occurred after these permits were adopted. Table F-21 lists changes to effluent limitations that increase allowable pollutant loadings or remove the effluent limitations entirely due to revised WLAs. While not all of the changes to these effluent limitations constitute backsliding, the rationale for each change is discussed below.

Table F-21. Changes to Effluent Limitations in Previous MS4 Permits

| TMDL | Constituent | Waterbody | Existing Limitation | New Limitation |
|--|-------------------------------|--|---------------------------------------|--|
| Revolon Slough and Beardsley Wash Trash TMDL | Trash | Revolon Slough and Beardsley Wash | 0 Trash discharged from all land uses | 0 Trash discharged from priority land uses |
| Malibu Creek Watershed Trash TMDL | Trash | Malibu Creek Watershed | 0 Trash discharged from all land uses | 0 Trash discharged from priority land uses |
| Ballona Creek Metals TMDL | Selenium | Ballona Creek | 169 g/day | None |
| | | Sepulveda Channel | 76 g/day | |
| | | Ballona Creek and tributaries | 5 µg/L | |
| | Ballona Creek and tributaries | 4.73 x 10 ⁻⁶ x daily storm volume (L) g/day | | |
| | Copper | Ballona Creek | 807.7 g/day | 1,457.6 g/day |

technical controls, or in lieu of such controls sufficient or appropriate monitoring to verify that in fact there was no ongoing degradation. The Order acknowledges that there may be some limited degradation of high quality waters due to stormwater and non-stormwater discharges, but imposes appropriate controls (e.g., through compliance with receiving water limitation provisions, discharge prohibitions, and WQBELs) to minimize any such degradation and further imposes extensive monitoring and reporting as described above to detect any degradation that may be inconsistent with the findings of the Order.

| TMDL | Constituent | Waterbody | Existing Limitation | New Limitation |
|---|-----------------|-------------------------------|--|---|
| | | Sepulveda Channel | 365.6 g/day | 540.6 g/day |
| | | Ballona Creek and tributaries | 24 µg/L | 35.56 µg/L |
| Ballona Creek Metals TMDL | Lead | Ballona Creek | 432.6 g/day | 805.0 g/day |
| | | Sepulveda Channel | 196.1 g/day | 298.7 g/day |
| | | Ballona Creek and tributaries | 13 µg/L | 19.65 µg/L |
| | | Ballona Creek and tributaries | 5.58 x 10 ⁻⁵ x daily storm volume (L) g/day | 7.265 x 10 ⁻⁵ x daily storm volume (L) g/day |
| | Zinc | Ballona Creek | 10,273.1 g/day | 18,302.1 g/day |
| | | Sepulveda Channel | 4,646.4 g/day | 6,790.8 g/day |
| | | Ballona Creek and tributaries | 304 µg/L | 446.55 µg/L |
| Ballona Creek Estuary Toxic Pollutants TMDL | Total PAHs | Ballona Creek Estuary | 26,900 g/yr | None |
| | Total Chlordane | | 3.34 g/yr | 8.69 g/yr |
| | Total DDTs | | 10.56 g/yr | 12.70 g/yr |
| Marina del Rey Harbor Toxic Pollutants TMDL | Copper | Marina del Rey Harbor | 2.01 kg/yr | 2.26 kg/yr |
| | Lead | | 2.75 kg/yr | 3.10 kg/yr |
| | Zinc | | 8.85 kg/yr | 9.96 kg/yr |
| | Total Chlordane | | 0.0295 g/yr | 0.0332 g/yr |
| | Total PCBs | | 1.34 g/yr | 1.51 g/yr |
| Los Angeles River (LAR) Metals TMDL | Copper | LAR Reach 4 | 0.32 kg/day | 1.27 kg/day |
| | | LAR Reach 3 | 0.06 kg/day | 0.24 kg/day |
| | | LAR Reach 2 | 0.13 kg/day | 0.52 kg/day |
| | | LAR Reach 1 | 0.14 kg/day | 0.56 kg/day |
| | | Tujunga Wash | 0.001 kg/day | 0.008 kg/day |
| | | Burbank Western Channel | 0.15 kg/day | 0.71 kg/day |

| TMDL | Constituent | Waterbody | Existing Limitation | New Limitation |
|---------------------------------|-------------------------|-------------------------------------|---|---|
| | | Verdugo Wash | 0.18 kg/day | 0.39 kg/day |
| | | Rio Hondo Reach 1 | 0.01 kg/day | 0.097 kg/day |
| | | Compton Creek | 0.04 kg/day | 0.13 kg/day |
| | | LAR Reach 4 | 26 µg/L | 103 µg/L |
| | | LAR Reach 3 above LAG WRP | 23 µg/L | 91 µg/L |
| | | Verdugo Wash | 23 µg/L | 50 µg/L |
| | | LAR Reach 3 below LAG WRP | 26 µg/L | 103 µg/L |
| | | Burbank Western Channel (above WRP) | 26 µg/L | 124 µg/L |
| | | Burbank Western Channel (below WRP) | 19 µg/L | 90 µg/L |
| | | LAR Reach 2 | 22 µg/L | 87 µg/L |
| | | Arroyo Seco | 22 µg/L | 29 µg/L |
| | | LAR Reach 1 | 23 µg/L | 91 µg/L |
| | | Compton Creek | 19 µg/L | 64 µg/L |
| | | Rio Hondo Reach 1 | 13 µg/L | 126 µg/L |
| | | Los Angeles River and tributaries | 1.5 x 10 ⁻⁸ x daily storm volume (L) – 9.5 g/day | 6.0 x 10 ⁻⁸ x daily storm volume (L) – 9.5 g/day |
| | | Lead | LAR Reach 6 | 0.33 kg/day |
| | LAR Reach 5 | | 0.03 kg/day | 0.31 kg/day |
| | LAR Reach 4 | | 0.12 kg/day | 1.04 kg/day |
| | LAR Reach 3 | | 0.03 kg/day | 1.18 kg/day |
| | LAR Reach 2 | | 0.07 kg/day | 0.89 kg/day |
| | LAR Reach 1 | | 0.07 kg/day | 0.64 kg/day |
| | Bell Creek | | 0.04 kg/day | 0.33 kg/day |
| | Tujunga Wash | | 0.0002 kg/day | 0.0053 kg/day |
| | Burbank Western Channel | | 0.07 kg/day | 0.61 kg/day |
| | Verdugo Wash | | 0.10 kg/day | 0.82 kg/day |
| | Arroyo Seco | | 0.01 kg/day | 0.06 kg/day |
| | Rio Hondo Reach 1 | 0.006 kg/day | 0.045 kg/day | |
| Compton Creek | 0.02 kg/day | 0.16 kg/day | | |
| LAR Reaches 5, 6 and Bell Creek | 19 µg/L | 170 µg/L | | |

| TMDL | Constituent | Waterbody | Existing Limitation | New Limitation | |
|--|------------------------|--|--|--|--|
| | | LAR Reach 4 | 10 µg/L | 83 µg/L | |
| | | LAR Reach 3 above LAG WRP | 12 µg/L | 102 µg/L | |
| | | Verdugo Wash | 12 µg/L | 102 µg/L | |
| | | LAR Reach 3 below LAG WRP | 12 µg/L | 100 µg/L | |
| | | Burbank Western Channel (above WRP) | 14 µg/L | 126 µg/L | |
| | | Burbank Western Channel (below WRP) | 9.1 µg/L | 751 µg/L | |
| | | LAR Reach 2 | 11 µg/L | 94 µg/L | |
| | | Arroyo Seco | 11 µg/L | 94 µg/L | |
| | | LAR Reach 1 | 12 µg/L | 102 µg/L | |
| | | Compton Creek | 8.9 µg/L | 73 µg/L | |
| | | Rio Hondo Reach 1 | 5.0 µg/L | 37 µg/L | |
| | | Los Angeles River and tributaries | 5.6 x 10 ⁻⁸ x daily storm volume (L) – 3.85 g/day | 8.5 x 10 ⁻⁸ x daily storm volume (L) – 32 g/day | |
| Los Angeles River Nitrogen Compounds and Related Effects TMDL | Ammonia 30-day Average | Los Angeles River Reach 5 | 1.6 mg/L | 2.1 mg/L | |
| | | | 1.8 mg/L | | |
| | | LAR Reach 4 | 1.6 mg/L | 2.1 mg/L | |
| | | LAR Reach 3 above LAG WRP | 1.6 mg/L | 4.1 mg/L | |
| | | | | 2.4 mg/L | |
| | | LAR Reach 3 below LAG WRP | 2.4 mg/L | 4.1 mg/L | |
| | | Rio Hondo Reach 3 above Whittier Narrows Dam | 2.3 mg/L | 4.3 mg/L | |
| 2.8 mg/L | | | | | |
| Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs and Metals TMDL | Lead | Termino Avenue Storm Drain | 1,134,867.12 mg/yr | None | |
| | Zinc | | 3,645,183.47 mg/yr | | |
| | Total Chlordane | | 12.15 mg/yr | | |
| | Dieldrin | | 0.49 mg/yr | | |
| | Total PAHs | | 97,739.52 mg/yr | | |

| TMDL | Constituent | Waterbody | Existing Limitation | New Limitation |
|--|-----------------|--|--|----------------|
| | Total PCBs | | 551.64 mg/yr | |
| | Total DDTs | | 38.40 mg/yr | |
| Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs and Metals TMDL | Lead | Line M Storm Drain | 68,116.09 mg/yr | None |
| | Zinc | | 218,788.29 mg/yr | |
| | Total Chlordane | | 0.73 mg/yr | |
| | Dieldrin | | 0.03 mg/yr | |
| | Total PAHs | | 5,866.44 mg/yr | |
| | Total PCBs | | 33.11 mg/yr | |
| | Total DDTs | | 2.30 mg/yr | |
| Middle Santa Ana River Watershed Bacterial Indicator TMDLs | Fecal Coliform | San Antonio Creek and Chino Creek | 30-Day Geometric Mean (GM) less than 180/100 mL | None |
| | | | Not more than 10% exceed 360/100 mL during any 30-day period | |
| | <i>E. coli</i> | San Antonio Creek and Chino Creek | 30-Day GM less than 113/100 mL | |
| | | | Not more than 10% exceed 212/100 mL during any 30-day period | |
| Upper Santa Clara River Chloride TMDL | Chloride | Reaches 4B and 5 (Ventura County only) | 100 mg/L | None |
| U.S. EPA Established - Santa Clara River Reach 3 | Chloride | Santa Clara River Reach 3 | 80 mg/L | 100 mg/L |

| TMDL | Constituent | Waterbody | Existing Limitation | New Limitation |
|--|----------------|---------------------------------------|---|--|
| Chloride TMDL | | | | |
| Santa Clara River Estuary and Reaches 3, 5, 6, & 7 Indicator Bacteria TMDL | <i>E. coli</i> | Santa Clara River Reaches 5, 6, and 7 | 0 allowable exceedances days at the outfall | Exceedance days now allowed at the outfall and are the same as the allowable exceedance days for receiving water |

What follows is a discussion of (1) the general law pertaining to anti-backsliding and (2) why the anti-backsliding provisions in the CWA and federal regulations do not bar the changes in the effluent limitations appearing in the Order.

1. General Principles of Law Governing Anti-Backsliding Analysis for Effluent Limitations Established Pursuant to TMDLs

As noted above, the CWA contains both statutory anti-backsliding provisions in section 402(o) and regulatory anti-backsliding provisions in 40 C.F.R. section 122.44(l). The CWA’s statutory prohibition against backsliding applies under a narrow set of criteria specified in section 402(o).⁷² Section 402(o)(1) prohibits relaxing technology based effluent limitations originally established based on best professional judgment, when there is a newly revised effluent limitation guideline. This section is inapplicable here since none of the WQBELs in the Order are TBELs based on BPJ. Section 402(o)(1) also prohibits relaxing of WQBELs imposed pursuant to CWA sections 301(b)(1)(C) or 303(d) or (e). However, backsliding may be allowed for WQBELs such as the ones at issue here pursuant to one of six exceptions in CWA section 402(o)(2).⁷³ Two are relevant here:

⁷² See SWRCB Order WQ 2015-0075 at pp. 19-23; NPDES Permit Writers’ Handbook at §7.2.1.1 (U.S. EPA 2010).

⁷³ NPDES Permit Writers’ Manual, § 7.2.1.3 (U.S. EPA 2010); CWA section 402(o). Relaxation of limits based on state water quality standards may not be based on section 402(o)(B)(ii), which allows TBELs based on BPJ to be relaxed if technical mistakes or mistaken interpretations of the law were made in issuing the permit under CWA section 402(a)(1)(B).

- material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation (CWA section 402(o)(A));
- 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 (the “New Information Exception”) (402(o)(2)(B)(i));

Relaxation of WQBELs may also be allowed if such backsliding is consistent with the provisions in CWA section 303(d)(4). CWA section 303(d)(4) allows backsliding in the following circumstances. First, “CWA section 303(d)(4)(A) allows the establishment of a less stringent effluent limitation when the receiving water has been identified as not meeting applicable water quality standards (i.e., a *nonattainment water*)” if two conditions are met: (a), “the existing effluent limitation must have been based on a ...TMDL or other ...WLA established under CWA section 303;” and (b) “relaxation of the effluent limitation is only allowed if attainment of water quality standards will be ensured or the designated use not being attained is removed in accordance with the water quality standards regulations.”⁷⁴

Second, section 303(d)(4)(B), applies to “waters where the water quality equals or exceeds levels necessary to protect the designated use, or to otherwise meet applicable water quality standards (i.e., an *attainment water*). Under CWA section 303(d)(4)(B), a limitation based on a TMDL, WLA, other water quality standard, or any other permitting standard may only be relaxed where the action is consistent with state’s antidegradation policy.”⁷⁵

Here, the WQBELs are imposed pursuant to section 303(d). For purposes of the following analysis, both sections 303(d)(4) and the exceptions in section 402(o)(2) are relevant because “U.S. EPA has consistently interpreted CWA section 402(o)(1) to allow relaxation of WQBELs and effluent limitations based on state standards if the relaxation is consistent with the provisions of CWA section 303(d)(4) or if ... [certain] of the exceptions in CWA section 402(o)(2)... [apply]. The two provisions [303(d)(4) and 402(o)(2)] constitute independent exceptions to the prohibition against relaxation of effluent limitations. If either is met, relaxation is permissible.”⁷⁶ As set forth below, the changes to numeric WQBELs in the Order either do not constitute backsliding or satisfy one or more of the foregoing exceptions to anti-backsliding as described below.

2. WQBEL Revisions That Do Not Constitute Backsliding

a. Marina del Rey Harbor Toxic Pollutants TMDL

The 2012 Permit for the County of Los Angeles incorporated the Marina del Rey Harbor Toxic Pollutants TMDL and included numeric WQBELs consistent with the assumptions and requirements of the WLAs in the TMDL as adopted in 2005. (Resolution No. 2005-012. (2005 TMDL.)). The TMDL was reconsidered in 2014 (Resolution R14-004 (2014 TMDL)). The Order updates the WQBELs for copper, lead, zinc, total chlordane, and total PCBs in Marina

⁷⁴ NPDES Permit Writers’ Manual, § 7.2.1.3 (U.S. EPA 2010); CWA section 303(d)(4)(A).

⁷⁵ NPDES Permit Writers’ Manual, § 7.2.1.3 (U.S. EPA 2010); CWA section 303(d)(4)(B).

⁷⁶ NPDES Permit Writers’ Manual, § 7.2.1.3 (U.S. EPA 2010); CWA sections 303(d)(4) and 402(o)(2).

del Rey Harbor consistent with the assumptions and requirements in the 2014 TMDL.

In the 2005 TMDL, the geographical area in which the toxic impairments were found were confined to the back basins of the Marina del Rey Harbor. During the 2014 reconsideration, the Los Angeles Water Board evaluated data collected since adoption of the TMDL and found that the toxic impairments were also present in several of the front basins.⁷⁷ Therefore, the 2014 TMDL revised the geographic area addressed by the TMDL to include the whole harbor and updated the percentage of land area covered by the MS4 permittees to account for areas draining into the front basins.⁷⁸ The 2014 TMDL adjusted the loading capacity and waste load allocations based on the revised geographic area.

The WQBELs in the Order are equal to the adjusted waste load allocations for copper, lead, zinc, total chlordane, and total PCBs in the 2014 TMDL. Because the increased geographic area resulted in an increased loading capacity of sediment bound pollutants discharged to Marina del Rey Harbor through stormwater, the WQBELs assigned to responsible MS4 permittees in the Order allow increased loadings of these constituents.

However, even though increased loadings are allowed, the WQBELs are not less stringent than before. In the 2014 TMDL analysis, the Los Angeles Water Board relied on the same the linkage analysis as the 2005 TMDL.⁷⁹ Similarly, the numeric sediment targets used to calculate the loading capacity and waste load allocations remained the same as the 2005 TMDL. The increased allowable loading is a result of adding the expanded geographic area to the analysis and its associated TSS loading. The increased allowable loading is spread out over the expanded geographic area. Therefore, while the WQBELs for copper, lead, zinc, total chlordane and total PCBs have increased, they are still as protective as the WQBELs in the 2012 Los Angeles County Permit. Even if anti-backsliding applies, the imposition of new WQBELs for copper, lead, zinc, total chlordane and total PCBs satisfies the anti-backsliding exception in CWA section 303(d)(4)(A) because the revisions in the 2014 TMDL will assure attainment of water quality standards. Indeed, TMDLs are developed for the purpose of specifying requirements for the achievement of water quality standards in impaired water bodies.⁸⁰ The additional loading of sediment-bound pollutants was solely to account for the expanded scope of the TMDL and no changes were made to the implementation schedule for the back basins.

b. Ballona Creek Metals TMDL

The 2012 Los Angeles County Permit incorporated numeric WQBELs consistent with the assumptions and requirements of the Ballona Creek Metals TMDL (Resolution No. R07-015), which became effective in 2008. In 2013, the Los Angeles Water Board reconsidered and revised this TMDL (Resolution No. R13-010). The revised TMDL became effective in 2015. The

⁷⁷ (Staff Report p. 6).

⁷⁸ (Staff Report p. 6 and 24)

⁷⁹ (Staff Report p. 8).

⁸⁰ (33 U.S.C. 1313(d); 40 C.F.R. §130.7.)

Order updates the WQBELs consistent with the assumptions and requirements of the revised Ballona Creek TMDL. Specifically:

- the final mass-based and concentration-based WQBELs for copper, lead and zinc allow increased loadings during dry weather; and
- the final mass-based WQBEL for lead allows increased loading during wet weather.

Although these revisions to the WQBELs allow increased loadings of copper, lead, and zinc, these changes do not constitute backsliding because the revised TMDL on which they are based used site-specific information to recalculate the WLAs, which did not change the intended level of protection. During the 2013 reconsideration, the Los Angeles Water Board evaluated additional, more recent flow data, hardness data, and dissolved to total metals ratios. These robust data sets resulted in adjustments to flow rates, hardness and conversion factors that compelled revisions to the dry- and wet-weather numeric targets. The dry-weather numeric targets for copper, lead and zinc increased, which in turn increased the dry-weather WLAs for copper, lead and zinc. Likewise, the wet-weather numeric target for lead increased, which increased the wet-weather WLA for lead.⁸¹ The WQBELs in the Order are equal to the revised WLAs.

Even if anti-backsliding applies, each of these changes meets the anti-backsliding exception set forth in CWA section 303(d)(4)(A). Section 303(d)(4)(A) of the CWA allows relaxation of effluent limits in non-attainment waters if “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 the CWA. These revisions were made in accordance with the revised WLAs in the revised TMDL, which will assure the attainment of water quality standards for copper, lead and zinc in dry weather, and for lead in wet weather. Attainment of these water quality standards will occur within a reasonable time frame, set forth in the implementation schedule.

c. Los Angeles River Nitrogen Compounds and Related Effects TMDL

The 2012 Permit for the County of Los Angeles incorporated WQBELs consistent with the assumptions and requirements of the Los Angeles River (LAR) Nitrogen Compounds and Related Effects TMDL (LAR Nitrogen TMDL) (Resolution NO. R03-009).⁸² In 2012, the Los Angeles Water Board reconsidered and revised the LAR Nitrogen TMDL to incorporate site-specific, seasonal objectives for ammonia, expressed as temperature- and pH-dependent equations for Reaches 3-5 of the river and Rio Hondo Reach 3. (Resolution No. 12-010). These revisions became effective on August 7, 2014. The Order therefore updates the numeric WQBELs consistent with the assumption and requirements of the 2012 revisions of the LAR Nitrogen

⁸¹ The wet-weather numeric targets for copper and zinc decreased which resulted in a decrease of the wet-weather WLAs for copper and zinc. (Section 3.1.5.1, pp. 15-16 of the Staff Report.)

⁸² The implementation plan for LAR Nitrogen TMDL was amended by Resolution No. 03-016 to align certain interim ammonia WLAs with planned construction projects. The TMDL remained unchanged in all other respects.

TMDL. The updated WQBELs were calculated using three years of site-specific temperature and pH data (1/1/2018 - 12/31/2020) consistent with the WLA equations and implementation provisions in the 2012 revised TMDL.

The original LAR Nitrogen TMDL included numeric targets and WLAs for ammonia based on U.S. EPA's "1999 Update of Ambient Water Quality Criteria" for Ammonia. EPA's updated ammonia criteria included thirty-day average water quality objectives that are a function of temperature and pH, which can affect ammonia toxicity to fish. The objectives are thus expressed as equations. There are separate equations for waterbodies with and without early life stages of fish, which are more sensitive to ammonia. The more stringent equation applies to waterbodies with early life stages of fish. The 1999 Update also allows for the development of a water effects ratio (WER) to adjust the equation. WERs account for site-specific conditions that also affect ammonia toxicity. In the absence of site-specific information, a default WER of 1.0 is used. At the time of the LAR Nitrogen TMDL adoption in 2003, the Basin Plan did not specifically identify, which reaches in the Los Angeles Region, where early life stages of fish were present or absent. As such, the numeric targets and WLAs for ammonia in the original LAR Nitrogen TMDL assumed that early life stages of fish were absent in the Los Angeles River watershed.⁸³ Additionally, the numeric targets and WLAs for ammonia in the TMDL were calculated using the default WER value of "1" because a WER study was still under development.

In 2005 and 2007, the Los Angeles Water Board adopted seasonal, site-specific ammonia objectives for the San Gabriel, Los Angeles, and Santa Clara River Watersheds.⁸⁴ These objectives became effective on April 5, 2007 and April 23, 2009, respectively, changing the previous 30-day average ammonia objective in Chapter 3 of the Basin Plan for a subset of inland surface waters, including Reaches 3-5 of the LAR and Reach 3 of the Rio Hondo, upstream of Whittier Narrows Dam. The new site-specific objectives incorporated WERs for these reaches and defined seasonal periods of early life stages of fish presence and absence in these reaches.⁸⁵

In 2012, the LAR Nitrogen TMDL was revised to conform the numeric targets and WLAs with the updated seasonal, site-specific objectives for Los Angeles River Reaches 3-5, and Rio Hondo Reach 3, upstream of Whittier Narrows Dam. Specifically, the TMDL's thirty-day average numeric targets and associated WLAs for Los Angeles River Reaches 3-5, and Rio Hondo Reach 3 were changed to the site-specific equations for "early life stages (of fish) present" and "early life stages (of fish) absent" periods. These equations incorporate a site-specific WER value and are temperature and pH dependent. The TMDL notes that it would be consistent with the assumptions

⁸³ TMDL for Nitrogen Compounds and Related Effects, Los Angeles River and Tributaries, Staff report (May 2, 2003; Revised July 10 2003) p. 37.

⁸⁴ Resolution R07-005

⁸⁵ "The SSOs are based on the results of a WER study completed by the City of Los Angeles, County Sanitation Districts of Los Angeles County, and the City of Burbank. These SSOs, in addition to ammonia SSOs for the San Gabriel and Santa Clara River watersheds, were previously incorporated into the Basin Plan by resolution 2007-005, adopted by the Regional Board on June 7, 2007. By adopting the SSOs into the Basin Plan, they are now the applicable ammonia water quality objectives for the rivers and reaches to which they apply." (December 6, 2012, Final Staff Report p. 3.) See also Basin Plan page 3-14 and 3-15.

and requirements of the TMDL to translate the WLA into effluent limitations by using the past three years of temperature and pH data.⁸⁶

The Order calculates the 30-day average ammonia WQBELs in the LAR watershed using the site-specific, seasonal objectives for Los Angeles River Reaches 3-5, and Rio Hondo Reach 3, upstream of Whittier Narrows Dam. Three years of temperature and pH data was obtained from receiving water monitoring from the Donald C. Tillman Water Reclamation Plant (WRP), the Los Angeles-Glendale WRP, and the Whittier Narrows WRP. Based on these calculations the 30-day effluent limitations for total ammonia when “early life stages present” and when “early life stages absent” increased in the Los Angeles River Reaches 3-5 and Rio Hondo Reach 3. Although the revisions to the ammonia WQBELs in the Order allow increased loadings of ammonia, these changes do not constitute backsliding because the updated WQBELs are based on site-specific information that achieve the same intended level of protection. The revised WLAs are still based on the same ammonia criteria equations. The WER term in the equations has merely been updated to reflect site-specific conditions and recent data have been inserted into the equations to calculate the WQBELs.

But even if the changes described above were subject to CWA section 402(o)'s anti-backsliding provisions, the revisions to these WQBELs comply with CWA section 304(d)(4)(A). Section 303(d)(4)(A) of the CWA allows relaxation of effluent limits in non-attainment waters if “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 the CWA. Here, the water quality objective itself was adjusted, and the revised TMDL reflects this. Any changes to WQBELs are recalculated as directed in the TMDL. Compliance with the WQBELs will therefore ensure the attainment of the site-specific objectives for ammonia in these four reaches of surface waters, within a reasonable time frame set forth in the implementation schedule.

d. Los Angeles River and Tributaries Metals TMDL

The 2012 Permit for the County of Los Angeles incorporated WQBELs consistent with the assumptions and requirements of the Los Angeles River and Tributaries Metals (LAR Metals TMDL).⁸⁷ In 2015, the Los Angeles Water Board reconsidered and revised the LAR Metals TMDL to incorporate site-specific water-effect ratios for calculating the copper water quality objectives and site-specific water quality objectives for lead for a number of reaches in the Los Angeles River watershed. (Resolution No. 15-004). The site-specific copper WERs and lead water quality objectives and revisions to the TMDL became effective on December 12, 2016. U.S. EPA withdrew the previously effective water quality criteria for lead from the California Toxics Rule (CTR) for the portions of the Los Angeles River watershed subject to the TMDL, effective November 15, 2018. The Order updates the WQBELs for copper and

⁸⁶ Basin Plan p. 7-91.

⁸⁷ The Los Angeles Water Board approved the LAR Metals TMDL in 2007 (Resolution No. R2007-0014). A TMDL revision applicable to POTWs was adopted in 2010 (R10-003). The revised TMDL became effective on November 3, 2011.

lead in the reaches identified in Table F-21 consistent with the assumptions and requirements of the revised LAR Metals TMDL. Although the revisions to these WQBELs allow increased loadings of copper and lead, the increased loadings do not constitute backsliding because the WQBELs provide the same level of intended protection and are no less stringent as described below.

i. Copper

The numeric targets and WLAs for the LAR Metals TMDL are based on the water quality objectives for copper in the CTR. The CTR water quality objectives for copper are expressed as equations, which include a term called a water effect ratio or WER. The WER reflects the effect that local site water constituents have on the toxicity of copper. The CTR equation includes a default WER of 1.0, which assumes that metals are equally toxic in local site water as they are in lab water. The WER may be adjusted using a properly conducted WER study. A WER greater than 1.0 means the local site water reduces the toxicity of copper and a WER less than 1.0 means that local site water increases the toxicity of copper. The numeric targets and WLAs for copper in the LAR Metals TMDL were based on a default WER value of 1.0.

The LAR Metals TMDL was revised in 2015 based on the results of a properly conducted WER study for Reaches 1, 2, 3, and 4 of the Los Angeles River, Compton Creek, Rio Hondo, Arroyo Seco, Verdugo Wash, Burbank Western Channel and Tujunga Wash.⁸⁸ The TMDL recalculated the numeric targets and WLAs for copper to reflect site-specific WERs for copper, as determined by the study.

The WQBELs in the Order are equal to the WLAs for copper in the revised LAR Metals TMDL. Incorporating WQBELs equal to the revised WLAs does not change the intended level of protection because the revised WLAs are still based on the same CTR equation for copper -- only the WER term in the equation has been updated to reflect site-specific conditions. The updated WQBELs merely reflect the fact copper is less toxic to aquatic life in the Los Angeles River receiving waters than it is in lab water.

ii. Lead

The numeric targets and WLAs for lead in the LAR Metals TMDL are based on the water quality objectives for lead in the CTR, which are based on a national toxicity dataset. U.S. EPA allows for the derivation of site-specific objectives using the Recalculation Procedure.⁸⁹ The Recalculation Procedure provides a method for adjusting the national dataset based on more recent toxicity studies.

The LAR Metals TMDL was revised in 2015 to incorporate recalculated lead water quality objectives based on the results of a special study that followed the Recalculation Procedure.⁹⁰ The study recalculated the acute

⁸⁸ Final Report: Copper Water-Effect Ratio Study to Support Implementation of the Los Angeles River and Tributaries Metals TMDL (2014)

⁸⁹ USEPA Water Quality Standards Handbook: Second Edition (1994)

⁹⁰ Final Lead Recalculation Report to Support Implementation of the Los Angeles River and Tributaries Metals TMDL (2014)

and chronic lead objectives for portions of the Los Angeles River using an expanded nation-wide dataset provided by U.S. EPA. The recalculated objectives were compared to toxicity data for species of interest in the Los Angeles River Watershed to ensure the objectives were protective of local species. The TMDL updated the numeric targets and WLAs based on the recalculated lead objectives.⁹¹ The resulting numeric targets and WLAs for lead were greater than the numeric targets and WLAs in the original LAR Metals TMDL. The WQBELs in the Order are based on the updated WLAs. Although the WQBELs for lead increased from the 2012 Los Angeles MS4 Permit, these effluent limitations are not less stringent. These effluent limitations are based on site-specific numeric targets and WLAs, which were based on an updated toxicity dataset and the recalculation of the water quality objectives following U.S. EPA guidelines. The study showed that the recalculated objectives for lead are protective of aquatic life, and the U.S. Fish and Wildlife Service agreed that the objectives would not likely adversely affect any listed threatened or endangered species or their critical habitat.⁹²

Conclusion. Even if anti-backsliding applies to the revised copper and lead WQBELs discussed above, each of these changes meets the anti-backsliding exception set forth in CWA section 303(d)(4)(A). Section 303(d)(4)(A) of the CWA allows relaxation of effluent limits in non-attainment waters if “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 the CWA. These revisions were made in accordance with the revised WLAs in the revised TMDL, which will ensure the attainment of water quality standards for copper and lead. Attainment of these water quality standards will occur within a reasonable time frame set forth in the implementation schedule.

e. Middle Santa Ana River Watershed Bacterial Indicator TMDL

The Order removes the Middle Santa Ana River Watershed Bacterial Indicator TMDL (MSAR Bacteria TMDL) WQBELs applicable to the cities of Claremont’s and Pomona’s MS4. Claremont and Pomona are subject to regulations by the Los Angeles Water Board and Santa Ana Water Board. To streamline regulatory requirements, Water Code section 13228 authorizes persons regulated by more than one regional water board to request designation of a single regulator. In 2013, the Los Angeles Water Board and the Santa Ana Water Board agreed to designate the Santa Ana Water Board as the single regulator of discharges of bacteria by Claremont and Pomona through their MS4s to the receiving waters within the Middle Santa Ana River Watershed.⁹³ On September 13, 2013, the Santa Ana Water Board adopted Order No. R8-2013-0043 (NPDES No. CA8000410) to implement the MSAR Bacteria TMDL. Accordingly, the WQBELs implementing the MSAR Bacteria

⁹¹ Section 4.2, pp. 8-9 of the Staff Report.

⁹² 83 Fed. Reg. 52166-52168 (Oct. 16, 2018).

⁹³ May 31, 2013 letter and memorandum of understanding by and between Los Angeles Water Board and Santa Ana Water Board (signed by Samuel Unger, Executive Officer, Los Angeles Water Board, and Kurt Berchtold, Executive Officer, Santa Ana Water Board).

TMDL are removed from the Order. Because the cities of Pomona and Claremont are still subject to these WQBELs through another permit, no backsliding has occurred.

3. WQBEL Revisions that Fall Within an Exception to Backsliding

a. Ballona Creek Metals TMDL

As previously discussed, the Ballona Creek Metals TMDL was reconsidered and revised in 2013. In addition to the changes to copper, lead and zinc set forth above, the revised 2013 Ballona Creek Metals TMDL removed WLAs for selenium because the receiving water is no longer considered impaired for selenium. In making this determination, the Los Angeles Water Board considered recent selenium data as well the data considered during the adoption of the Ballona Creek Metals TMDL in 2008. These data were evaluated pursuant to the State Water Board's Water Control Policy for Developing California's Clean Water Act Section 303(d) List (Listing Policy), which uses a weight of the evidence approach to evaluate whether to place waters on, or remove waters from, the 303(d) List. The reexamined data satisfied the delisting requirements in Table 4.1 of the Listing Policy and the Los Angeles Water Board approved removing selenium from the Ballona Creek Metals TMDL.

The Order therefore removes the selenium WQBELs for Ballona Creek Reach 2. Removal of the selenium WQBELs for Ballona Creek Reach 2 in the Order satisfies the anti-backsliding exception set forth in CWA section 303(d)(4)(B) because this reach is no longer impaired for selenium and MS4 discharges will not result in degradation. With the reconsideration of the TMDL, the Los Angeles Water Board determined that existing in stream beneficial uses and the level of water quality necessary to protect the beneficial uses would be maintained if selenium WLAs, and associated WQBELs, were removed. Even though there might be some discharges of selenium to Ballona Creek, any such discharges will be limited or minor with respect to the assimilative capacity of Ballona Creek and will not result in any long-term deleterious effects on water quality as shown in the water quality data assessment for the TMDL revision. (See, also, discussion in Fact Sheet, Part III.H, supra.) Furthermore, MS4 dischargers are still required to comply with receiving water limitations in Part V of the Order and are required to monitor for selenium in the Order. Continued monitoring for selenium ensures that any adverse changes in water quality with respect to selenium will be caught and corrected.

b. Ballona Creek Estuary Toxics TMDL

The 2012 Los Angeles County Permit incorporated numeric WQBELs consistent with the assumptions and requirements of the Ballona Creek Toxics TMDL (Resolution No. R05-008). In 2013, the Los Angeles Water Board reconsidered and revised this TMDL (Resolution No. R13-010). The revised TMDL became effective in 2015. The Order updates the numeric WQBELs consistent with the assumptions and requirements of the revised Ballona Creek Toxics TMDL. Specifically:

- the WQBELs for sediment for Chlordane and total DDTs were increased and
- the WQBELs for total PAHs were removed.

The rationale for these revisions is as follows:

i. Chlordane and DDTs

The numeric targets and WLAs for metals and organic pollutants in the Ballona Creek Estuary Toxics TMDL were originally based on National Oceanic and Atmospheric Administration's (NOAA) sediment quality guidelines. In 2009, the State Water Board adopted its Water Quality Control Plan for Enclosed Bays & Estuaries – Part 1 Sediment Quality (Sediment Quality Plan). The Sediment Quality Plan includes (1) a narrative sediment objective to protect benthic communities, and (2) a narrative sediment objective to protect human health. The Sediment Quality Plan established a methodology based on integrating multiple lines of evidence (MLOE) to determine whether the narrative sediment objective for benthic communities is achieved. This assessment is sometimes called a “direct effects” assessment for the direct effect of contaminants on benthic organisms and does not include an assessment of the “indirect effects” of contaminants transferring up the food chain to fish, which can impact human health.⁹⁴ The Sediment Quality Plan directed the State and Regional Water Boards to implement the narrative sediment objective to protect human health on a case-by-case basis, based upon a human health risk assessment.⁹⁵

During the reconsideration, the Los Angeles Water Board evaluated Ballona Creek Estuary using the MLOE approach in the Sediment Quality Plan. This evaluation indicated that at least one station in the Ballona Creek Estuary exceeded the sediment objectives for benthic communities.⁹⁶ The Los Angeles Water Board also considered the results of a Toxicity Identification Evaluation study conducted in 2010 (2010 TIE). This study found that the principal source of sediment toxicity in the Ballona Creek Estuary was pyrethroids. Based on these studies, the Los Angeles Water Board determined that total DDTs and chlordane were not causing “direct effect” impairments to the benthic community.⁹⁷ Nonetheless, monitoring data collected as part of the TMDL coordinated monitoring plan indicated that exceedances of total DDTs and chlordane targets in sediment were ongoing.⁹⁸ Total DDTs were present in limited fish sampling.⁹⁹ And in 2009, Ballona Creek was identified a fish consumption “red zone,” with 5 fish listed as “do not eat” and 14 fish with recommended consumption limitations.¹⁰⁰ The Los Angeles Water Board therefore conducted a human health risk assessment consistent with the Sediment Quality Plan to implement the narrative sediment objective to protect human health.¹⁰¹

⁹⁴ Staff report 19-20.

⁹⁵ https://www.waterboards.ca.gov/water_issues/programs/bptcp/docs/sediment/sed_qlty_part1.pdf at p. 13.

⁹⁶ Staff report p. 22.

⁹⁷ See staff report p. 23.

⁹⁸ Staff report pp. 3 and 23.

⁹⁹ Ibid.

¹⁰⁰ Staff report pp. 24-25

¹⁰¹ https://www.waterboards.ca.gov/water_issues/programs/bptcp/docs/sediment/sed_qlty_part1.pdf at p. 13.

The Sediment Quality Plan directed regional water boards to consider any applicable and relevant information, including but not limited to the California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) policies for fish consumption and risk assessment. In 2008, OEHHA developed Fish Contaminant Goals for Chlordane and total DDTs.¹⁰² During the reconsideration of the Ballona Creek Toxics TMDL, the Los Angeles Water Board replaced the direct effects numeric targets for chlordane and total DDTs in sediment with indirect effects numeric targets for chlordane and total DDTs in sediment using OEHHA's Fish Contaminant Goals. The new numeric targets and resulting WLAs for chlordane and total DDTs increased.¹⁰³ The WQBELs for chlordane and DDTs in the Order have been adjusted accordingly.

The changes described above meet the anti-backsliding exception set forth in CWA section 303(d)(4)(A) because any relaxation of the WQBELs for chlordane and total DDTs in the Order was made as a result of the reconsidered TMDL. Although the waters remain impaired, the changes to the WQBELs are consistent with the assumptions and requirements of the WLAs in the revised TMDL. The revised TMDL's limits are designed to attain water quality standards, and the WQBELs ensure this will happen within a reasonable time frame.

ii. Total PAHs

In addition to the foregoing, the numeric targets and WLAs for total PAHs were removed from the Ballona Creek Estuary Toxics TMDL in the 2013 reconsideration. Removal was based on application of criteria in the Listing Policy to sediment samples collected since the adoption of the TMDL in 2005. The reexamined data satisfied the delisting requirements in Table 4.1 of the Listing Policy and the Los Angeles Water Board approved removing total PAHs from the Ballona Creek Toxics TMDL.

Removal of total PAHs from the Order satisfies the exception to anti-backsliding in CWA section 303(d)(4)(B). The waters here are no longer impaired for total PAHs, and MS4 discharges will not result in degradation. With the reconsideration of the TMDL, the Los Angeles Water Board determined that existing in stream beneficial uses and the level of water quality necessary to protect the beneficial uses would be maintained if total PAH WLAs, and associated WQBELs, were removed. There have been no exceedances in any of the samples collected and analyzed, but even if there might be some discharges, any such discharges will be limited or minor with respect to the assimilative capacity of Ballona Creek. (See, also, discussion in Fact Sheet, Part III.H, supra.) Furthermore, MS4 dischargers are still required to comply with receiving water limitations in Part V of the Order and are required to monitor for total PAHs in the Order. Continued monitoring for total PAHs

¹⁰² Fish Contaminant Goals and Advisory Tissue Levels for Common Contaminants in California Sport Fish: Chlordane, DDTs, Dieldrin, Methylmercury, PCBs, Selenium, and Toxaphene" (FCGs), at <https://oehha.ca.gov/fish/report/fish-contaminant-goals-and-advisory-tissue-levels-evaluating-methylmercury-chlordane>.

¹⁰³ The numeric targets, WLA, and LAs for total PCBs are more stringent after the revision to the TMDL.

in sediment will ensure that any adverse changes in water quality with respect to total PAHs in sediment will be caught and corrected.

c. Colorado Lagoon TMDL

The 2012 Los Angeles County Permit incorporated WQBELs for lead, zinc, total chlordane, dieldrin, total PAHs, total PCBs, and Total DDTs consistent with the assumptions and requirements of the Colorado Lagoon TMDL. The Order removes these WQBELs for two discharge points: Termino Avenue and Line M because these two storm drains were physically rerouted such that they no longer discharge into the Colorado Lagoon. These alterations, which were structural changes to the MS4 itself, are “material and substantial alterations or additions to the permitted facility” and justify the application of a less stringent effluent limitation under CWA section 402(o)(2)(A).

d. Revolon Slough and Beardsley Wash Trash TMDL

The 2010 Ventura County Permit incorporated WQBELs of zero trash consistent with the assumptions and requirements of the Revolon Slough and Beardsley Wash Trash TMDL (Resolution No. 2007-007; Revolon/Beardsley Trash TMDL). The Revolon/Beardsley Trash TMDL required MS4 responsible entities to address discharges of trash from **all** land uses with full capture systems, or other lawful manner.¹⁰⁴ The Order revises the WQBELs to apply to discharges from priority land uses only. The rationale for this revision is as follows.

In 2015, the State Water Board adopted the Trash Amendments. As discussed in Part IV.B of this Fact Sheet, the Trash Amendments established a prohibition on the discharge of trash in all Waters of the State. Implementation of this discharge prohibition focuses MS4 compliance efforts on high trash generation areas or “priority land uses.” The Trash Amendments do not apply to waterbodies with a TMDL in effect prior to the effective date of the Trash Amendments (December 2, 2015). However, the State Water Board directed the Los Angeles Water Board to reconsider whether its existing trash TMDLs could be aligned with the Trash Amendments to focus on priority land use areas only.

In 2018, the Los Angeles Water Board reconsidered the Revolon/Beardsley Trash TMDL in light of the statewide Trash Amendments. The revised TMDL became effective on May 6, 2020. The Los Angeles Water Board concluded that a focus on priority land use areas would attain the numeric target of zero trash in the Revolon Slough/Beardsley subwatershed as long as nonpoint source responsible entities implemented Minimum Frequency of Assessment and Collection Program (MFAC) programs in the impaired waters downstream to address any potential trash discharged from nonpriority land uses. The TMDL revised the implementation provisions for the WLAs to require full capture systems for storm drains that capture runoff from priority land uses. This amounts to a reduction in the amount of full capture systems installed in the subwatershed. The Order incorporates WQBELs consistent with the revised implementation provisions for the TMDL.

¹⁰⁴ See page 3 of Attachment A to Resolution No. 2007-007 (Revolon Slough and Beardsley Wash Trash TMDL).

The changes described above meet the anti-backsliding exception set forth in CWA section 303(d)(4)(A) because any relaxation of the WQBELs in the Order for trash are a result of the reconsidered TMDL. Although the waters remain impaired, the revised TMDL determined that implementation of full capture systems to address priority land uses only will attain the numeric target of zero trash for Revolon Slough and Beardsley Slough provided that nonpoint source responsible entities implement MFAC programs in the impaired waters downstream.¹⁰⁵ Changes to the WQBELs consistent with the assumptions and requirements of the revised TMDL will ensure attainment of the water quality standard and is therefore permissible consistent CWA section 303(d)(4)(a).

e. Malibu Creek Watershed Trash TMDL

The 2012 Los Angeles County Permit incorporated WQBELs of zero trash consistent with the assumptions and requirements of the Malibu Creek Watershed Trash TMDL (Resolution No. 2008-007; Malibu Trash TMDL). The Malibu Trash TMDL required MS4 responsible entities to address discharges of trash from **all** land uses with full capture systems, or other lawful manner.¹⁰⁶ The Order revises the WQBELs to apply to discharges from priority land uses only. The rationale for this revision is as follows.

The Malibu Trash TMDL was revised at the same time and in the same manner as the Revolon Slough/Beardsley Wash TMDL discussed above (Resolution No. R4-2018-006). The revised TMDL became effective on May 6, 2020. Similar to the Revolon Slough/Beardsley Wash TMDL, the Los Angeles Water Board concluded it was appropriate to align the Malibu Trash TMDL with the Statewide Trash Amendments because installation of full capture devices in the priority land use areas would attain the numeric target of zero trash in the Malibu Creek watershed as long as nonpoint source responsible entities implement MFAC programs are in place in the impaired waters downstream to address any potential trash discharged from nonpriority land uses.¹⁰⁷ The WQBELs of zero trash in the Order are limited to discharges from “priority land use areas” to Malibu Creek, Malibu Lagoon, Malibu Lake, Medea Creek (Reach 1 and Reach 2), Lindero Creek (Reach 1 and Reach 2), Lake Lindero, and Las Virgenes Creek of the Malibu Creek Watershed, instead of the whole Malibu Creek Watershed.

The changes described above meet the anti-backsliding exception set forth in CWA section 303(d)(4)(A) because any relaxation of the WQBELs in the Order for trash are a result of the reconsidered TMDL. Although the waters remain impaired, the revised TMDL determined that implementation full capture systems to address priority land uses only will attain the numeric target of zero trash for Malibu Creek Watershed provided that nonpoint source responsible entities implement MFAC programs in the impaired waters downstream.¹⁰⁸ Changes to the WQBELs consistent with the assumptions and requirements of the revised TMDL will ensure attainment of the water quality standard and is therefore permissible consistent CWA section 303(d)(4)(a).

¹⁰⁵ Page 23 of the Staff Report.

¹⁰⁶ See page 3 of Attachment A to Resolution No. 2007-007 (Revolon Slough and Beardsley Wash Trash TMDL).

¹⁰⁷ Page 44 of the Staff Report.

¹⁰⁸ Page 44 of the Staff Report.

f. Upper Santa Clara River Chloride TMDL

The Order relieves Ventura County Permittees from compliance with the chloride limits in the Upper Santa Clara River Chloride TMDL for Reaches 4B and 5 of the Santa Clara River, because the MS4s are not discharging into those Reaches. Removal is consistent with both CWA section 303(d)(4)(A)(i) and section 402(o)(B)(i).

The TMDL for Chloride in the Upper Santa Clara River was originally adopted in 2003 and went into effect in 2005. It was revised in 2008 and 2014, and the revisions went into effect in 2009 and 2015, respectively.

In drafting the Order, the Los Angeles Water Board examined the evidence and found that Ventura County Permittees have no MS4s that discharge into the chloride impaired reaches of the Upper Santa Clara River. Reach 5 falls partially within Ventura County, but Ventura County Permittees do not have any MS4 discharges to the portion of Reach 5 that falls within Ventura County.¹⁰⁹ Therefore, the Order assigns chloride WQBELs for discharges to Reach 5 exclusively to Los Angeles County Permittees draining to Reach 5. For Reach 4B, although it is completely within Ventura County¹¹⁰, there are no MS4 discharges from Ventura County Permittees to Santa Clara River Reach 4B. Removal of the limits for Ventura County MS4 Facilities in the Order is therefore consistent with CWA section 303(d)(4) because removal will have no impact on the cumulative impact or effect of chloride loading in the Upper Santa Clara River. Put differently, the “cumulative effect” of this revised WLA for Ventura County Permittees will assure attainment of the water quality objectives, since they are not discharging through their MS4s to the Upper Santa Clara River.

g. U.S. EPA Established - Santa Clara River Reach 3 Chloride TMDL

The 2010 Ventura County MS4 Permit has a WQBEL of 80 mg/L for discharges of chloride to Santa Clara River Reach 3. The Order revises the WQBEL from 80 mg/L to 100 mg/L. Revisions to WQBELs in attainment waters are permitted provided the change is consistent with the antidegradation policy pursuant to CWA section 303(d)(4)(B). The revision of the chloride WQBEL is consistent with the antidegradation policies for the following reasons:

The Santa Clara River Reach 3 Chloride TMDL intended to assign a WLA for chloride equal to the applicable water quality objective in the Basin Plan. At the time this TMDL was established on June 18, 2003, the Basin Plan Objective for Santa Clara River Reach 3 was 80 mg/L for chloride. In 2004, the Los Angeles Water Board changed the water quality objective for Santa Clara River Reach 3 from 80 mg/L to 100 mg/L (Resolution R03-015, effective on 8/4/2004). The TMDL on page 20, Section 10: Implementation Recommendations, states the following: “EPA understands that the State is in the process of reviewing and revising upward the numeric water quality objective for chloride in Santa Clara River Reach 3. Based on our review of the data used to support the State’s listing of Reach 3 for chlorides on the 2002 California Section 303(d) list, it appears possible that this Reach would

¹⁰⁹ Ventura County GIS data and MS4 drainage area maps (July 15, 2016)

¹¹⁰ Ventura County GIS data and MS4 drainage area maps (July 15, 2016)

not exceed water quality standards if the objective is raised to 100 mg/L as proposed by the State. EPA believes it would be reasonable for the State to defer full implementation of the TMDL for Reach 3 until this objective change is completed. If the State does not complete its proposed action to raise the chloride objective for Reach 3, the State should determine the appropriate means of implementing the TMDL through its NPDES permitting decisions and other programs to address nonpoint sources for which allocations are included in this TMDL”. The change to the Water Quality Objective was inadvertently not considered during the issuance of the 2010 Ventura County MS4 Permit. The Santa Clara River Reach 3 WQBEL of 80 mg/L in the 2010 Ventura County MS4 Permit has been revised to 100 mg/L in the Order to align it with the water quality objective in the Basin Plan. This is consistent with the assumptions and requirements of the TMDL to implement the applicable water quality objective, which is currently being met (see Part VI.F.2.b of this Fact Sheet). Additionally, because compliance with the revised WQBEL still requires compliance with the applicable water quality objective for this reach it will not result in degradation and is consistent with the antidegradation policies. Therefore, this revision is permissible consistent CWA section 303(d)(4)(B).

h. Santa Clara River Estuary and Reaches 3, 5, 6 and 7 Indicator Bacteria TMDL

The 2012 Los Angeles County MS4 Permit incorporated WQBELs for *E. coli* for MS4 discharges to Santa Clara River Reaches 5, 6, and 7. The WQBELs were applied at the outfalls and Permittees were not allowed any exceedance days. For Los Angeles County Permittees, this Order incorporates the following exceedance days at the outfall for the daily maximum single sample objectives:

| Constituent | Daily Maximum Single Sample Objectives for Santa Clara River Reaches 5 and above (MPN or cfu) |
|----------------|---|
| <i>E. coli</i> | 235/100 mL |

| Location | Time Period | Interim Annual Allowable Exceedance Days of the Single Sample Objectives | | |
|---------------------------------------|--|--|-----------------|--------------------------------|
| | | Daily Sampling | Weekly Sampling | 3 Wet and 2 Dry weather events |
| Santa Clara River Reaches 5 and above | Dry Weather (November 1 to October 31) | 17 | 3 | 1 |
| | Wet Weather (November 1 to October 31) | 61 | 9 | 1 |

| Location | Time Period | Final Annual Allowable Exceedance Days of the Single Sample Objectives | |
|---------------------------------------|---|--|-----------------|
| | | Daily Sampling | Weekly Sampling |
| Santa Clara River Reaches 5 and above | Dry Weather (November 1 to October 31) | 5 | 1 |
| | Wet Weather (November 1 to October 31) | 16 | 3 |

The allowable exceedance days applied at the outfalls were erroneously omitted from the 2012 Los Angeles County MS4 Permit. Implementation of allowable exceedance days at the outfall in this permit is less stringent than the previous 2012 Los Angeles County MS4 Permit because Los Angeles County Permittees may exceed the daily maximum single sample objective per the allowable exceedance days as outlined in the above tables without violating the permit. However, allowing exceedance days is consistent with the TMDL and allowed pursuant to CWA section 303(d)(4)(A) for the following reason—when the TMDL was adopted it specifically contemplated application of exceedance days at the outfall in its implementation plan. Chapter 7, section 7-36 of the Basin Plan under the heading “Monitoring to Determine Compliance”, states, “Responsible jurisdictions and agencies shall assess compliance *at the outfall monitoring sites* identified in the implementation plan. Compliance shall be based on the allowable number of *exceedance days*...” (Basin Plan, p. 7-436.) Applying the allowable exceedance days to WQBELs measured at the outfalls is therefore consistent with the assumptions and requirements of the applicable TMDL WLAs and will ensure attainment of the water quality standard. As such, this revision is permissible under CWA section 303(d)(4)(A).

J. Human Right to Water Law

The Order is consistent with Water Code section 106.3 which establishes the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. The Order implements Water Code section 106.3 and promotes the State Water Board’s resolution adopting the human right to water as a core value and directing its implementation in Water Board programs and activities (Resolution No. 2016-0010) by requiring receiving waters to meet adopted water quality standards that are designed to protect human health and ensure that water is safe for domestic use and by regulating discharges to minimize loading to attain the highest water quality which is reasonable, considering all demands being made on those waters and the total values involved. (Water Code, sections 13000, 13050, subdivisions (i)-(m), 13240, 13241, 13263; State Water Board Resolution No. 68-16.) The Order includes actions to improve conditions for economically distressed communities and persons experiencing homelessness.

K. Advancing Measures to Mitigate and Adapt to Climate Change

The predicted impacts of climate change in Southern California include an increase in temperatures, heightened frequency of extreme weather conditions including extreme precipitation events and drought, along with sea level rise. At the local scale, within urbanized areas, these changes may directly impact groundwater and surface water

supply; drainage, flooding, and erosion patterns; economically distressed communities; and ecosystems and habitat.

In recognition of the challenges posed by climate change, the State Water Board adopted on March 7, 2017 a resolution that requires a proactive approach to climate change in all State Water Board actions, including drinking water regulation, water quality protection, and financial assistance (Resolution No. 2017-0012). The resolution lays the foundation for a response to climate change that is integrated into all State Water Board actions, by giving direction to the State Water Board divisions and encouraging coordination with the Regional Water Boards. In conjunction with the State Water Board's Resolution, the Los Angeles Water Board adopted "A Resolution to Prioritize Actions to Adapt to and Mitigate the Impacts of Climate Change on the Los Angeles Region's Water Resources and Associated Beneficial Uses" (Resolution No. R18-004) on May 10, 2018. The resolution summarizes the steps taken so far to address the impacts of climate change within the Los Angeles Water Board and lists a series of steps to move forward. These include the identification of potential regulatory adaptation and mitigation measures that could be implemented on a short-term and long-term basis by each of the Los Angeles Water Board's programs to take into account, and assist in mitigating where possible, the effects of climate change on water resources and associated beneficial uses.

In addition, Executive Order N-10-19, signed on April 29, 2019, directs the California Natural Resources Agency (CNRA), the California Environmental Protection Agency (CalEPA), and the California Department of Food and Agriculture (CDFA) to prepare a water resilience portfolio that meets the needs of California's communities, economy, and environment, and expand and/or reassess the priorities in the California Water Action Plan. The order directs agencies to prioritize multi-benefit approaches, natural infrastructure, innovation and new technologies, regional approaches, integration across state government, and partnerships across governments.

The Order follows the guiding principles of the State and Los Angeles Water Boards resolutions (No. 2017-0012 and No. R18-004) as well as Executive Order N-10-19 by contributing to an adaptive climate change and water resilience strategy. Through multi-benefit regional projects, stormwater and non-stormwater runoff can be captured, infiltrated, and used to mitigate periodic drought conditions, reduce flood hazards and erosion rates, and recharge depleted groundwater aquifers and other water supply sources, all while reducing pollutant loads, maintaining beneficial uses in receiving waters and improving community health.

While not a requirement, to maximize these types of benefits when considering different possible approaches (management practices, locations, etc.) to achieve compliance, permittees should consider climate change offsets. The relevance of long-term implementation measures in the face of a changing climate may be considered, for example, by taking into account the results of regional climate change models in stormwater models used to develop Watershed Management Programs, or by considering BMP vulnerability to climate change when designing mitigation plans.

Overall, implementation of such a strategy has multiple benefits and may contribute to enhancing local water supply, creating drought buffer reserves, and restoring habitat and watershed health.

L. California Environmental Quality Act (CEQA)

The action to adopt an NPDES permit is exempt from the provisions of Chapter 3 of the California Environmental Quality Act (CEQA) (Public Resources Code, § 21100, et seq.) pursuant to California Water Code section 13389. (County of Los Angeles v. Cal. Water Boards (2006) 143 Cal.App.4th 985.)

M. Advancing Racial Equity

In accordance with the Water Boards' Racial Equity Initiative, formally launched on August 18, 2020, the Order requires all Permittees to meet water quality standards to protect public health and the environment, thereby benefitting all persons and communities within the Region. The Los Angeles Water Board is **committed** to developing and implementing policies and programs to advance racial equity and environmental justice so that race can no longer be used to predict life outcomes, and outcomes for all groups are improved.

N. Other Plans, Policies, and Regulations

The Order implements all other applicable federal regulations and State plans, policies, and regulations.

IV. RATIONALE FOR DISCHARGE PROHIBITIONS

A. Non-Stormwater Discharges

1. Regulatory Background

The CWA employs the strategy of prohibiting the discharge of any pollutant from a point source into waters of the United States unless the discharger of the pollutant(s) obtains an NPDES permit pursuant to CWA section 402. The 1987 amendments to the CWA included section 402(p) that specifically addresses NPDES permitting requirements for municipal discharges from MS4s. Section 402(p) prohibits the discharge of pollutants from specified MS4s to waters of the United States except as authorized by an NPDES permit and identifies the substantive standards for MS4 permits. The MS4 permits (1) "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers[]" and (2) "shall require [i] controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and [ii] such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." (CWA § 402(p)(3)(B)(ii-iii).)

On November 16, 1990, U.S. EPA published regulations to implement the 1987 amendments to the CWA (55 Fed. Reg. 47990 et seq. (Nov. 16, 1990)). The regulations establish minimum requirements for MS4 permits and address both stormwater and non-stormwater discharges from MS4s; however, the minimum requirements for each are significantly different. This is evident from U.S. EPA's preamble to the stormwater regulations, which states that "Section 402(p)(B)(3) [of the CWA] requires that permits for discharges from municipal separate storm sewers require the municipality to "effectively prohibit" non-stormwater discharges from the municipal storm sewer ... Ultimately, such non-stormwater discharges through a municipal separate storm sewer system must either be removed from the system or become subject to an NPDES permit." (55 Fed.Reg. 47990, 47995

(Nov. 16, 1990).¹¹¹ U.S. EPA states that MS4 Permittees are to begin to fulfill the “effective prohibition of non-storm water discharges” requirement by: (1) conducting a screening analysis of the MS4 to provide information to develop priorities for a program to detect and remove illicit discharges, (2) implementing a program to detect and remove illicit discharges, or ensure they are covered by a separate NPDES permit, and (3) to control improper disposal into the storm sewer. (40 CFR § 122.26(d)(2)(iv)(B).) These non-stormwater discharges therefore are not subject to the MEP standard. In its precedential decision on the 2012 Los Angeles County MS4 Permit (Order WQ 2015-0075), the State Water Board affirmed that “MEP is not the standard that governs non-storm water discharges.”¹¹²

2. Definition of Non-Stormwater

Neither the CWA nor federal regulations specifically define “non-stormwater.” The definition of “non-stormwater” is derived from the definition of “stormwater.” Federal regulations define “storm water” as “storm water runoff, snow melt runoff, and surface runoff and drainage.” (40 CFR § 122.26(b)(13).) While “surface runoff and drainage” is not defined in federal law, U.S. EPA’s preamble to the federal regulations demonstrates that the term is related to precipitation events such as rain and/or snowmelt. (55 Fed.Reg. 47990, 47995-96 (Nov. 16, 1990)). For example, U.S. EPA states:

In response to the comments [on the proposed rule] which requested EPA to define the term ‘storm water’ broadly to include a number of classes of discharges which are not in any way related to precipitation events, EPA believes that this rulemaking is not an appropriate forum for addressing the appropriate regulation under the NPDES program of such non-storm water discharges Consequently, the final definition of storm water has not been expanded from what was proposed.

(*Ibid.*) The stormwater regulations themselves identify numerous categories of discharges including landscape irrigation, diverted stream flows, discharges from drinking water supplier sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, and street wash water as “non-stormwater.” While these types of discharges may be regulated under stormwater permits, they are not considered stormwater discharges. (40 CFR § 122.26(d)(2)(iv)(B)). U.S. EPA states that, “in general, municipalities will not be held responsible for prohibiting some specific components of discharges or flows . . . through their municipal separate storm sewer system, *even though such components may be considered non-storm water discharges...*” (emphasis added). However, where certain categories of non-stormwater discharges are identified by the Permittee (or the Los Angeles Water Board) as needing to be addressed, they are no longer exempt and become subject to the effective prohibition requirement in CWA section 402(p)(3)(B)(ii). This review of the stormwater regulations and U.S. EPA’s discussion of the definition of stormwater in its preamble to these regulations strongly supports the interpretation that stormwater includes only precipitation-related discharges. Therefore, non-precipitation related discharges are not

¹¹¹ U.S. EPA further states that, “[p]ermits for such [non-storm water] discharges must meet applicable technology-based and water-quality based requirements of Sections 402 and 301 of the CWA.” (55 Fed. Reg. 47990, 48037 (Nov. 16, 1990)).

¹¹² State Water Board Order WQ 2015-0075, p. 62.

stormwater discharges and, therefore, are not subject to the MEP standard in CWA section 402(p)(3)(B)(iii). Rather, non-stormwater discharges shall be effectively prohibited pursuant to CWA section 402(p)(3)(B)(ii), as discussed further in the next two sections.

While federal regulations have no definition for “non-stormwater discharges,” “illicit discharges” defined in the regulations is the most closely applicable definition and the terms are often used interchangeably. “Illicit discharge” is defined by U.S. EPA as “any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit . . . and discharges resulting from firefighting activities.”¹¹³ The program must include among other elements a program to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the MS4. The program is to address all types of illicit discharges, however the federal regulations specifically identify the following categories of non-stormwater discharges to be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the United States: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR § 35.2005(20)) to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water...¹¹⁴ Accordingly, federal regulations require that non-stormwater discharges be controlled if they are a significant source of pollutants and the permitting authority is expected to include permit conditions to prohibit or control specified categories of non-stormwater discharges if they are determined to be a source of pollutants to waters of the United States.

3. Non-Stormwater Regulation

Non-stormwater discharges from the MS4 that are not authorized by separate NPDES permits, nor specifically exempted, are subject to requirements under the NPDES program, including discharge prohibitions, technology-based effluent limitations and water quality-based effluent limitations (40 CFR § 122.44). U.S. EPA’s preamble to the stormwater regulations also supports the interpretation that regulation of non-stormwater discharges through an MS4 is not limited to the MEP standard in CWA section 402(p)(3)(B)(iii):

“Today’s rule defines the term ‘illicit discharge’ to describe any discharge through a municipal separate storm sewer system that is not composed entirely of storm water and that is not covered by an NPDES permit. Such illicit discharges are not authorized under the Clean Water Act. Section 402(p)(3)(B) requires that permits for discharges from municipal separate storm sewers require the municipality to ‘effectively prohibit’ non-storm water discharges from the municipal separate storm sewer...Ultimately, such non-storm water discharges through a municipal separate storm

¹¹³ *Id.*, § 122.26(b)(2). The preamble to the regulations states: “Today’s rule defines the term ‘illicit discharge’ to describe any discharge through a municipal separate storm sewer system that is not composed entirely of storm water and that is not covered by an NPDES permit.” (55 Fed. Reg. 47990, 47995 (Nov. 16, 1990))

¹¹⁴ 40 CFR § 122.26(d)(2)(iv)(B)(1).

sewer must either be removed from the system or become subject to an NPDES permit.” (55 Fed.Reg. 47990, 47995.)

In its 1990 rulemaking, U.S. EPA explained that the illicit discharge detection and elimination program requirement was intended to begin to implement the Clean Water Act’s provision requiring permits to “effectively prohibit non-stormwater discharges,” indicating that the illicit discharge detection and elimination program requirement did not constitute the full manifestation of this provision (55 Fed.Reg. 47990, 47995; see also 40 CFR § 122.26(d)(2)(i).)

U.S. EPA’s preamble to its 1990 Phase I MS4 regulations explain that the “effective prohibition” means that non-stormwater discharges to MS4s require separate NPDES permits, and that such permits must meet applicable requirements of CWA sections 402 and 301, including water quality-based requirements.¹¹⁵ In response to public comments suggesting that certain types of non-stormwater discharges should not be prohibited in such a manner because they did not pose significant environmental problems, U.S. EPA stated that “[it] disagrees that the above described flows will not pose, in every case, significant environmental problems.” U.S. EPA goes on to state that “[it] is clarifying that section 402(p)(3)(B) of the CWA (which requires permits for municipal separate storm sewers to ‘effectively’ prohibit non-storm water discharges) does not require permits for municipalities to prohibit certain discharges or flows of non-storm water to waters of the United States through municipal separate storm sewers in all cases.”¹¹⁶ U.S. EPA clarified that the permitting authority (i.e., the Los Angeles Water Board here) “may include permit conditions that either require municipalities to prohibit or otherwise control any of these types of discharges where appropriate.”¹¹⁷ In addition, U.S. EPA’s MS4 Permit Improvement Guide includes the following example of MS4 permit language addressing the Permittee’s authority to require compliance by Dischargers: “Authority to Require Compliance – Require compliance with conditions in the permittee’s ordinances, permits, contracts, or orders (i.e., hold dischargers accountable for their contributions of pollutants and flows).”¹¹⁸

Notably, the alternative to conditional exemptions to discharge prohibitions in the Order is a conservative interpretation of CWA section 402(p)(3)(B)(ii), which is to require Permittees to effectively prohibit *all* non-stormwater discharges. However, this alternative is more stringent than that provided in the Order (and previous permits) and, Permittees may incur more costs to implement a prohibition of all non-stormwater discharges than to implement or ensure implementation of specified BMPs to address non-stormwater discharges that are conditionally exempt from the discharge prohibition. An example of this is implementing an effective prohibition of landscape irrigation runoff as compared to implementing a local ordinance addressing landscape irrigation efficiency along with public outreach regarding use of drought tolerant landscaping and integrated pest management to minimize landscape irrigation runoff and associated pollutants.

4. Implementation of the Effective Prohibition on Non-Stormwater Discharges

Consistent with previous MS4 permits, Part III.A of the Order requires each Permittee, for the portion of the MS4 for which it is an owner or operator, to prohibit

¹¹⁵ *Id.*, at p. 48036-48037.

¹¹⁶ *Id.*, at p. 48037.

¹¹⁷ *Id.*, at p. 48037.

¹¹⁸ U.S. EPA. *MS4 Improvement Guide* (2010), p. 11.

non-stormwater discharges through the MS4 to receiving waters except where such discharges are specifically authorized or conditionally exempt. For nearly two decades, some permittees have raised concerns with the Los Angeles Water Board's use of "through the MS4" or similar language, alleging that the Los Angeles Water Board can only prohibit or regulate non-stormwater discharges "into" the MS4 and not "from" the MS4. The Los Angeles Water Board once again concludes that its usage of "through the MS4" is appropriate to implement the CWA's effective prohibition of non-stormwater discharges.

U.S. EPA regulations and its 1990 preamble to the Phase I MS4 regulations use the terms "into," "to," "through," and "from" the MS4 interchangeably when describing the federal requirement to effectively prohibit non-stormwater discharges. As noted previously, federal regulations define illicit discharges as "any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit..."¹¹⁹ U.S. EPA in its 1990 preamble states that "[t]hese [MS4] permits are to...effectively prohibit non-storm water discharges to the municipal separate storm sewer system," and that "[t]oday's rule defines the term 'illicit discharge' to describe any discharge through a municipal separate storm sewer that is not composed entirely of storm water and that is not covered by an NPDES permit. Such illicit discharges are not authorized under the CWA. Section 402(p)(3)(B) of the CWA requires that permits for discharges from municipal separate storm sewers require the municipality to 'effectively prohibit' non-storm water discharges from the municipal separate storm sewer... Ultimately, such non-storm water discharges through a municipal separate storm sewer must either be removed from the system or become subject to an NPDES permit."¹²⁰ Further on, U.S. EPA states that "[t]he CWA prohibits the point source discharge of non-storm water not subject to an NPDES permit through municipal separate storm sewers to waters of the United States."¹²¹ In addressing comments related to various types of non-stormwater discharges, U.S. EPA again uses "through" to describe the nature of the non-stormwater discharge prohibition, stating with regard to street wash waters that "such discharges...must be addressed by municipal management programs as part of the prohibition on non-storm water discharges through municipal separate storm sewer systems."¹²² Congress' intent and U.S. EPA's phraseology in its own regulations therefore support the Los Angeles Water Board's interpretation that there is no meaningful difference with these terms, and that permittees must have adequate legal authority to control non-stormwater discharges into and from a portion of an MS4 for which it is an owner or operator.

When commenting on a draft version of the 2012 Los Angeles County MS4 Permit, U.S. EPA supported the non-stormwater discharge prohibition, which has been carried over in this Regional MS4 Permit. U.S. EPA stated:

We understand that concerns have been raised specifically on Section III.A.1 of the draft permit which requires that the permittee prohibit certain non-stormwater discharges "through" the MS4 while Section 402(p)(3)(B)(ii) of the Clean Water Act requires that the permittee prohibit discharges "into" the MS4. We support the Board's proposed language

¹¹⁹ 40 CFR § 122.26(b)(2).

¹²⁰ 55 Fed. Reg. 47990, 47995 (Nov. 16, 1990).

¹²¹ *Id.*, at p. 47996.

¹²² *Id.*, at p. 47990, 47996.

on this issue. We would note that the preamble to EPA’s 1990 stormwater regulations (55 FR 47995) itself uses the word “through” in describing the discharges which are to be prohibited. We believe this is in recognition of the fact that a discharge “into” the MS4 is tantamount to a discharge “through” the MS4 to receiving waters since the principal purpose of an MS4 is conveyance of water.¹²³

Furthermore, the Los Angeles County Superior Court upheld the language in the 2001 Los Angeles County MS4 Permit and rejected the “into” versus “from” argument where the court stated:

[A]lthough this Court recognizes that it may not always be possible to prevent something from going into the system, it probably is the cheapest method. If something does not go in, then there is no concern about it coming out the other end. If the contaminant does not enter the system, there is no need to process it at the end of the system.¹²⁴

The court further stated that the permit’s “regulation of what goes ‘into’ the storm drain does not take away from the [Permittees’] rights and needs to control the process” and set regional controls.¹²⁵

Additionally, in Order WQ 2015-0075, the State Water Board agreed with the Los Angeles Water Board and found “the variation in language to be a distinction without a difference.” It concluded “[w]hether the Los Angeles MS4 Order prohibits non-storm water discharges *into the MS4* or *through the MS4 to receiving waters*, the intent and effect of the prohibition is to prevent non-exempt non-storm water discharges from reaching the receiving waters. The legal standard governing non-storm water – effective prohibition – is not altered because the Los Angeles MS4 Order imposes the prohibition at the point of entry into the receiving water rather than the point of entry into the MS4 itself. Instructively, U.S. EPA has used the terms “into,” “from,” and “through” interchangeably when describing the prohibition.”¹²⁶

5. Authorized and Conditionally Exempt Non-Stormwater Discharges

The Order carries over provisions from previous permits exempting a limited number of authorized and conditionally exempt non-stormwater discharges from the discharge prohibition. Authorized non-stormwater discharges are those that are separately regulated by an individual or general NPDES permit, or by WDRs or a conditional waiver of WDRs for non-stormwater discharges from agricultural lands. The conditionally exempt non-stormwater discharges are only exempt provided the discharge complies with the conditions set forth in the Order. In general, these conditions require Permittees to implement, or ensure that a discharger if not a named Permittee in the Order implements, BMPs to ensure that the non-stormwater discharges are not a source of pollutants to waters of the United States. Conditions established in the Order for each of the non-stormwater discharge

¹²³ U.S. EPA Comments on Draft MS4 Permit for Los Angeles County (July 23, 2012).

¹²⁴ *In re Los Angeles County Municipal Storm Water Permit Litigation* (Sup. Ct. Los Angeles County, March 24, 2005, Case No. BS 080548), Statement of Decision from Phase I Trial on Petitions for Writ of Mandate.

¹²⁵ *Id.*, at p. 17.

¹²⁶ State Water Board Order WQ 2015-0075, p. 61.

categories ensure the protection of receiving water quality and are considered common practices.

The list of authorized and conditionally exempt non-stormwater discharges is similar, but not identical, to the previous permits. The Order conforms the exemptions for Ventura County, Los Angeles County, and the City of Long Beach and most closely matches provisions in the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit. The primary changes are as follows:

- The Order carries over the 2010 Ventura County MS4 Permit's exemption for discharges from irrigated agriculture covered by WDRs or a conditional waiver of WDRs;
- The Order carries over the 2014 City of Long Beach MS4 Permit's exemption for short-term releases of potable water with no dyes or additives for filming purposes;
- The Order removes references to U.S. EPA from the exemption for temporary non-stormwater discharges authorized pursuant to section 104(a) or 104(b) of CERCLA because the federal response authorities in these sections has been delegated to a number of federal agencies including, but not limited to, U.S. EPA. For example, the Department of Defense, the Department of the Interior, and the Department of Transportation are all delegated with these federal response authorities;
- The Order does not carry over usage of the term "flows incidental to urban activities" from the 2010 Ventura County MS4 Permit to describe certain conditionally exempt discharges. Although the terminology is different, the categories of conditionally exempt discharges are the largely the same, except as described below.
- The Order eliminates the conditional exemptions in the 2010 Ventura County MS4 Permit for air conditioning condensate because the Los Angeles Water Board determined that these discharges were more appropriately regulated under a general permit. NPDES Permit No. CAG994003, Discharges of Nonprocess Wastewater to Surface Waters in Coastal Watershed of Los Angeles and Ventura Counties, was most recently reissued in 2014.
- The Order eliminates the conditional exemptions in the 2010 Ventura County MS4 Permit for gravity flows from foundation, footing, and crawl space drains because the Los Angeles Water Board determined that these discharges were more appropriately regulated under a general permit. NPDES Permit No. CAG994004, Discharges of Groundwater from Construction and Project Dewatering to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties, was most recently reissued in 2018.
- The Order eliminates the non-stormwater action levels (NALs) included in the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit. These NALs had been included as a means to identify the potential need for additional controls for non-stormwater discharges in the future. The inclusion of NALs is redundant with other permit requirements such as the non-stormwater discharge prohibition and WQBELs for non-stormwater discharges.

6. Specific Provisions

Part III.A.2.a-e (Non-Stormwater Discharges Not Subject to Discharge Prohibition). These provisions identify the types of non-stormwater discharges that are not subject to the discharge prohibition. The intent of this provision is to exempt certain non-stormwater discharges through the MS4 because they are separately regulated by another NPDES permit or permit equivalent, they are emergency discharges, or they are natural flows. The State Water Board and Los Angeles Water Board general NPDES permits that are used to regulate authorized non-stormwater discharges that are routinely discharged through the MS4 are, for the most part, listed in Table F-22 below.

Table F-22. General NPDES Permits, WDRs and Conditional Waivers Applicable to Non-Stormwater Discharges

| NPDES Permit No. or Order No. | Applicable Types of Discharges |
|---|---|
| NPDES Permit No. CAG994003 – Discharges of Nonprocess Wastewater to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties | <ul style="list-style-type: none"> • Ground water seepage • Uncontaminated pumped ground water • Gravity flow from foundation drains, footing drains, and crawl space pumps • Air conditioning condensate • Discharges of cleaning wastewater and filter backwash |
| NPDES Permit No. CAG994004 – Discharges of Groundwater from Construction and Project Dewatering to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties | <ul style="list-style-type: none"> • Uncontaminated pumped ground water • Discharges from activities that occur at wellheads, such as well construction, well development (e.g., aquifer pumping tests, well purging), or major well maintenance • Gravity flow from foundation drains, footing drains, and crawl space pumps • Discharges of ground water from construction and project dewatering¹²⁷ |
| NPDES Permit No. CAG990002 – Discharges from Utility Vaults and Underground Structures to Surface Waters | <ul style="list-style-type: none"> • Uncontaminated pumped ground water • Gravity flow from foundation drains, footing drains, and crawl space pumps |
| NPDES Permit No. CAG674001 – Discharges from Hydrostatic Test Water to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties | <ul style="list-style-type: none"> • Discharges of low threat hydrostatic test water¹²⁸ |

¹²⁷ Discharges of ground water from construction and project dewatering include treated or untreated wastewater from permanent or temporary construction dewatering operations; ground water pumped as an aid in the containment and/or cleanup of a contaminant plume; ground water extracted during short-term and long-term pumping/aquifer tests; ground water generated from well drilling, construction or development and purging of wells; equipment decontamination water; subterranean seepage dewatering; incidental collected stormwater from basements; and other process and non-process wastewater discharges that meet the eligibility criteria and could not be covered under another specific general NPDES permit.

¹²⁸ Low threat hydrostatic test water means discharges resulting from the hydrostatic testing or structural integrity testing of pipes, tanks, or any storage vessels using domestic water or from the repair and maintenance of pipes, tanks, or reservoirs.

| | |
|--|---|
| <p>NPDES Permit No. CAG914001 – Discharges of Treated Groundwater from Investigation and/or Cleanup of Volatile Organic Compounds Contaminated-Sites to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties</p> | <ul style="list-style-type: none"> • Discharges of treated ground water from investigation and/or cleanup of volatile organic compound (VOC) contaminated sites |
| <p>NPDES Permit No. CAG834001 – Discharges of Treated Groundwater and Other Wastewaters from Investigation and/or Cleanup of Petroleum Fuel-Contaminated Sites to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties</p> | <ul style="list-style-type: none"> • Discharges of treated groundwater and other wastewaters from investigation and/or cleanup of petroleum fuel-related contamination arising from current and former leaking underground storage tank sites or similar operations |
| <p>NPDES Permit No. CAG994006 – Discharges of Groundwater from San Gabriel Valley Groundwater Basin to Surface Water in the Upper San Gabriel River and Rio Hondo Watersheds – Los Angeles County</p> | <ul style="list-style-type: none"> • Discharges from well startup operations and testing of groundwater treatment facilities in the San Gabriel Valley watersheds |
| <p>NPDES Permit No. CAG140001 – Drinking Water System Discharges to Waters of the U.S.</p> | <ul style="list-style-type: none"> • Discharges from drinking water systems¹²⁹ |
| <p>NPDES Permit No. CAG990004 – Biological and Residual Pesticide Discharges from Vector Control Applications</p> | <ul style="list-style-type: none"> • Discharges of residual pesticides from the application of minimal risk pesticides, which are pesticides that USEPA has exempted from FIFRA requirements when used only in the manner specified in 40 CFR section 152.25, including residuals from larvicides and adulticides that are currently registered in California and minimum risk pesticide products. |
| <p>NPDES Permit No. CAG990005 – Residual Aquatic Pesticide Discharges to Waters of the United States from Algae and Aquatic Weed Control Applications</p> | <ul style="list-style-type: none"> • Discharges of residues resulting from pesticide applications using products registered for use in California containing 2,4-D, acrolein, copper, diquat, endothall, fluridone, glyphosate, imazamox, imazapyr, penoxsulam, sodium carbonate peroxyhydrate, and triclopyr-based algaecides and aquatic herbicides, and adjuvants containing ingredients |

¹²⁹ Discharges covered by this permit include discharges from drinking water systems generated during the following activities: ground water supply well flushing or pump-to-waste; ground water well development, rehabilitation, and testing; ground water monitoring for purpose of supply well development, rehabilitation and testing; trench dewatering of drinking water during planned repairs; transmission system installation, cleaning, and testing; water treatment plant operations (excluding filter backwash that is discharged to a water of the U.S.); distribution system storage tank or reservoir releases; distribution system dewatering, flushing, and pressure testing; fire flow / fire hydrant testing; meter testing; automated water analyzers operations; pressure relief valves; and unscheduled activities that must be undertaken to comply with mandates of the Federal Drinking Water Act and California Health and Safety Code.

| | |
|---|--|
| | represented by the surrogate nonylphenol. |
| Order No. R4-2016-0143 – Conditional Waiver for Discharges from Irrigated Lands | <ul style="list-style-type: none"> • Discharges from irrigated agricultural lands, including lands planted for row, vineyard, pasture, field and tree crops, nurseries, nursery stock production, wholesale nurseries, and greenhouse operations with permeable floors, which are not subject to WDRs, including a MS4 permit or other NPDES permit |

The Order also exempts temporary non-stormwater discharges authorized pursuant to sections 104(a) or 104(b) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). These discharges typically consist of short-term, high volume discharges resulting from the development or redevelopment of groundwater extraction wells, or federal or State-required compliance testing of potable water treatment plants, as part of a groundwater remediation action authorized under CERCLA. These discharges through the MS4 are only authorized if: (i) the discharge will comply with water quality standards identified as applicable or relevant and appropriate requirements (“ARARs”) under section 121(d)(2) of CERCLA; or (ii) the discharge is subject to either (a) a written waiver of ARARs pursuant to section 121(d)(4) of CERCLA or (b) a written determination that compliance with ARARs is not practicable considering the exigencies of the situation, pursuant to 40 CFR section 300.415(j). Exempting these discharges is appropriate because, as noted above, the discharges must comply with water quality standards, which are identified as ARARs, or must be subject to a written waiver of ARARs based on one or more factors identified in 42 U.S.C § 9621(d)(2) or determination that compliance with ARARs is not practicable given the urgency of the situation and scope of the action among other factors. Additionally, a decision to authorize a discharge through the MS4 to surface waters will not be made by U.S. EPA or another federal agency without first conducting a comprehensive evaluation of containment, treatment, reinjection, or re-use options for the water generated from the subject wells. If a decision to discharge through the MS4 is made, such authorization of the discharge under CERCLA will require that the discharger shall:

- a. Implement BMPs to minimize the rate and duration of the discharge and remove excessive solids and implement other on-site physical treatment where feasible;
 - i. Promote infiltration of discharged water in locations that will prevent or minimize degradation of groundwater quality;
 - ii. Notify the affected MS4 Permittees, including Ventura County Watershed Protection District and Los Angeles County Flood Control District, and the MS4 Permittee with land use authority over the discharge location, and the Los Angeles Water Board at least one week prior to a planned discharge (unless U.S. EPA determines in writing that exigent circumstances require a shorter notice period) and as soon as possible (but no later than 24 hours after the discharge has occurred) for unplanned discharges;

- iii. Monitor any pollutants of concern in the discharge;¹³⁰ and
- iv. Maintain records for all discharges greater than 100,000 gallons.¹³¹

The Order continues to unconditionally exempt non-stormwater discharges from emergency firefighting activities (i.e., flows necessary for the protection of life or property) from the discharge prohibition. Discharges from vehicle washing of firefighting vehicles, building fire suppression system maintenance and testing (e.g., sprinkler line flushing), fire hydrant maintenance and testing, and other routine maintenance activities are not considered emergency firefighting activities. Additionally, the Order distinguishes between emergency and non-emergency firefighting flows. Essential non-emergency firefighting flows are still eligible for a conditional exemption as discussed below.

Natural flows not subject to the non-stormwater discharge prohibition in the Order include natural springs, flows from riparian habitats and wetlands, diverted stream flows authorized by the State Water Board or the Los Angeles Water Board, uncontaminated groundwater infiltration, and rising groundwater where groundwater seepage is not otherwise covered by a NPDES permit. These discharges are not considered a potential source of pollutants.

Part III.A.3.(a-b) (Conditionally Exempt Non-Stormwater Discharges). These provisions identify the types of non-stormwater discharges that are conditionally exempt from the discharge prohibition. For non-stormwater discharges to be conditionally exempt from the discharge prohibition, the Permittees must identify appropriate BMPs, monitor and report on the non-stormwater discharges where applicable, and ensure implementation of effective control measures as discussed in subpart 7 below.

The Order separately identifies flows from non-emergency firefighting activities, discharges from drinking water supplier distribution systems, and potable wash water used to clean reservoir covers as “conditionally exempt essential” non-stormwater discharges rather than combining them into the same category as the other conditionally exempt non-stormwater discharges. In doing so, the Los Angeles Water Board recognizes that these discharges are essential public service discharge activities and are directly or indirectly required by other state or federal statutes and/or regulations as done in the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit. Note that the 2010 Ventura County MS4 Permit had an exemption for flows from firefighting activities but did not include a category for discharges from drinking water supplier distribution systems. Additionally, consistent with the California Ocean Plan, the Order imposes

¹³⁰ Pollutants of concern include, at a minimum, trash and debris, including organic matter, TSS, any pollutant being addressed by the groundwater remediation action under CERCLA, and any pollutant for which there is a Water Quality Based Effluent Limitation in Part IV of the Order applicable to discharges from the MS4 to the receiving water.

¹³¹ Records shall be maintained, as appropriate, on the: name of CERCLA authorized discharger, date and time of notification (for planned discharges), method of notification, location of discharge, discharge pathway, receiving water, date of discharge, time of the beginning and end of the discharge, duration of the discharge, flow rate or velocity, estimated total number of gallons discharged, type of pollutant removal equipment used, type of dechlorination equipment used if applicable, type of dechlorination chemicals used if applicable, concentration of residual chlorine if applicable, type(s) of sediment controls used, and field and laboratory monitoring data. Records shall be retained for three years, unless the Los Angeles Water Board requests a longer record retention period and shall be made available upon request by the MS4 Permittee or the Los Angeles Water Board.

additional requirements on conditionally exempt non-stormwater discharges for direct discharges to Areas of Special Biological Significance (ASBS).

If any of the conditionally exempt non-stormwater discharges are identified as being a potential source of pollutants, the Order contains a provision that the Los Angeles Water Board, based on an evaluation of monitoring data and other relevant information including TMDLs and antidegradation policies, may require that a discharger obtain coverage under a separate individual or general State Water Board or Los Angeles Water Board NPDES permit for the non-stormwater discharge or may require that the Permittee ensures that the discharger implements additional conditions specified or approved by the Executive Officer to ensure that the discharge is not a source of pollutants.

7. BMPs for Non-Stormwater Discharges

To eliminate adverse impacts from conditionally exempt non-stormwater discharges, Permittees are required to implement appropriate BMPs, or ensure that a discharger not named as a Permittee in the Order implements appropriate BMPs consistent with the requirements in Part III.A.5 of the Order. The Order contains language carried over from the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit that specifies certain conditions, including implementation of BMPs, for each category of conditionally exempt non-stormwater discharge that must be met in order for the non-stormwater discharge to be exempted from the non-stormwater discharge prohibition and thus allowed through the MS4. The 2010 Ventura County MS4 Permit also included similar conditions. The intent of these provisions is to ensure that Permittees implement BMPs consistent with common practice. The Los Angeles Water Board has included applicable guidance documents where appropriate.

One such example is that Permittees must develop and implement procedures to ensure that drinking water system owners/operators drinking water system owners/operators that may discharge amounts greater than 100,000 gallons to the Permittee's MS4: (1) provide notification at least 72 hours prior to a planned discharge and as soon as possible after an unplanned discharge; (2) monitor any pollutants of concern in the drinking water system discharge; (3) keep records; and (4) implement appropriate BMPs based on the American Water Works Association (California-Nevada Section) *Guidelines for the Development of Your Best Management Practices (BMP) Manual for Drinking Water System Releases* (2005) or equivalent industry standard BMP manual.

The Statewide Recycled Water Policy, adopted by the State Water Board through Resolution No. 2009-0011, and amended by Resolution No. 2013-0003 and Resolution No. 2018-0057, encourages the safe use of recycled water from wastewater sources that meets the definition in California Water Code section 13050(n), in a manner that implements state and federal water quality laws and protects public health and the environment. The conditions for non-stormwater discharges related to landscape irrigation using potable water and landscape irrigation using reclaimed water were carried over from the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit and emphasize the control of incidental runoff from landscape irrigation. Consistent with the Recycled Water Policy, the BMPs incorporated into the Order for potable landscape irrigation ensure that water is conserved, overspray and over irrigation

causing incidental runoff is minimized, and exposure to landscape related pollutants is minimized.

State Water Board Water Quality Order No. 2009-0006-DWQ, General Waste Discharge Requirements for Landscape Irrigation Uses of Municipal Recycled Water, is a general permit for producers and distributors of recycled water for landscape irrigation uses. As part of that general permit, the producers and distributors of recycled water for landscape irrigation are required to develop an Operations and Maintenance Plan (O&M Plan) that includes an Operations Plan and an Irrigation Management Plan. Therefore, any landscape irrigation discharges of reclaimed wastewater to the MS4 must comply with the relevant portion of the O&M Plan including the Irrigation Management Plan. By explicitly referencing the O&M requirement in that general permit, it centralizes the requirements for landscape irrigation using reclaimed wastewater and helps to ensure that procedures are in place for conserving water, minimizing incidental runoff, and minimizing exposure to landscape related pollutants.

Non-stormwater discharge provisions have been carried over from the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit for the dewatering of lakes to the MS4. The provisions for the dewatering of lakes including removing and legally disposing of all visible trash on the shoreline or on the surface of the lake and the cleaning of the MS4 inlet and outlet where the water will be discharged to the receiving water have been consistently incorporated into Los Angeles Water Board authorizations to discharge non-stormwater from lakes, reservoirs, and ponds. In addition, provisions for volumetrically and velocity controlling discharges as well as taking measurements to stabilize lake bottom sediments are carried over from the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit to the Order to ensure that turbidity in receiving waters due to the discharge is minimized. The permit provisions for the dewatering of lakes ensure the protection of receiving water quality.

Consistent with the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit, Basin Plan requirements for residual chlorine have been explicitly included in the conditions for drinking water supplier distribution system releases, dechlorinated/debrominated swimming pool/spa discharges, and dewatering of decorative fountains.¹³²

Specific BMPs for discharges from swimming pools/spas and the dewatering of decorative fountains have been carried over from the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit to the Order, including prohibiting the dewatering of swimming pools/spas or decorative fountains containing copper-based algaecides and requiring the implementation of controls to prevent introduction of pollutants prior to discharge. Swimming pool/spa discharges and decorative fountain water must be dechlorinated or debrominated using holding time, aeration, and/or sodium thiosulfate and if necessary, shall be pH adjusted to within the range of 6.5 and 8.5. The MS4 inlet and outlet must be inspected and cleaned out immediately prior to discharge to protect receiving water

¹³² Swimming pool discharges explicitly excludes discharges of cleaning wastewater and filter backwash. However, these discharges are considered exempt non-stormwater discharges if the discharge meets the eligibility requirements and obtains coverage under the Los Angeles Water Board's general permit for discharges of nonprocess wastewater to surface waters in coastal watersheds of Los Angeles and Ventura counties (NPDES Permit No. CAG994003).

quality. In addition, provisions for volumetrically and velocity controlling discharges are carried over from the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit to the Order to ensure that turbidity in receiving waters due to the discharge is minimized.

In addition to the specific inclusion of the Basin Plan water quality objective for residual chlorine, the Order allows discharges of drinking water supplier distribution system releases as long as specified BMPs are implemented. BMPs must be implemented to prevent introduction of pollutants to drinking water supplier distribution system releases prior to discharge to the receiving water. BMPs must be consistent with the American Water Works Association (California – Nevada Section) BMP Manual for Drinking Water System Releases or other equivalent industry standard BMP manual. This requirement therefore gives Permittees flexibility to design their own program by choosing their BMP manual to address non-stormwater discharges from drinking water supplier distribution systems. Similar to discharges from swimming pools/spas and dewatering of decorative fountains, drinking water supplier distribution system releases must be dechlorinated or debrominated using holding time, aeration, and/or sodium thiosulfate and if necessary, shall be pH adjusted to within the range of 6.5 and 8.5. The MS4 inlet and outlet must be inspected and cleaned out immediately prior to discharge to protect receiving water quality. BMPs such as sandbags or gravel bags, or other appropriate means shall be utilized to prevent sediment transport and all sediment shall be collected and disposed of in a legal and appropriate manner. Additional provisions for volumetrically and velocity controlling discharges are carried over from the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 permit to the Regional MS4 Permit to ensure that turbidity in receiving waters due to the discharge is minimized. The permit provisions for drinking water supply and distribution system releases, dechlorinated/debrominated swimming pool/spa discharges, and dewatering of decorative fountains ensures the protection of receiving water quality.

Potable wash water used to clean reservoir covers is included in the Order as a conditionally exempt non-essential non-stormwater discharge. This requirement and the corresponding BMPs were carried over from the 2014 City of Long Beach MS4 Permit. Provisions and BMPs for potable wash water used to clean reservoir covers is pursuant to The Final Long Term 2 Enhanced Surface Water Treatment Rule (EPA 815-R06-005 February 2006), which includes requirements for “Systems that store treated water in open reservoirs [where the systems] must either cover the reservoir or treat the reservoir discharge to inactivate 4-log virus, 3-log *Giardia lamblia*, and 2-log *Cryptosporidium*.”¹³³ The provisions and BMPs are also pursuant to the Safe Drinking Water Act (SDWA).

The Los Angeles Water Board evaluated and established a list of approved BMPs for various programs and activities through Los Angeles Water Board Resolution 98-08 that serves as appropriate BMPs for inclusion in the discharger and Permittees’ regulatory programs. Requirements for street/sidewalk wash water contained in Resolution 98-08 have been explicitly incorporated into the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit and

¹³³ U.S. EPA. Fact Sheet - Long Term 2 Enhanced Surface Water Treatment Rule. December 2005. EPA 815-F-05-009.

have been carried over to the Order. The inclusion of the requirements originally identified in Resolution 98-08 ensures the protection of receiving water quality.

Specific BMPs for discharges from non-commercial car washing have been carried over from the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit to the Order to prevent the introduction of pollutants prior to discharge. BMPs that must be implemented for the discharge of non-commercial vehicle wash water include minimizing the amount of water used by turning off nozzles or kinking the hose when not spraying a vehicle and by using a low-volume pressure washer; using biodegradable, phosphate free detergents and non-toxic cleaning products; where possible, washing vehicles on permeable surfaces where wash water can percolate into the ground; creating a temporary berm or block off the storm drains; using pumps or vacuums to direct water to pervious areas; and emptying buckets of soapy water or rinse water into the sanitary sewer system. These BMPs are common practice and ensure the protection of receiving water quality.

Discharges resulting from essential non-emergency firefighting activities have been carried over from the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit to the Order. Similar BMPs have been incorporated into other California MS4 permits. For example, both the Riverside County and Orange County MS4 permits require the development and implementation of a program to address pollutants from non-emergency firefighting flows. Rather than develop a program to address non-emergency firefighting discharges, Permittees may implement the BMPs contained in the Best Management Practices Plan for Urban Runoff Management for Participating Riverside County Fire Fighting Agencies or an equivalent guidance manual.

The inclusion of specific conditions for conditionally exempted non-stormwater discharges in the Order centralizes the requirements for non-stormwater discharges. Conditions established in the Order for each of the conditionally exempt non-stormwater discharge categories are common practice and have been incorporated into other area MS4 permits.

8. Permittee Requirements for Non-Stormwater Discharges

The Order includes specific requirements for Permittees related to targeted screening of MS4 outfalls for non-stormwater discharges, and monitoring and evaluation of significant non-stormwater discharges. Permittees are required to develop and implement procedures to ensure that all conditions required for conditionally exempt non-stormwater discharges are being implemented. These requirements were carried over from the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit to help clarify the responsibilities of the Permittees versus the responsibilities of the non-MS4 Permittee dischargers to the MS4. The development and implementation of these procedures helps to ensure compliance with the non-stormwater discharge prohibition and ensure that the non-stormwater discharges are not sources of pollutants.

9. Compliance Demonstration

A Permittee's implementation of program elements and control measures to effectively eliminate prohibited non-stormwater discharges will be considered as evidence of whether a Permittee is complying with the non-stormwater discharge prohibition in Part III.A of the Order. Where a Permittee is fully implementing its

Illicit Connections and Illicit Discharges Elimination Program, either pursuant to Part VIII.I of the Order, or by incorporation of customized actions into a WMP as approved by the Los Angeles Water Board (see Part IX.B of the Order), the Los Angeles Water Board would conduct a fact-specific analysis of the nature and source of the unauthorized non-stormwater discharge and the efforts of the Permittee to prohibit the discharge in support of any enforcement action under Part III.A of the Order.

B. Trash

1. Federal Requirements

Federal regulations identify the need to develop, implement, and enforce controls to reduce the discharge of pollutants from MS4s.¹³⁴ Federal regulations further specify that Permittees must include in their management program maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from MS4s.¹³⁵ The highlighting of floatables is pertinent since a significant portion of trash is characteristic of, and within the category of, floatable pollutants. Municipal trash management programs are discussed in federal documents including U.S. EPA's Stormwater Menu of BMPs fact sheet on Trash and Debris Management.¹³⁶ This fact sheet highlights source control and structural control techniques to manage trash.

2. Statewide Trash Amendments

On April 7, 2015, the State Water Board adopted Part 1 Trash Provisions (Trash Provisions) of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (ISWEBE Plan) and an amendment to the Ocean Plan to control trash. Together, these amendments are referred to as the Trash Amendments or Trash Provisions. The Trash Amendments establish a water quality objective, a prohibition on the discharge of trash, and implementation requirements to control trash. The Trash Amendments were approved by OAL on December 2, 2015 and by U.S. EPA on January 12, 2016.

3. Applicability

The Trash Amendments apply to all waters of the State, except waters in the Los Angeles Region in which a TMDL for trash was in effect prior to the effective date of the Trash Amendments.¹³⁷

¹³⁴ 40 CFR § 122.26(d)(2)(iv).

¹³⁵ *Id.*, subd. (d)(2)(iv)(A)(1).

¹³⁶ U.S. EPA. Trash and Debris Management, Public Education and Outreach on Stormwater Impacts: Education for Homeowners.

¹³⁷ While the Trash Amendments do not apply to waters addressed by existing trash TMDLs in the Los Angeles Region, the Trash Amendments directed the Los Angeles Water Board to reconsider the scope of its trash TMDLs, except for the Los Angeles River Watershed and Ballona Creek Trash TMDLs, within one year of the Trash Amendments' effective date. The Los Angeles Water Board held an initial public meeting to consider its trash TMDLs on November 28, 2016. On June 14, 2018 the Los Angeles Water Board adopted revisions to the Malibu Creek Watershed Trash TMDL and the Revolon Slough and Beardsley Wash Trash TMDL to align them with the Trash Amendments. On March 14, 2019 the Los Angeles Water Board adopted a resolution finding that the Santa Monica Bay Nearshore and Offshore Debris TMDL and the Machado Lake Trash TMDL could not be aligned with the Trash Amendments. On June 13, 2019 the Los Angeles Water Board adopted a resolution finding that the Ventura River Estuary

The Order incorporates the Trash Amendments in all areas not addressed by an existing trash TMDL. For areas addressed by an existing trash TMDL, the Order requires Permittees to comply with the appropriate TMDL-based trash WQBELS specified in Part IV.B.3 of the Order.

4. Implementation

The Trash Amendments require NPDES permits regulating MS4 permittees with regulatory authority over priority land uses (PLUs) to include provisions to prohibit the discharge of trash in Waters of the United States. Permittees may elect to comply with the trash prohibition under one of two compliance tracks. Under Track 1, a Permittee must install, operate, and maintain full capture systems for storm drains that capture runoff from priority land uses in their respective jurisdictions. Under Track 2, a Permittee must install, operate, and maintain any combination of full capture systems, multi-benefit projects, treatment controls and/or institutional controls. Permittees outside of or lacking land use authority over PLUs do not have to implement the trash prohibition unless directed to by the Los Angeles Water Board as described in the discussion of designated land use areas below.

Prior to the issuance of the Order, and as contemplated by the Trash Amendments, on August 18, 2017, the Los Angeles Water Board issued California Water Code Section 13383 Orders to Permittees whose jurisdictional areas are not fully addressed by an existing trash TMDL. These California Water Code Section 13383 Orders required Permittees to submit: (1) a letter identifying the Permittee's selected compliance option (Track 1 or Track 2) to comply with the Trash Provisions by November 20, 2017; and (2) supporting documents based on the compliance option selected by February 18, 2019. The supporting documents for Permittees selecting Track 1 included the following. For Permittees selecting Track 1, a jurisdictional or watershed map(s) identifying 1) all PLU areas discharging to the storm drain network; 2) any drainage areas addressed by existing trash TMDLs; 3) the corresponding storm drain network; 4) proposed locations of all certified full capture systems; and 5) proposed equivalent alternative land uses, documentation demonstrating that the substitution of equivalent alternative land uses has been approved by the Los Angeles Water Board Executive Officer, and corresponding storm drainage network, if applicable. The supporting documents for Permittees selecting Track 2 generally included a jurisdictional map(s) identifying the provisions 1-3 mentioned above as well as locations or land uses where a combination of controls will be implemented to achieve full capture system equivalency (see Attachment A for a definition of this term) and an assessment of trash levels for all PLUs and for other selected locations or land uses within the MS4s jurisdiction if proposing to implement any combination of controls in locations other than PLUs. In addition, Permittees selecting Track 2 were also required to submit an implementation plan that included requirements similar to the ones included in Part III.B.2.b of the Order. Table F-23 below, lists the Permittees that were issued a California Water Code Section 13383 Order and the compliance option that they selected in response to the Order. The Table also notes those Permittees that are outside of or lack jurisdiction over PLUs. All Permittees that selected either of the Tracks, also submitted the required supporting documents that were due by February 18, 2019. Only two cities selected Track 2, the cities of

Trash TMDL, Lake Elizabeth Trash TMDL, and Legg Lake Trash TMDL, could not be aligned with the Trash Amendments.

Gardena and Los Angeles. On April 8, 2019, the Los Angeles Water Board sent a correspondence to Track 1 Permittees clarifying that they could proceed implementing the provisions of the 13383 Order without requiring further approval. On June 26, 2019, the Los Angeles Water Board issued a conditional approval letter to the City of Gardena, requiring additional information and submittals in order to approve its implementation plan, which were due by March 31, 2021. In its implementation plan, the City of Los Angeles indicated that it is in compliance with the Trash Amendments; Board staff are in the process of reviewing the information provided by both cities.

Table F-23. Selected Compliance Option in Response to California Water Code Section 13383 Orders

| Permittee | Selected Compliance Option (Track 1 or Track 2) |
|-----------------------|--|
| Arcadia | Track 1 |
| Artesia | Track 1 |
| Azusa | Track 1 |
| Baldwin Park | Track 1 |
| Bellflower | Track 1 |
| Bradbury | Track 1 |
| Carson | Track 1 |
| Cerritos | Track 1 |
| Claremont | Track 1 |
| Compton | ¹³⁸ |
| County of Los Angeles | Track 1 |
| Covina | Track 1 |
| Diamond Bar | Track 1 |
| Downey | Track 1 |
| Duarte | Track 1 |
| El Monte | Track 1 |
| El Segundo | Track 1 |
| Gardena | Track 2 |
| Glendora | Track 1 |
| Hawaiian Gardens | Track 1 |
| Hawthorne | Track 1 |
| Industry | Track 1 |
| Inglewood | Track 1 |
| Irwindale | Track 1 |
| La Habra Heights | Track 1 |
| La Mirada | Track 1 |
| La Puente | Track 1 |
| La Verne | Track 1 |
| Lakewood | Track 1 |
| Lawndale | Track 1 |
| Lomita | Track 1 |

¹³⁸ On December 20, 2017, the City of Compton responded to the Los Angeles Water Board’s August 18, 2017’s 13383 Order and stated that the City is only subject to the Los Angeles River Watershed Trash TMDL. Board staff are still investigating the City’s claim.

| Permittee | Selected Compliance Option (Track 1 or Track 2) |
|--|--|
| Los Angeles | Track 2 |
| Los Angeles County Flood Control District | ¹³⁹ |
| Manhattan Beach | Track 1 |
| Monrovia | Track 1 |
| Norwalk | Track 1 |
| Paramount | Track 1 |
| Pico Rivera | Track 1 |
| Pomona | Track 1 |
| Rancho Palos Verdes | Track 1 |
| Redondo Beach | Track 1 |
| Rolling Hills | ¹⁴⁰ |
| Rolling Hills Estates | Track 1 |
| San Dimas | Track 1 |
| Santa Clarita | Track 1 |
| Santa Fe Springs | Track 1 |
| Signal Hill | Track 1 |
| South El Monte | Track 1 |
| Torrance | Track 1 |
| Walnut | Track 1 |
| West Covina | Track 1 |
| Whittier | Track 1 |
| County of Ventura | Track 1 |
| Camarillo | Track 1 |
| Fillmore | Track 1 |
| Moorpark | Track 1 |
| Ojai | Track 1 |
| Oxnard | Track 1 |
| Port Hueneme | Track 1 |
| Santa Paula | Track 1 |
| Simi Valley | Track 1 |
| Thousand Oaks | Track 1 |
| Ventura | Track 1 |
| Ventura County Watershed Protection District | ¹⁴¹ |
| Long Beach | Track 1 |

Both compliance tracks focus trash control efforts on PLUs. PLUs are areas that have been shown to generate a significant amount of trash and include high density residential, industrial, commercial, mixed urban, and public transportation stations. A compliance framework focused on PLUs allows MS4s to allocate trash-control resources to the highest priority areas.

¹³⁹The District has no jurisdictional authority over PLUs.

¹⁴⁰The City has no PLUs within its jurisdiction.

¹⁴¹The District has no jurisdictional authority over PLUs.

In some cases, non-priority land use areas may also generate a substantial amount of trash. Permittees may get approval from the Los Angeles Water Board to substitute one or more of the PLUs with an alternate land use area that generates trash at rates equivalent or greater than the PLU(s) being substituted. The Los Angeles Water Board may also determine that a non-priority land use or location generates a substantial amount of trash. Where this determination is made, the Los Angeles Water Board may require Permittees to adopt Track 1 or Track 2 control measures over these areas. The Order refers to these areas as “designated land use areas.” No designated land use areas for trash have been identified as of the issuance of the Order.

5. Implementation Schedule

The Trash Amendments require NPDES permits for MS4 permittees to contain provisions prohibiting the discharge of trash within ten years of the effective date of the first implementing permit, or no later than fifteen years from the effective date of the Trash Amendments (December 2, 2030). The Order is the first implementing permit for the Permittees; therefore, the Permittees must obtain full compliance with the Trash Amendments by December 2, 2030. Additional time for compliance may be authorized for designated land uses identified after the effective date of the Order. In no case may the time for compliance with the Trash Amendments for newly Designated Land Uses be more than 10 years.

Part III.B.2 of the Order incorporates the Trash Amendments requirements for Permittees with regulatory authority over PLUs, designated land uses, or equivalent alternate land uses. Specifically, Part III.B.2.a of the Order outlines the compliance methods and allows Permittees to change their compliance method by submitting a written request to the Los Angeles Water Board for approval of a modified jurisdictional map. Permittees changing their compliance method to Track 2 are also required to submit an Implementation Plan. Part III.B.2.b of the Order outlines provisions for Implementation Plan for Track 2; and Part III.B.2.c of the Order outlines provisions for jurisdictional map. Part III.B.2.d of the Order establishes the implementation schedule for complying with the discharge prohibition consistent with the Trash Amendments. This provision establishes an interim compliance deadline requiring 50% of all PLUs and/or approved equivalent alternate land uses to meet full capture (Track 1) or full capture system equivalency (Track 2) within 5 years and a final compliance deadline requiring 100% of all PLUs and/or approved equivalent alternate land uses to meet full capture (Track 1) or full capture system equivalency (Track 2) by no later than 10 years from the effective date of the Order or December 2, 2030, whichever is sooner. For designated land uses, it may not be feasible to expect compliance within ten years from the effective date of the Order. Hence, the final compliance date for a designated land use is no longer than 10 years from the Los Angeles Water Board’s written determination to designate a land use or location as a designated land use.

6. Previous Permit Requirements

Part VI.D.9.h.vii of the 2012 Los Angeles County MS4 Permit and Part VII.L.8.vii of the 2014 City of Long Beach MS4 Permit required Permittees to install trash excluders, or equivalent devices, on or in catch basins or outfalls to prevent the discharge of trash to the MS4 or receiving water no later than December 28, 2016 and March 28, 2018, respectively. Part 4.G.I.5.(e) of the 2010 Ventura County MS4 Permit also required the Permittees to comply with the same requirements no later

than July 8, 2012. This requirement only applied to areas not subject to a trash TMDL and identified as a “Priority A” area and did not apply to sites where the application of such BMP(s) alone would cause flooding. Priority A was defined as areas consistently generating the highest volumes of trash and/or debris. Alternatively, Permittees could implement alternative or enhanced BMPs that provide substantially equivalent removal of trash. The Statewide Trash Amendments closely align with the intent and scope of the requirements of the previous permits. Therefore, incorporation of Statewide Trash Amendments into the Order are not new requirements but rather a refinement of the existing requirements.

V. RATIONALE FOR EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

Clean Water Act section 402(p)(3)(B)(iii) requires MS4 permits to include “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.” The control of pollutants discharged is established through effluent limitations and other requirements in NPDES permits. The Clean Water Act generally requires NPDES permits to include technology-based effluent limitations and any more stringent water quality-based effluent limitations necessary to meet water quality standards. Both types of limitations are in the Order and are discussed below.

A. Technology-Based Effluent Limitations

Section 301(b)(1)(A) of the CWA and 40 CFR section 122.44(a) require that NPDES permits include technology-based effluent limitations and standards.¹⁴² In 1987, the CWA was amended to require that municipal stormwater discharges “reduce the discharge of pollutants to the maximum extent practicable.” (CWA § 402(p)(3)(B)(iii).) The “maximum extent practicable” (MEP) standard is the applicable federal technology-based standard that MS4 owners and operators must attain to comply, in part, with their NPDES permits.¹⁴³ 40 CFR section 122.26(d)(2)(iv) further details the MEP standard, which requires that MS4 owners and operators implement comprehensive pollutant control measures in a stormwater management program including management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. Permit requirements to implement the MEP standard are generally referred to, collectively, as best management practices or BMPs.

¹⁴² A technology-based effluent limitation is based on the capability of a model treatment method to reduce a pollutant to a certain concentration (NPDES Permit Writer’s Manual (September 2010), Appendix A). Technology-based effluent limitations generally are expressed numerically as the maximum amount of pollutant that may be discharged (either as a prohibition or as a concentration or mass; mass is usually normalized either based on production units or wastewater flow) but are sometimes narrative effluent limitations such as model best management practices for an industrial category like “Concentrated Aquatic Animal Production.” For example, model best management practices are identified for solids control, including the following, “[i]n order to minimize the discharge of accumulated solids from settling ponds and basins and production systems, identify and implement procedures for routine cleaning ..., and procedures to minimize any discharge of accumulated solids during the ... harvesting of aquatic animals in the production system” (NPDES Writers’ Manual (September 2010), p. 5-33). Technology-based requirements represent the minimum level of control that must be imposed in a permit issued under CWA § 402.

¹⁴³ Note that the MEP standard only applies to stormwater discharges from the MS4. Non-stormwater discharges are subject to a different standard – specifically, non-stormwater discharges through the MS4 must be effectively prohibited.

Examples of BMPs used to comply with the MEP standard include street sweeping, requiring erosion controls at construction sites (e.g., straw wattles, silt fences), and catch basin cleanouts.

The fundamental requirement that municipalities reduce pollutants in municipal stormwater discharges to the MEP remains a cornerstone of the mandate imposed on municipalities by the federal Clean Water Act and implementing NPDES regulations. Meeting the MEP standard is generally a result of emphasizing robust pollution prevention and control through various programs and structural measures. These pollution prevention and control methods require municipalities to take actions that will lessen the incidence of pollutants entering the storm drains by regulating the behavior and practices of the municipalities, their residents, and their businesses and controlling the discharge of pollutants through structural measures and treatment methods.

Neither Congress nor the U.S. EPA has specifically defined the term “maximum extent practicable.” Rather, the MEP standard is an ever evolving, flexible and advancing concept, which considers technical and economic feasibility. As knowledge and technology regarding controlling stormwater runoff continue to evolve, so too must the actions that are taken to comply with the standard. Congress established this flexible MEP standard so that administrative bodies would have “the tools to meet the fundamental goals of the Clean Water Act in the context of storm water pollution.”¹⁴⁴ This standard was designed to allow permit writers flexibility to tailor permits to the site-specific nature of MS4s and to use a combination of pollution controls that may be different in different permits.¹⁴⁵ The MEP standard is also expected to evolve in light of programmatic improvements, new source control initiatives, and technological advances that serve to improve the overall effectiveness of stormwater management programs in reducing pollutant loading to receiving waters.

In addition to regulations, U.S. EPA has issued guidance documents that discuss the type of BMPs that should be included in MS4 permits in order to reduce the discharge of pollutants in stormwater to the MEP.¹⁴⁶ Successive permits for the same MS4 must become more refined and detailed and require greater levels of specificity over time in defining what constitutes MEP, based on experience under the previous permit. For example, the 1990 Los Angeles County MS4 Permit provided a general requirement that Permittees develop and implement a plan with a schedule of implementation for BMPs to control pollutants from residential, commercial, and industrial sites to the MEP. To continue to address these land use areas, the 1996 Permit required Permittees to develop and implement a model system for prioritization of development projects and establish a list of recommended BMPs in a model program, referred to as a Standard Urban Storm Water Mitigation Plan (SUSMP). For new and re-development, the 2001 Los Angeles County MS4 Permit established numeric criteria, requiring the control of a specific volume of runoff from these priority development and redevelopment projects, i.e., the 85th percentile, 24-hour storm volume. In the 2012 Los Angeles County MS4 Permit, Permittees were required to prioritize onsite retention of this runoff and, only if that was infeasible, to use other means (such as flow-through treatment) of controlling that runoff volume. The 1994 Ventura County MS4 Permit provided a general

¹⁴⁴ Building Industry Ass’n of San Diego County v. State Water Resources Control Board (2004) 124 Cal.App.4th 866, 884.

¹⁴⁵ In re City of Irving, Texas, Municipal Storm Sewer System (July 16, 2001) 10 E.A.D. 111 (E.P.A.), *6.

¹⁴⁶ See, e.g., U.S. EPA, *MS4 Permit Improvement Guide* (2010). Prior to issuance of the *MS4 Permit Improvement Guide*, U.S. EPA provided BMP “menus” for the required elements of a MS4 permittee’s stormwater management program as required by 40 CFR § 122.26(d)(2)(iv).

requirement that Permittees develop and implement source control BMPs and treatment control BMPs in the areas of land development, industrial, commercial, and construction sites. The 2000 Ventura County MS4 Permit required Permittees to develop and implement a comprehensive stormwater quality management program to reduce the discharge of stormwater pollutants to the MEP. In the 2010 Ventura County MS4 Permit, Permittees were required to implement LID strategies for new development and redevelopment, which would maintain pre-development hydrology and utilize natural controls to reduce stormwater pollution. This is consistent with U.S. EPA's intent that stormwater management programs evolve based on changing conditions from program development and implementation and corresponding improvements in water quality.¹⁴⁷ There is ample evidence of this evolution in stormwater management. Examples include the development of full capture trash control devices in response to the Los Angeles Region Trash TMDLs, innovative media filters for use in outfalls at the Boeing Santa Susana Field Laboratory that have potential municipal applications; and regional scale multi-benefit stormwater capture projects such as the Carriage Crest Park project, which captures stormwater from an 1,146-acre, multi-jurisdictional drainage area for treatment and reclamation at the adjacent wastewater treatment facility.

To provide clarification to the Regional Water Boards, the State Water Board's Office of Chief Counsel issued a memorandum dated February 11, 1993 regarding the "Definition of 'Maximum Extent Practicable'." In the memorandum, the State Water Board interpreted the MEP standard to entail "a serious attempt to comply," and that under the MEP standard, "practical solutions may not be lightly rejected." The memorandum states, "[i]n selecting BMPs which will achieve MEP, it is important to remember that municipalities will be responsible to reduce the discharge of pollutants in storm water to *the maximum extent practicable*. This means choosing effective BMPs, and rejecting applicable BMPs only where other effective BMPs will serve the same purpose, the BMPs would not be technically feasible, or the cost would be prohibitive." The memorandum suggests several factors to be considered when choosing BMPs, including effectiveness, regulatory compliance, public acceptance, cost, and technical feasibility. The memorandum further states that, "[a]fter selecting a menu of BMPs, it is of course the responsibility of the discharger to insure that all BMPs are implemented."

The Order includes programmatic requirements in six areas pursuant to 40 CFR section 122.26(d)(2)(iv), including numeric design standards for stormwater runoff from new development and significant redevelopment consistent with the federal MEP standard (see State Water Board Order WQ 2000-11, the "LA SUSMP Order"). The Order also includes requirements for periodically evaluating and modifying or adding control measures, consistent with the concept that MEP is an evolving and flexible standard.

¹⁴⁷ See, 55 Fed. Reg. 47990, 48052 ("EPA anticipates that storm water management programs will evolve and mature over time."); 64 Fed. Reg. 68722, 68754; Dec. 8, 1999 ("EPA envisions application of the MEP standard as an iterative process."); Interim Permitting Approach for Water Quality-Based Effluent Limitations in Stormwater Permits (Sept. 1, 1996) ("The interim permitting approach uses BMPs in first-round storm water permits, and expanded or better-tailored BMPs in subsequent permits, where necessary, to provide for the attainment of water quality standards."); Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on LAs" (Nov. 26, 2014) ("In subsequent stormwater permit terms, if the BMPs used during prior years were shown to be inadequate to meet the requirements of the Clean Water Act (CWA), including attainment of applicable water quality standards, the permit would need to contain more specific conditions or limitations.").

B. Water Quality-Based Effluent Limitations (WQBELs)

1. Basis for WQBELs

In addition to requiring that MS4 permits include technology-based requirements consistent with the MEP standard, section 402(p)(3)(B)(iii) of the CWA requires that MS4 permits include “such other provisions as the Administrator or the State determines appropriate for the control of [] pollutants.”¹⁴⁸ U.S. EPA interprets this provision to mandate “controls to reduce the discharge of pollutants to the maximum extent practicable, *and where necessary water quality-based controls.*”¹⁴⁹ U.S. EPA has reiterated that MS4 “permit conditions must provide for attainment of applicable water quality standards (including designated uses), allocations of pollutant loads established by a TMDL, and timing requirements for implementation of a TMDL.”¹⁵⁰ U.S. EPA Region IX has also affirmed the Water Boards’ position that MS4 discharges must meet water quality standards in a series of comment letters on MS4 permits issued by various California regional water boards.¹⁵¹ Likewise, the State Water Board has affirmed that MS4 permits must include requirements necessary to achieve compliance with the applicable technology-based standard of MEP and to achieve water quality standards.¹⁵² The permitting agency, be it the Los Angeles Water Board or U.S. EPA, must therefore include provisions in addition to those based on the MEP standard when it finds it is appropriate to do so and to exercise its discretion to determine what permit conditions are necessary to control pollutants in a specific geographic area.

Generally, discharge requirements designed to achieve water quality standards are referred to as water quality-based effluent limitations (WQBELs). A WQBEL is a restriction on the quantity or concentration of a pollutant that may be discharged from a point source into a receiving water that is necessary to achieve an applicable water quality standard in the receiving water.¹⁵³ As discussed more fully below, WQBELs may be expressed narratively or numerically.

Federal NPDES regulations require the permitting agency to include WQBELs for point source discharges that cause, have the reasonable potential to cause, or contribute to an excursion above water quality standards.¹⁵⁴ As the State Water

¹⁴⁸ The early iterations (issued from 1990-1996) of the previous MS4 permits for Permittees in Los Angeles and Ventura Counties relied solely upon requirements consistent with the MEP standard to work toward achieving water quality standards. Note that the MEP standard is distinct from a water quality-based standard; each has a different basis. Therefore, while from a practical point of view, the goal of all MS4 permits is to control pollutants in discharges to ultimately achieve water quality standards, water quality based standards are directly derived from this desired outcome, while the MEP standard is anticipated to be a way of working toward the desired outcome, but is not directly derived from it.

¹⁴⁹ Phase I Stormwater Regulations, Final Rule, 55 Fed. Reg. 47990, 47994 (Nov. 16, 1990) (emphasis added); see also *Building Industry Ass’n of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 882-887.

¹⁵⁰ See, e.g., Phase II Stormwater Regulations, Final Rule, 64 Fed. Reg. 68722, 68737.

¹⁵¹ See, e.g., letter from Alexis Strauss, Acting Director, Water Division, U.S. EPA Region IX, to Walt Pettit, Executive Director, State Water Board, re: SWRCB/OCC File A-1041 for Orange County, dated January 21, 1998.

¹⁵² See, e.g., State Water Board Orders WQ 99-05, WQ 2001-15, and WQ 2015-0075.

¹⁵³ See 40 CFR § 122.2; NPDES Permit Writer’s Manual, Appendix A. A WQBEL is distinguished from a technology based effluent limitation (TBEL) in that the basis for the WQBEL is the applicable water quality standard for the receiving water, while the basis for the TBEL is generally the performance of the best available technology.

¹⁵⁴ 40 CFR § 122.44, subds. (d)(1)(i) and (d)(1)(iii).

Board explained in 2001, “Urban runoff is causing and contributing to impacts on receiving waters throughout the state and impairing their beneficial uses....It is not enough simply to apply the technology-based standards of controlling discharges of pollutants to the MEP....”¹⁵⁵ Nearly two decades later, this is still true.

In the Order, WQBELs are included where the Los Angeles Water Board or U.S. EPA has determined that discharges from the MS4 cause, have the reasonable potential to cause, or contribute to an excursion above water quality standards.¹⁵⁶ Reasonable potential can be demonstrated in several ways, one of which is through the TMDL development process. Where a point source is assigned a wasteload allocation (WLA)¹⁵⁷ in a TMDL, the analysis conducted in the development of the TMDL provides the basis for the Los Angeles Water Board or U.S. EPA’s determination that the discharge has the reasonable potential to cause or contribute to an exceedance of water quality standards in the receiving water. This approach is affirmed in U.S. EPA’s Permit Writer’s Manual, which states, “[w]here there is a pollutant with a WLA from a TMDL, a permit writer must develop WQBELs.”¹⁵⁸

The Los Angeles Water Board and U.S. EPA have each established numerous TMDLs to address water quality impairments in the Los Angeles Region. Through the process of developing these TMDLs and assigning wasteload allocations to MS4 discharges in the Los Angeles Region, the Los Angeles Water Board and U.S. EPA have established that MS4 discharges cause or contribute to exceedances of water quality standards. Given the number of Los Angeles Water Board and U.S. EPA established TMDLs for impaired waters in the Los Angeles Region, there is ample evidence that MS4 discharges are a continuing and significant source of pollutants to the impaired receiving waters notwithstanding implementation of stormwater management programs driven by the MEP standard for the last three decades.

Where a TMDL has been established for a particular waterbody, U.S. EPA’s NPDES regulations further require that, “when developing water quality-based effluent limits...the permitting authority shall ensure that effluent limits ... are consistent with the assumptions and requirements of any available wasteload allocation for the discharge...” (40 CFR § 122.44(d)(1)(vii)(B)). In its 2014 memorandum, *Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, U.S. EPA reaffirmed its 2002 interpretation that this regulation requires that “where a State or EPA has established a TMDL, NPDES permits *must* contain effluent limits and conditions consistent with the assumptions and requirements of the WLAs in the TMDL.”¹⁵⁹ This is inclusive of stormwater

¹⁵⁵ State Water Board Order WQ 2001-15, pp. 7-8.

¹⁵⁶ 40 CFR §§ 122.44(d)(1)(i)-(iii); 122.44(d)(1)(vii)(B)

¹⁵⁷ “Wasteload allocation” is defined as “[t]he portion of a receiving water’s loading capacity that is allocated to one if its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.” (40 CFR § 130.2(h)).

¹⁵⁸ NPDES Permit Writers’ Manual, p. 6-30.

¹⁵⁹ U.S. EPA, Memorandum, “Revisions to the November 22, 2002 Memorandum ‘Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs,’” (Nov. 26, 2014), p. 6 (emphasis added); see also U.S. EPA, Memorandum, “Establishing Total Maximum Daily Load Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs,” (Nov. 22, 2002).

permits – municipal, industrial and construction. U.S. EPA’s interpretation of its own regulation is entitled to deference. This requirement that WQBELs must be consistent with the assumptions and requirements of the WLAs means that the permit must include either an equivalent numeric effluent limit or “a measurable, objective BMP-based limit that is projected to achieve the WLA.”¹⁶⁰ When a narrative WQBEL in the form of a BMP-based limit is relied upon, “the permit’s administrative record needs to provide adequate demonstration that ... the BMPs ... will be sufficient to implement applicable WLAs. ... Improved knowledge of BMP effectiveness ... should be reflected in the demonstration and supporting rationale that implementation of the BMPs will attain water quality standards and be consistent with WLAs.”¹⁶¹ Even if this regulation could be read to preclude mandatory incorporation of wasteload allocations into an MS4 permit, effluent limitations consistent with those wasteload allocations are nevertheless required under Clean Water Act section 402(p)(3)(B)(iii)’s direction that the MS4 permit shall require “such other controls” as the permitting authority determines “appropriate for the control of such pollutants.”¹⁶²

Finally, California Water Code section 13377 requires that NPDES permits include effluent limitations necessary to implement water quality control plans, including TMDL requirements that have been incorporated into the water quality control plans.¹⁶³

Therefore, the Los Angeles Water Board has included WQBELs in the Order for all pollutants for which a TMDL WLA is assigned to the MS4 discharges and the WQBELs are consistent with the assumptions and requirements of available TMDL WLAs applicable to the Permittees.

2. Expression of WQBELs

While federal law requires the Los Angeles Water Board to include TMDL-based WQBELs in the Order, it does not specify how those WQBELs are to be expressed in MS4 permits. Rather, federal law requires the permitting authority to make that determination as appropriate and necessary for the control of the discharge. In MS4 permits, WQBELs may be expressed either in narrative form (e.g., as requirements to implement specified BMPs) or in numeric form (i.e., as numeric effluent limitations). In the latter, the choice of how to achieve the numeric effluent limitations is left to the permittee.¹⁶⁴ Both types of expression of the WQBELs are

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² 33 U.S.C. § 1342(p)(3)(B)(iii). See, e.g., State Water Board Orders WQ 91-03, WQ 91-04, WQ 98-01, WQ 99-05, WQ 2001-15, and WQ 2015-0075.

¹⁶³ Water Code section 13263, subd. (a) likewise requires waste discharge requirements to implement any relevant water quality control plans that have been adopted. See also *State Water Res. Control Bd. Cases* (2006) 136 Cal. App. 4th 674, 730 (noting the obligation of the water boards to follow the program of implementation included in a water quality control plan).

¹⁶⁴ CWA § 402(p)(3)(B)(iii); 40 CFR § 122.44(k); U.S. EPA. Memorandum, Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs,” (Nov. 26, 2014), p. 6. (noting that WQBELs “could take the form of a numeric limit, or of a measurable, objective BMP-based limit that is projected to achieve the WLA”); see also *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, 1166 (noting that the permitting authority has discretion regarding the nature and timing of requirements that it includes as MS4 permit conditions to attain water quality standards, and that these requirements may include numeric effluent limitations).

allowed and neither one is more stringent than the other because an equivalent level of implementation of BMPs or other control measures is necessary to comply in either expression of the WQBELs. For example, to address MS4 discharges of trash, the permitting authority may require permittees to implement specific pollutant control measures, such as installing certified full capture systems on storm drains that prevent nearly all trash from reaching receiving waters (e.g., screens that trap particles of a certain size), partial capture devices on storm drains that prevent most trash from reaching receiving waters, or non-structural institutional controls (e.g., street sweeping, sidewalk trash cans, and anti-litter educational and outreach programs), or a combination of these three measures. To comply with this narrative WQBEL expression, a permittee would need to demonstrate that it implemented the required control measures. Alternatively, the permitting authority may establish a numeric limit of zero trash discharged from the MS4. To comply with this numeric WQBEL expression, a permittee would still need to implement pollutant control measures on the ground, and these necessarily would include implementation of certified full capture systems, partial capture systems, or institutional controls, or any combination thereof. Functionally, compliance with either approach requires an equivalent level of implementation, although compliance with numeric WQBELs provides a greater level of flexibility. The Los Angeles Water Board, as the permitting authority, must choose one of these options for each TMDL wasteload allocation and, in doing so, must ensure attainment of the wasteload allocations within the timeframes established in the TMDLs. Whether the WQBELs are expressed narratively or numerically are simply different ways to achieve the same desired water quality outcome.

Although federal regulations authorize the use of BMP-based WQBELs in stormwater permits to control the discharge of pollutants, those federal regulations and U.S. EPA guidance also state that BMP-based WQBELs are appropriate where it is “infeasible” to develop a numeric effluent limitation.¹⁶⁵ At the public hearing for issuance of the 2012 Los Angeles County MS4 Permit, then Associate Director of the Water Division for U.S. EPA Region 9, confirmed that: “[T]he use of the term ‘feasible’ was to say is it feasible to translate the wasteload allocation into a numeric [effluent limitation]”¹⁶⁶

U.S. EPA has issued two memoranda, on November 22, 2002 (2002 U.S. EPA Memorandum) and November 26, 2014 (2014 U.S. EPA Memorandum), providing guidance to permitting authorities on translating TMDL wasteload allocations into WQBELs in NPDES permits for stormwater discharges.¹⁶⁷ The 2002 U.S. EPA Memorandum contemplated that “the NPDES permitting authority will review the information provided by the TMDL . . . and determine whether the effluent limit is appropriately expressed using a BMP approach (including an iterative BMP approach) or a numeric limit.”¹⁶⁸ U.S. EPA further stated that it “expects that most WQBELs for NPDES-regulated municipal . . . storm water discharges will be in the

¹⁶⁵ 40 CFR § 122.44(k).

¹⁶⁶ Transcript, Oct. 5, 2012, p. 225.

¹⁶⁷ In addition to the two memoranda, U.S. EPA published guidance titled “Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits” ((Sept. 1996) 61 Federal Register 57425), which recommended inclusion of BMPs in the first two to three rounds of permit issuance, and more specific BMPs or limitations in subsequent permits if the BMPs used during prior years were shown to be inadequate to meet the requirements of the Clean Water Act, including attainment of applicable water quality standards.

¹⁶⁸ 2002 U.S. EPA Memorandum, p. 5.

form of BMPs, and that numeric limits will be used only in rare instances.”¹⁶⁹ The 2014 U.S. EPA Memorandum updated aspects of the 2002 U.S. EPA Memorandum and constitutes U.S. EPA’s current guidance on this subject. After noting the increased information available to the permitting agencies after more than a decade of experience in setting wasteload allocations and WQBELs, the 2014 U.S. EPA Memorandum explained that:

Where the TMDL includes WLAs for stormwater sources that provide numeric pollutant loads, the WLA should, where feasible, be translated into effective, measurable WQBELs that will achieve this objective. This could take the form of a numeric limit, or of a measurable, objective BMP-based limit that is projected to achieve the WLA....The permitting authority’s decision as to how to express the WQBEL(s), either as numeric effluent limitations or as BMPs, with clear, specific, and measurable elements, should be based on an analysis of the specific facts and circumstances surrounding the permit, and/or the underlying WLA, including the nature of the stormwater discharge, available data, modeling results, and other relevant information.¹⁷⁰

Where a BMP-based approach to permit limitations is selected, the 2014 U.S. EPA Memorandum noted that the permit’s administrative record needs to provide an adequate demonstration that implementation of the BMPs required in the permit will attain water quality standards and be consistent with the WLAs.¹⁷¹

As stated in Part II.F of this Fact Sheet, the three previous Orders included WQBELs consistent with the assumptions and requirements of available TMDL WLAs assigned to the Permittees’ MS4 discharges.

Except for wasteload allocations associated with certain TMDLs established by U.S. EPA (discussed below), the Los Angeles Water Board has expressed WQBELs in the Order as numeric effluent limitations as the default standard, but alternatively allows permittees the option to demonstrate compliance narratively. Permittees may comply with the numeric WQBELs either by demonstrating compliance with the numeric WQBELs through monitoring or by implementing BMPs in approved Watershed Management Programs. Therefore, in essence, the Permit includes both numeric and narrative WQBELs. The Order contains both approaches to protect water quality and provide compliance flexibility for Permittees, while also following U.S. EPA guidance. Compliance with numeric WQBELs through monitoring and analysis of water samples collected from select representative MS4 discharge points is the default compliance standard. Alternatively, Permittees may develop and implement an approved Watershed Management Program whereby they propose and implement certain approved BMPs that computer modeling demonstrates will meet the applicable numeric WQBELs by specified timeframes.

In determining how to express the WQBELs, the Los Angeles Water Board has analyzed the specific facts and circumstances surrounding the Order and the underlying TMDL WLAs, including the nature of MS4 discharges in the Los Angeles Region, available data, modeling results, and other relevant information. In doing so, the Los Angeles Water Board concludes that WQBELs expressed numerically

¹⁶⁹ *Id.*, p. 2.

¹⁷⁰ 2014 U.S. EPA Memorandum, p. 6.

¹⁷¹ *Ibid.*

are appropriate and necessary in the Order to achieve the WLAs. MS4 discharges constitute a continuing and significant source of pollutants resulting in exceedances of water quality standards in the Los Angeles Region, as evidenced by the number of TMDLs established for impaired waters in the region and identification of MS4 discharges as a source of that impairment. To date, sole reliance on BMP-based requirements have been insufficient to resolve these exceedances. As such, the Los Angeles Water Board finds that WQBELs expressed numerically are necessary to address the historic and persistent exceedances of water quality standards in the Los Angeles Region.

Further, the Los Angeles Water Board concludes that numeric WQBELs are feasible. In the last 20 years, the Los Angeles Water Board and U.S. EPA have established 45 TMDLs for waterbodies in the Los Angeles Region in which WLAs are assigned to Phase I MS4 discharges. A significant part of developing each TMDL entailed analyzing pollutant sources and allocating loads to those sources using empirical relationships, quantitative modeling, and other relevant information. As noted by the State Water Board when reviewing the numeric WQBELs in the 2012 Los Angeles County MS4 Permit, "In many ways, the Los Angeles MS4 Order was uniquely positioned to incorporate numeric WQBELs because of the extensive TMDL development in the region in the past decade and the documented role of MS4 discharges in contributing to the impairments addressed by those TMDLs."¹⁷² Following the extensive work already conducted to develop the TMDLs, the Los Angeles Water Board continues to conclude that it is feasible to develop numeric WQBELs for MS4 discharges, and that the numeric WQBELs are consistent with the TMDL wasteload allocations. There is ample evidence that BMPs and other control measures can be designed proactively (through modeling) to divert, capture, and/or treat MS4 discharges such that it is possible for any such discharges to ultimately meet the numeric WQBELs according to established compliance schedules. The 7 WMPs and 12 EWMPs developed under the 2012 Los Angeles County MS4 Permit and, in particular, the Reasonable Assurance Analysis done in these WMPs/EWMPs demonstrate this. Further, given the variability in implementation of stormwater management programs across Permittees, numeric WQBELs create a measurable, objective, and accountable means of controlling MS4 discharges, while providing significant flexibility for Permittees to comply with the numeric WQBELs in any lawful manner, including by working with other Permittees as well as other government agencies and entities to implement cost-effective control measures.

While the Los Angeles Water Board finds that inclusion of numeric WQBELs in the Order is appropriate and necessary to achieve compliance with the TMDLs WLAs as required by federal law, at the same time, the Los Angeles Water Board also finds it appropriate to allow permittees to, alternatively and voluntarily, comply with the numeric WQBELs by implementing approved Watershed Management Programs comprised of a suite of BMP-based control measures. Watershed Management Programs must be accompanied by demonstrations, via computer modeling, that the BMPs will meet the numeric WQBELs. This alternative BMP-based option satisfies U.S. EPA's guidance that MS4 permits include "effective, measurable WQBELs...that is projected to achieve the WLA."¹⁷³

¹⁷² Order WQ 2015-0075, p. 59.

¹⁷³ 2014 U.S. EPA Memorandum, p. 6.

3. Interim and Final QBELs

Final QBELs are included in the Order based on the final WLAs assigned to MS4 discharges in all available TMDLs established for waterbodies in the Los Angeles Region.

MS4 permits can include compliance schedules for achieving final QBELs derived from TMDL WLAs, so long as the compliance schedule is consistent with the program of implementation for the TMDL established by the Los Angeles Water Board and approved through the State's basin plan amendment process (see Water Code §§ 13242, 13263, 13377). If a compliance schedule in an NPDES permit exceeds one year, it must include interim requirements and the dates for their achievement pursuant to 40 CFR section 122.47. As discussed later in this Fact Sheet, the Los Angeles Water Board is providing compliance schedules longer than one year for various pollutants consistent with TMDL programs of implementation. Where there is a program of implementation for a TMDL adopted by the Los Angeles Water Board and approved through the State's basin plan amendment process, interim QBELs are included in the Order based on interim WLAs established for MS4 discharges.

VI. RATIONALE FOR TOTAL MAXIMUM DAILY LOAD PROVISIONS

Pursuant to CWA section 402(p)(B)(3)(iii) and 40 CFR section 122.44(d)(1)(vii)(B), the Order includes requirements, including QBELs, that are consistent with and implement WLAs that are assigned to discharges from the Permittees' MS4s from 45 State-adopted and U.S. EPA-established TMDLs. Permittees are required to comply with the TMDL Provisions in Part IV.B and Attachments K through S of the Order, including QBELs and receiving water limitations which are consistent with the assumptions and requirements of the TMDL WLAs assigned to discharges from the Permittees' MS4s. A comprehensive list of TMDLs by WMA and the Permittees subject to each TMDL is included in Attachment J of the Order.

A. Clean Water Act Section 303(d) List and Relationship to TMDLs

Clean Water Act section 303(d)(1)(A) requires each State to conduct a biennial assessment of its waters and identify those waters that are not achieving water quality standards. These waters are identified as impaired on the State's Clean Water Act section "303(d) List" of water quality limited segments. Periodically, U.S. EPA approves the State's 303(d) List. Most recently, U.S. EPA approved the State's 2014 and 2016 303(d) List of impaired water bodies on April 6, 2018, which includes certain receiving waters in the Los Angeles Region. Numerous water bodies within Los Angeles and Ventura counties do not meet water quality standards or fully support beneficial uses and therefore have been included on the State's 303(d) List. For each 303(d) listed water body, the state or U.S. EPA is required to establish a Total Maximum Daily Load (TMDL), or implement alternative approaches as defined in U.S. EPA's *Long-Term Vision for Assessment, Restoration and Protection under the Clean Water Act Section 303(d) Program*, for each pollutant impairing the water quality in that water body.¹⁷⁴

B. TMDLs and Their Implementation Through NPDES Permits

A TMDL is a tool for facilitating attainment of water quality standards and is based on the relationship between pollution sources and in-stream water quality conditions,

¹⁷⁴ Alternative approaches to TMDLs include placement of a waterbody-pollutant combination in Category 4B of the 303(d) List or adoption of a Watershed Plan for nonpoint sources of pollution. Currently there are no alternative approaches adopted for the Los Angeles Region that apply to Phase I MS4 discharges.

thereby providing the basis to establish water quality-based controls. A TMDL specifies the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards and allocates the acceptable pollutant load to point and nonpoint sources. The elements of a TMDL are described in 40 CFR sections 130.2 and 130.7. A TMDL is defined as “the sum of the individual waste load allocations for point sources and load allocations for nonpoint sources and natural background.” (40 CFR § 130.2(i).) MS4 discharges are considered point source discharges.

Regulations further require that TMDLs must be set at “levels necessary to attain and maintain the applicable narrative and numeric water quality standards with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.” (40 CFR section 130.7(c)(1).) 40 CFR section 130.7 also states that TMDLs shall take into account critical conditions for stream flow, loading and water quality parameters. These controls should provide the pollution reduction necessary for a water body to attain water quality standards. Essentially, TMDLs serve as a backstop provision of the Clean Water Act designed to ensure attainment of water quality standards when other provisions, such as technology-based effluent limitations, have failed to achieve water quality standards.

Upon establishment of TMDLs by the State or the U.S. EPA, the State is required to incorporate, or reference, the TMDLs in the State Water Quality Management Plan. (40 CFR sections 130.6(c)(1) and 130.7.) The Los Angeles Water Board’s Basin Plan, and applicable statewide water quality control plans, serves as the State Water Quality Management Plan governing the watersheds under the jurisdiction of the Los Angeles Water Board. When adopting TMDLs as part of its Basin Plan, the Los Angeles Water Board includes, as part of the TMDL, a program for implementation of the WLAs for point sources and load allocations (LAs) for nonpoint sources.

TMDLs are not self-executing, but instead rely upon further Board orders to impose pollutant restrictions on discharges to achieve the TMDL’s WLAs. Section 402(p)(3)(B)(iii) of the Clean Water Act requires the Los Angeles Water Board to impose permit conditions, including: “management practices, control techniques and system, design and engineering methods, and *such other provisions as the Administrator of the State determines appropriate for the control of such pollutants.*” (emphasis added.) Section 402(a)(1) of the Clean Water Act also requires states to issue permits with conditions necessary to carry out the provisions of the Clean Water Act. Federal regulations also require that NPDES permits include water quality-based effluent limitations consistent with the assumptions and requirements of any available waste load allocation for the discharge. (40 CFR section 122.44(d)(1)(vii)(B).) U.S. EPA has consistently stated that this regulation applies to all permitted stormwater discharges, including MS4 permits.¹⁷⁵ Similarly, state law requires that the Los Angeles Water Board implement its Basin Plan when adopting waste discharge requirements (WDRs) and that NPDES permits apply “any more stringent effluent standards or limitations necessary to implement water quality control plans...” (Cal. Wat. Code, §§ 13263, 13377). In precedential State Water Board Order WQ 99-05, the State Water Board exercised its discretion under federal law by requiring MS4s to comply with water quality standards. In precedential Order WQ 2015-0075, the State Water Board reaffirmed that it would continue to require water quality standards compliance in MS4 permits. These

¹⁷⁵ U.S. EPA Memorandum, “Revisions to the November 22, 2002 Memorandum ‘Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those TMDLs,’” p. 6 (Nov. 26, 2014).

precedential orders are relevant as a TMDL, by its very nature, sets forth a plan for an impaired water body to achieve water quality standards.

An NPDES permit should include clear, specific, and measurable permit requirements, and where feasible, incorporate TMDL WLAs as numeric WQBELs.¹⁷⁶ Where a non-numeric permit limitation is selected, such as BMPs, the permit's fact sheet and administrative record must support the expectation that the BMPs are sufficient to achieve the WLAs.¹⁷⁷ (40 CFR § 124.8.) U.S. EPA has published guidance for establishing WLAs for stormwater discharges in TMDLs and their incorporation as numeric WQBELs, where feasible, in MS4 permits.¹⁷⁸

C. TMDL Provisions

As required, WQBELs and receiving water limitations included in the Order and Attachments K through S are consistent with the assumptions and requirements of the available WLAs assigned to MS4 discharges in the Los Angeles Region, which have been established in forty-five (45) TMDLs. The Los Angeles Water Board established thirty-five (35) TMDLs and U.S. EPA established ten (10) TMDLs that assign WLAs to MS4 Permittees within the counties of Los Angeles and Ventura. These TMDLs identify MS4 discharges as a source of pollutants to these water bodies and, as required, establish WLAs for MS4 discharges to reduce the amount of pollutants discharged to receiving waters. While the TMDLs established by the Los Angeles Water Board include a program of implementation, including actions to be taken and a time schedule for such actions, TMDLs established by U.S. EPA do not. To date, the Los Angeles Water Board adopted three programs of implementation pursuant to Water Code sections 13240 and 13242 for four (4) U.S. EPA-established TMDLs. The TMDLs and programs of implementation included in the Regional MS4 Permit, along with establishment, approval, and effective dates, are listed in Table F-24 below.

The 2010 Ventura County MS4 Permit incorporated WQBELs and other permit requirements for thirteen (13) TMDLs. The Regional MS4 Permit continues to include WQBELs for all these TMDLs. The Regional MS4 Permit also continues to include other permit requirements for these TMDLs, except for the Calleguas Creek Nitrogen Compounds and Related Effects TMDL (Calleguas Creek Nitrogen TMDL). The Calleguas Creek Nitrogen TMDL identifies stormwater discharges as a minor source of nitrogen to Calleguas Creek; therefore, the TMDL did not assign WLAs to MS4 dischargers. The 2010 Ventura County MS4 Permit thus did not include WQBELs for this TMDL and the Regional MS4 Permit continues to not include WQBELs for this TMDL. However, monitoring requirements for the Calleguas Creek Nitrogen TMDL were included in the 2010 Ventura County MS4 Permit. The monitoring data from 2009 to 2017 had an exceedance rate of less than 1% of Nitrate as Nitrogen plus Nitrite as Nitrogen (1 exceedance out of 108 samples) at the monitored outfalls. Therefore, the Regional MS4 Permit does not include monitoring requirements for the Calleguas Creek Nitrogen TMDL.

The 2012 Los Angeles County MS4 Permit included WQBELs, receiving water limitations, and other permit requirements for thirty-three (33) TMDLs. The Regional MS4 Permit continues to include WQBELs, receiving water limitations, and other permit

¹⁷⁶ *Id.*, p. 3.

¹⁷⁷ *Id.*, p. 6.

¹⁷⁸ U.S. EPA Memorandum, "Revisions to the November 22, 2002 Memorandum 'Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those TMDLs'," Nov. 26, 2014.

requirements for all these TMDLs, except for the Bacterial Indicator TMDLs for Middle Santa Ana River Watershed (Middle Santa Ana River Bacteria TMDL). On August 26, 2005, the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) established the Middle Santa Ana River Bacteria TMDL, which assigned WLAs to the cities of Claremont and Pomona. The cities of Claremont and Pomona are located within the Los Angeles Water Board's jurisdictional boundaries, but portions of their MS4 discharges drain to the Middle Santa Ana River Watershed. The 2012 Los Angeles County MS4 Permit contained WQBELs, receiving water limitations, and other permit requirements for the cities of Claremont and Pomona consistent with the Middle Santa Ana River Bacteria TMDL, but provided that the WQBELs, receiving water limitations, and other permit requirements would not be applicable during the effective dates of any NPDES permit that is issued by the Santa Ana Water Board. Pursuant to a valid and enforceable designation agreement between the Los Angeles Water Board and the Santa Ana Water Board under Water Code section 13228, dated May 31, 2013, the Santa Ana Water Board was designated as the regulator of discharges of bacteria from the cities of Claremont and Pomona through their MS4 to receiving waters within the Middle Santa Ana River Watershed. Therefore, the Regional MS4 Permit does not include WQBELs and other permit requirements implementing the Middle Santa Ana River Bacteria TMDL.

The 2014 City of Long Beach MS4 Permit included WQBELs and other permit requirements for nine (9) TMDLs, all of which continue to be included in the Regional MS4 Permit.

In addition, there are new TMDLs that the Los Angeles Water Board established, or U.S. EPA established, after the previous MS4 permits were issued. Table F-24 and Table F-25 below list all the TMDLs that are in the Order. Table F-25 indicates which TMDLs were in previous MS4 permits and which TMDLs are new to the Regional MS4 Permit.

Table F-24. Incorporated TMDLs and Programs of Implementation

| Total Maximum Daily Load | Resolution Number | Adoption Date | State Water Board Resolution Number | State Water Board Approval Date | OAL Approval Date | U.S. EPA Approval Date | Effective Date |
|--|-------------------|---------------|-------------------------------------|---------------------------------|-------------------|------------------------|----------------|
| VENTURA RIVER WATERSHED | | | | | | | |
| Ventura River Estuary Trash TMDL | R4-2007-008 | 6/7/2007 | 2007-0072 | 12/4/2007 | 2/11/2008 | 2/27/2008 | 3/6/2008 |
| Ventura River Estuary Trash TMDL (Revised) | R19-005 | 6/13/2019 | 2020-0002 | 1/21/2020 | --- | --- | --- |
| TMDL for Algae, Eutrophic Conditions, and Nutrients in the Ventura River and its Tributaries | R12-011 | 12/6/2012 | 2013-0005 | 2/19/2013 | 6/4/2013 | 6/28/2013 | 6/28/2013 |
| MISCELLANEOUS VENTURA COASTAL WMA | | | | | | | |
| Harbor Beaches of Ventura County Bacteria TMDL | R2007-017 | 11/1/2007 | 2008-0072 | 10/7/2008 | 12/9/2008 | 12/18/2008 | 12/18/2008 |
| SANTA CLARA RIVER WATERSHED | | | | | | | |
| Santa Clara River Nitrogen Compounds TMDL | 03-011 | 8/7/2003 | 2003-0073 | 11/19/2003 | 2/27/2004 | 3/18/2004 | 3/23/2004 |
| Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL | R10-006 | 7/8/2010 | 2011-0048 | 10/4/2011 | 12/19/2011 | 1/13/2012 | 3/21/2012 |
| TMDL for Chloride in the Santa Clara River, Reach 3 (U.S. EPA established) | N/A | N/A | N/A | N/A | N/A | 6/18/2003 | 6/18/2003 |
| Upper Santa Clara River Chloride TMDL | R14-010 | 10/9/2014 | 2014-0069 | 12/16/2014 | 3/18/2015 | 4/28/2015 | 4/28/2015 |
| Lake Elizabeth, Munz Lake, and Lake Hughes Trash TMDL (Lake Elizabeth only) | R4-2007-009 | 6/7/2007 | 2007-0073 | 12/4/2007 | 2/8/2008 | 2/27/2008 | 3/6/2008 |
| Lake Elizabeth, Munz Lake, and Lake Hughes Trash TMDL (Lake Elizabeth only) (Revised) | R19-005 | 6/13/2019 | 2020-0002 | 1/21/2020 | --- | --- | --- |

| Total Maximum Daily Load | Resolution Number | Adoption Date | State Water Board Resolution Number | State Water Board Approval Date | OAL Approval Date | U.S. EPA Approval Date | Effective Date |
|---|-------------------|---------------|-------------------------------------|---------------------------------|-------------------|------------------------|----------------|
| Santa Clara River Lakes Nutrients TMDL (Lake Elizabeth only) | R16-006 | 9/8/2016 | 2017-0011 | 3/7/2017 | 6/22/2017 | 6/27/2017 | 6/27/2017 |
| CALLEGUAS CREEK WATERSHED | | | | | | | |
| TMDL for Organochlorine (OC) Pesticides, Polychlorinated Biphenyls (PCBs), and Siltation in Calleguas Creek, Its Tributaries, and Mugu Lagoon | R4-2005-010 | 7/7/2005 | 2005-0068 | 9/22/2005 | 1/20/2006 | 3/14/2006 | 3/24/2006 |
| TMDL for Toxicity, Chlorpyrifos, and Diazinon in the Calleguas Creek, its Tributaries, and Mugu Lagoon | R4-2005-009 | 7/7/2005 | 2005-0067 | 9/22/2005 | 12/27/2005 | 3/14/2006 | 3/24/2006 |
| TMDL for Metals and Selenium in Calleguas Creek, its Tributaries, and Mugu Lagoon | R16-007 | 10/13/2016 | 2017-0007 | 2/22/2017 | 5/18/2017 | 6/9/2017 | 6/23/2017 |
| Revolon Slough and Beardsley Wash Trash TMDL | R18-005 | 6/14/2018 | 2019-0018 | 5/21/2019 | 4/2/2020 | 5/6/2020 | 5/6/2020 |
| TMDL for Boron, Chloride, Sulfate, and TDS (Salts) in the Calleguas Creek Watershed | R4-2007-016 | 10/4/2007 | 2008-0033 | 5/20/2008 | 11/6/2008 | 12/2/2008 | 12/2/2008 |
| TMDLs for Pesticides, PCBs, and Sediment Toxicity in Oxnard Drain 3 (U.S. EPA established) | N/A | N/A | N/A | N/A | N/A | 10/6/2011 | 10/6/2011 |

| Total Maximum Daily Load | Resolution Number | Adoption Date | State Water Board Resolution Number | State Water Board Approval Date | OAL Approval Date | U.S. EPA Approval Date | Effective Date |
|--|-------------------|---------------|-------------------------------------|---------------------------------|-------------------|------------------------|----------------|
| SANTA MONICA BAY WMA | | | | | | | |
| Santa Monica Bay Beaches Bacteria TMDL | R12-007 | 6/7/2012 | 2013-0008 | 3/19/2013 | 11/7/2013 | 7/2/2014 | 7/2/2014 |
| Santa Monica Bay Beaches Bacteria TMDL (Revised) | R21-001 | 3/11/2021 | --- | --- | --- | --- | --- |
| Santa Monica Bay Nearshore and Offshore Debris TMDL | R10-010 | 11/4/2010 | 2011-0064 | 12/6/2011 | 3/15/2012 | 3/20/2012 | 3/20/2012 |
| Santa Monica Bay Nearshore and Offshore Debris TMDL (Revised) | R19-004 | 3/14/2019 | 2020-0001 | 1/21/2020 | --- | --- | --- |
| Santa Monica Bay TMDL for DDTs and PCBs (U.S. EPA established) | N/A | N/A | N/A | N/A | N/A | 3/26/2012 | 3/26/2012 |
| MALIBU CREEK SUBWATERSHED | | | | | | | |
| Malibu Creek and Lagoon Bacteria TMDL | R12-009 | 6/7/2012 | 2013-0008 | 3/19/2013 | 11/8/2013 | 7/2/2014 | 7/2/2014 |
| Malibu Creek and Lagoon Bacteria TMDL (Revised) | R21-001 | 3/11/2021 | --- | --- | --- | --- | --- |
| Malibu Creek Watershed Trash TMDL | R18-006 | 6/14/2018 | 2019-0017 | 5/21/2019 | 4/2/2020 | 5/6/2020 | 5/6/2020 |
| TMDLs for Nutrients - Malibu Creek Watershed (U.S. EPA established) | N/A | N/A | N/A | N/A | N/A | 3/21/2003 | 3/21/2003 |
| Malibu Creek & Lagoon TMDL for Sedimentation and Nutrients to Address Benthic Community Impairments (U.S. EPA established) | N/A | N/A | N/A | N/A | N/A | 7/2/2013 | 7/2/2013 |
| Program of Implementation for the U.S. EPA- | R16-009 | 12/8/2016 | 2017-0008 | 2/22/2017 | 5/16/2017 | N/A | 5/16/2017 |

| Total Maximum Daily Load | Resolution Number | Adoption Date | State Water Board Resolution Number | State Water Board Approval Date | OAL Approval Date | U.S. EPA Approval Date | Effective Date |
|---|-------------------|---------------|-------------------------------------|---------------------------------|-------------------|------------------------|----------------|
| Established Malibu Creek Nutrients TMDL and the U.S. EPA-Established Malibu Creek and Lagoon Sedimentation and Nutrients TMDL to Address Benthic Community Impairments | | | | | | | |
| Program of Implementation for the U.S. EPA-Established Malibu Creek Nutrients TMDL and the U.S. EPA-Established Malibu Creek and Lagoon Sedimentation and Nutrients TMDL to Address Benthic Community Impairments (Revised) | R21-001 | 3/11/2021 | --- | --- | --- | --- | --- |
| BALLONA CREEK SUBWATERSHED | | | | | | | |
| Ballona Creek Trash TMDL | R15-006 | 6/11/2015 | 2015-0068 | 11/17/2015 | 5/4/2016 | 6/30/2016 | 6/30/2016 |
| Ballona Creek Estuary Toxic Pollutants TMDL | R13-010 | 12/5/2013 | 2014-0030 | 6/17/2014 | 5/4/2015 | 10/26/2015 | 10/26/2015 |
| Ballona Creek Estuary Toxic Pollutants TMDL (Revised) | R21-001 | 3/11/2021 | --- | --- | --- | --- | --- |
| Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL | R12-008 | 6/7/2012 | 2013-0008 | 3/19/2013 | 11/8/2013 | 7/2/2014 | 7/2/2014 |
| Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL (Revised) | R21-001 | 3/11/2021 | --- | --- | --- | --- | --- |

| Total Maximum Daily Load | Resolution Number | Adoption Date | State Water Board Resolution Number | State Water Board Approval Date | OAL Approval Date | U.S. EPA Approval Date | Effective Date |
|---|-------------------|---------------|-------------------------------------|---------------------------------|-------------------|------------------------|----------------|
| Ballona Creek Metals TMDL | R13-010 | 12/5/2013 | 2014-0030 | 6/17/2014 | 5/4/2015 | 10/26/2015 | 10/26/2015 |
| Ballona Creek Metals TMDL (Revised) | R21-001 | 3/11/2021 | --- | --- | --- | --- | --- |
| Ballona Creek Wetlands TMDL for Sediments and Invasive Exotic Vegetation (U.S. EPA established) | N/A | N/A | N/A | N/A | N/A | 3/26/2012 | 3/26/2012 |
| MARINA DEL REY SUBWATERSHED | | | | | | | |
| Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL | R12-007 | 6/7/2012 | 2013-0008 | 3/19/2013 | 11/7/2013 | 7/2/2014 | 7/2/2014 |
| Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL (Revised) | R21-001 | 3/11/2021 | --- | --- | --- | --- | --- |
| Marina del Rey Harbor Toxic Pollutants TMDL | R14-004 | 2/6/2014 | 2014-0049 | 9/9/2014 | 5/4/2015 | 10/16/2015 | 10/16/2015 |
| Marina del Rey Harbor Toxic Pollutants TMDL (Revised) | R21-001 | 3/11/2021 | --- | --- | --- | --- | --- |
| DOMINGUEZ CHANNEL AND GREATER HARBORS WATERS WATERSHED | | | | | | | |
| Los Angeles Harbor Bacteria TMDL (Inner Cabrillo Beach and Main Ship Channel) | R12-007 | 6/7/2012 | 2013-0008 | 3/19/2013 | 11/7/2013 | 7/2/2014 | 7/2/2014 |
| Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL | R11-008 | 5/5/2011 | 2012-0008 | 2/7/2012 | 3/21/2012 | 3/23/2012 | 3/23/2012 |
| MACHADO LAKE SUBWATERSHED | | | | | | | |

| Total Maximum Daily Load | Resolution Number | Adoption Date | State Water Board Resolution Number | State Water Board Approval Date | OAL Approval Date | U.S. EPA Approval Date | Effective Date |
|--|-------------------|---------------|-------------------------------------|---------------------------------|-------------------|------------------------|----------------|
| Machado Lake Trash TMDL | R4-2007-006 | 6/7/2007 | 2007-0075 | 12/4/2007 | 2/8/2008 | 2/27/2008 | 3/6/2008 |
| Machado Lake Trash TMDL (Revised) | R19-004 | 3/14/2019 | 2020-0001 | 1/21/2020 | --- | --- | --- |
| Machado Lake Eutrophic, Algae, Ammonia, and Odors (Nutrient) TMDL | R08-006 | 5/1/2008 | 2008-0089 | 12/2/2008 | 2/19/2009 | 3/11/2009 | 3/11/2009 |
| Machado Lake Pesticides and PCBs TMDL | R10-008 | 9/2/2010 | 2011-0065 | 12/6/2011 | 2/29/2012 | 3/20/2012 | 3/20/2012 |
| LOS ANGELES RIVER WATERSHED | | | | | | | |
| Los Angeles River Watershed Trash TMDL | R15-006 | 6/11/2015 | 2015-0068 | 11/17/2015 | 5/4/2016 | 6/30/2016 | 6/30/2016 |
| Los Angeles River Nitrogen Compounds and Related Effects TMDL | R12-010 | 12/6/2012 | 2013-0016 | 6/4/2013 | 6/9/2014 | 8/7/2014 | 8/7/2014 |
| Los Angeles River and Tributaries Metals TMDL | R15-004 | 4/9/2015 | 2015-0069 | 11/17/2015 | 7/11/2016 | 12/12/2016 | 12/12/2016 |
| Los Angeles River Watershed Bacteria TMDL | R10-007 | 7/9/2010 | 2011-0056 | 11/1/2011 | 3/21/2012 | 3/23/2012 | 3/23/2012 |
| Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDL (U.S. EPA established) | N/A | N/A | N/A | N/A | N/A | 3/26/2012 | 3/26/2012 |
| Legg Lake Trash TMDL | R4-2007-010 | 6/7/2007 | 2007-0074 | 12/4/2007 | 2/5/2008 | 2/27/2008 | 3/6/2008 |
| Legg Lake Trash TMDL (Revised) | R19-005 | 6/13/2019 | 2020-0002 | 1/21/2020 | --- | --- | --- |

| Total Maximum Daily Load | Resolution Number | Adoption Date | State Water Board Resolution Number | State Water Board Approval Date | OAL Approval Date | U.S. EPA Approval Date | Effective Date |
|--|-------------------|---------------|-------------------------------------|---------------------------------|-------------------|------------------------|----------------|
| Los Angeles Area Lakes TMDLs (U.S. EPA established for Legg Lake, Lake Calabasas, Echo Park Lake, and Peck Road Park Lake) | N/A | N/A | N/A | N/A | N/A | 3/26/2012 | 3/26/2012 |
| SAN GABRIEL RIVER WATERSHED | | | | | | | |
| San Gabriel River and Impaired Tributaries Metals and Selenium TMDL (U.S. EPA established) | N/A | N/A | N/A | N/A | N/A | 3/26/2007 | 3/26/2007 |
| Program of Implementation for the TMDLs for Metals and Selenium in the San Gabriel River and Impaired Tributaries | R13-004 | 6/6/2013 | 2014-0012 | 3/4/2014 | 10/13/2014 | 5/11/2017 | 10/13/2014 |
| San Gabriel River, Estuary and Tributaries Indicator Bacteria TMDL | R15-005 | 6/10/2015 | 2015-0067 | 11/17/2015 | 4/14/2016 | 6/14/2016 | 6/14/2016 |
| Los Angeles Area Lakes TMDLs (U.S. EPA established for Puddingstone Reservoir) | N/A | N/A | N/A | N/A | N/A | 3/26/2012 | 3/26/2012 |
| LOS CERRITOS CHANNEL AND ALAMITOS BAY WATERSHED | | | | | | | |
| Los Cerritos Channel Metals TMDL (U.S. EPA established) | N/A | N/A | N/A | N/A | N/A | 3/17/2010 | 3/17/2010 |
| Program of Implementation for the TMDLs for Metals in Los Cerritos Channel | R13-004 | 6/6/2013 | 2014-0012 | 3/4/2014 | 10/13/2014 | 5/11/2017 | 10/13/2014 |
| Colorado Lagoon OC Pesticides, PCBs, | R09-005 | 10/1/2009 | 2010-0056 | 11/16/2010 | 5/6/2011 | 6/14/2011 | 7/28/2011 |

| Total Maximum Daily Load | Resolution Number | Adoption Date | State Water Board Resolution Number | State Water Board Approval Date | OAL Approval Date | U.S. EPA Approval Date | Effective Date |
|---|-------------------|---------------|-------------------------------------|---------------------------------|-------------------|------------------------|----------------|
| Sediment Toxicity, PAHs and Metals TMDL | | | | | | | |

Table F-25. Status of TMDLs in the Regional MS4 Permit and Previous MS4 Permits

| TOTAL MAXIMUM DAILY LOAD | NEW TO REGIONAL MS4 PERMIT | 2012 LA COUNTY MS4 PERMIT | 2014 CITY OF LONG BEACH MS4 PERMIT | 2010 VENTURA COUNTY MS4 PERMIT |
|---|----------------------------|---------------------------|------------------------------------|--------------------------------|
| VENTURA RIVER WATERSHED | | | | |
| Ventura River Estuary Trash TMDL | | | | X |
| Total Maximum Daily Load for Algae, Eutrophic Conditions, and Nutrients in the Ventura River and its Tributaries | X | | | |
| MISCELLANEOUS VENTURA COASTAL WMA | | | | |
| Harbor Beaches of Ventura County Bacteria TMDL | | | | X |
| SANTA CLARA RIVER WATERSHED | | | | |
| Santa Clara River Nitrogen Compounds TMDL | | X | | X |
| Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL | | X | | |
| TMDL for Chloride in the Santa Clara River, Reach 3 (U.S. EPA established) | | | | X |
| Upper Santa Clara River Chloride TMDL | | X | | X |
| Lake Elizabeth, Munz Lake, and Lake Hughes Trash TMDL (Lake Elizabeth only) | | X | | |
| Santa Clara River Lakes Nutrients TMDL (Lake Elizabeth only) | X | | | |
| CALLEGUAS CREEK WATERSHED | | | | |
| TMDL for Organochlorine (OC) Pesticides, Polychlorinated Biphenyls (PCBs), and Siltation in Calleguas Creek, Its Tributaries, and Mugu Lagoon | | | | X |

| TOTAL MAXIMUM DAILY LOAD | NEW TO REGIONAL MS4 PERMIT | 2012 LA COUNTY MS4 PERMIT | 2014 CITY OF LONG BEACH MS4 PERMIT | 2010 VENTURA COUNTY MS4 PERMIT |
|--|----------------------------|---------------------------|------------------------------------|--------------------------------|
| TMDL for Toxicity, Chlorpyrifos, and Diazinon in the Calleguas Creek, its Tributaries, and Mugu Lagoon | | | | X |
| TMDL for Metals and Selenium in Calleguas Creek, its Tributaries, and Mugu Lagoon | | | | X |
| Revolon Slough and Beardsley Wash Trash TMDL | | | | X |
| TMDL for Boron, Chloride, Sulfate, and TDS (Salts) in the Calleguas Creek Watershed | | | | X |
| TMDLs for Pesticides, PCBs, and Sediment Toxicity in Oxnard Drain 3 (U.S. EPA established) | X | | | |
| SANTA MONICA BAY WMA | | | | |
| Santa Monica Bay Beaches Bacteria TMDL | | X | | |
| Santa Monica Bay Nearshore and Offshore Debris TMDL | | X | | |
| Santa Monica Bay TMDL for DDTs and PCBs (U.S. EPA established) | | X | | |
| MALIBU CREEK SUBWATERSHED | | | | |
| Malibu Creek and Lagoon Bacteria TMDL | | X | | X |
| Malibu Creek Watershed Trash TMDL | | X | | |
| TMDLs for Nutrients - Malibu Creek Watershed (U.S. EPA established) | | X | | X |
| Malibu Creek & Lagoon TMDL for Sedimentation and Nutrients to Address Benthic Community Impairments (U.S. EPA established) | X | | | |
| BALLONA CREEK SUBWATERSHED | | | | |
| Ballona Creek Trash TMDL | | X | | |
| Ballona Creek Estuary Toxic Pollutants TMDL | | X | | |
| Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL | | X | | |
| Ballona Creek Metals TMDL | | X | | |
| Ballona Creek Wetlands TMDL for Sediments and Invasive Exotic Vegetation (U.S. EPA established) | | X | | |
| MARINA DEL REY SUBWATERSHED | | | | |

| TOTAL MAXIMUM DAILY LOAD | NEW TO REGIONAL MS4 PERMIT | 2012 LA COUNTY MS4 PERMIT | 2014 CITY OF LONG BEACH MS4 PERMIT | 2010 VENTURA COUNTY MS4 PERMIT |
|--|----------------------------|---------------------------|------------------------------------|--------------------------------|
| Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL | | X | | |
| Marina del Rey Harbor Toxic Pollutants TMDL | | X | | |
| DOMINGUEZ CHANNEL AND GREATER HARBORS WATERS WATERSHED | | | | |
| Los Angeles Harbor Bacteria TMDL (Inner Cabrillo Beach and Main Ship Channel) | | X | | |
| Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL | | X | X | |
| MACHADO LAKE SUBWATERSHED | | | | |
| Machado Lake Trash TMDL | | X | | |
| Machado Lake Eutrophic, Algae, Ammonia, and Odors (Nutrient) TMDL | | X | | |
| Machado Lake Pesticides and PCBs TMDL | | X | | |
| LOS ANGELES RIVER WATERSHED | | | | |
| Los Angeles River Watershed Trash TMDL | | X | X | |
| Los Angeles River Nitrogen Compounds and Related Effects TMDL | | X | X | |
| Los Angeles River and Tributaries Metals TMDL | | X | X | |
| Los Angeles River Watershed Bacteria TMDL | | X | X | |
| Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDL (U.S. EPA established) | | X | X | |
| Legg Lake Trash TMDL | | X | | |
| Los Angeles Area Lakes TMDLs (U.S. EPA established for Legg Lake, Lake Calabasas, Echo Park Lake, and Peck Road Park Lake) | | X | | |
| SAN GABRIEL RIVER WATERSHED | | | | |
| San Gabriel River and Impaired Tributaries Metals and Selenium TMDL (U.S. EPA established) | | X | X | |
| San Gabriel River, Estuary and Tributaries Indicator Bacteria TMDL | X | | | |

| TOTAL MAXIMUM DAILY LOAD | NEW TO REGIONAL MS4 PERMIT | 2012 LA COUNTY MS4 PERMIT | 2014 CITY OF LONG BEACH MS4 PERMIT | 2010 VENTURA COUNTY MS4 PERMIT |
|--|----------------------------|---------------------------|------------------------------------|--------------------------------|
| Los Angeles Area Lakes TMDLs (U.S. EPA established for Puddingstone Reservoir) | | X | | |
| LOS CERRITOS CHANNEL AND ALAMITOS BAY WATERSHED | | | | |
| Los Cerritos Channel Metals TMDL (U.S. EPA established) | | X | X | |
| Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs and Metals TMDL | | X | X | |

D. Manner of TMDL Incorporation

The TMDLs incorporated into the Order express WLAs in different ways. In general, a WLA is a pollutant threshold that must be achieved in order to ensure that water quality standards are attained in the receiving water. The WLA may be expressed in terms of mass or concentration of a pollutant. However, in some cases, a WLA may be expressed as a receiving water condition such as an allowable number of exceedance days of the bacteria water quality objectives.

In the Order, TMDL WLAs have been translated into WQBELs and/or receiving water limitations that are consistent with the assumptions and requirements of the TMDL WLAs. The assumptions and requirements include, but are not limited to, numeric values and averaging periods. For those TMDLs that do not specify averaging periods for the WLAs, the averaging period for the WQBELs and/or receiving water limitations in the Order are based on the averaging period for the TMDL numeric targets. For each TMDL pollutant category, to the extent possible, the WLAs have been incorporated into the Order in a consistent manner. Some TMDLs specify alternative means of demonstrating compliance with WLAs; these alternative means of demonstrating compliance are included in the TMDL provisions in Part IV.B and Attachments K through S of the Order. The manner of incorporation for each TMDL pollutant category is discussed below in more detail.

A number of the TMDLs for various categories of pollutants such as bacteria, metals, and toxics establish WLAs that are assigned jointly to a group of Permittees whose stormwater and/or non-stormwater discharges are or may be commingled in the MS4 prior to discharge to the receiving water subject to the TMDL. TMDLs address commingled MS4 discharges by assigning a WLA to a group of MS4 Permittees based on co-location within the same subwatershed.

The applicability of TMDLs to Permittees as specified in Attachment J of the Order is consistent with the previous MS4 permits and the TMDLs. Where a TMDL assigns WLAs to categories of certain types of discharges or dischargers (e.g., MS4 permittees), but does not specifically name the “responsible Permittees”, current GIS data, drainage area boundaries, and other relevant information have been used to determine the applicability of a categorical WLA to individual Permittees.

1. Expression of Bacteria TMDLs as Permit Limitations

Ten bacteria TMDLs are incorporated into the Regional MS4 Permit as listed below:

- Harbor Beaches of Ventura County Bacteria TMDL (Attachment L)
- Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL (Attachment M)
- Santa Monica Bay Beaches Bacteria TMDL (Attachment O)
- Malibu Creek and Lagoon Bacteria TMDL (Attachment O)
- Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL (Attachment O)
- Marina del Rey Harbor Mothers’ Beach and Back Basins Bacteria TMDL (Attachment O)
- Los Angeles Harbor Bacteria TMDL (Attachment P)
- Los Angeles River Watershed Bacteria TMDL (Attachment Q)

- Long Beach City Beaches and Los Angeles River Estuary Indicator Bacteria TMDL – U.S. EPA Established TMDL (Attachment Q)
- San Gabriel River, Estuary and Tributaries Indicator Bacteria TMDL (Attachment R)

In general, the bacteria TMDLs express the WLAs as an allowable number of exceedance days of the bacteria water quality objectives within the water body; therefore, the WLAs are translated into receiving water limitations. In addition to the receiving water limitations, WQBELs for MS4 outfalls are established to allow the opportunity for Permittees to individually demonstrate compliance at an outfall or jurisdictional boundary, thus isolating the Permittee's pollutant contributions from those of other Permittees and from other pollutant sources to the receiving water. The WQBELs are based on the bacteria water quality objectives in the Basin Plan at the time the TMDL was established.¹⁷⁹ For the bacteria TMDLs that apply to marine and ocean waters,¹⁸⁰ the WQBELs are based on the multi-part bacteriological water quality objectives for total coliform, fecal coliform and enterococcus. For the bacteria TMDLs for freshwater,¹⁸¹ the WQBELs are based on the bacteria water quality objectives for *E. coli*. No exceedances of the WQBELs are permitted unless expressly authorized by the TMDL (e.g., Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL). The rationale for not allowing any exceedances of the WQBELs is that MS4 outfalls are monitored less frequently than the receiving waters, which are generally sampled at least weekly. According to the equations used to express WLAs as allowable exceedance days in the bacteria TMDLs, as the frequency of monitoring decreases, the allowable number of exceedance days approaches zero, such that water quality objectives must be met for each monitoring event. Given the frequency at which outfalls are monitored, the allowable number of exceedance days for outfalls is zero and

¹⁷⁹ In 2018, the State Water Board adopted statewide bacteria water quality objectives and implementation provisions to protect recreational users from the effects of pathogens in California water bodies (Bacteria Provisions). The Bacteria Provisions supersede numeric REC-1 water quality objectives for bacteria contained in a basin plan prior to the effective date of the Bacteria Provisions (February 4, 2019). The Los Angeles Water Board incorporated these Bacteria Provisions into the Basin Plan. The Bacteria Provisions did not change bacteria TMDLs established before February 4, 2019 and these TMDLs remain in effect. The Los Angeles Water Board may convene a public meeting to evaluate the effectiveness of these TMDLs in attaining the Bacteria Provisions at a later date.

¹⁸⁰ These include: Harbor Beaches of Ventura County Bacteria TMDL (Attachment L); Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL (discharges to the Santa Clara River Estuary and Santa Clara River Reaches 1 and 2) (Attachment M); Santa Monica Bay Beaches Bacteria TMDL (Attachment O); Malibu Creek and Lagoon Bacteria TMDL (discharges to the Lagoon) (Attachment O); Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL (discharges to the Estuary) (Attachment O); Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL (Attachment O); Los Angeles Harbor Bacteria TMDL (Attachment P); Long Beach City Beaches and Los Angeles River Estuary Indicator Bacteria TMDL – U.S. EPA Established TMDL (Attachment Q); and San Gabriel River, Estuary, and Tributaries Indicator Bacteria TMDL (discharges to the San Gabriel River Estuary) (Attachment R).

¹⁸¹ These include: Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL (discharges to Santa Clara River Reaches 3 and above) (Attachment M); Malibu Creek and Lagoon Bacteria TMDL (Malibu Creek discharges) (Attachment O); Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL (Ballona Creek and Sepulveda Channel discharges) (Attachment O); Los Angeles River Watershed Bacteria TMDL (Attachment Q); and the San Gabriel River, Estuary and Tributaries Indicator Bacteria TMDL (discharges to the San Gabriel River and tributaries) (Attachment R).

therefore no exceedances of the WQBELs are permitted unless otherwise specified.

The following TMDLs require additional discussion either because the manner of incorporation has changed from previous MS4 permits or information in the TMDL regarding the naming of responsible Permittees requires clarification.

Santa Monica Bay Beaches Bacteria TMDL, Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL, Los Angeles Harbor Bacteria TMDL, and Long Beach City Beaches and Los Angeles River Estuary Indicator Bacteria TMDL. A change that was made in the Order from the way these bacteria TMDLs were previously incorporated into the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit is the removal of open beach compliance locations. Since the Order regulates MS4 discharges, only sampling sites that are or could be impacted by an MS4 discharge are included as receiving water compliance locations. MS4 compliance locations are defined as sites that are within 400 yards of storm drain outfalls.¹⁸² Open beach sites are regulated under a different mechanism, such as the Nonpoint Source Program.

For the Santa Monica Bay Beaches Bacteria TMDL (SMB Bacteria TMDL) specifically, the removal of open beach compliance locations affects the calculation of the interim wet-weather single sample indicator bacteria receiving water limitations for each jurisdictional group. The SMB Bacteria TMDL's interim wet-weather milestones were based on a cumulative percentage reduction from the total wet-weather exceedance-day reductions required for each jurisdictional group. These reduction milestones were translated into the number of exceedance days to be reduced plus the number of annual allowable wet-weather exceedance days for each jurisdictional group. By July 15, 2018, the SMB Bacteria TMDL required each jurisdictional group to achieve a 50% cumulative percent reduction from the total wet-weather exceedance-day reductions required for each jurisdictional group as defined in Table 7-4.2b of the Basin Plan. Table 7-4.2b defines each jurisdictional group and the monitoring sites assigned to that group, which includes both open beach and MS4 compliance locations. The Order incorporates the SMB Bacteria TMDL interim wet-weather milestones as interim wet-weather receiving water limitations to be achieved by the effective date of the Order. For each jurisdictional group, the interim wet-weather receiving water limitations have been recalculated to remove open beach compliance locations. In addition, for MS4 compliance locations that are sampled weekly instead of daily, the interim wet-weather receiving water limitations have been scaled according to equation 8.2 in the Santa Monica Bay Beaches Wet-Weather Bacteria TMDL staff report dated November 7, 2002.

Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL (SCR Bacteria TMDL). Unlike other bacteria TMDLs, the SCR Bacteria TMDL only provided values for allowable exceedance days when daily sampling is conducted and provided equations to calculate values for more or less frequent sampling. Interim annual allowable exceedance days of the single sample water quality objective are calculated for daily, weekly, and less than weekly (3 wet and 2 dry weather) sampling frequencies according to the equation included in Table 7-36.3 of the Basin Plan. Final annual allowable exceedance days are calculated for daily

¹⁸² "An Epidemiological Study of Possible Adverse Health Effects of Swimming in Santa Monica Bay." Santa Monica Bay Restoration Project.

and weekly sampling frequencies according to the equation included in Table 7-36.2 of the Basin Plan.

The SCR Bacteria TMDL identifies wet weather as the critical condition. However, the TMDL did not define the wet-weather period. Therefore, the wet-weather period for the SCR Bacteria TMDL is determined based on the same approach as the Santa Monica Bay Beaches Bacteria TMDL (a day with 0.1 inch of rain or greater and the three days following the rain event).¹⁸³

The Order identifies the City of Oxnard as one of the responsible Permittees for the SCR Bacteria TMDL even though the TMDL contains conflicting direction about the inclusion of the City of Oxnard. While the TMDL assigns WLAs to different general categories of pollutants¹⁸⁴, the implementation section of the TMDL does not specifically name the City of Oxnard as one of the entities responsible for MS4 WLAs.¹⁸⁵ However, the TMDL Staff Report does name the City of Oxnard as one of the entities responsible for MS4 WLAs¹⁸⁶ and shows the City as discharging to Reach 1 and Reach 2, which drain to the Estuary, in Figure 2-1 of the TMDL Staff Report¹⁸⁷. Therefore, including the City of Oxnard as a responsible Permittee for the SCR Bacteria TMDL is consistent with the assumptions and requirements of the TMDL.

The Order includes indicator bacteria WQBELs for MS4 dischargers that discharge to Reaches 3 or above based on allowable exceedance days for Reaches 3, 5, 6, and 7. Ventura County Permittees have not been assigned indicator bacteria WQBELs for discharges to Reaches 4B, 5, 6, and 7 because there are no MS4 discharges from Ventura County MS4 Permittees to these reaches. For Reaches 6 and 7, the drainage area for MS4 discharges is completely within Los Angeles County. Reach 5 partially falls within Ventura County, but Ventura County Permittees do not have any MS4 discharges to the portion of Reach 5 that falls within Ventura County¹⁸⁸. This is consistent with the TMDL Staff Report, which shows a map of the Santa Clara River Reach 5 subwatershed as draining mainly Los Angeles County.¹⁸⁹ Therefore, the Order assigns indicator bacteria WQBELs for discharges to Reach 5 exclusively to Los Angeles County Permittees draining to Reach 5. For Reach 4B, although it is completely within Ventura County¹⁹⁰, there are no MS4 discharges from Ventura County Permittees to Santa Clara River Reach 4B. The Order may be reopened to name Ventura County Permittees as responsible Permittees for Santa Clara River Reach 4B and 5 if there is future development of MS4 infrastructure and discharges to these reaches.

¹⁸³ Los Angeles Water Board. Total Maximum Daily Loads for Indicator Bacteria in Santa Clara River Estuary and Reaches 3, 5, 6, and 7 [Staff Report]. July 8, 2010. p. 49.

¹⁸⁴ Los Angeles Water Board. Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties. Chapter 7 p. 7-433.

¹⁸⁵ Los Angeles Water Board. Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties. Chapter 7 p. 7-435

¹⁸⁶ Los Angeles Water Board. Total Maximum Daily Loads for Indicator Bacteria in Santa Clara River Estuary and Reaches 3, 5, 6, and 7 [Staff Report]. July 8, 2010. pp. 52-53.

¹⁸⁷ Los Angeles Water Board. Total Maximum Daily Loads for Indicator Bacteria in Santa Clara River Estuary and Reaches 3, 5, 6, and 7 [Staff Report]. July 8, 2010. p. 23.

¹⁸⁸ Ventura County GIS data and MS4 drainage area maps (July 15, 2016)

¹⁸⁹ Los Angeles Water Board. Total Maximum Daily Loads for Indicator Bacteria in Santa Clara River Estuary and Reaches 3, 5, 6, and 7 [Staff Report]. July 8, 2010. p. 15.

¹⁹⁰ Ventura County GIS data and MS4 drainage area maps (July 15, 2016)

2. Expression of Metals TMDLs as Permit Limitations

Six metals TMDLs are incorporated into the Regional MS4 Permit as listed below:

- Metals and Selenium in the Calleguas Creek, its Tributaries and Mugu Lagoon TMDL (Attachment N)
- Ballona Creek Metals TMDL (Attachment O)
- Los Angeles River and Tributaries Metals TMDL (Attachment Q)
- TMDLs for Metals and Selenium - San Gabriel River and Impaired Tributaries – U.S. EPA Established TMDL (Attachment R)
- Los Angeles Area Lakes TMDLs: Puddingstone Reservoir Mercury TMDL – U.S. EPA Established TMDL (Attachment R)
- Los Cerritos Channel TMDLs for Metals – U.S. EPA Established TMDL (Attachment S)

The following TMDLs require additional discussion because the manner of incorporation has changed from previous MS4 permits.

Los Angeles River and Tributaries Metals TMDL, Ballona Creek Metals TMDL, San Gabriel River and Impaired Tributaries Metals and Selenium TMDL, and Los Cerritos Channel Metals TMDL. These TMDLs assign mass-based WLAs to the Permittees during dry-weather and wet-weather conditions expressed as mass per day. For ease of implementation, these WLAs are incorporated into the Order as mass-based WQBELs as well as alternative concentration-based WQBELs. Demonstrating compliance with concentration-based values rather than mass-based values is more practical given the nature of monitoring requirements in the Order.

The TMDLs' dry-weather numeric targets are used for the alternative concentration-based dry-weather WQBELs. This approach is consistent with the assumptions and requirements of these TMDLs. The Los Angeles River and Tributaries Metals TMDL and Ballona Creek Metals TMDL both state that concentration-based permit limits equal to dry-weather reach-specific numeric targets may apply during dry weather.¹⁹¹ The San Gabriel River and Los Cerritos Channel TMDLs do not contain this explicit language, but as they follow the same calculation approach as the Los Angeles River and Ballona Creek TMDLs, the same approach for incorporation into permits may apply.

The wet-weather mass-based WLAs are expressed as equations. In the Order, the terms of these equations have been rearranged to express WQBELs as an "effective concentration" of a metal that when multiplied by the volume of flow in the river for the assessed day (i.e. the daily volume in liters) gives the calculated effluent limitation as a load.

$$\text{Effluent Limitation} = (\text{Effective Concentration}) \times (\text{daily volume})$$

As an example, the grouped wet-weather effluent limitation for cadmium in the Los Angeles River is a load expressed as kg/day:

¹⁹¹ Los Angeles Water Board. Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties. Chapter 7 p. 7-132 (Ballona Creek Metals TMDL) and p. 7-156 (Los Angeles and Tributaries Metals TMDL).

$$\text{Effluent Limitation} = \text{WER} \times (2.8 \times 10^{-9}) \times (\text{daily volume}) - 1.8$$

Setting the two equations equal and rearranging the variables to solve for the “effective concentration,” the equation becomes:

$$\begin{aligned} (\text{Effective Concentration}) \times (\text{daily volume}) \\ = \text{WER} \times (2.8 \times 10^{-9}) \times (\text{daily volume}) - 1.8 \end{aligned}$$

$$\text{Effective Concentration} = \frac{\text{WER} \times (2.8 \times 10^{-9}) \times (\text{daily volume}) - 1.8}{(\text{daily volume})}$$

$$\text{Effective Concentration} = \text{WER} \times (2.8 \times 10^{-9}) - \frac{1.8}{(\text{daily volume})}$$

This equation results in an effective concentration for cadmium expressed as kg/L; to convert to µg/L, apply the conversion factor 1 kg = 1 x 10⁹ µg:

$$\text{Effective Concentration} = \left[\text{WER} \times (2.8 \times 10^{-9}) - \frac{1.8}{(\text{daily volume})} \right] \left(\frac{1 \times 10^9 \mu\text{g}}{1 \text{ kg}} \right)$$

$$\text{Effective Concentration} \left(\frac{\mu\text{g}}{\text{L}} \right) = \text{WER} \times 2.8 - \frac{1.8 \times 10^9}{(\text{daily volume})}$$

The concentration WQBELs for the Los Angeles River and Tributaries Metals TMDL based on this methodology are the following:

$$\text{Cadmium} \left(\frac{\mu\text{g}}{\text{L}} \right) = \text{WER} \times 2.8 - \frac{1.8 \times 10^9}{(\text{daily volume})}$$

$$\text{Copper} \left(\frac{\mu\text{g}}{\text{L}} \right) = \text{WER} \times 15 - \frac{9.5 \times 10^9}{(\text{daily volume})}$$

$$\text{Lead} \left(\frac{\mu\text{g}}{\text{L}} \right) = \text{WER} \times 85 - \frac{3.2 \times 10^{10}}{(\text{daily volume})}$$

$$\text{Zinc} \left(\frac{\mu\text{g}}{\text{L}} \right) = \text{WER} \times 140 - \frac{8.3 \times 10^{10}}{(\text{daily volume})}$$

The Los Angeles River Metals TMDL defines wet weather as any day when the maximum daily flow instream is equal to or greater than 500 cfs at the Wardlow station. A flow of 500 cfs results in a daily volume of 1.22 x 10⁹ L. Using this daily volume, a WER default value of 1 except for copper, which has a site-specific WER of 3.97, in these equations result in the following effective concentrations:

$$\text{Cadmium: } 1 \times 2.8 - \frac{1.8 \times 10^9}{1.22 \times 10^9} = 1.32 \frac{\mu\text{g}}{\text{L}}$$

$$\text{Copper: } 3.97 \times 15 - \frac{9.5 \times 10^9}{1.22 \times 10^9} = 51.76 \frac{\mu\text{g}}{\text{L}}$$

$$\text{Lead: } 1 \times 85 - \frac{3.2 \times 10^{10}}{1.22 \times 10^9} = 58.77 \frac{\mu\text{g}}{\text{L}}$$

$$\text{Zinc: } 1 \times 140 - \frac{8.3 \times 10^{10}}{1.22 \times 10^9} = 71.97 \frac{\mu\text{g}}{\text{L}}$$

The equations for the wet-weather mass-based WQBELs for the Ballona Creek Metals TMDL, San Gabriel River Metals TMDL, and Los Cerritos Channel Metals TMDL are simpler than for the Los Angeles River Metals TMDL because they do not account for the allocations for wastewater treatment plants. Thus, when the equations for the Ballona Creek Metals TMDL, San Gabriel River Metals TMDL, and Los Cerritos Channel Metals TMDL are rearranged, the effective concentration is a value. As an example, the grouped wet-weather effluent limitation for copper in Ballona Creek is a load expressed as grams per day:

$$\text{Effluent Limitation} = \text{WER} \times (1.297 \times 10^{-5}) \times (\text{daily volume})$$

As in the previous example, the effluent limitation is expressed as an “effective concentration”:

$$\text{Effluent Limitation} = (\text{Effective Concentration}) \times (\text{daily volume})$$

Setting the two equations equal and rearranging the variables to solve for the “effective concentration” the equation becomes:

$$\begin{aligned} (\text{Effective Concentration}) \times (\text{daily volume}) \\ = \text{WER} \times (1.297 \times 10^{-5}) \times (\text{daily volume}) \end{aligned}$$

$$\text{Effective Concentration} = \frac{\text{WER} \times (1.297 \times 10^{-5}) \times (\text{daily volume})}{(\text{daily volume})}$$

$$\text{Effective Concentration} = \text{WER} \times 1.297 \times 10^{-5}$$

This equation results in an effective concentration for copper expressed as g/L; to convert to $\mu\text{g/L}$, apply the conversion factor $1 \text{ g} = 1 \times 10^6 \mu\text{g}$:

$$\text{Effective Concentration} = (\text{WER} \times 1.297 \times 10^{-5}) \left(\frac{1 \times 10^6 \mu\text{g}}{1 \text{ g}} \right)$$

$$\text{Effective Concentration} \left(\frac{\mu\text{g}}{\text{L}} \right) = \text{WER} \times 12.97$$

The concentration WQBELs for the Ballona Creek Metals TMDL based on this methodology are the following:

$$\text{Copper} \left(\frac{\mu\text{g}}{\text{L}} \right) = \text{WER} \times 12.97$$

$$\text{Lead} \left(\frac{\mu\text{g}}{\text{L}} \right) = \text{WER} \times 72.65$$

$$\text{Zinc} \left(\frac{\mu\text{g}}{\text{L}} \right) = \text{WER} \times 99.17$$

This methodology for determining effective concentrations to be used as the alternative wet-weather concentration-based WQBELs is consistent with the assumptions and requirements of these TMDLs because the equations are the same as the WLA equations assigned by the TMDLs; the terms have merely been rearranged for ease of compliance determination.

3. Expression of Nutrient TMDLs as Permit Limitations

Twelve nutrient TMDLs are incorporated into the Regional MS4 Permit as listed below:

- TMDL for Algae, Eutrophic Conditions, and Nutrients in the Ventura River and its Tributaries (Attachment K)
- Santa Clara River Nitrogen Compounds TMDL (Attachment M)
- Santa Clara River Lakes Nutrients TMDL (Lake Elizabeth) (Attachment M)
- TMDLs for Nutrients - Malibu Creek Watershed – U.S. EPA Established TMDLs (Attachment O)
- Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients to Address Benthic Community Impairments – U.S. EPA Established TMDLs (Attachment O)
- Machado Lake Eutrophic, Algae, Ammonia, and Odors (Nutrient) TMDL (Attachment P)
- Los Angeles River Nitrogen Compounds and Related Effects TMDL (Attachment Q)
- LA Area Lakes TMDLs: Echo Park Lake Nutrient TMDL – U.S. EPA Established TMDL (Attachment Q)
- LA Area Lakes TMDLs: Peck Road Park Lake Nutrient TMDL – U.S. EPA Established TMDL (Attachment Q)
- LA Area Lakes TMDL: Legg Lake System Nutrient TMDL – U.S. EPA Established TMDL (Attachment Q)
- LA Area Lakes TMDLs: Lake Calabasas Nutrient TMDL – U.S. EPA Established TMDL (Attachment Q)
- LA Area Lakes TMDL: Puddingstone Reservoir Nutrient TMDL – U.S. EPA Established (Attachment R)

The following TMDLs require additional discussion either because the manner of incorporation has changed from previous MS4 permits or there is inconsistent information in the TMDL about the naming of responsible Permittees.

Santa Clara River Lakes Nutrients TMDL (Lake Elizabeth only). The *Santa Clara River Lakes Nutrients TMDL* assigns grouped WLAs to all MS4 discharges for Lake Elizabeth, Munz Lake, and Lake Hughes. Only WLAs for Lake Elizabeth were incorporated in Attachment M of the Order because there are no Permittee discharges subject to the Order into Lake Hughes or Lake Munz.¹⁹² The WLAs for MS4 discharges to Munz Lake and Lake Hughes were assigned to additional responsible entities in the future under Phase II of the U.S. EPA Stormwater Permitting Program; or the residual designation authority of the state under Clean Water Action section 402(p)(2)(E), and other applicable regulatory programs.¹⁹³

Los Angeles River Nitrogen Compounds and Related Effects TMDL. In the *Los Angeles River Nitrogen Compounds and Related Effects TMDL* (LAR Nitrogen

¹⁹² Total Maximum Daily Load for Nutrients in Elizabeth Lake, Munz Lake, and Lake Hughes in the Santa Clara River Watershed [Staff Report]. September 8, 2016. Table 4 pp. 16-17.

¹⁹³ Los Angeles Water Board. Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties. Chapter 7 pp. 7-564-565

TMDL) the total ammonia as nitrogen WLAs are dependent on the temperature and pH of receiving waters as well as the presence of early life stages (ELS) of fish. The WQBELs incorporated into the Regional MS4 Permit for total ammonia as nitrogen are based on the calculation procedure for translation of objectives into effluent limits in Chapter 3 of the Basin Plan, page 3-16 to 3-25. Following this procedure is consistent with the LAR Nitrogen TMDL, which states, "It would be consistent with the findings and assumptions of this TMDL to calculate total ammonia WLAs based on temperature and pH data from the most recent three years of monitoring data when incorporating WLAs into permits. In applying this approach, 90th percentile pH data shall be used to establish one-hour average WLAs and the 50th percentile of pH and temperature data shall be used to establish 30-day average WLAs. The procedure for translation of objectives into effluent limits specified in Chapter 3 of this Basin Plan, as amended by Resolution R02-011 and R04-022, shall be used to translate WLAs into effluent limitations." The three years of receiving water monitoring data used to calculate the ammonia WQBELs were from the Donald C. Tillman Water Reclamation Plant (WRP), the Los Angeles-Glendale WRP, and the Whittier Narrows WRP.

The Donald C. Tillman WRP is located at the Sepulveda Basin and discharges to Reach 5. There are receiving water monitoring stations in Reach 5 (Sepulveda Basin) and Reach 4 (below Sepulveda Basin). Monitoring data from receiving water monitoring stations RSW-LATT628 (Reach 5) and RSW-LATT630 (Reach 4) were used to calculate the ammonia site specific 30-day average limitations. The Los Angeles-Glendale WRP discharges to Los Angeles River Reach 3. Monitoring data from receiving water monitoring station RSW-LAGT650 (Reach 3) were used to calculate the ammonia site specific 30-day average limitations. Whittier Narrows WRP is located adjacent to Rio Hondo Reach 3 (above Whittier Narrows Dam). Monitoring data from receiving water monitoring station RSW-006 (Rio Hondo Reach 3) were used to calculate the ammonia site specific 30-day average limitations. For the three WRPs, the receiving water monitoring data from January 1, 2018 to December 31, 2020, were used to calculate the 50th percentile for pH and temperature values, which were used to calculate the ammonia WQBELs.

4. Expression of Salts TMDLs as Permit Limitations

Three salts TMDLs are incorporated into the Regional MS4 Permit as listed below:

- Santa Clara River Reach 3 Chloride TMDL – U.S. EPA Established TMDL (Attachment M)
- Upper Santa Clara River Chloride TMDL (Attachment M)
- Calleguas Creek Watershed Salts TMDL (Attachment N)

The following TMDLs require additional discussion either because the manner of incorporation has changed from previous MS4 permits or there is inconsistent information in the TMDL about the naming of responsible Permittees.

Santa Clara River Reach 3 Chloride TMDL. The SCR Reach 3 Chloride TMDL recommends incorporating WLAs as an instantaneous maximum. However, the WLAs were incorporated into Attachment M of the Order as a daily maximum. Based on the monitoring frequency required in the MRP of the Order, the daily maximum is effectively the same as an instantaneous maximum WQBEL.

Upper Santa Clara River Chloride TMDL. The *Upper Santa Clara River Chloride TMDL* (USCR Chloride TMDL) includes a 3-month rolling average WLA for chloride. However, the 2012 Los Angeles County MS4 Permit includes WLAs as an instantaneous maximum. Based on the monitoring frequency required in the MRP of the Order, the daily maximum is effectively the same as an instantaneous maximum. Therefore, consistent with the 2012 Los Angeles County MS4 Permit, the WLA for chloride is incorporated in Attachment M of the Order as a daily maximum WQBEL.

Although the USCR Chloride TMDL did not specifically list individual responsible Permittees, it assigned WLAs to “Other NPDES discharges.” Consistent with the SCR Bacteria TMDL, Ventura County Permittees have not been assigned chloride WQBELs for discharges to the upper reaches of the Santa Clara River (Reaches 4Band 5) because there are no MS4 discharges from Ventura County MS4 Permittees to these reaches.¹⁹⁴

Boron, Chloride, Sulfate, and TDS (Salts) in the Calleguas Creek Watershed TMDL (Calleguas Creek Salts TMDL). Among the other Permittees specifically named in the Calleguas Creek Salts TMDL, the Los Angeles Water Board has determined that the Cities of Oxnard and Simi Valley are responsible Permittees for this TMDL because their MS4s discharge to the subwatersheds to which the TMDL assigns WLAs (Pleasant Valley (Revolon) and Simi)¹⁹⁵. This determination was made based on current GIS information on MS4s and their drainage areas.

5. Expression of Toxic Pollutants and Sediment TMDLs as Permit Limitations

There are twenty-one (21) toxic pollutants and sediment TMDLs that are incorporated into the Regional MS4 Permit as listed below:

- Calleguas Creek OC Pesticides and PCBs TMDL (Attachment N)
- Calleguas Creek Toxicity TMDL (Attachment N)
- TMDLs for Pesticides, PCBs, and Sediment Toxicity in Oxnard Drain 3 – U.S. EPA Established (Attachment N)
- Santa Monica Bay TMDLs for DDTs and PCBs – U.S. EPA established (Attachment O)
- Ballona Creek Estuary Toxic Pollutants TMDL (Attachment O)
- Ballona Creek Wetlands TMDLs for Sediment and Invasive Exotic Vegetation – U.S. EPA established (Attachment O)
- Marina del Rey Harbor Toxic Pollutants TMDL (Attachment O)
- Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL (Attachment P)
- Machado Lake Pesticides and PCBs TMDL (Attachment P)
- LA Area Lakes TMDLs: Echo Park Lake Chlordane, Dieldrin and PCBs TMDL – U.S. EPA Established (Attachment Q)
- LA Area Lakes TMDLs: Peck Road Park Lake Chlordane, Dieldrin, DDTs and PCBs TMDL – U.S. EPA Established (Attachment Q)
- LA Area Lakes TMDLs: Puddingstone Reservoir Chlordane, Dieldrin, DDTs and PCBs TMDLs – U.S. EPA Established (Attachment R)
- Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals TMDL (Attachment S)

¹⁹⁴ Ventura County GIS data and MS4 drainage area maps (July 15, 2016).

¹⁹⁵ Los Angeles Water Board. Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties. Chapter 7 p 7-273

The following TMDLs require additional discussion either because the manner of incorporation has changed from previous MS4 permits or there is inconsistent information in the TMDL about the manner of incorporation.

Organochlorine (OC) Pesticides, Polychlorinated Biphenyls (PCBs), and Siltation in Calleguas Creek, its Tributaries, and Mugu Lagoon TMDL (Calleguas Creek OC Pesticides and PCBs TMDL). The Calleguas Creek OC Pesticides and PCBs TMDL includes a siltation WLA, which is allocated to all NPDES permitted MS4s, including Caltrans. The WLA is expressed as a reduction from the baseline sediment yield to Mugu Lagoon. The TMDL states on page 7 that “the [waste] load allocation will apply after the baseline is established, as described in the Implementation Plan.” The TMDL Implementation Plan requires Ventura County Permittees to propose a baseline load per Special Study #1. Ventura County Permittees have completed Special Study #1. However, the study did not determine the baseline sedimentation yield but rather claimed that Mugu Lagoon is unimpaired for sedimentation based on habitat conversion and benthic community degradation. Mugu Lagoon has not been removed from the 303(d) list for sedimentation. Nonetheless, until a baseline sedimentation yield is calculated, it is not possible to incorporate the sedimentation WLA into the Order because of the way the WLA is expressed in the TMDL. Therefore, the siltation WLA for Mugu Lagoon is not incorporated into Attachment N of the Order. The Los Angeles Water Board will reopen the Order to incorporate a siltation WLA depending upon the decision regarding the impairment status of Mugu Lagoon.

Calleguas Creek Toxicity TMDL. The Toxicity, Chlorpyrifos, and Diazinon in the Calleguas Creek, its Tributaries, and Mugu Lagoon TMDL (Calleguas Creek Toxicity TMDL) includes 1-hour (acute) and 4-day (chronic) WLAs for both chlorpyrifos and diazinon. Based on the monitoring frequency required in the MRP of the Order, the daily maximum is effectively the same as the 1-hour and 4-day frequency. Hence, WLAs are incorporated as a daily maximum. Consistent with other Los Angeles Water Board-adopted toxics TMDLs, acute WLAs were interpreted to apply to wet weather and chronic WLAs were interpreted to apply to dry weather.

E. WQBELs for Trash

1. Previous Permit Requirements

The Los Angeles Water Board amended the 2001 Los Angeles County MS4 Permit (Order No. 01-182) on December 10, 2009 to incorporate provisions implementing the Los Angeles River Trash TMDL. At that time, the Los Angeles Water Board incorporated the WLAs from the Los Angeles River Trash TMDL into the 2001 Los Angeles County MS4 Permit as numeric WQBELs.¹⁹⁶ The 2001 Los Angeles County MS4 Permit stated: “Each Permittee identified in Appendix 7-1 shall comply with the interim and final effluent limitations set forth in Appendix 7-1 hereto.”¹⁹⁷ Appendix 7-1 expressed the numeric effluent limitations for trash as progressively decreasing allowable amounts of trash discharged from each applicable permittee’s jurisdictional area within the watershed. Each applicable permittee was

¹⁹⁶ See generally 2001 Permit, Part 7, pp. 79-84, Appendix 7-1, and Appendix 7-2. See also, 2001 Permit, Findings Related to the Incorporation of the Los Angeles River Trash TMDL, pp. 15-20; see also 2012 Permit, Fact Sheet, pp. F-13, F-23..

¹⁹⁷ 2001 Permit, Part 7, p. 79 and Appendix 7-1.

required to make annual reductions of its discharges of trash over a 7-year period (2010-2016), until the final effluent limitation of zero trash discharged from the MS4 was achieved. “Permittees shall achieve their final effluent limitation of zero trash discharge for the 2015-2016 storm year and every year thereafter.”¹⁹⁸ Consistent with the TMDL, the Los Angeles Water Board provided Permittees the option to be deemed in compliance with the numeric effluent limitations through the installation of certain BMPs (i.e., certified full capture devices).¹⁹⁹

In the 2012 Los Angeles County MS4 Permit, the Los Angeles Water Board carried over the effluent limitations and compliance deadlines, as well as the compliance approaches, established in the 2001 Los Angeles County MS4 Permit.²⁰⁰ Part A of Attachment O of the 2012 Los Angeles County MS4 Permit included the interim and final numeric WQBELs and compliance deadlines implementing the Los Angeles River Trash TMDL. Applicable permittees were required to “comply with the final water quality-based effluent limitation of zero trash discharged to the Los Angeles River no later than September 30, 2016 and every year thereafter.”²⁰¹ The 2012 Los Angeles County MS4 Permit also included provisions implementing 8 other trash TMDLs, including interim and final numeric WQBELs and compliance deadlines and provisions outlining the method of compliance for all trash TMDLs.

The 2014 City of Long Beach MS4 Permit included similar requirements for the Los Angeles River Trash TMDL. As discussed in Part II.F of this Fact Sheet, the 2012 Los Angeles County MS4 Permit was reopened in 2016 to incorporate revisions to the Los Angeles River Trash TMDL and Ballona Creek and Wetlands Trash TMDL. At the same time, the 2014 City of Long Beach MS4 Permit was also reopened to incorporate the same revisions to the Los Angeles River Trash TMDL. The 2010 Ventura County MS4 Permit included provisions for the Revolon Slough and Beardsley Wash Trash TMDL and the Ventura River Estuary Trash TMDL. These provisions in the Ventura County MS4 Permit included WLAs expressed as WQBELs of “zero trash”, compliance monitoring, and actions and special studies.

2. Manner of Trash TMDLs Incorporation

There are eleven (11) trash TMDLs that are incorporated into the Regional MS4 Permit, listed below, consistent with the assumptions and requirements of the TMDL WLAs.

- Ventura River Estuary Trash TMDL (Attachment K)
- Lake Elizabeth Trash TMDL (Attachment M)
- Revolon Slough and Beardsley Wash Trash TMDL (Attachment N)
- Santa Monica Bay Nearshore and Offshore Debris TMDL (Attachment O)
- Malibu Creek Watershed Trash TMDL (Attachment O)

¹⁹⁸ *Id.*, Part 7, Appendix 7-1, footnote 3.

¹⁹⁹ *Id.*, Part 7, pp. 79-84 and Appendix 7-2.

²⁰⁰ 2012 Permit, Part VI.E.5, pp. 151-157 and Attachment O, Part A, pp. O-1 to O-3.. See also *id.*, Fact Sheet, p. F-37 (“This Order carries over the final receiving water limitations and WQBELs that were included to implement the Marina del Rey Harbor Back Basins and Mothers’ Beach Bacteria TMDL and the Los Angeles River Trash TMDL, respectively, in the 2007 and 2009 amendments to Order No. 01-182.”).

²⁰¹ *Id.*, Part A.2, p. O-1..

- Ballona Creek Trash TMDL (Attachment O)
- Machado Lake Trash TMDL (Attachment P)
- Los Angeles River Watershed Trash TMDL (Attachment Q)
- Legg Lake Trash TMDL (Attachment Q)
- LA Area Lakes TMDLs: Echo Park Lake Trash TMDL – U.S. EPA Established (Attachment Q)
- LA Area Lakes TMDLs: Peck Road Park Lake Trash TMDL – U.S. EPA Established (Attachment Q)

The WLAs for trash are expressed as progressively decreasing allowable amounts of trash discharged from a Permittee’s jurisdictional area within the drainage area to the impaired water body. The Trash TMDLs require each Permittee to make annual reductions of its discharges of trash over a set period, until the numeric target of zero trash discharged from the MS4 is achieved. The Trash TMDLs specify a specific formula for calculating and allocating annual reductions in trash discharges from each jurisdictional area within a watershed. The formula results in specified annual amounts of trash that may be discharged from each jurisdiction into the receiving waters. Translation of the WLAs or compliance points described in the TMDLs into jurisdiction-specific load reductions from the baseline levels, as specified in the TMDL, logically results in the articulation of an annual limitation on the amount of a pollutant that may be discharged. The specification of allowable annual trash discharge amounts meets the definition of an “effluent limitation”, as that term is defined in subdivision (c) of section 13385.1 of the California Water Code. Alternatively, if Permittees choose to comply with the WLAs for trash by progressively installing full capture systems to address 100% of the drainage area to the impaired waterbody within their jurisdiction, the specification of the percentage of the drainage area (or percentage of catch basins) that must be addressed meets the definition of an “effluent limitation.” Specifically, the trash discharge limitations or, alternatively, percentage of area addressed by full capture systems constitute a “numeric restriction ... on the quantity [or] discharge rate ... of a pollutant or pollutants that may be discharged from an authorized location.”

3. Compliance Schedules for Trash TMDLs

Trash TMDL compliance schedules are incorporated into the Regional MS4 Permit consistent with the TMDLs. Note that the Santa Monica Bay Debris TMDL included a mechanism where Permittees would receive a three-year extension of the final TMDL implementation deadline if they adopted certain local ordinances. The cities of Manhattan Beach, Hermosa Beach, and Malibu adopted local ordinances to ban plastic bags, smoking in public places, and single use expanded polystyrene food packaging. Therefore, the final TMDL implementation deadline for these Permittees is extended from March 20, 2020 to March 20, 2023.

4. Trash TMDLs Compliance Methods

Part IV.B.3 of the Order sets forth the trash WQBELs, Permittees’ compliance options with respect to trash WBQELs, and additional trash TMDL provisions. The compliance options included in the Order are consistent with the compliance options included in the previous 2012 Los Angeles County and 2014 City of Long Beach MS4 Permits, with the exception of the following:

- a. Under the 2012 Los Angeles County and 2014 City of Long Beach MS4 Permits, a Permittee could request a less frequent assessment of its daily generation rate (DGR) subject to Executive Officer approval. Part IV.B.3.b.ii.(a)(1)(iii) of the Order, however, allows Permittees to reduce the frequency of DGR recalculation to every five years upon achieving full compliance with final WQBELs without the requirement for Executive Officer approval. This change was made due to the time and tracking costs associated with tracking and responding to such requests and does not affect requirements for annual reporting and, thus, the ability to assess compliance with the final WQBELs on an ongoing basis.
- b. Two trash TMDL compliance approaches included in previous MS4 permits, “Partial Capture Devices and Institutional Controls” and “Combined Compliance Approaches,” have been combined into the “Mass Balance Compliance Approach” detailed in Part IV.B.3.b.ii of the Order. This approach allows Permittees to comply with their interim and final effluent limitations using a combination of full capture systems, partial capture devices, and institutional controls. Furthermore, performance of full capture systems and partial capture devices (i.e., trash removal efficiency) may be accounted for in calculating the “Total Storm Year Trash Discharge,” using the forms provided in Attachment I of the Order. The change to combine the “Partial Capture Devices and Institutional Controls” and “Combined Compliance Approaches” from the previous permits does not constitute a change in trash TMDL compliance options.
- c. Additionally, the Order takes into account additional full capture system compliance options for the Malibu Creek Watershed Trash TMDL and the Revolon Slough and Beardsley Wash Trash TMDL. These additional full capture system compliance options are consistent with recent updates to these TMDLs, which are now in effect (See Table F-24). These compliance options allow Permittees to demonstrate compliance with the WQBELs by installing certified full capture systems on conveyances that collect drainage from priority land use areas as defined in the Trash Amendments.

F. U.S. EPA Established TMDLs

U.S. EPA has established ten TMDLs that include waste load allocations for MS4 discharges in Los Angeles and Ventura counties. These TMDLs are listed below with their effective dates:

- March 21, 2003 – TMDLs for Nutrients - Malibu Creek Watershed (Attachment O)
- June 18, 2003 – TMDL for Chloride in the Santa Clara River, Reach 3 (Attachment M)
- March 26, 2007 – TMDLs for Metals and Selenium - San Gabriel River and Impaired Tributaries (Attachment R)
- March 17, 2010 – Los Cerritos Channel TMDLs for Metals (Attachment S)
- October 6, 2011 – TMDLs for Pesticides, PCBs, and Sediment Toxicity in Oxnard Drain 3 (Attachment N)
- March 26, 2012 – Santa Monica Bay TMDLs for DDTs and PCBs (Attachment O)

- March 26, 2012 – Ballona Creek Wetlands TMDLs for Sediment and Invasive Exotic Vegetation (Attachment O)
- March 26, 2012 – Long Beach City Beaches and Los Angeles River Estuary TMDLs for Indicator Bacteria (Attachment Q)
- March 26, 2012 – Los Angeles Area Lakes TMDLs for Nitrogen, Phosphorus, Mercury, Trash, Organochlorine Pesticides and PCBs (Attachments O, Q, and R)
- July 2, 2013 – Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients to Address Benthic Community Impairments (Attachment O)

As discussed above, in contrast to State-established TMDLs, U.S. EPA-established TMDLs do not contain a program of implementation. The Clean Water Act does not allow U.S. EPA to either adopt programs of implementation or establish implementation schedules for its TMDLs. Such decisions are generally left with the states. The Los Angeles Water Board may, and has in some cases, subsequently adopted a separate program of implementation as a Basin Plan Amendment for U.S. EPA-established TMDLs, including schedules of implementation, which can be included as compliance schedules in permits where applicable. Alternatively, considering the specific approach taken in the Regional MS4 Permit and specific facts pertaining to the U.S. EPA-established TMDLs, the Los Angeles Water Board can determine that no compliance schedule should be provided or may approve a schedule in a Watershed Management Program.

In the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit, Permittees subject to WLAs in U.S. EPA-established TMDLs were required to propose and implement best management practices (BMPs) that would be effective in achieving compliance with U.S. EPA-established numeric WLAs and a schedule to implement the proposed BMPs in their WMPs. The Los Angeles Water Board's approach in these two prior permits was based the fact that the TMDLs were being newly incorporated and, because they did not have State adopted programs of implementation, the numeric WLAs would take effect immediately. Further, through the WMP Provisions in these two permits, the Los Angeles Water Board created an alternative compliance pathway that provided a rigorous process for identifying BMPs and a schedule for implementing the BMPs that would ensure that the WLAs would be achieved. Therefore, the Los Angeles Water Board determined that it was appropriate to express the TMDL WLAs as narrative WQBELs and allow Permittees to propose BMPs to meet the numeric WLAs and a schedule that was as short as possible in a Watershed Management Program during the terms of these two permits. If Permittees did not propose such BMPs in their WMPs, and receive approval of their WMP, they were required to immediately comply with numeric WQBELs equivalent to the numeric WLAs.²⁰²

In developing the Order, the Los Angeles Water Board revisited, and is clarifying, its approach to U.S. EPA-established TMDL WLAs in the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit, which these permits anticipated the Los Angeles Water Board would do. In revisiting its approach, the Los Angeles Water Board considered (a) whether it had adopted a program of implementation for the TMDL pursuant to Water Code sections 13240 and 13242; (b) whether the WLAs for the U.S. EPA-established TMDL were equivalent to existing pollutant loads (thus

²⁰² Note that per 40 CFR § 130.2(h) "WLAs constitute a type of water quality-based effluent limitation [WQBEL]."

requiring no reductions); (c) whether Permittees were currently achieving the WLAs; and (d) whether load reductions are still required to meet the WLAs.

In some cases, the Los Angeles Water Board is allowing Permittees the option to continue implementing proposed BMPs per a specified schedule in a Watershed Management Program. In other cases, the Los Angeles Water Board is incorporating compliance schedules where it has adopted a program of implementation for the U.S. EPA TMDL. And, finally, in some cases, the Los Angeles Water Board has concluded that additional time to comply with the TMDL-based WQBELs is not needed. The manner of incorporation and compliance schedules for each of the U.S. EPA TMDLs is set forth and explained below.

1. U.S. EPA TMDLs with State Programs of Implementation

The Los Angeles Water Board adopted the following three separate programs of implementation to address four U.S. EPA-established TMDLs:

- Implementation Plan for the (a) TMDLs for Nutrients - Malibu Creek Watershed and the (b) Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients to Address Benthic Impairments (effective date: May 16, 2017)
- Implementation Plan for the TMDLs for Metals and Selenium - San Gabriel River and Impaired Tributaries (effective date: October 13, 2014)
- Implementation Plan for the Los Cerritos Channel TMDLs for Metals (effective date: October 13, 2014)

For these U.S. EPA-established TMDLs, the WLAs are incorporated into the Order as numeric WQBELs and/or receiving water limitations with corresponding compliance schedules consistent with the TMDLs and programs of implementation adopted by the Los Angeles Water Board. Permittees have the option to address these U.S. EPA-established TMDLs in a Watershed Management Program in the same manner as Los Angeles Water Board-adopted TMDLs.

Through establishment of these state programs of implementation the Los Angeles Water Board has undergone a comprehensive evaluation of implementation strategies, cost considerations including the estimated cost of implementing the measures to achieve the WLAs, and the time required to fully implement control measures to achieve the final WLAs.

2. U.S. EPA TMDLs That Do Not Have State Programs of Implementation

The remaining six U.S. EPA established TMDLs do not have State programs of implementation. The Los Angeles Water Board's decision as to how to incorporate WQBELs and/or receiving water limitations for these six U.S. EPA established TMDLs is based on an evaluation of (1) whether the WLAs in the U.S. EPA-established TMDLs were based on existing MS4 loads and (2) whether Permittees were currently achieving WLAs.

a. U.S. EPA TMDLs Where WLAs Were Based on Existing MS4 Loads at Time of TMDL Adoption

After a fact-specific re-evaluation of how each U.S. EPA-established TMDL should be incorporated, the Los Angeles Water Board has determined that numeric WQBELs and/or receiving water limitations must be achieved by the effective date of the Order for the U.S. EPA-established TMDLs where the WLAs were established equal to existing MS4 pollutant loads. The following

TMDLs established by U.S. EPA have WLAs that are equivalent to existing MS4 pollutant loads at the time of TMDL adoption:

- Santa Monica Bay TMDLs for DDTs and PCBs²⁰³
- Ballona Creek Wetlands TMDLs for Sediment and Invasive Exotic Vegetation²⁰⁴
- Echo Park Lake Nutrients TMDL and Peck Road Park Lake Nutrients TMDL²⁰⁵

For these TMDLs, the U.S. EPA TMDL specifies that the WLAs are set equal to the existing pollutant loads at the time of TMDL adoption. Therefore, no reductions in pollutant loads should be required. Permittees must continue to maintain and not increase pollutant loads in MS4 discharges as compared to the WLAs. Accordingly, these WLAs are incorporated as numeric WQBELs and/or receiving water limitations that must be complied with as of the effective date of the Order. No compliance schedules or alternative to propose BMPs and schedules of implementation in Watershed Management Programs are provided.

b. U.S. EPA TMDLs Where Permittees Are Achieving WLAs

For U.S. EPA-established TMDLs where Permittees are currently achieving WLAs, the Los Angeles Water Board has also incorporated these WLAs as numeric WQBELs and/or receiving water limitations that must be complied with as of the effective date of the Order. The rationale for this manner of incorporation is further explained below.

The previous MS4 Permits required Permittees to propose and implement BMPs to achieve compliance with the WLAs. Therefore, the Los Angeles Water Board evaluated the Permittees' TMDL implementation strategies, monitoring data, and the time required to fully implement control measures to achieve the final WLAs in the WMPs and Annual Reports. Based on this information, the Los Angeles Water Board determined that Permittees will be able to comply immediately with the numeric WQBELs and/or receiving water limitations as of the effective date of the Order.

Based on this information, for the following TMDLs, the WLAs are incorporated as numeric WQBELs and/or receiving water limitations that must be complied with as of the effective date of the Order. No compliance schedules or alternative to propose BMPs and schedules of implementation in Watershed Management Programs are provided.

Santa Clara River Reach 3 Chloride TMDL. On June 18, 2003, U.S. EPA established the *TMDL for Chloride in the Santa Clara River Reach 3* (SCR Reach 3 Chloride TMDL). Based on outfall monitoring data (site IDs MO-SPA and MO-FIL) from October 2010 through May 2017, there were three

²⁰³ U.S. EPA. Santa Monica Bay Total Maximum Daily Loads for DDTs and PCBs. March 26, 2012. pp. 49-51.

²⁰⁴ U.S. EPA. Ballona Creek Wetlands Total Maximum Daily Loads for Sediment and Invasive Exotic Vegetation. March 26, 2012. pp. 73-74.

²⁰⁵ U.S. EPA. Los Angeles Area Lakes Total Maximum Daily Loads for Nitrogen, Phosphorus, Mercury, Trash, Organochlorine Pesticides and PCBs. March 26, 2012. pp. 6-17 and 4-18.

exceedances out of 51 samples of the 80 mg/L WQBEL²⁰⁶. Furthermore, recent monitoring data from January 2018 to January 2019 for these outfall sites indicate no exceedances out of 19 samples. For these reasons, the WLA in the SCR Reach 3 Chloride TMDL is incorporated in Attachment Q of the Order as a numeric WQBEL and no compliance schedule or option to propose BMPs and an implementation schedule in a Watershed Management Program is included. Thus, this numeric WQBEL must be complied with as of the effective date of the Order.

Echo Park Lake Trash TMDL and the Peck Road Park Lake Trash TMDL.

The Echo Park Lake Trash TMDL and Peck Road Park Lake Trash TMDL are part of the *Los Angeles Area Lakes TMDLs for Nitrogen, Phosphorus, Mercury, Trash, Organochlorine Pesticides and PCBs*. The Upper Los Angeles River EWMP 2017-18 Annual Report (p. 29) for the Echo Park Lake Trash TMDL states, “The target of zero trash established in the Echo Park Lake Trash TMDL was met at Echo Park Lake.” The Upper Los Angeles River EWMP is the only Watershed Management Program that addresses Echo Park Lake. Having achieved the TMDL WLA, Permittees are expected to maintain compliance.

The Rio Hondo/San Gabriel River EWMP proposed September 30, 2016 as the final compliance date to meet the Peck Road Park Lake Trash TMDL (Table 2-10, p. 59 of the EWMP), which has passed. The City of Irwindale reports in the 2017-18 Annual Report (p. 23) that they have achieved full compliance with the Peck Road Park Lake Trash TMDL. The City of El Monte in their WMP (pp. 1-57 to 1-58) states that the City does not discharge to Peck Road Park Lake. In summary, for the Peck Road Park Lake Trash TMDL Permittees have either proposed a compliance schedule for which the final deadline has passed or have reported full compliance in their latest annual reports; therefore, Permittees are expected to be in compliance and maintain compliance with the TMDL WLAs.

For these reasons, the WLAs in the Echo Park Lake Trash TMDL and Peck Road Park Lake Trash TMDL were incorporated in Attachment Q of the Order as numeric WQBELs that must be complied with as of the effective date of the Order. No compliance schedules or alternative to propose BMPs and additional schedules of implementation in Watershed Management Programs are provided.

c. Remaining U.S. EPA TMDLs

Some U.S. EPA-established TMDLs without state programs of implementation have WLAs that were not based on existing pollutant loads, therefore, they required pollutant load reductions; and Permittees may still not be meeting the WLAs.

The following U.S. EPA established TMDLs are included in the Order as narrative WQBELs whereby Permittees have the option of proposing BMPs that have a reasonable assurance of achieving the TMDL WLAs along with a schedule to implement the BMPs that is as short as possible in a Watershed Management Program. The State Water Board upheld this approach in WQ-

²⁰⁶ California Environmental Data Exchange Network (CEDEN). Accessed August 7, 2020. <https://ceden.waterboards.ca.gov/AdvancedQueryTool>.

2015-0075.²⁰⁷ The Los Angeles Water Board may, at its discretion, revisit this decision within the term of the Order or in a future permit, as more information is developed to support the inclusion of numeric WQBELs for these U.S. EPA-established TMDLs:

- TMDLs for Pesticides, PCBs, and Sediment Toxicity in Oxnard Drain 3
- Long Beach City Beaches and Los Angeles River Estuary Indicator Bacteria TMDL
- Los Angeles Area Lakes TMDLs for Nitrogen, Phosphorus, Mercury, Trash, OC Pesticides and PCBs
 - Legg Lake System Nutrient TMDL
 - Lake Calabasas Nutrient TMDL
 - Echo Park Lake Chlordane, Dieldrin and PCBs TMDL
 - Peck Road Park Lake Chlordane, Dieldrin, DDTs and PCBs TMDL
 - Puddingstone Reservoir Nutrient, Mercury, Chlordane, Dieldrin, DDTs and PCBs TMDLs

For these U.S. EPA established TMDLs, the Order allows Permittees subject to these TMDLs to propose and implement BMPs that will be effective in achieving the TMDL WLAs in a Watershed Management Program, subject to Los Angeles Water Board approval.²⁰⁸ Where these TMDLs were previously included in the 2012 Los Angeles County MS4 Permit and 2014 City of Long Beach MS4 Permit, some Permittees have already done so. In the case of Ventura County Permittees, the 2010 Ventura County MS4 Permit did not include the alternative to develop and implement a Watershed Management Program and, further, the one TMDL applicable to the Ventura County Permittees that is in this category is a TMDL that is newly incorporated into the Order.

For Permittees developing a Watershed Management Program, or revising an existing approved Watershed Management Program, Permittees must propose a schedule for implementing the BMPs that is as short as possible. The Los Angeles Water Board finds that, at this time, it is reasonable to include permit requirements for some of the U.S. EPA established TMDLs that allow Permittees to develop Watershed Management Programs that include BMPs, interim requirements and schedules for actions to achieve the TMDL WLAs. More detail on the required elements of a Watershed Management Program is included in Part X of this Fact Sheet. These Watershed Management Programs will facilitate a comprehensive planning process, including coordination among Permittees where necessary, on a watershed basis to identify the most effective watershed control measures and implementation strategies to achieve the TMDL WLAs much like a state program of implementation for a TMDL facilitates.

Based on the nature and timing of the proposed watershed control measures, the Los Angeles Water Board will consider appropriate actions on its part, which may include: (1) no action and continued reliance on permit

²⁰⁷ State Water Board Order WQ 2015-0075, pp. 59-61.

²⁰⁸ The requirements for Permittees who do not choose to participate in a WMP are set forth *infra*.

requirements that require implementation of the approved watershed control measures throughout the permit term per an approved Watershed Management Program; (2) adopting a program of implementation and corresponding schedule through the Basin Plan Amendment process and then incorporating a compliance schedule into this Order consistent with the State-adopted program of implementation; or (3) issuing a separate enforcement order (e.g., Time Schedule Order or Cease and Desist Order) to provide the necessary time to fully implement the watershed control measures to achieve the WQBELs.

Further detail on specific TMDLs is provided below, including limitations to schedules proposed in a Watershed Management Program.

Long Beach City Beaches and Los Angeles River Estuary Indicator Bacteria TMDL. The *Long Beach City Beaches and Los Angeles River Estuary Indicator Bacteria TMDL* (LB City Beaches and LA River Estuary Bacteria TMDL) addresses the Long Beach City Beaches that drain an area of 505 acres within the City of Long Beach. The TMDL, on page 6, refers to this drainage area as the “LBC beaches direct drainage” where there are five “sewersheds,” or storm drain basins that collect, convey, and discharge stormwater and dry weather flow from these basins to the impaired beaches. Flows from other adjacent areas are directed away from the Long Beach City Beaches.

To determine whether additional time for BMP implementation is appropriate for the Long Beach City Beaches during dry weather conditions, the Los Angeles Water Board considered the manner this TMDL was previously incorporated into the City of Long Beach MS4 Permit. Per Part VIII.G.1.c.iv.(1) of the 2014 City of Long Beach MS4 Permit, it states that “For the City of Long Beach City Beaches Bacteria TMDL established by U.S. EPA in 2012, for all locations with the exception of the Los Angeles River Estuary, in no case shall the time schedule to achieve the final numeric WLAs during dry weather exceed five years from the effective date of the Order”; five years from the effective date of the 2014 City of Long Beach MS4 Permit was March 28, 2019, which is a past deadline. Therefore, the Order requires the City of Long Beach to comply with numeric WQBELs and receiving water limitations during dry weather at the Long Beach City Beaches as of the effective date of the Order.

To determine whether additional time for BMP implementation is appropriate for the Long Beach City Beaches during wet weather conditions, the Los Angeles Water Board considered the factors discussed above along with other considerations such as the time needed to implement BMPs and information on the cost of implementing the BMPs. The Order requires Permittees participating in a WMP to propose a schedule for implementing BMPs to achieve WQBELs and receiving water limitations during wet weather at the Long Beach City Beaches that is as short as possible. Similarly, the Order requires Permittees participating in a WMP to propose a schedule for implementing BMPs to achieve geometric mean WQBELs and receiving water limitations at the Long Beach City Beaches consistent with the schedule proposed to achieve WQBELs and receiving water limitations at the Long Beach City Beaches during wet weather.

To determine whether additional time for BMP implementation is appropriate for the Los Angeles River Estuary, the Los Angeles Water Board considered the Estuary's geographic relationship to the Los Angeles River. The Los Angeles River Estuary is downstream of the waterbodies addressed by the Los Angeles Water Board-adopted Los Angeles River Bacteria TMDL. Therefore, it is appropriate to align implementation schedules for the Los Angeles River Estuary with the compliance schedules for the Los Angeles River Bacteria TMDL. For Permittees participating in a WMP, the Order requires Permittees to propose a schedule for implementing BMPs to achieve WQBELs and receiving water limitations for the Los Angeles River Estuary during dry weather not to exceed the compliance schedule for Segment A (Rosecrans Avenue to Willow Street) in Table Q – 1 of Attachment Q. Table Q-1 of Attachment Q includes dry weather compliance schedules for the Los Angeles River Bacteria TMDL where the schedule for Segment A was deemed most appropriate for the Los Angeles River Estuary. Likewise, for the Los Angeles River Estuary during wet weather, the proposed schedule for implementing BMPs to achieve WQBELs and receiving water limitations in the WMP shall not to exceed the final compliance deadline incorporated in the Order for the Los Angeles River Bacteria TMDL for wet weather (March 23, 2037). Similarly, the Order requires Permittees participating in a Watershed Management Program a to propose a schedule to comply with geometric mean WQBELs and receiving water limitations for the Los Angeles River Estuary consistent with the schedule proposed for wet weather.

Legg Lake System Nutrients TMDL. The Legg Lake System Nutrients TMDL is part of the *Los Angeles Area Lakes TMDLs for Nitrogen, Phosphorus, Mercury, Trash, Organochlorine Pesticides and PCBs*. Per Table 9-7 and pages 9-18 and 9-19 of the TMDL, the Legg Lake System Nutrients TMDL WLAs for total phosphorus are based on existing MS4 loads at the time of TMDL adoption. However, a load reduction is required to achieve the TMDL WLAs for total nitrogen. Considering that Permittees typically implement the same suite of BMPs to address nutrients, the Los Angeles Water Board determined that it is reasonable for Permittees to be provided with the same compliance options to achieve WQBELs and receiving water limitations for both total nitrogen and total phosphorous. Therefore, the Order incorporates WQBELs and receiving water limitations in Attachment Q consistent with the TMDL WLAs with the option of proposing BMPs and a schedule to implement the BMPs that is as short as possible.

G. Compliance Schedules for Achieving TMDL Requirements

A Regional Water Board may include a compliance schedule in an NPDES permit when the state's water quality standards or regulations include a provision that authorizes such schedules in NPDES permits.²⁰⁹ In California, TMDL programs of implementation²¹⁰ are typically adopted through amendments to a regional water

²⁰⁹ See *In re Star-Kist Caribe, Inc.*, (Apr. 16, 1990) 3 E.A.D. 172, 175, modification denied, 4 E.A.D. 33, 34 (EAB 1992).

²¹⁰ TMDL programs of implementation consist of those measures, along with a schedule for their implementation, that the Water Boards determine are necessary to correct an impairment. The NPDES implementation measures are thus required by Clean Water Act sections 303(d) and 402(p)(3)(B)(iii). State law also requires the Water Boards to implement basin plan requirements. (See Wat. Code §§ 13263, 13377; *State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 189.)

board's basin plan. The TMDL program of implementation, which is part of the basin plan amendment, becomes a regulation upon approval by the State of California Office of Administrative Law (OAL).²¹¹ Pursuant to California Water Code sections 13240 and 13242, TMDL programs of implementation adopted by the Regional Water Board "shall include ... a time schedule for the actions to be taken [for achieving water quality objectives]," which allows for compliance schedules in future permits. This basin plan amendment becomes the applicable regulation that authorizes an MS4 permit to include a compliance schedule to achieve effluent limitations derived from TMDL WLAs.

Where a TMDL implementation schedule has been established through a basin plan amendment, it is incorporated into the Order as a compliance schedule to achieve interim and final WQBELs and corresponding receiving water limitations, in accordance with 40 CFR section 122.47. WQBELs must be consistent with the assumptions and requirements of any WLA, which includes applicable implementation schedules.²¹² California Water Code sections 13263 and 13377 state that waste discharge requirements must implement water quality controls plans (i.e., basin plans).²¹³ Therefore, permit compliance schedules for attaining WQBELs and receiving water limitations derived from WLAs must be based on a state-adopted TMDL programs of implementation and cannot exceed the maximum time that the implementation schedule allows.

In determining the TMDL implementation schedules, the Los Angeles Water Board considered numerous factors to ensure that the schedules are as short as possible. Factors examined include, but are not limited to, the size and complexity of the watershed; the pollutants being addressed; the number of responsible agencies involved; time for Permittees to negotiate memorandum of agreements; development of water quality management plans; the cost of compliance; identification of funding sources; determination of an implementation strategy based on the recommendations of water quality management plans and/or special studies; and time for the implementation strategies to yield measurable results. Implementation schedules may be altered based on the monitoring and reporting results as set forth in the individual TMDLs by revising the TMDL.

In many ways, the incorporation of interim and final WQBELs, receiving water limitations, and associated compliance schedules is consistent with the inclusion of TMDLs in previous permits in that progress toward compliance with the final effluent limitations may occur over the course of many years. However, because many of the waterbodies in the Los Angeles Region are impaired due to MS4 discharges, it is necessary to establish more specific provisions in order to: (i) ensure measurable reductions in pollutant discharges from the MS4, resulting in progressive water quality

²¹¹ See Gov. Code, § 11353, subd. (b). Every amendment to a Basin Plan, such as a TMDL and its program of implementation, requires approval by the State Water Board and OAL. When the TMDL and program of implementation is approved by OAL, it becomes a state regulation.

²¹² See 40 CFR § 122.44(d)(1)(vii)(B).

²¹³ Cal. Wat. Code, § 13263, subd. (a) ("requirements shall implement any relevant water quality control plans that have been adopted"); Cal. Wat. Code, § 13377 ("the state board or the regional boards shall . . . issue waste discharge requirements and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the [CWA], thereto, together with any more stringent effluent standards or limitations necessary to implement waste quality control plans, or for the protection of beneficial uses, or to prevent nuisance"); see also, *State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 189.

improvements, and (ii) establish a final date for completing implementation of BMPs and, ultimately, achieving WQBELs and receiving water limitations.

The compliance schedules established in the Order are consistent with the implementation schedules established in the individual TMDLs. The TMDL implementation deadlines for each TMDL are listed below in Table F-26. As previously noted, TMDLs established by U.S. EPA do not contain implementation schedules. Unless the Los Angeles Water Board has adopted a separate program of implementation and schedule as a Basin Plan amendment for a U.S. EPA-established TMDL, the implementation date in the table below is the date the TMDL was established by U.S. EPA.

Table F-26. TMDL Final Implementation Deadlines

| TOTAL MAXIMUM DAILY LOADS (TMDLs) | Final Implementation Deadline has passed | Final Implementation Deadline between years 1 and 5 (2021-2025) | Final Implementation Deadline between years 6 and 10 (2026-2030) | Final Implementation Deadline after 10 years (2031 and onwards) |
|--|---|--|---|--|
| VENTURA RIVER WATERSHED | | | | |
| Ventura River Estuary Trash TMDL | March 6, 2016 | | | |
| TMDL for Algae, Eutrophic Conditions, and Nutrients in the Ventura River and its Tributaries | | | | |
| • Wet Weather | June 28, 2013 | | | |
| • Dry Weather | June 28, 2019 | | | |
| MISCELLANEOUS VENTURA COASTAL WMA | | | | |
| Harbor Beaches of Ventura County (Kiddie Beach and Hobie Beach) Bacteria TMDL | | | | |
| • Dry Weather | December 18, 2013 | | | |
| • Wet Weather | December 18, 2018 | | | |
| SANTA CLARA RIVER WATERSHED | | | | |
| Santa Clara River Nitrogen Compounds TMDL | March 23, 2004 | | | |
| TMDL for Chloride in the Santa Clara River, Reach 3 (U.S. EPA established) | June 18, 2003 | | | |
| Upper Santa Clara River Chloride TMDL | April 28, 2015 | | | |
| Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL | | | | |
| • Dry Weather | | March 21, 2023 | | |
| • Wet Weather | | | March 21, 2029 | |
| Lake Elizabeth, Munz Lake, and Lake Hughes Trash TMDL (Lake Elizabeth only) | March 6, 2016 | | | |
| Santa Clara River Lakes Nutrients TMDL (Lake Elizabeth only) | | | | June 27, 2032 |

| TOTAL MAXIMUM DAILY LOADS (TMDLs) | Final Implementation Deadline has passed | Final Implementation Deadline between years 1 and 5 (2021-2025) | Final Implementation Deadline between years 6 and 10 (2026-2030) | Final Implementation Deadline after 10 years (2031 and onwards) |
|---|--|---|--|---|
| CALLEGUAS CREEK WATERSHED | | | | |
| TMDL for Organochlorine (OC) Pesticides, Polychlorinated Biphenyls (PCBs), and Siltation in Calleguas Creek, Its Tributaries, and Mugu Lagoon | | | March 24, 2026 | |
| TMDL for Toxicity, Chlorpyrifos, and Diazinon in the Calleguas Creek, its Tributaries, and Mugu Lagoon | March 24, 2008 | | | |
| TMDL for Metals and Selenium in Calleguas Creek, its Tributaries, and Mugu Lagoon | | March 27, 2022 | | |
| Revolon Slough and Beardsley Wash Trash TMDL | March 6, 2016 | | | |
| TMDL for Boron, Chloride, Sulfate, and TDS (Salts) in the Calleguas Creek Watershed | | December 2, 2023 | | |
| TMDLs for Pesticides, PCBs, and Sediment Toxicity in Oxnard Drain 3 (U.S. EPA established) | October 6, 2011 | | | |
| SANTA MONICA BAY WATERSHED | | | | |
| Santa Monica Bay Beaches Bacteria TMDL ²¹⁴ | | | | |
| • Summer Dry Weather | July 15, 2006 | | | |
| • Winter Dry Weather | November 1, 2009 | | | |
| • Wet Weather | July 15, 2021 | | | |

²¹⁴ The following deadlines for the Santa Monica Bay Beaches Bacteria TMDL are applicable until the effective date of the revised SMB Bacteria TMDL (Attachment A to Resolution No. R21-001).

| TOTAL MAXIMUM DAILY LOADS (TMDLs) | Final Implementation Deadline has passed | Final Implementation Deadline between years 1 and 5 (2021-2025) | Final Implementation Deadline between years 6 and 10 (2026-2030) | Final Implementation Deadline after 10 years (2031 and onwards) |
|--|--|---|--|---|
| Santa Monica Bay Beaches Bacteria TMDL (Revised) ²¹⁵ | | | | |
| • Summer Dry Weather | July 15, 2006 | | | |
| • Winter Dry Weather | November 1, 2009 | | | |
| • Wet Weather – Antidegradation Beach Sites | July 15, 2021 | | | |
| • Wet Weather – Jurisdictional Groups 1, 4, 5, 6, and 9 | | July 15, 2024 | | |
| • Wet Weather – Jurisdictional Groups 2 and 3 | | | July 15, 2026 | |
| Santa Monica Bay Nearshore and Offshore Debris TMDL ²¹⁶ | | | | |
| • Permittees, except Manhattan Beach | March 20, 2020 | | | |
| • Manhattan Beach | | March 20, 2023 | | |
| Santa Monica Bay Nearshore and Offshore Debris TMDL (Revised) ²¹⁷ | | | | |
| • Permittees, except Hermosa Beach, Malibu and Manhattan Beach | March 20, 2020 | | | |
| • Hermosa Beach, Malibu and Manhattan Beach | | March 20, 2023 | | |
| Santa Monica Bay TMDL for DDTs and PCBs (U.S. EPA established) | March 26, 2012 | | | |

²¹⁵ Upon the effective date of the revised SMB Bacteria TMDL (Attachment A to Resolution No. R21-001), the following deadlines shall be applicable.

²¹⁶ The following deadlines for the Santa Monica Bay Nearshore and Offshore Debris TMDL (SMB Debris TMDL) are applicable until the effective date of the revised SMB Debris TMDL (Attachment A to Resolution No. R19-004).

²¹⁷ Upon the effective date of the revised SMB Debris TMDL (Attachment A to Resolution No. R19-004), the following deadlines shall be applicable.

| TOTAL MAXIMUM DAILY LOADS (TMDLs) | Final Implementation Deadline has passed | Final Implementation Deadline between years 1 and 5 (2021-2025) | Final Implementation Deadline between years 6 and 10 (2026-2030) | Final Implementation Deadline after 10 years (2031 and onwards) |
|--|--|---|--|---|
| MALIBU CREEK SUBWATERSHED | | | | |
| Malibu Creek and Lagoon Bacteria TMDL ²¹⁸ | | | | |
| • Dry Weather | January 24, 2012 | | | |
| • Wet Weather | July 15, 2021 | | | |
| Malibu Creek and Lagoon Bacteria TMDL (Revised) ²¹⁹ | | | | |
| • Dry Weather | January 24, 2012 | | | |
| • Wet Weather | | | July 15, 2026 | |
| Malibu Creek Watershed Trash TMDL | July 7, 2017 | | | |
| TMDLs for Nutrients - Malibu Creek Watershed (U.S. EPA established) ²²⁰ | | | | |
| • Los Angeles County Permittees above Malibou Lake | | December 28, 2021 | | |
| • Ventura County Permittees | | | Five years from effective date of the Order | |
| TMDLs for Nutrients - Malibu Creek Watershed (U.S. EPA established) (Revised Program of Implementation) ²²¹ | | | | |
| • Los Angeles County Permittees above Malibou Lake | | | July 15, 2026 | |

²¹⁸ The following deadlines for the Malibu Creek and Lagoon Bacteria TMDL (Malibu Creek Bacteria TMDL) are applicable until the effective date of the revised Malibu Creek Bacteria TMDL (Attachment C to Resolution No. R21-001).

²¹⁹ Upon the effective date of the revised Malibu Creek Bacteria TMDL (Attachment C to Resolution No. R21-001), the following deadlines shall be applicable.

²²⁰ The following deadlines for the TMDLs for Nutrients - Malibu Creek Watershed are applicable until the effective date of the revised Implementation Plan for the U.S. EPA-Established Malibu Creek Nutrients TMDL and the U.S. EPA-Established Malibu Creek and Lagoon Sedimentation and Nutrients TMDL to Address Benthic Community Impairments (Implementation Plan for Malibu Creek Nutrients and Sedimentation TMDLs) (Attachment H to Resolution No. R21-001).

²²¹ Upon the effective date of the revised Implementation Plan for Malibu Creek Nutrients and Sedimentation TMDLs (Attachment H to Resolution No. R21-001), the following deadlines shall be applicable.

| TOTAL MAXIMUM DAILY LOADS (TMDLs) | Final Implementation Deadline has passed | Final Implementation Deadline between years 1 and 5 (2021-2025) | Final Implementation Deadline between years 6 and 10 (2026-2030) | Final Implementation Deadline after 10 years (2031 and onwards) |
|---|--|---|--|---|
| <ul style="list-style-type: none"> Ventura County Permittees | | | Five years from effective date of the Order | |
| Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients to Address Benthic Community Impairments (U.S. EPA established) ²²² | | | | |
| <ul style="list-style-type: none"> Los Angeles County Permittees below Malibou Lake (Nitrogen and Phosphorus) | | December 28, 2023 | | |
| <ul style="list-style-type: none"> Los Angeles County Permittees below Malibou Lake (Sediment) | | December 28, 2025 | | |
| Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients to Address Benthic Community Impairments (U.S. EPA established) (Revised Program of Implementation) ²²³ | | | | |
| <ul style="list-style-type: none"> Los Angeles County Permittees below Malibou Lake (Nitrogen and Phosphorus) | | | July 15, 2026 | |
| <ul style="list-style-type: none"> Los Angeles County Permittees below Malibou Lake (Sediment) | | December 28, 2025 | | |
| BALLONA CREEK SUBWATERSHED | | | | |
| Ballona Creek Trash TMDL | September 30, 2015 | | | |

²²² The following deadlines for the Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients to Address Benthic Community Impairments are applicable until the effective date of the revised Implementation Plan for Malibu Creek Nutrients and Sedimentation TMDLs (Attachment H to Resolution No. R21-001).

²²³ Upon the effective date of the revised Implementation Plan for Malibu Creek Nutrients and Sedimentation TMDLs (Attachment H to Resolution No. R21-001), the following deadlines shall be applicable.

| TOTAL MAXIMUM DAILY LOADS (TMDLs) | Final Implementation Deadline has passed | Final Implementation Deadline between years 1 and 5 (2021-2025) | Final Implementation Deadline between years 6 and 10 (2026-2030) | Final Implementation Deadline after 10 years (2031 and onwards) |
|---|--|---|--|---|
| Ballona Creek Estuary Toxic Pollutants TMDL ²²⁴ | | | | |
| • Metals, Total Chlordane and Total DDTs | January 11, 2021 | | | |
| • Total PCBs | | January 11, 2025 | | |
| Ballona Creek Estuary Toxic Pollutants TMDL (Revised) ²²⁵ | | | | |
| • Metals, Total Chlordane, Total DDTs, and Total PCBs | | | July 15, 2026 | |
| Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL ²²⁶ | | | | |
| • Dry Weather | April 27, 2013 | | | |
| • Wet Weather | July 15, 2021 | | | |
| Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL (Revised) ²²⁷ | | | | |
| • Dry Weather | April 27, 2013 | | | |
| • Wet Weather | | | July 15, 2026 | |
| Ballona Creek Metals TMDL ²²⁸ | | | | |
| • Dry Weather | January 11, 2016 | | | |
| • Wet Weather | January 11, 2021 | | | |
| Ballona Creek Metals TMDL (Revised) ²²⁹ | | | | |
| • Dry Weather | January 11, 2016 | | | |

²²⁴ The following deadlines for the Ballona Creek Estuary Toxic Pollutants TMDL are applicable until the effective date of the revised Ballona Creek Estuary Toxic Pollutants TMDL (Attachment D to Resolution No. R21-001).

²²⁵ Upon the effective date of the revised Ballona Creek Estuary Toxic Pollutants TMDL (Attachment D to Resolution No. R21-001), the following deadlines shall be applicable.

²²⁶ The following deadlines for the Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL (Ballona Creek Bacteria TMDL) are applicable until the effective date of the revised Ballona Creek Bacteria TMDL (Attachment F to Resolution No. R21-001).

²²⁷ Upon the effective date of the revised Ballona Creek Bacteria TMDL (Attachment F to Resolution No. R21-001), the following deadlines shall be applicable.

²²⁸ The following deadlines for the Ballona Creek Metals TMDL are applicable until the effective date of the revised Ballona Creek Metals TMDL (Attachment G to Resolution No. R21-001).

²²⁹ Upon the effective date of the revised Ballona Creek Metals TMDL (Attachment G to Resolution No. R21-001), the following deadlines shall be applicable.

| TOTAL MAXIMUM DAILY LOADS (TMDLs) | Final Implementation Deadline has passed | Final Implementation Deadline between years 1 and 5 (2021-2025) | Final Implementation Deadline between years 6 and 10 (2026-2030) | Final Implementation Deadline after 10 years (2031 and onwards) |
|---|--|---|--|---|
| <ul style="list-style-type: none"> Wet Weather | | | July 15, 2026 | |
| Ballona Creek Wetlands TMDL for Sediments and Invasive Exotic Vegetation (U.S. EPA established) | March 26, 2012 | | | |
| MARINA DEL REY SUBWATERSHED | | | | |
| Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL ²³⁰ | | | | |
| <ul style="list-style-type: none"> Dry Weather | March 18, 2007 | | | |
| <ul style="list-style-type: none"> Wet Weather | July 15, 2021 | | | |
| Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL (Revised) ²³¹ | | | | |
| <ul style="list-style-type: none"> Dry Weather | March 18, 2007 | | | |
| <ul style="list-style-type: none"> Wet Weather | | July 15, 2024 | | |
| Marina del Rey Harbor Toxic Pollutants TMDL ²³² | | | | |
| <ul style="list-style-type: none"> Back Basins D, E and F | March 22, 2018 | | | |
| <ul style="list-style-type: none"> Front Basins A, B, C, G and H | March 22, 2021 | | | |
| Marina del Rey Harbor Toxic Pollutants TMDL (Revised) ²³³ | | | | |
| <ul style="list-style-type: none"> Basins A through H | | July 15, 2024 | | |
| DOMINGUEZ CHANNEL AND GREATER HARBORS WATERS WATERSHED | | | | |
| Los Angeles Harbor Bacteria TMDL (Inner Cabrillo Beach and Main Ship Channel) | March 10, 2010 | | | |

²³⁰ The following deadlines for the Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL (MdRH Bacteria TMDL) are applicable until the effective date of the revised MdRH Bacteria TMDL (Attachment B to Resolution No. R21-001).

²³¹ Upon the effective date of the revised Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL (Attachment B to Resolution No. R21-001), the following deadlines shall be applicable.

²³² The following deadlines for the Marina del Rey Harbor Toxic Pollutants TMDL are applicable until the effective date of the revised Marina del Rey Harbor Toxic Pollutants TMDL (Attachment E to Resolution No. R21-001).

²³³ Upon the effective date of the revised Marina del Rey Harbor Toxic Pollutants TMDL (Attachment E to Resolution No. R21-001), the following deadlines shall be applicable.

| TOTAL MAXIMUM DAILY LOADS (TMDLs) | Final Implementation Deadline has passed | Final Implementation Deadline between years 1 and 5 (2021-2025) | Final Implementation Deadline between years 6 and 10 (2026-2030) | Final Implementation Deadline after 10 years (2031 and onwards) |
|--|---|--|---|--|
| Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL | | | | March 23, 2032 |
| Machado Lake Trash TMDL | March 6, 2016 | | | |
| Machado Lake Eutrophic, Algae, Ammonia, and Odors (Nutrient) TMDL | September 11, 2018 | | | |
| Machado Lake Pesticides and PCBs TMDL | September 30, 2019 | | | |
| LOS ANGELES RIVER WATERSHED | | | | |
| Los Angeles River Watershed Trash TMDL | September 30, 2016 | | | |
| Los Angeles River Nitrogen Compounds and Related Effects TMDL | March 23, 2004 | | | |
| Los Angeles River and Tributaries Metals TMDL | | | | |
| • Dry Weather | | January 11, 2024 | | |
| • Wet Weather | | | January 11, 2028 | |
| Los Angeles River Watershed Bacteria TMDL | | | | |
| • Dry Weather: Segment B – Alternative Compliance Plan | | March 23, 2022 | | |
| • Dry Weather: Segment B – Load Reduction Strategy (LRS) | | | September 23, 2028 | |
| • Dry Weather: Segment B Tributaries – Alternative Compliance Plan | | September 23, 2023 | | |
| • Dry Weather: Segment B Tributaries – LRS | | | March 23, 2030 | |

| TOTAL MAXIMUM DAILY LOADS (TMDLs) | Final Implementation Deadline has passed | Final Implementation Deadline between years 1 and 5 (2021-2025) | Final Implementation Deadline between years 6 and 10 (2026-2030) | Final Implementation Deadline after 10 years (2031 and onwards) |
|---|--|---|--|---|
| • Dry Weather: Segment A – Alternative Compliance Plan | | March 23, 2024 | | |
| • Dry Weather: Segment A – LRS | | | | September 23, 2031 |
| • Dry Weather: Segment A Tributary – Alternative Compliance Plan | | September 23, 2025 | | |
| • Dry Weather: Segment A Tributary – LRS | | | | March 23, 2032 |
| • Dry Weather: Segment E – Alternative Compliance Plan | | March 23, 2025 | | |
| • Dry Weather: Segment E – LRS | | | | September 23, 2031 |
| • Dry Weather: Segment E Tributaries – Alternative Compliance Plan | | | March 23, 2029 | |
| • Dry Weather: Segment E Tributaries – LRS | | | | September 23, 2035 |
| • Dry Weather: Segment C, Segment C Tributaries, Segment D, Segment D Tributaries – Alternative Compliance Plan | | | September 23, 2030 | |
| • Dry Weather: Segment C, Segment C Tributaries, Segment D, Segment D Tributaries – LRS | | | | March 23, 2037 |
| • Wet Weather | | | | March 23, 2037 |
| Long Beach City Beaches and Los Angeles River Estuary | March 26, 2012 | | | |

| TOTAL MAXIMUM DAILY LOADS (TMDLs) | Final Implementation Deadline has passed | Final Implementation Deadline between years 1 and 5 (2021-2025) | Final Implementation Deadline between years 6 and 10 (2026-2030) | Final Implementation Deadline after 10 years (2031 and onwards) |
|---|--|---|--|---|
| Bacteria TMDL (U.S. EPA established) | | | | |
| Legg Lake Trash TMDL | March 6, 2016 | | | |
| Los Angeles Area Lakes TMDLs: Legg Lake System, Lake Calabasas, Echo Park Lake and Peck Road Park Lake TMDLS (U.S. EPA established) | March 26, 2012 | | | |
| SAN GABRIEL RIVER WATERSHED | | | | |
| San Gabriel River and Impaired Tributaries Metals and Selenium TMDL (U.S. EPA established) | | | | |
| • Dry Weather | | September 30, 2023 | | |
| • Wet Weather | | | September 30, 2026 | |
| San Gabriel River, Estuary and Tributaries Indicator Bacteria TMDL | | | | |
| • Dry Weather | | | June 14, 2026 | |
| • Wet Weather | | | | June 14, 2036 |
| Los Angeles Area Lakes TMDLs: Puddingstone Reservoir Nutrient, Mercury, Chlordane, Dieldrin, DDTs and PCBs TMDLs (U.S. EPA established) | March 26, 2012 | | | |
| LOS CERRITOS CHANNEL AND ALAMITOS BAY WATERSHED | | | | |
| Los Cerritos Channel Metals TMDL (U.S. EPA established) | | | | |
| • Dry Weather | | September 30, 2023 | | |
| • Wet Weather | | | September 30, 2026 | |
| Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs and Metals TMDL | July 28, 2018 | | | |

H. Considerations Regarding Extensions of TMDL Deadlines

Using mechanisms outside of the Order (e.g., Time Schedule Orders, Basin Plan Amendments to revise TMDL implementation schedules), for Los Angeles Water Board-adopted TMDL implementation schedules, the Los Angeles Water Board may consider providing additional time to implement measures to achieve WQBELs and receiving water limitations to more closely align with available funding from the Benefit Assessment Program, Safe, Clean Water Program, and other funding sources available to Permittees as summarized in Part XIII.D.3 of this Fact Sheet (Economic Considerations – Funding Sources).

1. Benefit Assessment Program

On April 14, 1992, the Ventura County Board of Supervisors approved the concept of a countywide NPDES permit program and the use of the Flood Management District (presently the Watershed Protection District) benefit assessment authority to finance it. On June 30, 1992, the Ventura County Board of Supervisors adopted a benefit assessment fee for stormwater and flood management in the unincorporated areas of Ventura County and the cities within the County, to be used in part to finance the implementation of a countywide NPDES municipal stormwater permit program. The Ventura County Permittees except for the City of Moorpark entered into an agreement with the Watershed Protection District to finance the activities related to the Ventura County MS4 Permit for shared and district-wide expenses. The Permittees are also given the option to use the Benefit Assessment Program to finance their respective activities related to reducing the discharge of pollutants from their MS4s under the MS4 Permit.

2. Safe, Clean Water Program

In November 2018, Los Angeles County voters approved Measure W, adopting the Safe, Clean Water Program, which will generate up to \$285 million per year from a special parcel tax on private property to capture, conserve, and treat stormwater to improve water quality, increase local water supply, and enhance communities. The County began dispersing revenues from the collected taxes. (See, Table F-20) The Safe, Clean Water Program will be reevaluated in 30 years. Fifty percent of the Safe, Clean Water Program funds will be allocated to the “Regional Program”, which will consist of projects and programs at the watershed scale to address stormwater from multiple municipalities. As of August 2020, the current projected revenue for the Regional Program is \$140.6 million per year. Forty percent of the funds will be allocated directly to municipalities as part of the “Municipal Program” for local stormwater projects and programs. As of August 2020, the current projected revenue for the Municipal Program is \$112.6 million per year. Ten percent of the Safe, Clean Water Program funds will be allocated to the “District Program” for general administration of the program including, but not limited to, technical assistance teams, watershed coordinators funded through the Regional Technical Resources Program (TRP), stormwater education programs, and District Projects.

The Los Angeles Water Board may decide to extend deadlines based on availability and distribution of Safe, Clean Water Program funding and other dedicated funding sources, on the funding allocation schemes contained in the Stormwater Investment Plans developed by each Watershed Area Steering Committee for the Regional Program funds, and funding allocations in the fiscal year plans developed by each municipality for the Municipal Program funds. Based

on a comparison of the locations of prioritized projects and those waterbodies with upcoming deadlines, the Los Angeles Water Board can determine if additional time is warranted to allow for Safe, Clean Water Program revenues to accrue to fund in part or total the projects needed to comply with WQBELs and receiving water limitations.

VII. RATIONALE FOR RECEIVING WATER LIMITATIONS

Clean Water Act section 402(p)(3)(B)(iii) requires MS4 permits to include “such other provisions as the Administrator or the State determines appropriate for the control of [] pollutants.” U.S. EPA interprets this provision to mandate “controls to reduce the discharge of pollutants to the maximum extent practicable, *and where necessary water quality-based controls.*”²³⁴ U.S. EPA has reiterated that MS4 “permit conditions must provide for attainment of applicable water quality standards (including designated uses), allocations of pollutant loads established by a TMDL, and timing requirements for implementation of a TMDL.”²³⁵ U.S. EPA Region IX has also affirmed the agency’s position that MS4 discharges must meet water quality standards in a series of comment letters on MS4 permits issued by various California regional water boards.²³⁶ Likewise, the State Water Board has affirmed that MS4 permits must include requirements necessary to achieve compliance with the applicable technology-based standard of MEP and to achieve water quality standards.²³⁷ The permitting agency, be it the Los Angeles Water Board or U.S. EPA, must therefore include provisions when it finds it is appropriate to do so to control pollutants in a specific geographic area. California Water Code section 13377 also requires that NPDES permits include limitations necessary to implement water quality control plans. Both the State Water Board and Los Angeles Water Board have previously concluded that discharges from the MS4 contain pollutants that have the reasonable potential to cause or contribute to excursion above water quality standards. As such, inclusion of receiving water limitations is necessary and appropriate to control MS4 discharges in the Los Angeles Region.

The inclusion of receiving water limitations is also consistent with the Ninth Circuit Court of Appeal’s ruling in *Defenders of Wildlife v. Browner* (191 F.3d 1159, 1166 (1999)) that the permitting authority has discretion regarding the nature and timing of requirements that it includes as MS4 permit conditions to attain water quality standards.

The Ninth Circuit Court of Appeals has explained that, “[w]ater quality standards are used as a supplementary basis for effluent limitations [guidelines] so that numerous dischargers, despite their individual compliance with technology based effluent limitations, can be regulated to prevent water quality from falling below acceptable levels” (*NRDC v. County of Los Angeles* (2011) 673 F.3d 880, 886). Receiving water limitations are included in the Order to ensure that individual and collective discharges from the MS4 do not cause or contribute to exceedances of water quality standards necessary to protect the beneficial uses of the receiving waters.

The receiving water limitations in the Order consist of all applicable numeric or narrative water quality objectives or criteria, or limitations to implement the applicable water quality

²³⁴ Phase I Stormwater Regulations, Final Rule, 55 Fed. Reg. 47990, 47994 (Nov. 16, 1990) (emphasis added); see also *Building Industry Ass’n of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 882-887).

²³⁵ See, e.g., Phase II Stormwater Regulations, Final Rule, 64 Fed. Reg. 68722, 68737.

²³⁶ See, e.g., letter from Alexis Strauss, Acting Director, Water Division, U.S. EPA Region IX, to Walt Pettit, Executive Director, State Water Board, re: SWRCB/OCC File A-1041 for Orange County, dated January 21, 1998.

²³⁷ See, e.g., State Water Board Orders WQ 99-05, WQ 2001-15, and WQ 2015-0075.

objectives or criteria, for receiving waters as contained in Chapters 3 and 7 of the Basin Plan, or in water quality control plans or policies adopted by the State Water Resources Control Board, including Resolution No. 68-16, or in federal regulations, including but not limited to, 40 CFR sections 131.12 and 131.38. The water quality objectives in the Basin Plan and other State Water Board plans and policies have been approved by U.S. EPA and combined with the designated beneficial uses and the state's antidegradation policy constitute the water quality standards required under federal law.

The receiving water limitations provisions in the Order are carried over from the previous permits and are based on precedential State Water Board Orders WQ 98-01, WQ 99-05, and WQ 2015-0075. In Order 99-05, the State Water Board directed that all MS4 permits contain specific language explaining how receiving water limitations will be implemented. Since 2001, the Los Angeles Water Board has included this language in all MS4 permits. After re-examining the receiving water limitations and iterative process in MS4 permits statewide, in 2015, the State Water Board proclaimed the following:

As the storm water management programs of municipalities have matured, an increasing body of monitoring data indicates that many water quality standards are in fact not being met by many MS4s. The iterative process has been underutilized and ineffective to date in bringing MS4 discharges into compliance with water quality standards. Compliance with water quality standards is and should remain the ultimate goal of any MS4 permit. We reiterate and confirm our determination that provisions requiring compliance with receiving water limitations are "appropriate for the control of . . . pollutants" addressed in MS4 permits and that therefore, consistent with our authority under the Clean Water Act, we will continue to require compliance with receiving water limitations. (Order WQ 2015-0075, p. 14.)

Having determined that it will not depart from its prior precedent regarding compliance with water quality standards, the State Water Board directed that the "regional water boards shall continue to require compliance with receiving water limitations in municipal storm water permits through incorporation of receiving water limitations provisions consistent with State Water Board Order WQ 99-05." (*Id.*, p. 76.)

Thus, consistent with State Water Board Order 99-05, the Order includes three main provisions related to receiving water limitations. First, consistent with CWA section 402(p)(B)(3)(iii) and 40 CFR section 122.44(d)(1), it includes a provision stating that discharges from the MS4 that cause or contribute to an exceedance of receiving water limitations are prohibited. This is also in accord with the State Water Board's finding in Order WQ 98-01 ("The [State Water Board] agrees that the NPDES permit must prohibit discharges that "cause" or "contribute" to violations of water quality standards."). Second, it includes a provision stating that discharges from the MS4 of stormwater or non-stormwater, for which a Permittee is responsible, shall not cause or contribute to a condition of nuisance.²³⁸

Third, it includes a provision that states that Permittees shall achieve these two prohibitions "through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the storm water management program and its components and other requirements of this Order including any modifications." This third provision elucidates the process by which Permittees are expected to achieve the first two provisions and then outlines the so-called "iterative process" whereby certain actions are

²³⁸ Wat. Code, § 13377 ("the state board or the regional boards shall . . . issue waste discharge requirements and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the [CWA], thereto, together with any more stringent effluent standards or limitations necessary to implement waste quality control plans, or for the protection of beneficial uses, or to prevent nuisance").

required when exceedances of receiving water limitations occur and discharges from the MS4 are implicated. This iterative process includes submitting a Receiving Water Limitations Compliance Report; revising the stormwater management program and its components to include additional BMPs, an implementation schedule and additional monitoring to address the exceedances; and implementing the revised stormwater management program. The inclusion of this protocol for estimating BMP effectiveness and taking additional actions such as implementing additional BMPs and/or modifying BMPs to improve their effectiveness when monitoring demonstrates that they are necessary to protect water quality is consistent with U.S. EPA's expectations for MS4 permits.²³⁹

The State and Los Angeles Water Boards have stated that each of the three provisions are independently applicable, meaning that compliance with one provision does not provide a "safe harbor" where there is non-compliance with another provision (i.e., compliance with the third provision does not shield a Permittee who may have violated the first or second provision from an enforcement action). Rather, the third provision is intended to ensure that the necessary stormwater management programs and controls are in place, and that they are modified by Permittees in a timely fashion when necessary, so that the first two provisions are achieved as soon as possible. U.S. EPA expressed the importance of this independent applicability in a series of comment letters on MS4 permits proposed by various regional water boards. At that time, U.S. EPA expressly objected to certain MS4 permits that included language stating, "permittees will not be in violation of this [receiving water limitation] provision ...[if certain steps are taken to evaluate and improve the effectiveness of the Drainage Area Management Plan (DAMP)]," concluding that this phrase would not comply with the CWA.²⁴⁰

The Receiving Water Limitations provisions of the 2001 Los Angeles County MS4 permit (Order No. 01-182) have been litigated twice, and in both cases the courts have upheld the language and the State and Los Angeles Water Boards' interpretation of it. Both courts ruled that the first two provisions are independently applicable from the third provision that establishes the "iterative process" requirements and no "safe harbor" exists.

The provisions were first litigated in 2005 where the Los Angeles County Superior Court stated, "In sum, the Regional [Water] Board acted within its authority when it included Parts 2.1 and 2.2 in the Permit without a 'safe harbor,' whether or not compliance therewith requires efforts that exceed the 'MEP' standard." (*In re L.A. Cnty. Mun. Storm Water Permit Litig.* (L.A. Super. Ct., No. BS 080548, Mar. 24, 2005) Statement of Decision from Phase I Trial on Petitions for Writ of Mandate, pp. 4-5, 7.) The Court of Appeal upheld the 2001 Los Angeles County MS4 Permit. (*County of Los Angeles et al. v. California State Water Resources Control Board et al.* (2006) 143 Cal.App.4th 985).

The provisions were again litigated in 2011. In that case, the Ninth Circuit Court of Appeals in *NRDC v. County of Los Angeles* (673 F.3d 880, 886) affirmed that the iterative process (in Part 2.3 of Order No. 01-182) does not "forgive" violations of the discharge prohibitions (in Parts 2.1 and 2.2 of Order No. 01-182). The court acknowledged that Part 2.3 clarifies that Parts 2 and 3 interact, but the court concluded that Part 2.3 "offers no textual support for the proposition that compliance with certain provisions shall forgive non-compliance with the

²³⁹ See, e.g., U.S. EPA 2014 memorandum, "Revisions to the November 22, 2002 Memorandum 'Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs'" dated November 26, 2014.

²⁴⁰ See, e.g., letter from Alexis Strauss, Acting Director, Water Division, USEPA Region IX, to Walt Pettit, Executive Director, State Water Board, re: SWRCB/OCC File A-1041 for Orange County, dated January 21, 1998.

discharge prohibitions.” The Ninth Circuit further concluded that, “[a]s opposed to absolving noncompliance or exclusively adopting the MEP standard, the iterative process ensures that if water quality exceedances ‘persist,’ despite prior abatement efforts, a process will commence whereby a responsible Permittee amends its SQMP. Given that Part 3 of the [2001] Permit states that SQMP implementation is the ‘minimum’ required of each Permittee, the discharge prohibitions serve as additional requirements that operate as enforceable water-quality-based performance standards required by the Regional Board.”

Additionally, in 2015, the State Water Board specifically addressed the issue of whether compliance with the “iterative process” in part 3 constituted compliance with parts one and two of the receiving water limitation provisions in precedential State Water Board Order WQ 2015-0075 (concerning the 2012 Los Angeles MS4 Permit).²⁴¹ Given “significant confusion” amongst permittees, the State Water Board clarified once again that compliance with the “iterative process” is not a “safe harbor” and that MS4 discharges that are causing or contributing to an exceedance of water quality standards are in violation of the permit.²⁴² The State Water Board also expressly rejected arguments that State Water Board Order WQ 2001-15 stands for the proposition that the iterative process is a “safe harbor.”²⁴³

VIII. RATIONALE FOR STANDARD PROVISIONS

Standard Provisions incorporated in the Order have been carried over from the previous MS4 permits.

A. Standard Provisions

Standard Provisions, which apply to all NPDES permits in accordance with 40 CFR section 122.41, and additional conditions applicable to specified categories of permits in accordance with 40 CFR section 122.42, are provided in Attachment D. Dischargers must comply with all standard provisions and with those additional conditions that are applicable under section 122.42.

B. Legal Authority

A Permittee must have adequate legal authority to implement its stormwater management program, including minimum control measures, and all equivalent actions if implemented through a Watershed Management Program (see 40 CFR section 122.26(d)(2)(i)(A)-(F) and 40 CFR section 122.26(d)(2)(iv)). Without adequate legal authority, the Permittee would be unable to perform many functions such as performing inspections, requiring remedies, and requiring installation of control measures. In addition, the Permittee would not be able to conduct enforcement, where necessary. Additionally, pursuant to 40 CFR sections 122.26(d)(1)(ii) and 122.26(d)(2)(iv), each Permittee must also maintain the necessary legal authority to control the contribution of pollutants to its MS4 and must include in its stormwater management program a comprehensive planning process that includes intergovernmental coordination, where necessary. As noted elsewhere, federal, state, regional or local entities not named as a Permittee in the Order may operate MS4 facilities and/or discharge to the Permittees’ MS4s and water bodies covered by the Order (e.g., California Department of Transportation). The abovementioned requirement is intended to address, in part, these circumstances.

²⁴¹ See generally discussion pages 10-12 of State Board Order WQ 2015-0075.

²⁴² *Id.* at 12.

²⁴³ *Id.* at p. 12, fn. 44.

C. Fiscal Resources

Section 122.26(d)(2)(vi) of Title 40 of the Code of Federal Regulations requires, for each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the stormwater management program, including monitoring program. The analysis is to include a description of the source(s) of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds. Additionally, 40 CFR section 122.42(c)(5) requires that annual reports for MS4 permits include annual expenditures and budget for year following each annual report. The inclusion of the requirement to perform a fiscal analysis annually in the Regional MS4 Permit was carried over from the previous permits. The annual fiscal analysis will show the allocated resources, expenditures, and staff resources necessary to comply with the Regional MS4 Permit, including implementation of the Permittee's Watershed Management Program, where applicable. The annual analysis is necessary to show that the Permittee has adequate resources to meet all Permit requirements. The analysis can also show year-to-year changes in funding for the MS4 program. A summary of the annual analysis must be reported in the annual report. This analysis will help the Los Angeles Water Board understand the resources that are dedicated to compliance with this permit including the implementation of Watershed Management Programs, and track how costs change over time. Permittees will provide their annual fiscal analysis in Attachment H (Annual Report Form) of the Order. Attachment H of the Order identifies a consistent reporting format for this fiscal analysis as recommended by the State Auditor in its Report 2017-118 on the State and Regional Water Boards MS4 programs. This reporting format is based on the statewide guidance, "Guidance for Obtaining Phase I Municipal Separate Storm Sewer System Permit (MS4) Compliance Costs," prepared by the State Water Board in response to the State Auditor's recommendation.²⁴⁴

D. Responsibilities of the Permittees

Because of the complexity and networking of the storm drain system and drainage facilities within the Los Angeles Region, the Los Angeles Water Board adopted a region-wide approach in permitting stormwater and urban runoff discharges. (See Part I.D of this Fact Sheet) Note that the 2010 Ventura County MS4 Permit was structured to assign certain requirements to the Principal Permittee (Ventura County Watershed Protection District) and other requirements to the other Ventura County Permittees. As this is a Regional MS4 Permit and applies to both Los Angeles County and Ventura County MS4 Permittees, the retention of a Principal Permittee as discussed in Part II.D of this Fact Sheet is no longer applicable. Accordingly, there are no separate requirements for the Principal Permittee in the Regional MS4 Permit. Consistent with the previous permits, the Regional MS4 Permit is structured to require all Permittees to comply with the requirements of the Order as applicable to its discharges. However, it does not hold a Permittee responsible for implementation of provisions applicable to other Permittees. Note that, in some cases, the Order includes specific requirements for Los Angeles County Permittees and others for Ventura County Permittees and, in some cases, the Order includes specific requirements for the two flood control districts. These cases are clearly indicated in the Order.

²⁴⁴ State Water Resources Control Board (2020) "Guidance for Obtaining Phase I Municipal Separate Storm Sewer System Permit (MS4) Compliance Costs." August 12, 2020.

Parts VI.D.4-5 of the Order requires inter- and intra-agency coordination to facilitate implementation of the Order. This requirement is based on 40 CFR section 122.26(d)(2)(iv), which requires “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 [...]”

E. Public Review and Los Angeles Water Board Review

Public review and Los Angeles Water Board review provisions have been carried over from the previous permits. These provisions reflect federal and state requirements to make documents available to members of the public pursuant to the Freedom of Information Act (5 U.S.C. § 552 (as amended)) and the Public Records Act (Cal. Government Code § 6250 et seq.). They also reflect the Los Angeles Water Board’s commitment to public participation during implementation of the Regional MS4 Permit.

F. Reopener and Modification Provisions

These provisions are based on 40 CFR sections 122.44, 122.62, 122.63, 122.64, 124.5, 125.62, and 125.64, and are also carried over from the previous permits. The Los Angeles Water Board may reopen the permit to modify permit conditions and requirements, as well as revoke, reissue, or terminate in accordance with federal regulations. Causes for such actions include, but are not limited to, endangerment to human health or the environment; acquisition of newly-obtained information that would have justified the application of different conditions if known at the time of Order adoption; to incorporate provisions as a result of new federal or state laws, regulations, plans, or policies (including TMDLs and other Basin Plan amendments); modification in toxicity requirements; violation of any term or condition in the Order; and/or minor modifications to correct typographical errors or require more frequent monitoring or reporting by a Permittee. The Order also includes two additional causes for modification, which have been carried over from prior permits, including: 1) where the revisions warrant a change to the provisions of the Order, the Los Angeles Water Board may modify the Order consistent with the assumptions and requirements of the revised WLA(s), including the program of implementation and schedule; and 2) to include provisions or modifications to WQBELs in Part IV and Attachments K-S in the Order prior to the final compliance deadlines, if practicable, that would allow an action-based, BMP compliance demonstration approach with regard to final WQBELs for stormwater discharges based on the Los Angeles Water Board’s evaluation of whether Watershed Management Programs in Part VI.C of the Order have resulted in attainment of interim WQBELs for stormwater and review of relevant research, including but not limited to data and information provided by Permittees and other stakeholders, on stormwater quality and the efficacy and reliability of control technologies.

G. Other Provisions

Other provisions in the Standard Provisions of the Order not specifically discussed above were carried over from the previous permits.

IX. RATIONALE FOR STORMWATER MANAGEMENT PROGRAMS AND MCMs

The required components of stormwater management programs and minimum control measures (MCMs) are specifically set forth in Part VIII.D through Part VIII.I of the Order. However, each of these six Parts have several overlapping requirements (including timelines

for implementation, municipal employee and contractor training and progressive enforcement), which are addressed in Part VIII.A through Part VIII.C of the Order.

A. General Requirements

1. Basis for Minimum Control Measures (MCMs)

40 CFR section 122.26(d)(2)(iv) establishes required elements of the Permittees' stormwater management program. The previous permits included six categories of minimum control measures (or MCMs) that are the baseline programmatic elements for meeting the requirements of 40 CFR section 122.26(d)(2)(iv). The minimum control measures require Permittees to implement BMPs that are considered necessary to reduce pollutants in stormwater to the MEP and to effectively prohibit non-stormwater discharges. In lieu of implementing the MCMs as described in Part VIII.A.1 of the Order, the Order allows Permittees to develop alternative BMPs to comply with 40 CFR section 122.26(d)(2)(iv) when implemented through a Watershed Management Program approved by the Los Angeles Water Board.

2. Timelines for Implementation

The timelines for implementation of MCMs are specified in Part VIII.A.2 of the Order where all Permittees must implement the MCMs no later than 6 months from the effective date of the Order or per specific timelines indicated in the Order. If participating in a Watershed Management Program, the MCMs are required to be integrated in the new or revised Watershed Management Program. Since Permittees have been implementing MCMs in the previous permits, they are expected to continue implementing their MCMs. Ventura County Permittees that elect to develop a Watershed Management Program shall continue to implement their existing stormwater management programs, including actions within each of the six categories of minimum control measures consistent with 40 CFR section 122.26(d)(2)(iv) until the Watershed Management Program is approved by the Los Angeles Water Board. Likewise, Los Angeles County Permittees that opt to continue implementing an approved Watershed Management Program shall continue to implement the six categories of MCMs as approved in their Watershed Management Program until any revision to their Watershed Management Program is approved by the Los Angeles Water Board.

3. Municipal Employee and Contractor Training

Municipal training requirements are necessary to implement CWA section 402(p)(3)(B)(ii) and (iii). The Los Angeles Water Board finds that specifying training requirements for municipal employees and contractors is necessary to prevent or minimize the potential discharge of pollutants through the MS4 to receiving waters as explained in the following paragraphs. Municipal employees whose jobs affect stormwater quality must be trained in stormwater management to ensure that non-stormwater discharges are effectively prohibited, the discharge of pollutants in stormwater is reduced to the maximum extent practicable, and other provisions to control pollutants in MS4 discharges are implemented as required. The Order retains municipal employee and contractor training requirements from the previous Los Angeles County, City of Long Beach, and Ventura County permits. Note that the previous permits included training requirements within each MCM. Specific requirements were included in the Public Agency Activities MCM, Illicit Connection and Illicit Discharge MCM, Construction MCM, and Planning and Land

Development MCM. For better organization, the Order includes these provisions under the General Provisions in Part VIII.A of the Order where training requirements apply to all municipal employees and contractors implementing the stormwater management program and includes specific training requirements for the Illicit Discharge Detection and Elimination (IDDE), Construction, and Industrial/Commercial Facilities MCMs.

U.S. EPA's MS4 Permit Improvement Guide supports the conclusion that municipal employee and contractor training requirements are necessary to meet federal requirements. U.S. EPA states, "[f]ederal stormwater regulations (see 40 C.F.R. 122.34(b)(6) and 40 C.F.R. 122.26(d)(2)(iv)(A)) require the operator of a regulated MS4 community to develop a program to... [t]rain employees on how to incorporate pollution prevention/good housekeeping techniques into municipal operations."²⁴⁵ The Guide includes example permit provisions that state, "[p]ermittees must develop an annual training program for appropriate employees involved in implementing pollution prevention and good housekeeping practices in the preceding Parts" and "[t]he permittee must provide oversight of contractor activities to ensure that contractors are using appropriate control measures and [standard operating procedures]."²⁴⁶ U.S. EPA also provides several examples of permits with similar training requirements.²⁴⁷ Moreover, U.S. EPA-issued MS4 permits commonly include pollution prevention training requirements for municipal staff.^{248,249,250}

Federal regulations identify the need for a program to reduce pollutants in discharges from MS4s associated with the application of pesticides, herbicides, and fertilizer.²⁵¹ Training programs for the application of pesticides and fertilizer are necessary to comply with these regulations. A municipal training program addresses these federal requirements, in part, by including "certifications and other measures for commercial applicators and distributors." Federal regulations for small MS4s explicitly outline the requirement for permits to include training provisions:

"The permit must identify the minimum elements and require the development and implementation of an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, the State, Tribe, or other organizations, the program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building

²⁴⁵ U.S. EPA. *MS4 Improvement Guide* (2010), pp. 67, 83.

²⁴⁶ *Id.*, at p. 84.

²⁴⁷ Compendium of MS4 Permitting Examples, Part 1: Six Minimum Control Measures. Office of Wastewater Management, Water Permits Division. November 2016. 810-U-16-001.

²⁴⁸ Maryland Department of the Environment, National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Discharge Permit, NPDES No. MD0068276, Effective October 9, 2015. p. 6.

²⁴⁹ NPDES permit (DC0000221) issued to Government of the District of Columbia, with final signed Modification #1, effective November 9, 2012. pp. 20-21.

²⁵⁰ NPDES permit (IDS-027561) issued to Ada County Highway District, Boise State University, City of Boise, City of Garden City. Drainage District #3, and the Idaho Transportation Department District #3. Effective February 1, 2013. p. 26 and 29.

²⁵¹ 40 CFR § 122.26(d)(2)(iv)(A)(6).

maintenance, new construction and land disturbances, and storm water system maintenance.”²⁵²

Federal regulations at 40 CFR section 122.26(d)(2)(iv)(B)(6) require a description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials. The Order requires each Permittee to train field staff who may come into contact or observe illicit discharges on the identification and proper procedures for responding to and reporting illicit discharges. The previous Los Angeles County, City of Long Beach, and Ventura County permits had similar requirements. Municipal maintenance and repair activities are frequently conducted in areas where illicit connections and discharges occur. Therefore, municipal employees who are not assigned specifically to implement a municipality’s illicit discharge detection and elimination (IDDE) program are often good resources for reporting illicit connections and discharges.

The U.S. EPA MS4 Permit Improvement Guide states that, “Phase I MS4 regulations specify that several key elements be included in Phase I MS4 stormwater management programs [to control pollutants in stormwater discharges to the MS4 from industrial and commercial facilities]. These elements include: adequate legal authority to require compliance and inspect sites, inspection of priority industrial and commercial facilities, establishing control measure requirements for facilities that may pose a threat to water quality, and enforcing stormwater requirements. In order to implement these requirements, MS4 permits require the development of an inventory of facilities and prioritization protocol *and adequate staff training to ensure proper inspection and enforcement of requirements.*”²⁵³

40 CFR section 122.26(d)(2)(iv)(D)(4) requires that Permittees have appropriate educational and training measures for construction site operators.²⁵⁴ More specifically, 40 CFR section 122.26(d)(2)(iv)(D)(3) requires that Permittees have “procedures for identifying priorities for inspecting sites and enforcing control measures...”. An important element of such procedures is training for the individuals tasked with implementing the program. Therefore, the municipal employees and contractors training requirement in the Order is necessary to meet these federal requirements, by ensuring that Permittees are trained in technical standards for BMPs and that they make these technical standards readily available to the development community as educational and training measures. The U.S. EPA MS4 Permit Improvement Guide provides draft permit provisions that closely resemble the requirements for municipal employees and contractor training in the Order, including training for staff as well as third-party inspectors and plan reviewers.²⁵⁵

B. Progressive Enforcement

Progressive enforcement is a series of defined and reproducible enforcement actions whereby consequences of non-compliance increase with each incremental enforcement step. Progressive enforcement includes procedures to coordinate enforcement between the Los Angeles Water Board and Permittees. As the Los Angeles Water Board is the

²⁵² *Id.*, § 122.34(b)(6)(i).

²⁵³ U.S. EPA. *MS4 Permit Improvement Guide* (2010), Chapter 7, p. 85 (emphasis added).

²⁵⁴ *Id.*, subd. (d)(2)(iv)(D)(4).

²⁵⁵ U.S. EPA. *MS4 Permit Improvement Guide* (2010), Chapter 4, p. 46.

regulating agency for the NPDES program, it has the authority to step in when enforcement actions of a Permittee are unsuccessful in bringing dischargers into compliance. As such, progressive enforcement is an effective strategy to achieve timely compliance. Previous permits included requirements for Permittees to develop and implement a progressive enforcement strategy, which are carried over to the Order. The Order eliminates the provision in the 2010 Ventura County MS4 Permit that allows the Los Angeles Water Board and Permittees to form a stormwater task force. This provision was removed because the ability for coordinated enforcement between the Los Angeles Water Board and Permittees is adequately established through remaining provisions within Part VIII.B of the Order. Also note that the 2010 Ventura County MS4 Permit includes progressive enforcement requirements within the Industrial/Commercial Facilities MCM and Construction MCM. However, the Progressive Enforcement provisions under Part VIII.B of the Order follow the same structure of the 2012 Los Angeles County and 2014 City of Long Beach MS4 permits and are inclusive of the progressive enforcement requirements that were previously within the two abovementioned MCMs in the 2010 Ventura County MS4 Permit.

C. Modifications/Revisions

The Order requires each Permittee to modify its stormwater management programs, protocols, practices, and municipal codes to be consistent with the Order. This provision is necessary to ensure that each Permittee takes all the steps necessary to update the core and ancillary programs that are required to ensure compliance with the Order.

D. Public Information and Participation Program

1. Federal Requirements

The Los Angeles Water Board has incorporated the Public Information and Participation Program into the Regional MS4 Permit per the following federal requirements:

Clean Water Act section 402(p)(3)(B)(iii) requires that “[p]ermits for discharges from municipal storm sewers 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.”

NPDES regulations at 40 CFR section 122.26(d)(2)(iv) require as part of a stormwater management program “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.”

NPDES regulations at 40 CFR section 122.26(d)(2)(iv)(A)(6) provide that the proposed management program include “[a] description of a program to reduce to the maximum extent practicable, pollutants in discharges from MS4s associated with the application of pesticides, herbicides, and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications, and other measures for commercial applicators and distributors, and controls for application in public right-of-way’s and at municipal facilities.”

NPDES regulations at 40 CFR section 122.26(d)(2)(iv)(B)(6) provide that the proposed management program includes “[a] description of education activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials.”

40 CFR section 122.42(c) requires the owner or operator of an MS4 to submit an annual report that includes in part “(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 condition. Such proposed changes shall be consistent with §122.26(d)(2)(iii) of this part...” and “(6) A summary describing the number and nature of enforcement actions, inspections, and public education programs; ...”

2. General Provisions

Part VIII.D.1 of the Order requires continued implementation of public participation in the stormwater management program, consistent with 40 CFR section 122.26(d)(2)(iv). It is generally more cost-effective to have multiple Permittees coordinate using an existing program than have each individual Permittee develop its own local program. Therefore, Permittees are encouraged to participate in a County-wide public information and participation program (PIPP) or in one or more Watershed Group sponsored PIPPs supplemented with additional information specific to local needs. While the previous 2010 Ventura County MS4 Permit required coordination among Permittees, this Regional Permit covers numerous Permittees over a larger area, making it difficult to coordinate amongst all Permittees. As a result, the Los Angeles Water Board encourages but does not require forming partnerships and coordination among Permittees. This is consistent with by 40 CFR §§122.26(d)(2)(iv), which specifies intergovernmental coordination as part of the stormwater management program where necessary.

Previous 2012 Los Angeles County and 2010 City of Long Beach MS4 permits required the Public Information and Participation Program to include contact information and means for public reporting of clogged catch basin inlets, illicit discharges/dumping, faded or missing catch basin labels, and general stormwater and non-stormwater pollution prevention information. These requirements are redundant with requirements in the Illicit Discharge Detection and Elimination Program and are removed from the Public Information and Participation section.

3. Objectives

The objectives of the PIPP are to involve and engage a diversity of socioeconomic groups and ethnic communities by building an understanding of stormwater issues and strengthening support for programs and projects. These objectives are established in the permit to provide a compass for Permittees as they adapt their program to address new information, water quality priorities, and MS4 program priorities. Through broad community support, the program objective in Part VIII.D.2 of the Order would instill the methods for proper management and disposal of used oil and toxic materials such that pollution prevention becomes common knowledge in the community.

The Order also includes an objective to use effective strategies to educate and involve residents and population subgroups through culturally effective methods. To accomplish this objective, Permittees may rely on the existing framework of their program and build upon existing methods to reach cultural subgroups. For

example, existing materials may be translated to other languages or recurring events may be promoted through television and radio stations that cater to specific subgroups.

The objectives in the Regional MS4 Permit support the broader federal requirements discussed earlier in this Fact Sheet by encouraging behavior changes that reduce pollutants in stormwater and non-stormwater. The programs must reach the general population, but also must reach a portion of the population who might otherwise be overlooked. U.S. EPA support for this provision is evident in a similar provision in the U.S. EPA-issued permit for the Middle Rio Grande Watershed.²⁵⁶ In addition, *U.S. EPA, Tailoring Outreach Programs to Minority and Disadvantaged Communities and Children Fact Sheet*²⁵⁷ finds that, "[m]any residents of ethnically and culturally diverse communities don't speak English." English messages contained in public education outreach materials may not be effectively reaching a significant portion of some communities. In addition, some lower income communities may have less access to the internet and would be more reachable through TV, radio, and neighborhood newspapers than through webpages.²⁵⁸

4. Program Requirements

a. Community involvement in stormwater planning and program implementation and awareness of stormwater program needs (Part VIII.D.3.a of the Order).

An emerging challenge for municipal stormwater programs is to promote the public's understanding for the need for planning and funding of stormwater programs and projects. Stormwater programs are a key component of water quality protection and are a legal requirement. By educating and involving the public on stormwater planning needs, municipalities may gain public support for funding stormwater programs. Through stakeholder input, the Los Angeles Water Board recognizes that a lack of support in planning and funding are often obstacles to effective program implementation. This requirement is supported by the U.S. EPA Memorandum dated October 26, 2016 that identifies lack of funding as a limiting factor in implementing stormwater pollution programs. The memorandum further recommends long-term planning to secure adequate funding for infrastructure and stormwater controls. Public awareness of long-term planning and implementation is therefore a necessary step towards gaining support and funds for short-term and long-term program implementation. First step methods for involving the community may include town meetings, webinars, citizen advisory committees or focus groups. Once community support is strengthened, the Permittee may also develop and promote ballot funding measures for stormwater projects and thus meet several PIPP requirements and achieve program objectives.

²⁵⁶ NPDES Permit No. NMR04A000 issued to Middle Rio Grande Watershed, effective December 22, 2014. p. 48.

²⁵⁷ U.S. EPA. 2006. "Tailoring Outreach Programs to Minority and Disadvantaged Communities and Children." National Pollutant Discharge Elimination System (NPDES). May 24, 2006. As noted on the website <https://www.epa.gov/npdes/national-menu-best-management-practices-bmps-stormwater#edu>, U.S. EPA is currently updating this document.

²⁵⁸ See Internet/Broadband Fact Sheet. Pew Research Center, Internet and Technology. The center displays data showing lower internet use among non-white ethnic groups and lower income groups. <http://www.pewinternet.org/fact-sheet/internet-broadband/>. Accessed on May 11, 2016.

For example, this has been done successfully in Los Angeles County with the passage of Measure W, in Culver City with the passage of Measure CW, in the City of Los Angeles with the passage of Proposition O, and in the City of Santa Monica with the passage of Measure V.

U.S. EPA's *MS4 Permit Improvement Guide*²⁵⁹ suggests the inclusion of a requirement to establish a citizen's advisory group to participate in the development and implementation of the community's stormwater program, explaining that "[b]y listening to the public's concerns and coming up with solutions together, the permittee will gain the public's support and the community will become invested in the program." Furthermore, the U.S. EPA document *Evaluation of the Role of Public Outreach and Stakeholder Engagement in Stormwater Funding Decisions in New England: Lessons from Communities*²⁶⁰ describes benefits of engaging stakeholders in stormwater planning and funding that include, among other benefits: (1) providing a forum to share concerns and knowledge and (2) providing "[a]n opportunity to find the balance between costs and services that fee payers can support."

In Los Angeles County, this has been done on a regional basis through OurWaterLA, a diverse coalition of community leaders and organizations from across Los Angeles County, which was formed to support outreach to all residents in Los Angeles County about the importance of clean, safe, affordable and reliable water to the region's communities. OurWaterLA works to make water issues accessible by developing informational materials, bringing new partners to the coalition, and hosting workshops and community events throughout Los Angeles County. The coalition strives to listen and help communities understand their power to make neighborhoods greener and healthier while enhancing the local economy and quality of life. OurWaterLA was a key supporter of the passage of Measure W by the voters, which established a dedicated revenue stream for stormwater projects to improve water quality and local water supply and provide other community benefits. Citizen oversight committees have also been established to support implementation of some of the funding programs identified above, including Measure V and Proposition O. Coalitions and committees like these can be formed by Permittees to facilitate effective public participation in local and regional stormwater management programs.

b. Informational and Educational Activities (Part VIII.D.3.b of the Order).

The informational and educational activities requirements in previous permits for Ventura County, City of Long Beach, and Los Angeles County implemented federal requirements in 40 CFR sections 122.26(d)(2)(iv)(A) and (B)(6). This permit maintains the requirements from the previous permits, but allows for additional flexibility in how the Permittees may implement them. The Los Angeles Water Board recognizes that this flexibility will allow Permittees to focus resources and efforts on targeted pollutants and behaviors that are most problematic to individual communities or where efforts will result in the

²⁵⁹ U.S. EPA. 2010. *MS4 Permit Improvement Guide*. Apr. 2010. p. 22.

²⁶⁰ U.S. EPA. 2013. *Evaluation of the Role of Public Outreach and Stakeholder Engagement in Stormwater Funding Decisions in New England: Lessons from Communities*. EPA-100-K-13-0004. Office of Policy. June 2013. p. 27.

greatest improvements. These provisions support the broader federal requirements discussed earlier in this Fact Sheet.

For Part VIII.D.3.b of the Order, the Permittee has the flexibility of selecting activities and topics based on water quality priorities. Additionally, the Permittee may choose various methods for disseminating educational materials on pollution prevention or may promote pollution mitigation through public reporting of illicit discharges. In this way, the Permittee is expected to adapt the program efforts and resources to focus public education in targeted areas. This flexibility notwithstanding, the requirements implement federal regulations at 40 CFR sections 122.26(d)(2)(iv)(A) and 122.26(d)(2)(iv)(B)(6). The U.S. EPA *MS4 Permit Improvement Guide* supports flexibility in PIPP programs through example fact sheet language:

*The public education and outreach program must be tailored and targeted to specific water quality issues of concern in the relevant community. These community-wide and targeted issues must then guide the development of the comprehensive outreach program, including the creation of appropriate messages and educational materials. The permit includes a list of potential residential and commercial waste topics, but the permittee may also choose other issues that contribute significant pollutant loads to stormwater.*²⁶¹

The U.S. EPA-issued permit for Boise Area MS4²⁶² allows flexibility in that Permittees decide the effective methods and topics for prescribed target audiences. Similarly, the U.S. EPA-issued MS4 permit for the Rio Grande Watershed²⁶³ allows for Permittees to use a “tailored public education program using a mix of locally appropriate strategies, to target specific audiences and communities” and “[use] material or outreach programs directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant storm water impacts.”

Resources for outreach methods and pollution prevention practices associated with Part VIII.D.3.b of the Order are available through U.S. EPA’s Non-point Source Toolbox available at <https://cfpub.epa.gov/npstbx/>.

5. Documentation, Tracking and Measurement of Effectiveness.

Part VIII.D.4 of the Order requires the Permittee to document and track selected activities and targets as well as report on the effectiveness of public information and participation activities. This enables the Los Angeles Water Board to ensure the program requirements are implemented. It also helps the Permittee to ascertain the most successful public participation efforts.

The previous 2010 Ventura County MS4 Permit required documentation of activities and strategies implemented and required effectiveness measurements on outreach to school children and the general public related to stormwater quality. The previous 2014 City of Long Beach and 2012 Los Angeles County MS4 permits

²⁶¹ U.S. EPA. 2010. *MS4 Permit Improvement Guide*. Apr. 2010. p. 20.

²⁶² NPDES permit (*IDS-027561*) issued to Ada County Highway District, Boise State University, City of Boise, City of Garden City. Drainage District #3, and the Idaho Transportation Department District #3. Effective February 1, 2013. pp. 30-32.

²⁶³ NPDES Permit No. NMR04A000 issued to Middle Rio Grande Watershed, effective December 22, 2014. p. 32.

required documentation and effectiveness information to be reported in annual reports. The Regional MS4 Permit requires Permittees to document the selected activities, dates of activities, methods, targeted behavior, targeted pollutant, targeted audience, cultural outreach effort, and the metric chosen to measure effectiveness of the activity. This information must be made available upon request to the Los Angeles Water Board and reported in annual reports.²⁶⁴

The Regional Permit includes a new requirement for all Permittees to develop metrics and evaluate the success of the program, based on chosen metrics, in educating, raising awareness, and changing behaviors. U.S. EPA emphasizes permit conditions related to MCMs must be clear, specific, and measurable.²⁶⁵ U.S. EPA-issued permits²⁶⁶ include clear, specific, measurable requirements to document and track effectiveness of public information and outreach activities. Additionally, several permit language examples in the *Compendium of MS4 Permitting Approaches*²⁶⁷ require Permittees to develop and/or use metrics to measure improved understanding of stormwater quality, support for the program, and pollutant management and disposal behaviors as defined by objectives in Part VIII.D.2 of the Order.

6. Annual Report Requirements.

Requirements to report PIPP activities in Attachment H (Annual Report Form) of the Order as well as effectiveness using metrics established in Part VIII.D.4 of the Order are based on federal requirements in 40 CFR 122.42(c)(1), (c)(2), and (c)(6) among others as identified in the Monitoring and Reporting Program (Attachment E). These reporting requirements ensure that Permittees evaluate the success of the program, in educating, raising awareness, and changing behaviors.

E. Industrial/Commercial Facilities Program

1. Background

Since the Nationwide Urban Runoff Program (NURP) study²⁶⁸ in the early 1980s, it has been demonstrated that sites of industrial activity have the potential to contribute higher quantities of pollutants in stormwater runoff when compared with other land uses. Data from the NURP study were analyzed further in the U.S. Geological Survey (USGS) Urban Storm Water Data Base for 22 Metropolitan Areas Throughout the United States study.²⁶⁹ The USGS report summarized additional monitoring data compiled during the mid-1980s, covering 717 storm events at 99 sites in 22 metropolitan areas, and documented problems associated with metals and sediment concentrations in urban stormwater runoff.

²⁶⁴ 40 CFR § 122.42(c)(4) requires “A summary of data, including monitoring data, that is accumulated throughout the reporting year;” 40 CFR § 122.42(c)(6) requires “A summary describing the number and nature of enforcement actions, inspections, and public education programs;”

²⁶⁵ Federal Register/ Vol. 79, No. 245/Monday, December 22, 2014/ Notices. P. 89320.

²⁶⁶ For example, see footnote , p. 14 and footnote , p. 45.

²⁶⁷ Compendium of MS4 Permitting Examples, Part 1: Six Minimum Control Measures. Office of Wastewater Management, Water Permits Division. November 2016. 810-U-16-001.

²⁶⁸ Results of the Nationwide Urban Runoff Program, Volume 1—Final Report. U.S. EPA. 1983. Office of Water. Washington, D.C.

²⁶⁹ U.S. Geological Survey Urban Storm Water Data Base for 22 Metropolitan Areas Throughout the United States. Driver, N.E., M.H. Mustard, R.B. Rhinesmith, and R.F. Middleburg. 1985. Report No. 85-337 USGS. Lakewood, CO.

2. Legal Authority

The Permittee is ultimately responsible for discharges from its MS4. The Phase I regulations require, in part, that the applicant: (i) develop adequate legal authority, (ii) perform a source identification, and (iii) develop a management program to reduce the discharge of pollutants. (40 CFR section 122.26(d)(2).)

The U.S. EPA *MS4 Permit Improvement Guide* states that, “Phase I MS4 regulations specify that several key elements be included in Phase I MS4 stormwater management programs [to control pollutants in stormwater discharges to the MS4 from industrial and commercial facilities]. These elements include: adequate legal authority to require compliance and inspect sites, inspection of priority industrial and commercial facilities, establishing control measure requirements for facilities that may pose a threat to water quality, and enforcing stormwater requirements. In order to implement these requirements, MS4 permits require the development of an inventory of facilities and prioritization protocol and adequate staff training to ensure proper inspection and enforcement of requirements.”²⁷⁰

Federal regulations at 40 CFR section 122.26(d)(2)(ii) require MS4 operators to “[p]rovide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity.”

Per 40 CFR section 122.26(d)(2)(iv)(C), with regards to industrial controls, the management plan shall include the following.

“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),²⁷¹ and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

- (1) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges.
- (2) Describe a monitoring program for storm water discharges associated with industrial facilities [..]”

Per 40 CFR section 122.26(d)(2)(ii), as part of the Source Identification requirements, the municipality is required to “Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity.”

In the preamble to the 1990 regulations, U.S. EPA clearly states the intended strategy for discharges of stormwater associated with industrial activity:

²⁷⁰ U.S. EPA. *MS4 Permit Improvement Guide* (2010), Chapter 7, p. 85 (emphasis added).

²⁷¹ See U.S. EPA’s Toxic Release Inventory (TRI) Program webpage at: <https://www.epa.gov/toxics-release-inventory-tri-program>

“...Municipal operators of large and medium municipal separate storm sewer systems are responsible for obtaining system-wide or area permits for their system’s discharges. These permits are expected to require that controls be placed on storm water discharges associated with industrial activity which discharge through the municipal system.”²⁷²

The U.S. EPA also notes in the preamble that “... municipalities will be required to meet the terms of their permits related to industrial dischargers.”²⁷³

Similarly, in the U.S. EPA’s Guidance Manual (Chapter 3.0), U.S. EPA specifies that MS4 applicants must demonstrate that they possess adequate legal authority to:

- a. Control construction site and other industrial discharges to MS4s;
 - i. Prohibit illicit discharges and control spills and dumping;
 - ii. Carry out inspection, surveillance, and monitoring procedures.

The document goes on to explain that "control," in this context means not only to require disclosure of information, but also to limit, discourage, or terminate a stormwater discharge to the MS4. Further, to satisfy its permit conditions, a Permittee may need to impose additional requirements on discharges from permitted industrial facilities, as well as discharges from industrial facilities and construction sites not required to obtain permits.

In the same Guidance Manual (Chapter 6.3.3), U.S. EPA states that the Permittee is ultimately responsible for discharges from their MS4. Consequently, the MS4 applicant must describe how the municipality will help the U.S. EPA and States authorized to implement the federal NPDES permit program to:

- a. Identify priority industries discharging to their systems;
 - i. Review and evaluate storm water pollution prevention plans (SWPPPs) and other procedures that industrial facilities must develop under general or individual permits;
 - ii. Establish and implement BMPs to reduce pollutants from these industrial facilities (or require industry to implement them); and
 - iii. Inspect and monitor industrial facilities discharging storm water to the municipal systems to ensure these facilities are in compliance with their NPDES storm water permit, if required.

Therefore, Permittees are required to implement programs to control stormwater discharges associated with industrial activities and other commercial facilities identified as significant contributors of pollutants through the implementation of a mandatory baseline minimum set of source control BMPs; performance of an inspection program to verify the adequacy of BMP implementation in the field and compliance with municipal ordinances; and assist the Los Angeles Water Board in ensuring that industrial activities subject to regulations are covered by the State Water Board’s industrial stormwater general permit. Los Angeles Water Board will also assist the municipalities in case of instances of egregious non-compliance with the municipal ordinances and state and federal laws and regulations.

²⁷² Federal Register, Vol. 55, No. 222, November 16, 1990, pp. 47990-48091.

²⁷³ Ibid.

The provisions contained in the Order pertaining to the inspection and facility control program requirements for industrial and commercial facilities are also based on the requirements found in the previous permits. Those requirements, among others, were the subject of litigation between several permittees and the Los Angeles Water Board on the 2001 Los Angeles County MS4 permit (Order No. 01-182). In that case, the Los Angeles County Superior Court upheld the inspection and facility control program requirements for industrial/commercial facilities and construction sites. The Court found that requiring permittees to inspect commercial and industrial facilities and construction sites is authorized under the Clean Water Act. The Court further determined that “[t]he Permit contains reasonable inspection requirements for these types of facilities. [Citation.] Additionally, permittees have the fee authority to impose a fee on the facility operator or owner to recover the cost of these inspections. As part of the scope of inspection, the Permit requires each permittee to confirm that operators are effectively implementing Best Management Practices (BMPs) in compliance with County and municipal ordinances, Regional Board Resolution 90-08 and the Stormwater Quality Management Plans (SQMPs). [Citation.] Addressing pollution after it has entered the storm sewer system is not working to meet legislative goals. More work is required at the source of pollution, and that is partially the basis on which this Court finds that the Permit’s inspection requirements are reasonable, and not onerous and burdensome.” (*In re L.A. Cnty. Mun. Storm Water Permit Litig.* (L.A. Super. Ct., No. BS 080548, Mar. 24, 2005), Statement of Decision from Phase II Trial on Petitions for Writ of Mandate, p. 17.)

There is currently pending litigation concerning the permittees’ fee authority to pay for inspections of industrial, commercial, and construction sites. In 2003, several Los Angeles County MS4 permittees filed test claims with the Commission on State Mandates alleging the requirements to conduct inspections at industrial facilities, commercial facilities, and construction sites in the 2001 permit (Order No. 01-182) were unfunded state mandates subject to reimbursement by the state pursuant to article XIII B, section 6 of the California Constitution. In 2009, the Commission determined that the provisions imposed state mandates as the provisions were not specifically found in federal law, but found that the requirements were not reimbursable because the permittees could charge fees to fund the inspection requirements. Both the Water Boards and the permittees appealed various aspects of the Commission’s decision. That litigation remains pending on several issues, including the permittees’ challenge regarding their fee authority issue. To date, no court has ruled specifically on this issue. (*State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates; County of Los Angeles, et al., Real Parties in Interest* (Super. Ct. Los Angeles County, Case No. BS130730, B292446, app. pending).

3. Industrial/Commercial Facilities Program Implementation

The purpose of the Industrial/Commercial Facilities Pollutant Control Program is to ensure the implementation of adequate controls at all industrial and commercial sites in order to assist Permittees in achieving compliance with the water quality limitations for discharges from their MS4s. The applicable provisions in the Order are carried over from the prior MS4 permits. However, they have been slightly modified to better define the requirements. These provisions clarify the inventory requirements for all facilities that are critical sources of stormwater pollution, as

well as requirements for industrial facilities (i.e. facilities listed in Part VIII.E.2.a.i) of the Order and commercial facilities (i.e. facilities listed in Parts VIII.E.2.a.ii through iv).

Part VIII.E.2.b of the Order lists the minimum necessary information required to develop and maintain an effective list of all facilities that are critical sources of stormwater pollution.

For ease of compliance and more clear guidelines, the requirements for industrial facilities (i.e., facilities that require enrollment in the Industrial General Permit) have been separated from the other facilities. Part VIII.E.3 of the Order sets provisions specific to commercial facilities listed in Parts VIII.E.2.a.ii through iv of the Order and Part VIII.E.4 of the Order sets forth provisions specific to industrial facilities. While the requirements for all facilities include a business assistance program and facility inspections, the details of each component are tailored to the facility type. The commercial facilities' outreach and business assistance programs are tailored to raise awareness among commercial facility owners of their BMP requirements. The industrial facilities' business assistance program is tailored to raise awareness among industrial facility owners of the obligation to obtain and comply with permit requirements for their stormwater discharges. The inspection component for both commercial and industrial facilities is set forth to ensure effective implementation of BMPs to manage stormwater discharge from the facility. The Order also requires Permittees, during facility inspections, to confirm that industrial facilities are enrolled in the Industrial General Permit and have a current waste discharge identification (WDID) number. Inspection frequencies have been modified to start with more frequent inspections while giving the Permittee the opportunity to reduce the frequency for facilities that demonstrate compliance with the BMP requirements. This will give the Permittees the freedom to better utilize their resources by allocating them to areas of higher concern. Additionally, inspection frequencies for commercial facilities have been modified to require inspections of a facility every two years, ensuring that the first mandatory compliance inspection occurs no later than 2 years after the effective date of the Order. A minimum interval of 6 months between the compliance inspections is required. The scope of the inspections was clarified by listing possible BMPs that should be implemented at the facility to ensure that exposure of pollutants to stormwater is managed. The BMP categories are based on BMPs identified in the 2003 California Stormwater BMP Handbook, Industrial and Commercial as well as BMPs identified in Los Angeles Water Board Resolution No. 98-08.

Additionally, the provision for outreach is necessary to meet federal standards and federal requirements regarding stormwater management programs at 40 CFR section 122.26(d)(2)(iv), including subsections (A)(6) and (B)(6), which require educational outreach regarding pollutants in discharges of pesticides, herbicides, fertilizers, oil, and toxic materials.

Part VIII.E.6 of the Order sets requirements for a progressive enforcement procedure that outlines the minimum steps needed to enforce their municipalities' stormwater requirements. In recognition of some of the Permittees' concerns regarding the resource intensive efforts needed to elevate enforcement actions, a mechanism was provided through which Permittees can refer cases to the Los Angeles Water Board.

Due to the level of technicality of industrial and commercial facilities inspections, Part VIII.A.3 of the Order sets requirements for staff training. These requirements are set to ensure pertinent staff possess the appropriate knowledge of the program.

F. Planning and Land Development Program

1. Legal Authority

The permit application requirements described in 40 CFR section 122.26(d) have formed the foundation for MS4 permits and remain applicable as elements in a stormwater management program. 40 CFR section 122.26(d)(2)(iv) requires, in part, that the large and medium MS4 applicant develop a management program. Specifically, with regards to planning and land development and post-constructions controls, the management program shall include the following:

“(A) 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. At a minimum, the description shall include:

(1) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

(2) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed.

(3) 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...

(4) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.”

2. Background

Land development and urbanization have been linked to the impairment of aquatic life beneficial uses in numerous studies. Poorly planned and constructed new development and re-development projects have the potential to impact the hydrology of the watershed and the water quality of the surface waters. Development without appropriate planning and controls often results in increased soil compaction, changes in vegetation and increased impervious surfaces. These conditions may lead to a reduction in groundwater recharge and changes in the flow regime of the surface water drainages. Historically, urban development has resulted in increased peak stream flows and flow duration, reduced base flows, and increased water temperatures. Pollutant loading in stormwater runoff often

increases due to post-construction activities and because the stormwater runoff is directly connected to the storm drain system or to the surface water body, without the benefit of filtration through soil and vegetation.

The Planning and Land Development Program provisions in the 2012 Los Angeles County, 2014 City of Long Beach, and 2010 Ventura County MS4 Permits require that Permittees impose requirements on development projects (including significant redevelopment projects) within their jurisdiction to address stormwater pollution and hydromodification impacts. These provisions establish:

- Water quality, flow reduction, and resources management criteria for applicable development projects within the Permittee's jurisdiction.
- Hydromodification mitigation criteria for applicable development projects within the Permittee's jurisdiction.
- Implementation requirements.

Except for some provisions that were updated and/or refined, the Order generally carries over the Planning and Land Development provisions included in the 2012 Los Angeles County, 2014 City of Long Beach, and 2010 Ventura County MS4 Permits.

3. Implementation

a. Priority Development Projects

Part VIII.F.1 of the Order establishes the term "Priority Development Projects" for new development and redevelopment projects subject to water quality, flow reduction, and resources management criteria. Although the term Priority Development Project was not used in the 2012 Los Angeles County, 2014 City of Long Beach, and 2010 Ventura County MS4 Permits, this change does not constitute a new requirement. The categories of development projects designated as Priority Development Projects are generally the same categories of new development and redevelopment projects that were subject to water quality, flow reduction, and resources management criteria in the previous permits. Part VIII.F.1.a.iv of the Order establishes that new development and redevelopment projects that create and/or replace 2,500 square feet or more of impervious area; discharge stormwater that is likely to impact a sensitive biological species or habitat; and are located in or directly to or are discharging directly to a "Sensitive Ecological Area" in Los Angeles County or an "Environmentally Sensitive Area" in Ventura County are Priority Development Projects. This is consistent with the 2012 Los Angeles County, 2014 City of Long Beach, and 2010 Ventura County MS4 Permits.

Part VIII.F.1.c of the Order includes exemptions from Priority Development Project Structural BMP Performance Requirements through implementation of an approved Local Ordinance Equivalence or an approved Regional Stormwater Mitigation Program. These exemptions were included in the 2012 Los Angeles County MS4 Permit and 2014 City of Long Beach MS4 Permit.

i. Hydromodification

Part VIII.F.2.a of the Order establishes hydromodification management requirements for Priority Development Projects within natural drainage systems for Los Angeles County Permittees and all development projects greater than 50 acres for Ventura County Permittees. This is the same

as the applicability requirements in the 2012 Los Angeles County, 2014 City of Long Beach, and 2010 Ventura County MS4 Permits. Under the 2012 Los Angeles County MS4 Permit, hydromodification requirements applied to all New Development and Redevelopment projects located in natural drainage systems. Under the 2010 Ventura County MS4 Permit, hydromodification requirements applied to all applicable New Development and Redevelopment projects identified in subpart 4.E.II of that permit (i.e., projects that would be referred to as Priority Development Projects under this Order), however hydromodification-specific controls are only required for projects disturbing lands areas of fifty acres or greater.

The hydromodification management control criteria outlined in Part VIII.F.2.c of the Order carry over the criteria included in the 2010 Ventura County MS4 Permit, 2012 Los Angeles County MS4 Permit, and 2014 City of Long Beach MS4 Permit.

ii. Implementation Requirements

Part VIII.F.3 of the Order establishes implementation requirements related to project coordination; maintenance agreements and transfers; and tracking, inspection, and enforcement of post-construction BMPs. These requirements are directly carried over from those included in the 2010 Ventura County MS4 Permit, 2012 Los Angeles County MS4 Permit, and 2014 City of Long Beach MS4 Permit.

b. Priority Development Project Structural BMP Performance Requirements

Part VIII.F.4 of the Order establishes requirements for Priority Development Projects for Permittees. Under these requirements, Permittees must require Priority Development Projects to retain a Stormwater Quality Design Volume (SWQDV). If retention of the SWQDV is infeasible or if there is an applicable groundwater replenishment opportunity, then Permittees may allow Priority Development Projects to use alternative compliance measures including: onsite biofiltration or onsite flow-based BMPs in conjunction with offsite infiltration projects, groundwater replenishment projects, or offsite retrofit projects. These requirements are generally consistent with the corresponding requirements in the 2012 Los Angeles County, 2010 Ventura County, and 2014 City of Long Beach MS4 Permits.

Part VIII.F.4.c.i of the Order provides that on-site biofiltration may be used as an alternative compliance measure. Unlike the 2012 Los Angeles County, 2010 Ventura County, and 2014 City of Long Beach MS4 Permits, the Order does not directly include design specifications for biofiltration systems but instead references the design specifications in the County of Los Angeles Department of Public Works' Low Impact Development Standards Manual and 2011 Ventura County Technical Guidance Manual. These specifications are generally consistent with the previous design specifications in Attachment H of the 2012 Los Angeles County MS4 Permit and 2011 Ventura County Technical Guidance Manual.

Part VIII.F.4.c.ii of the Order provides that on-site flow-based BMPs may be used as an alternative compliance measure for Permittees in situations where

on-site biofiltration is not technically feasible. This option was not included in the 2012 Los Angeles County, 2010 Ventura County, and 2014 City of Long Beach MS4 Permits. This alternative compliance measure option is included in the Order to give an on-site treatment option for projects in areas where on-site biofiltration is technically infeasible. The requirements are similar to the mitigation criteria in Part VIII.F.4.d of the Order, however the BMP must be certified for “Enhanced Treatment” under the Washington State Department of Ecology’s TAPE Program; or an appropriate future BMP certification program developed by the State of California.

Part VIII.F.4.d of the Order establishes water quality mitigation criteria for projects in cases where the priority development project is utilizing offsite mitigation or an offsite ground water replenishment project to comply with its structural BMP performance requirements. This ensures that there is treatment of stormwater runoff from the project site. The Order updates the mitigation requirements included in the 2012 Los Angeles County, 2010 Ventura County, and 2014 City of Long Beach MS4 Permits.

G. Construction Program

1. Background

Soil disturbing activities during construction and demolition exacerbate sediment losses. Sediment is a primary pollutant impacting beneficial uses of watercourses. Sediment also transports other pollutants such as nutrients, metals, and oils and greases. Sediments, and other construction activity pollutants must be properly controlled to reduce or eliminate adverse impacts.

Construction activities addressed by the Construction Program in the Order include the following:

- Any construction or demolition activity, including, but not limited to, clearing, grading, grubbing, or excavation, or any other activity.
- Construction activity related to residential, commercial, or industrial development on lands currently used for agriculture including, but not limited to, the construction of buildings related to agriculture that are considered industrial pursuant to U.S. EPA regulations, such as dairy barns or food processing facilities.
- Construction activity associated with linear underground/overhead project (LUPs) including, but not limited to, those activities necessary for the installation of underground and overhead linear facilities (e.g., conduits, substructures, pipelines, towers, poles, cables, wires, connectors, switching, regulating and transforming equipment and associated ancillary facilities) and include, but are not limited to, underground utility mark-out, potholing, concrete and asphalt cutting and removal, trenching, excavation, boring and drilling, access road and pole/tower pad and cable/wire pull station, substation construction, substructure installation, construction of tower footings and/or foundations, pole and tower installations, pipeline installations, welding, concrete and/or pavement repair or replacement, and stockpile/borrow locations.
- Construction activities associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities.

- Activities resulting in storm water discharges from dredge spoil placement that occur outside of U.S. Army Corps of Engineers jurisdiction²⁷⁴ (upland sites) and that disturb one or more acres of land surface from construction activity. Construction projects that intend to disturb one or more acres of land within the jurisdictional boundaries of a CWA section 404 permit should contact the appropriate Regional Water Board to determine whether this permit applies to the project.

2. Legal Authority

With respect to construction site stormwater runoff control, federal regulations set forth requirements that include implementation of BMPs, site inspection, enforcement, and educational and training measures for construction site operators.

40 CFR section 126.26(d)(2)(iv)(D) requires “A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system...”

Per 40 CFR section 126.26(d)(2)(iv)(D)(2), the program must include “A description of requirements for nonstructural and structural best management practices.”

Per 40 CFR section 126.26(d)(2)(iv)(D)(3), the program must include “A description of procedures for identifying priorities for inspecting sites and enforcing control measures...”

Per 40 CFR section 126.26(d)(2)(iv)(D)(4), the program must include “A description of appropriate educational and training measures for construction site operators.”

40 CFR section 122.34(b)(4) states that with respect to construction site stormwater runoff control for small MS4s, which is analogous to that for large MS4s:

“(i) [the permittee] must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the NPDES permitting authority waives requirements for storm water discharges associated with small construction activity in accordance with § 122.26(b)(15)(i), you are not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites. (ii) Your program must include the development and implementation of, at a minimum: (A) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State, Tribal, or local law; (B) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices; (C) Requirements for construction site operators to

²⁷⁴ A construction site that includes a dredge and/or fill discharge to any water of the United States (e.g., wetland, channel, pond, or marine water) requires a permit from the U.S. Army Corps of Engineers pursuant to CWA section 404 and a Water Quality Certification from the Regional Water Board or State Water Board pursuant to CWA section 401.

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; (D) Procedures for site plan review which incorporate consideration of potential water quality impacts; (E) Procedures for receipt and consideration of information submitted by the public, and (F) Procedures for site inspection and enforcement of control measures.”

The inspection requirements for construction sites contained in the Order are also based on the requirements found in the previous permits. As previously noted, the inspection requirements contained in the 2001 Los Angeles County MS4 permit (Order No. 01-182) for construction sites were the subject of litigation between several permittees and the Los Angeles Water Board. As provided in more detail above, the Los Angeles County Superior Court upheld the inspection requirements for industrial/commercial facilities and construction sites in Order No. 01-182, finding that the “[t]he Permit contains reasonable inspection requirements for these types of facilities” and also that permittees have the authority to impose a fee on the facility operator or owner to recover the cost of these inspections. (*In re L.A. Cnty. Mun. Storm Water Permit Litig.* (L.A. Super. Ct., No. BS 080548, Mar. 24, 2005), Statement of Decision from Phase II Trial on Petitions for Writ of Mandate, p. 17.) As previously noted above, there remains pending litigation on test claims filed by several Los Angeles County MS4 permittees concerning the permittees’ fee authority to pay for inspections of industrial, commercial, and construction sites. The matter is currently at the Court of Appeal. To date, however, no court has ruled specifically on the fee authority issue. (*State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates; County of Los Angeles, et al., Real Parties in Interest* (Super. Ct. Los Angeles County, Case No. BS130730, B292446, app. pending).

3. Construction Program Implementation

The purpose of the Construction Program is to ensure the implementation of adequate controls at all construction sites in order to assist Permittees in achieving compliance with the receiving water limitation provisions and WQBELs applicable to discharges from their MS4s. The applicable provisions in the Order are carried over from existing MS4 Permits. However, they have been slightly modified to better define the requirements.

For ease of compliance and more clear guidelines, the requirements for construction sites that disturb one acre or greater of land (or construction sites less than one acre that are part of a common plan of development totaling one acre or greater) have been separated from construction sites that disturb less than one acre and are not part of a common plan of development. Part VIII.G.4 of the Order sets provisions specific to sites that disturb less than one acre of land while Part VIII.G.5 of the Order sets provisions specific to sites that disturb one acre or greater of land or sites less than one acre that are part of a common plan of development totaling one acre or greater.

Part VIII.G.4.a of the Order states that Permittees shall require the implementation of effective BMPs at construction sites disturbing less than one acre. To better assist Permittees, this part includes a list of applicable BMPs. To ensure effective implementation of these BMPs, Part VIII.G.4.b of the Order requires Permittees to inspect these sites.

Part VIII.G.5.a.i of the Order states that Permittees shall verify enrollment in the Construction General Permit prior to issuing a grading or building permit. Also, Permittees shall require operators of these sites to prepare and submit a post-construction plan for the Permittee's review and approval. These post-construction requirements are based on some of the provisions listed in Part VIII.F of the Order. These provisions are not listed in the Construction General Permit.

Part VIII.G.5.b of the Order lists the minimum necessary information required to develop and maintain an effective list of all construction sites one acre or greater.

Part VIII.G.5.c of the Order requires inspection of these sites to verify enrollment in the Construction General Permit, implementation of appropriate BMPs, or implementation of proper post-construction BMPs. The requirement for Permittees to develop standard operation procedures for their inspection procedures has been removed since inspection requirements are streamlined as part of the inspection requirements of the Order. Similarly, the requirement for Permittees to require an Erosion and Sediment Control Plan (ESCP) has been removed since an ESCP include the elements of a Storm Water Pollution Prevention Plan (SWPPP). Therefore, these requirements shall be satisfied via SWPPPs.

Part VIII.G.6 of the Order requires that Permittees implement their Progressive Enforcement Policy set forth in Part VIII.B as it pertains to ensuring that construction site operators come into compliance with all stormwater requirements.

Due to the technical nature of construction activities and BMP implementation, Part VIII.A.3 of the Order sets requirements for staff training. These requirements are set to ensure pertinent staff possess the appropriate knowledge of the program.

H. Public Agency Activities Program

1. Federal Requirements

The Los Angeles Water Board has incorporated the Public Agency Activities Program into the Order per the following federal requirements:

Clean Water Act section 402(p)(3)(B)(ii) and (iii) require that “[p]ermits for discharges from municipal storm sewers ... shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and 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.”

40 CFR section 122.26(d)(2)(iv)(A) requires that the stormwater management program is based on, among other items, “[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.” This section goes on to identify component areas to address structural and source control measures. The components related to the Public Agency Activities Program include 40 CFR sections 122.26(d)(2)(iv)(A)(1), (3), (4), and (6), and are described below.

40 CFR section 122.26(d)(2)(iv)(A)(1) states that the stormwater management program must include “[a] description of maintenance activities and a

maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;”

40 CFR section 122.26(d)(2)(iv)(A)(3) states that the stormwater management program must include “[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 CFR section 122.26(d)(2)(iv)(A)(4) states that the stormwater management program must include “[a] description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible;” and

40 CFR section 122.26(d)(2)(iv)(A)(6) states that the stormwater management program must include “[a] description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.”

40 CFR section 122.41(n) describes conditions under which an upset of treatment may constitute an affirmative defense to an action brought for noncompliance. At 40 CFR section 122.41(n)(1) “[u]pset 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.” The regulation further provides for conditions of affirmative defense and requirements to demonstrate an upset at 40 CFR sections 122.41(n)(2) and (3): Within the Regional MS4 Permit, the provisions for Emergency Procedures in Part VIII.H.10. of the Order allow for an affirmative defense subject to the conditions of 40 CFR 122.41(n)(1), (2), and (3).

40 CFR section 122.42(c) requires the owner or operator of an MS4 to submit an annual report that includes in part “(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 condition. Such proposed changes shall be consistent with §122.26(d)(2)(iii) of this part; (3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under §122.26(d)(2)(iv) and (d)(2)(v) of this part; (4) A summary of data, including monitoring data, that is accumulated throughout the reporting year...” and “(6) A summary describing the number and nature of enforcement actions, inspections, and public education programs...”

2. General Provisions

Permittees previously covered under the 2012 Los Angeles County MS4 Permit, the 2014 City of Long Beach MS4 Permit, and the 2010 Ventura County MS4 Permit must continue existing programs while updating those programs, as necessary, to comply with the requirements of the Order. The Order consolidates requirements among the three previous permits, updates requirements to reflect completed program elements, and provides additional flexibility for BMP implementation. The most notable changes from previous permits are discussed below.

3. Public Agency Facility and Activity Management

The requirements for BMP implementation address federal requirements in 40 CFR sections 122.26(d)(2)(iv)(A)(1), (3), and (6). In addition, 40 CFR section 122.44(k) authorizes BMP requirements in permits for stormwater subject to Clean Water Act section 402(p). The BMP requirements in this section are similar to those in other permits, including the U.S. EPA-issued permit for Washington, D.C., which requires proper operation and maintenance, inspections, and proper disposal of residual water from treatment control BMPs.²⁷⁵ Several examples in U.S. EPA's *Compendium of MS4 Permitting Approaches* require BMP implementation for municipal activities, often through development of a SWPPP.²⁷⁶

Part VIII.H.3 of the Order requires each Permittee implement BMPs (identified in the inventory in Part VIII.H.2 of the Order), which may be structural and/or nonstructural. For implemented BMPs, the Permittee must inspect, maintain, properly operate, and properly dispose of any residual water produced by a treatment control BMP.²⁷⁷ Municipal operations are often performed by contractors; therefore, the Order requires contractual requirements to ensure BMPs are properly implemented.

The previous 2010 Ventura County MS4 Permit prescribed specific BMPs, referenced to the *Caltrans Storm Water Quality Handbook Maintenance Staff Guide* or as approved by the Executive Officer.²⁷⁸ The Order allows the Permittee to determine appropriate BMPs corresponding to activities. In doing so, Permittees have flexibility to incorporate advanced techniques beyond those in the references. Nonetheless, the Los Angeles Water Board encourages Permittees to consult *Caltrans Storm Water Quality Handbook Maintenance Staff Guide* as guidance for selecting BMPs.

The Order removes requirements specific to flood management projects in the previous 2012 Los Angeles County and 2014 City of Long Beach MS4 permits because MCMs related to flood management projects and flood control procedures

²⁷⁵ NPDES Permit No. DC0000221 issued to the Government of the District of Columbia, as modified November 9, 2012, pp. 16-17).

²⁷⁶ Compendium of MS4 Permitting Examples, Part 1: Six Minimum Control Measures. Office of Wastewater Management, Water Permits Division. November 2016. 810-U-16-001. pp. 38-45.

²⁷⁷ See Attachment A (Definitions). Residual Water means "In the context of the Order, water remaining in a structural BMP subsequent to the drawdown or drainage period. The residual water typically contains high concentration(s) of pollutants." Treatment Control BMP means "Any engineered system designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media absorption or any other physical, biological, or chemical process."

²⁷⁸ Appendix B of the *Caltrans Storm Water Quality Handbook Maintenance Staff Guide*, May 2003, and its addenda.

are now included in the inventory required by revised Part VIII.H.2 of the Order and, as such, the Permittee is required to assign appropriate BMPs, considering impacts of flood management projects on the water quality of the receiving water bodies. Flood control management is largely outside the scope of the MS4 permit; therefore, additional BMP requirements are not retained from previous Orders.

The Order removes numeric limitations for residual water produced by treatment control BMPs that were included in previous permits for Los Angeles County, City of Long Beach, and Ventura County. The Order includes treatment control BMPs in the requirements for Public Agency Facility and Activity Management. The numeric limitations are unnecessary as there is no longer an option in the Order to discharge residual water from treatment BMPs to the MS4. Their removal streamlines the permit requirements and improves clarity.

4. Vehicle and Equipment Washing; Landscape, Park, and Recreational Facilities Management; Storm Drain Operation and Maintenance; Road Reconstruction, Streets and Road Pollutant Management, and Parking Facilities.

The specific BMPs in Parts VIII.H.4 through 9 of the Order are based on section 402(p)(3)(B) of the CWA, which mandates that a permit for discharges from MS4s must effectively prohibit the discharge of non-stormwater to the MS4; require controls to reduce pollutants in discharges from the MS4 to the maximum extent practicable (MEP) including BMPs control techniques, and system, design and engineering methods; and such other provisions as the State deems appropriate for the control of pollutants. The specific BMPs for Parts VIII.H.4 through 9 of the Order are commonly accepted practices that the Los Angeles Water Board considers necessary to control pollutants discharged to the MS4 to the maximum extent practicable. Vehicle wash water is a prohibited non-stormwater discharge; thus, requirements in Part VIII.H.4 of the Order are also necessary to comply with the prohibition. U.S. EPA included BMP requirements similar to those in Part VIII.H.5 of the Order (Landscape, Park, and Recreational Facilities Management) in MS4 permits for Washington, D.C.,²⁷⁹ and Boise Area,²⁸⁰ and Middle Rio Grande Watershed.²⁸¹ Similarly, U.S. EPA provides example requirements to label catch basins in the MS4 Improvement Guide. Street sweeping reduces debris and pollutants that may become entrained in stormwater and urban runoff. Additionally, street sweeping may reduce clogging of catch basins and extend the life of infiltration BMPs.²⁸²

The Permittee must implement specific BMPs for vehicle and equipment washing; landscape, park, and recreational facilities management; storm drain operation and maintenance; catch basin cleaning; road reconstruction; streets and road pollutant

²⁷⁹ NPDES permit (DC0000221) issued to Government of the District of Columbia, with final signed Modification #1, effective November 9, 2012. pp. 16-17.

²⁸⁰ NPDES permit (IDS-027561) issued to Ada County Highway District, Boise State University, City of Boise, City of Garden City. Drainage District #3, and the Idaho Transportation Department District #3. Effective February 1, 2013. p. 25.

²⁸¹ NPDES Permit No. NMR04A000 issued to Middle Rio Grande Watershed, effective December 22, 2014. p. 29.

²⁸² Urban Drainage and Flood Control District, 2010. Urban Storm Drainage Criteria Manual, Volume 3. Chapter 5, Fact Sheet S-11, available at https://udfcd.org/wp-content/uploads/uploads/vol3%20criteria%20manual/01_USDCM%20Volume%203.pdf. Last accessed June 20, 2018.

management; and parking facilities maintenance. The Order's requirements in these areas have been updated from the previous permits to be consistent with the Trash Amendments²⁸³ and to remove catch basin prioritization requirements already completed by the Permittees.

This Part of the Order does not require Permittees to quantify trash removed from catch basins, as was required in the 2010 Ventura County MS4 Permit, rather, the Order aligns trash requirements with the Statewide Trash Amendments. Trash requirements are included in Part III.B of the Order.

Previous permits for Los Angeles County, City of Long Beach, and Ventura County permits required that the public agency program address infiltration to sanitary sewers and related preventative maintenance. For the Order, these requirements are addressed as illicit connections and discharges in Part VIII.I of the Order to more closely align with federal requirements. Provisions for controls on infiltration to sanitary sewers and related preventative maintenance address federal requirements in 40 CFR section 122.26(d)(2)(iv)(B)(7) as a component of the IDDE program.

Parking areas were not specifically identified for additional BMPs in the previous Ventura County permit. The remaining BMP requirements under these Parts are retained from previous permits for Los Angeles County, City of Long Beach, and Ventura County, with a specification for parking areas with a sediment/gravel base. To provide a phased approach for parking area requirements to Ventura County Permittees, an applicability threshold for parking areas greater than 1 acre or any parking lot used for heavy vehicle storage was added.

5. Emergency Procedures

The provisions in Part VIII.H.10 of the Order are consistent with federal regulations in 40 CFR section 122.41(n) as described earlier in this Fact Sheet. Permittees are required to conduct repairs of essential public service systems and infrastructure in emergency situations. In these situations, a Permittee is allowed a self-waiver from implementing facility and activity specific BMPs identified in Part VIII.H.3 of the Order, as well as BMPs described in Part VIII.H.4 through 9 of the Order. An emergency includes only those situations included as conditions necessary for demonstration of an upset at 40 CFR section 122.41(n). For each claimed emergency, the Permittee shall submit to the Los Angeles Water Board a statement of the occurrence of the emergency, an explanation of the circumstances, and the measures that were implemented to reduce the threat to water quality, no later than required by applicable federal NPDES regulations.

6. Other Changes to Program Requirements

The Order discontinues cross references to other regulatory requirements that were provided in previous permits for Los Angeles County and the City of Long Beach. This change reduces unnecessary language, as it is naturally implied that Permittees are not exempt from other regulatory requirements within the Order (e.g., Development Construction, Planning and Land Development requirements)

²⁸³ Amendment to the Water Quality Control Plan for Ocean Waters of California (Ocean Plan) to Control Trash and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (ISWEBE Plan). Final Resolution No. 2015-0019. The OAL approved the Trash Amendments on December 2, 2015. The U.S. EPA approved the Trash Amendments on January 12, 2016.

or general permit requirements (e.g., *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* [NPDES No. CAS000002] and/or the *General Permit for Storm Water Discharges Associated with Industrial Activities* [NPDES No. CAS000001]), if applicable).

The Order does not require the Public Agency Program to include an Inventory of Existing Development for Retrofitting Opportunities, as was required in the 2012 Los Angeles County and the 2014 City of Long Beach MS4 permits. The previous permit provisions addressed federal requirements in 40 CFR section 122.26(d)(2)(iv)(A)(4). This requirement has been completed by Los Angeles County and City of Long Beach Permittees and a similar requirement is included under the Planning and Land Development Program in the Order. The previous 2010 Ventura County MS4 Permit also contained a similar requirement related to identifying eligible public and private off-site mitigation project sites in the Planning and Land Development program.²⁸⁴

7. Documentation and Tracking

Federal regulations in 40 CFR section 122.44(k)(4) require the Permitting Authority to establish requirements for BMPs where “The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purpose and intent of the CWA.” The regulation contains a footnoted reference to the *Guidance Manual for Developing Best Management Practices (BMPs)*,²⁸⁵ for additional technical information on BMPs and the elements of BMPs. As described in the Manual, recordkeeping involves collecting background information that is pertinent to the BMP plan or the BMP itself. California Water Code section 13383 authorizes the Los Angeles Water Board to establish monitoring, inspection, entry, reporting, and recordkeeping requirements. The Order requires documentation and tracking as a form of recordkeeping that is integral to BMP implementation. Without documentation and tracking, the Permittee cannot effectively ensure proper BMP implementation that is protective of water quality. U.S. EPA-issued MS4 permits such as the one issued to the District of Columbia,²⁸⁶ routinely require documentation and tracking interconnected with clear, specific, measurable requirements.

The Permittee must document and track the Public Agency Activities Program through the inventory developed in Part VIII.H.2 of the Order. This inventory is a framework for setting up periodic facility assessments and for developing, where necessary, facility stormwater pollution prevention plans. Documenting and tracking of BMPs through the inventory help to ensure that public agency facilities are monitored and receiving water quality is protected.

Part VIII.H.2 of the Order addresses, in part, federal requirements in 40 CFR section 122.26(d)(2)(iv)(A)(1), (3), and (6). A public agency oversees numerous facilities and performs many activities and must therefore identify activities that may

²⁸⁴ Waste Discharge Requirements for Storm Water (Wet Weather) and Non-storm Water (Dry Weather) Discharges from the Municipal Separate Storm Sewer Systems Within the Ventura County Watershed Protection District, County of Ventura and the Incorporated Cities Therein. Order 09-0057, NPDES No. CAS004002. Issued May 7, 2009, Corrected January 13, 2010.

²⁸⁵ U.S. EPA, 1993. *Guidance Manual for Developing Best Management Practices (BMPs)*. Office of Water. EPA No. 833/B-93-004. October 1993.

²⁸⁶ NPDES permit (DC0000221) issued to Government of the District of Columbia, effective June 22, 2018. pp. 19-22.

result in discharges of pollutants to the MS4. As follows, the requirements in 40 CFR sections 122.26(d)(2)(iv)(A)(1), (3), and (6) effectively require such an inventory. The *MS4 Permit Improvement Guide* recommends an inventory that is similar to the requirements in the Order.²⁸⁷

Permittees must develop and maintain an inventory of public facilities that are potential sources of pollutants to the MS4. Permittees formerly covered under the 2012 Los Angeles County and 2014 City of Long Beach MS4 permits may use information from the Public Facilities Inventory developed under the previous permit to comply with this provision, provided that all requirements in Part VIII.H.2 of the Order are met. The previous 2010 Ventura County MS4 Permit did not require an inventory but required BMP implementation for specific activities and specific types of facilities as well as BMP documentation. Thus, the previous 2010 Ventura County MS4 Permit requirements are effectively similar to the Order's inventory requirement. Under the Order, activities with potential to discharge pollutants to the MS4 must be included in the inventory and must be associated with facilities where the activity occurs. The list of facility types to include in the inventory is retained from previous permits for Los Angeles County and the City of Long Beach and correspond to similar requirements in the 2010 Ventura County MS4 Permit; however, streets and roads; catch basins; and stormwater capture, control, and treatment devices are added to the inventory list. The Order consolidates information requirements from the three previous permits. The framework of this requirement is slightly different than the three previous permits, but results in equivalent requirements to implement BMPs.

The previous permit for the City of Long Beach required the Permittee to update the inventory twice during the permit term; whereas, the Regional MS4 Permit requires the inventory to be updated once per permit term. The Los Angeles Water Board believes that this change will allow for reduced burden, without diminishing the overall integrity of the inventory.

8. Annual Report Requirements

The reporting requirements for the Public Agency Activities Program in Attachment H (Annual Report Form) of the Order are based on federal requirements in 40 CFR 122.42(c) (1), (2), (3), (4) and (6) among others as identified in the Monitoring and Reporting Program (Attachment E) and are necessary to ensure program requirements are implemented.

I. Illicit Discharge Detection and Elimination Program

The title of this section has changed from Illicit Connections and Illicit Discharges Elimination Program in previous permits to Illicit Discharge Detection and Elimination (IDDE) Program. The change has been made to match federal regulation language.

1. Federal Requirements

The Los Angeles Water Board has incorporated the Illicit Discharge Detection and Elimination Program into the Regional MS4 Permit per the following federal requirements:

²⁸⁷ U.S. EPA. 2010. *MS4 Permit Improvement Guide*. April 2010. pp. 67-69.

Clean Water Act section 402(p)(3)(B)(ii) requires that “[p]ermits for discharges from municipal storm sewers shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers;...”

Federal regulations at 40 CFR section 122.26(d)(2)(iv)(B) require that the stormwater management program shall be based on “a description of a program, including a schedule, to detect and remove (or require the discharger to the municipal storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer.” The proposed management 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 storm sewer system,” per subsection (1) of the above federal regulation.

Federal regulations at 40 CFR section 122.26(b)(2) define “illicit discharge” as “any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities.” Federal regulations at 40 CFR section 122.26(d)(2)(iv)(B)(1) state that the following non-stormwater discharges may be allowed if they are not determined to be a significant source of pollutants to the MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from drinking water supplier distribution systems, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water. If, however, these discharges are determined to be a significant source of pollution then they must be prohibited.

Federal regulations at 40 CFR section 122.26(d)(2)(iv)(B)(1) through (7) provide the IDDE program requirements including 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,” field screening, investigation procedures, spill prevention, public reporting, educational activities, and a description of controls to limit infiltration of seepage from municipal sanitary sewers.

2. General Provisions

Part VIII.I.1 of the Order implements federal requirements in Clean Water Act section 402(p)(3)(B)(ii) and 40 CFR section 122.26(d)(2)(iv)(B)(3). The Permittee must continue to implement their IDDE program, maintain it in written form, and update it, as necessary. The requirements in the IDDE program are retained from previous permits for Los Angeles County, City of Long Beach, and Ventura County and have been reworded for improved clarity. Many of the program components are monitoring and reporting efforts. As such, some requirements are included in the MRP for non-stormwater outfall-based screening and monitoring.

The Regional MS4 Permit considers the procedures in the MRP for the non-stormwater outfall-based screening and monitoring program as part of the IDDE program. These Regional MS4 Permit requirements address federal regulations at 40 CFR 122.26(d)(2)(iv)(B)(2), (5), and (6), which are program requirements for the IDDE that state the permittee must include in the IDDE program: “(2) [a] description of procedures to conduct on-going field screening activities during the life of the

permit, including areas or locations that will be evaluated by such field screens;” “(5) [a] description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers” and “(6) [a] description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials.”

3. Illicit Discharge Detection and Elimination

Clean Water Act section 402(p)(3)(B)(ii) requires MS4 permits to “effectively prohibit non-stormwater discharges into the storm sewers.” Parts VIII.I.2 and 3 of the Order implement the federal requirement, in part, by requiring the development of procedures to investigate and eliminate illicit discharges. In addition to the broad federal requirement, the Regional MS4 Permit requires a timeline of 72 hours to initiate the investigation. This timeline is retained from previous permits for Los Angeles County and the City of Long Beach but is slightly different from the previous 2010 Ventura County MS4 Permit requirement of “one business day.” Nonetheless, the Los Angeles Water Board believes “72 hours” is a clearer requirement. U.S. EPA encourages permit writers to include clear, specific, measurable requirements in permits as is evident through the Phase II remand rule²⁸⁸ and guidance documents.²⁸⁹

The previous Los Angeles and City of Long Beach permits include a requirement to notify upstream jurisdictions when an illicit discharge has been determined to have originated upstream of their jurisdictional boundary. Communication with upstream jurisdictions is essential to eliminating illicit discharges as the upstream entity might not be aware of the discharge leaving their MS4.

The Regional MS4 Permit retains the requirement that if a Permittee is unable to eliminate an ongoing illicit discharge, or other circumstances prevent the full elimination of an ongoing illicit discharge, the Permittee shall require diversion of the entire flow to the sanitary sewer or treatment. In the event of either above circumstance, the Permittee shall notify the Los Angeles Water Board in writing within 30 days, providing a written plan for review and comment. The goal of this requirement is to provide a permanent solution for ongoing illicit discharges. This requirement was not included in the previous 2010 Ventura County MS4 Permit but it is necessary as it supports the federal requirement to effectively prohibit non-stormwater discharges through the MS4.

The illicit connection requirements as stated in the previous 2012 Los Angeles County, 2014 City of Long Beach, and 2010 Ventura County MS4 permits, have been combined with illicit discharge requirements in Part VIII.I of the Order. Combining illicit discharges and illicit connections into one section streamlines the Regional MS4 Permit while still meeting the NPDES requirements stated in 40 CFR section 122.26 (d)(1)(v)(B). Illicit connections are often treated as illicit discharges,

²⁸⁸ U.S. EPA. 2016. National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System General Permit Remand Rule, 81 Federal Register, p 89326.

²⁸⁹ U.S. EPA. 2010. *MS4 Permit Improvement Guide*. April 2010. p.5.

as is evident in U.S. EPA-issued permits for Boise Area²⁹⁰ and District of Columbia.²⁹¹

The illicit connection screening requirements included in the three previous permits are discontinued in the Regional MS4 Permit. They have been removed to eliminate redundancy and streamline the permit. As illicit connections are a source of illicit discharges by performing illicit discharge screening and investigations the Permittee is fulfilling that requirement. If the Permittee eliminates the sources of illicit discharges, then they will eliminate illicit connections.

4. Infiltration from Sanitary Sewer to MS4 – Preventative Maintenance

The NPDES requirements of 40 CFR section 122.26(d)(2)(vi)(B)(7) require that the IDDE program include “A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary.” The Sanitary Sewer Preventative Maintenance requirements were in the Public Agency Activity Program in the previous 2012 Los Angeles County and 2014 City of Long Beach MS4 permits but were not any section of the previous 2010 Ventura County MS4 Permit. Proper sanitary sewer preventative maintenance decreases the probability that a sanitary sewer line will back up, overflow, or leak, causing potential contact with the MS4 or directly to the receiving water. By moving these requirements into the IDDE section, the Regional Permit implements the above-mentioned requirements of 40 CFR 122.26(d)(2)(iv)(B)(7).

5. Spill Response

Federal regulations at 40 CFR section 122.26(d)(2)(iv)(B)(4) require a “description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer.” Spills, leaks, sanitary sewer overflows, and illicit dumping or discharges can introduce a range of pollutants into the storm system. A quick response to a spill can prevent the pollutant from reaching the MS4 or the receiving water. Often, a different entity might be responsible for spill response in a community (e.g., fire department); therefore, it is imperative that adequate communication exists between stormwater and spill response staff to ensure that spills are documented and investigated in a timely manner.

The language in the Regional MS4 Permit has been streamlined to maintain the federal requirements but allow for flexibility for each Permittee to design their program to best fit the needs of their community. Other U.S. EPA-issued permits, such as the one issued to the District of Columbia,²⁹² include a similar streamlined approach to spill response that states “the permittee shall continue to implement procedures to prevent, contain, and respond to spills that may discharge into the MS4. The permittee shall provide for the training of appropriate personnel in spill

²⁹⁰ NPDES permit (IDS-027561) issued to Ada County Highway District, Boise State University, City of Boise, City of Garden City. Drainage District #3, and the Idaho Transportation Department District #3. Effective February 1, 2013. p. 27 and 32.

²⁹¹ NPDES permit (DC0000221) issued to Government of the District of Columbia, with final signed Modification #1, effective November 9, 2012. pp. 35-36.

²⁹² NPDES permit (DC0000221) issued to Government of the District of Columbia, with final signed Modification #1, effective November 9, 2012. p. 25

prevention and response procedures.” Additionally, the U.S. EPA-issued permit for Boise Area²⁹³ also includes similar spill response requirements.²⁹⁴

6. Public Reporting of Non-Stormwater Discharges and Spills

Federal regulations at 40 CFR section 122.26(d)(2)(iv)(B)(5) require the permittee to develop a description of a program “to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewer.” The Permittee(s) needs to promote the program to help in the identification and termination of illicit discharges. The Regional MS4 Permit establishes requirements for the Permittees, individually or as a group, to develop public education campaigns and public reporting of illicit discharges.

The language used in this Regional MS4 Permit has been streamlined to allow for adaptation of new technology other than telephone hotlines, such as websites, cellular telephone applications, and social media. Permittees must provide the public with at least one way of reporting illicit discharges, spills, and observed water quality impacts associated with the MS4.

7. Documentation and Tracking

The Regional MS4 Permit retains the overall documentation and tracking requirements in Part VIII.I.8 of the Order from the 2012 Los Angeles County and 2014 City of Long Beach MS4 permits. These requirements are more specific than in the previous 2010 Ventura County MS4 Permit but are necessary to ensure that Permittees are effectively prohibiting non-stormwater discharges, as required by Clean Water Act section 402(p)(3)(B)(ii). Additionally, the *EPA MS4 Permit Improvement Guide*²⁹⁵ provides an example requirement to “track all investigations to document at a minimum the date(s) the illicit discharge was observed; the results of the investigation; any follow-up of the investigation; and the date the investigation was closed.” Other U.S. EPA issued permits, such as for the Boise Area,²⁹⁶ include similar approaches to IDDE, which require the Permittee to maintain a record documenting all complaints or reports of illicit discharges and responses take by the Permittee.

While the documentation requirements are less specific in some ways than those in the previous 2012 Los Angeles County and 2014 City of Long Beach MS4 permits, the requirements in the Regional MS4 Permit still meet the requirements of federal regulations. Specific documentation requirements are covered by Annual Reporting Requirements in the Regional MS4 Permit. The removal of specific requirements allows for flexibility, removes redundancy, and improves alignment

²⁹³ NPDES permit (IDS-027561) issued to Ada County Highway District, Boise State University, City of Boise, City of Garden City. Drainage District #3, and the Idaho Transportation Department District #3. Effective February 1, 2013. p. 29.

²⁹⁴ For example, a Permittee could follow the Cal OES: California Hazardous Materials Spill/Release Notification Guidance when reporting and addressing spills. The Booklet is a guidance document that summarizes emergency notification requirements including when to notify, who to notify, how to notify and what to include in the notification. (Anderson, Trevor et al. Cal OES Governor’s Office of Emergency Services. California Hazardous Materials Spill/Release Notification Guidance. February 2014.)

²⁹⁵ U.S. EPA. 2010. *MS4 Permit Improvement Guide*. April 2010. p. 33.

²⁹⁶ NPDES permit (IDS-027561) issued to Ada County Highway District, Boise State University, City of Boise, City of Garden City. Drainage District #3, and the Idaho Transportation Department District #3. Effective February 1, 2013. p. 24 - 25.

among the three permits by allowing the Permittees to adjust their program to be the most effective within their community while still meeting the federal requirement.

The Permittee must track all suspected sources of non-stormwater discharges, starting with sources suspected of being sanitary sewage. To streamline tracking requirements within the Regional MS4 Permit, tracking requirements have been added to Part VIII.1.8 of the Order. To meet the documentation and tracking requirements, the Permittees may use the outfall database inventory developed per the MRP, which contains information on non-stormwater discharge characterization at outfalls. Documenting and tracking of illicit discharges through the inventory help to ensure that all illicit discharges are investigated and addressed, and water quality is protected.

8. Annual Report Requirements

The reporting requirements in Attachment H (Annual Report Form) are based on federal requirements in 40 CFR section 122.42(c)(1), (4) and (6) and others as identified in the Monitoring and Reporting Program (Attachment E) and are necessary to ensure program requirements are implemented.

X. RATIONALE FOR WATERSHED MANAGEMENT PROGRAMS

The Watershed Management Program is a voluntary alternative compliance pathway that allows Permittees to implement permit requirements in an integrated manner on a watershed basis, including demonstrating compliance with numeric WQBELs by implementing BMPs.

A. Previous Permit Requirements

Watershed Management Program provisions were carried over from the 2012 Los Angeles County and the 2014 City of Long Beach MS4 permits to the Regional MS4 Permit. Furthermore, the Regional MS4 Permit incorporates requirements and recommendations in the State Board Order WQ 2020-0038. However, one notable change from these two permits is the elimination of the option to develop either a Watershed Management Program (WMP) or an Enhanced Watershed Management Program (EWMP). In the previous permits, Permittees developing WMPs and EWMPs were largely subject to the same requirements except in two respects: 1) Permittees developing a WMP were not required to maximize opportunities to capture the 85th percentile, 24-hour storm event but were required to conduct a Reasonable Assurance Analysis (RAA) for every waterbody-pollutant combination in the WMP, and 2) Permittees developing an EWMP were required to maximize opportunities to capture the 85th percentile, 24-hour storm event by implementing regional multi-benefit stormwater projects but were not required to conduct a RAA except in drainage areas where retention to the 85th percentile, 24-hour storm event was not feasible. The previous permits allowed Permittees to either develop a WMP or EWMP with the expectation that only Permittees that had geotechnical issues with capturing the runoff from the 85th percentile, 24-hour storm event would opt for a WMP. However, Permittees implementing both WMPs and EWMPs sought opportunities to capture the runoff from the 85th percentile, 24-hour storm events and Permittees implementing both WMPs and EWMPs faced geotechnical issues related to capturing the runoff from the 85th percentile, 24-hour storm event throughout the area covered by the WMP or EWMP. Therefore, in practice, there was little distinction between the WMPs and EWMPs. For this reason, the Regional MS4 Permit eliminates the distinction made between a WMP

and EWMP so that these programs are now all termed Watershed Management Programs.

The 2010 Ventura County MS4 Permit did not include WMPs as an alternative compliance pathway. Rather, the prior permit only included the separate compliance pathways for receiving water limitations in the receiving water limitation provisions and water quality based effluent limitations based on TMDL WLAs in the TMDL provisions. It did not provide the opportunity to comply with permit provisions in a watershed-based integrated manner through WMPs. Ventura County Permittees proposed inclusion of the Watershed Management Program for their next permit in their ROWD, stating that “[t]he Program supports the inclusion of a watershed management approach within the next Ventura County MS4 Permit, similar to the Watershed Management Programs (WMP) outlined in Part VI.C of the 2012 Los Angeles County NPDES Permit (LA Permit).”²⁹⁷ Therefore, this proposed approach was included for Ventura County Permittees in the Regional MS4 Permit.

B. General Rationale for All Watershed Management Programs

The WMPs are a voluntary alternative compliance pathway by which Permittees can meet the requirements in the Order, and are developed on a watershed or subwatershed basis. The purpose of the WMPs is to provide a framework for Permittees to implement the requirements of the Order in an integrated and collaborative fashion to address water quality priorities on a watershed scale, including complying with the requirements of Part V (Receiving Water Limitations), Part IV.B (Total Maximum Daily Load Provisions) and Attachments K through S, by customizing the control measures in Parts III.B (Prohibitions – Non-Stormwater Discharges) and Part VIII (Minimum Control Measures) of the Order. This watershed management paradigm is consistent with federal regulations that support the development of permit conditions, as well as the implementation of stormwater management programs, at a watershed scale (40 CFR §§ 122.26(a)(3)(ii), 122.26(a)(3)(v), and 122.26(d)(2)(iv)). U.S. EPA has issued a Watershed-Based NPDES Permitting Policy Statement (U.S. EPA, 2003) that defines watershed-based permitting as an approach that produces NPDES permits that are issued to point sources on a geographic or watershed basis. In this policy statement, U.S. EPA explains that, “[t]he utility of this tool relies heavily on a detailed, integrated, and inclusive watershed planning process.” U.S. EPA identifies a number of important benefits of watershed permitting, including more environmentally effective results; the ability to emphasize measuring the effectiveness of targeted actions on improvements in water quality; reduced cost of improving the quality of the nation’s waters; and more effective implementation of watershed plans, including TMDLs, among others.

Furthermore, the California Watershed Improvement Act of 2009 authorizes MS4 permittees statewide to develop and implement voluntary watershed improvement plans.²⁹⁸ State Water Board Order WQ 2015-0075, which upheld the 2012 Los Angeles County MS4 Permit with some modifications, clarifies that “[t]he California Watershed Improvement Act of 2009 grants authority to local government permittees regulated by an MS4 permit to develop and implement watershed improvement plans, but does not limit the authority of a regional water board to impose terms related to watershed management in an MS4 permit. Further, the terms of the Watershed Management Programs are largely consistent with the watershed improvement plans authorized by

²⁹⁷ Ventura Countywide Stormwater Quality Management Program. Report of Waste Discharge. January 2015.

²⁹⁸ Wat. Code, §§ 16100 to 16104.

the Act, so a permittee can comply with the Regional Permit while also using the authority provided by the California Watershed Improvement Act of 2009 if it so chooses.”²⁹⁹

Additionally, Public Law 115-436 Water Infrastructure Improvement Act approved on January 14, 2019 established section 402(s) of the Clean Water Act authorizing integrated plans that address both municipal wastewater and stormwater management as a potential compliance path that may be incorporated into an NPDES permit. Integrated planning is designed to help municipalities identify efficiencies in implementing requirements that arise from distinct permitting programs, particularly how best to make capital investments (Integrated Municipal Stormwater and Wastewater Planning Approach Framework, EPA, June 5, 2012). Under this law, an integrated plan can be used to implement any requirements relating to “a combined sewer overflow,” “a capacity, management, operation, and maintenance program for sanitary sewer collection systems,” “a municipal stormwater discharge,” “a municipal wastewater discharge,” and a “water quality-based effluent limitation to implement an applicable wasteload allocation in a total maximum daily load.” The integrated plan can include “a schedule of compliance, under which actions taken to meet any applicable water quality-based effluent limitation may be implemented” and “the implementation of projects, including innovative projects, to reclaim, recycle, or reuse water; and green infrastructure.” (33 USCA § 1342(s).) The integrated planning approach does not relax or change regulatory permitting standards, but rather recognizes existing flexibilities in the Clean Water Act to sequence and schedule compliance projects that may be relevant to multiple permitting programs. (*Id.* at subd. (s)(5).) While the watershed management programs authorized in the Order are not “integrated plans” as defined in section 402(s) of the Clean Water Act, these watershed level plans share many of the same underlying principles and advance the same goals that prompted the Los Angeles Water Board to adopt a watershed-based permitting approach for the Order. While all municipalities are encouraged to consider integrated planning approaches for their stormwater and wastewater management, municipalities participating in watershed management programs are particularly encouraged to use their watershed management programs as part of a larger integrated planning process where appropriate and useful.

Furthermore, SB 485 updated state law to expressly authorize the Sanitation Districts of Los Angeles County (LACSD) to use their facilities and expertise to help member agencies to meet MS4 permit requirements to specifically “divert, manage, treat, and discharge stormwater and dry weather runoff, as well as make beneficial use of the water.” (Health & Safety Code § 4730.68) Passage of this law will further facilitate innovative, watershed level approaches to stormwater management that are consistent with the watershed-based permitting approach in the Order.

The watershed-based permitting approach is supported by a number of state and nationwide studies regarding MS4 pollution (Little Hoover Commission, Clearer Structure, Cleaner Water: Improving Performance and Outcomes at the State Water Boards (January 22, 2009). In 2008, the National Research Council published a report stating: “The course of action most likely to check and reverse degradation of the nation’s aquatic resources would be to base all storm water and other wastewater discharge permits on watershed boundaries instead of political boundaries.” (National Research Council, Urban Stormwater Management in the U.S. (October 15, 2008)

²⁹⁹ State Water Board Order WQ 2015-0075, p. 8, footnote 30 (2015 AR, p. SB-AR-013203).

(emphasis in original).) The report acknowledged the challenges of such an approach would include “the inevitable limits of an urban municipality’s authority within a larger watershed”, but said the approach would be “essential” even though it would likely take years to implement.

As noted in subpart A above, the prior permits for Los Angeles County and the City of Long Beach included provisions related to the development and implementation of Watershed Management Programs as an alternative compliance pathway. However, the prior Ventura County Permit did not. The Order allows all Permittees, including those in Ventura County, to participate in WMPs as an alternative compliance pathway. There are many reasons supporting this approach, as set forth below.

First, a watershed-based structure for permit implementation is consistent with TMDLs for waterbodies in both Los Angeles and Ventura counties developed by the Los Angeles Water Board and U.S. EPA, which are established at a watershed or subwatershed scale. The majority of Los Angeles County Permittees have already been implementing approved Watershed Management Programs. Furthermore, Ventura County Permittees have already been collaborating on a watershed scale to develop and implement monitoring and implementation plans required by TMDLs.

Second, an emphasis on a watershed-based approach is appropriate and necessary at this stage in the region’s MS4 program to shift the focus of the Permittees from rote program development and implementation to more targeted, water quality driven planning and implementation. Addressing MS4 discharges on a watershed scale focuses on water quality results by emphasizing the receiving waters within the watershed. The conditions of the receiving waters drive management actions, which in turn focus on the measures to address pollutant contributions from MS4 discharges. The ultimate goal of the Watershed Management Programs is to ensure that MS4 discharges: (i) achieve applicable WQBELs that implement TMDLs, (ii) do not cause or contribute to exceedances of receiving water limitations, and (iii) for non-stormwater discharges from the MS4, are not a source of pollutants to receiving waters.

Third, after 30 years of program implementation, it is critical that the Permittees design and implement their permit requirements based on their improved knowledge of stormwater and urban runoff and its impacts on local receiving waters and by employing BMPs and other control measures that have been developed and refined over the past three decades. The Watershed Management Programs are driven by strategic planning and implementation, which will ultimately result in more cost-effective implementation. The Watershed Management Programs will provide permittees with the flexibility to prioritize and customize control measures to address the water quality issues specific to the watershed or subwatershed, consistent with federal regulations (40 CFR § 122.26(d)(2)(iv)).

Importantly, a focus on watershed implementation does not mean that the Permittees must expend funds unrelated to their MS4 discharges. Rather, the Permittees within each watershed are expected to collaborate to develop a watershed strategy to address the high priority water quality problems within each watershed. They have the option of implementing the strategy in the manner they find to be most effective at achieving the necessary water quality outcomes. Each Permittee can implement the strategy individually within its jurisdiction, or the Permittees can group together to implement the strategy throughout the watershed.

While the Order includes a new compliance pathway for addressing MS4 discharges on a watershed basis for Ventura County Permittees, the Order includes recognition of the

importance of continued program implementation on jurisdictional levels. The Order also acknowledges that jurisdictional and watershed efforts may be integrated to achieve water quality outcomes.

In the Order, the watershed management program provisions serve as the mechanism for this program integration. Since jurisdictional activities also serve watershed purposes, such activities can be integrated into the Permittees' Watershed Management Programs. Such opportunities for program integration inherently provide flexibility to the Permittees in implementing their programs. Program integration can be expanded or minimized as the Permittees see fit. Some Permittees may opt to continue jurisdiction-specific implementation for certain programs, while for other program areas more collaborative watershed scale implementation may be more effective. Permittees identify individual roles and responsibilities as part of the Watershed Management Program.

Permittees can customize the BMPs to be implemented, or required to be implemented, for new and re-development, construction, and existing development areas. Flexibility to determine which industrial or commercial sites are to be inspected is also provided to the Permittees. Educational approaches are also to be determined by the Permittees under the Order. Significant leeway is also provided to the Permittees in using methods to assess the effectiveness of their various runoff management programs. This flexibility is further extended to the monitoring program requirements, which allow the Permittees to develop monitoring approaches to several aspects of the monitoring program.

The challenge in drafting the Order was to provide the flexibility described above, while ensuring that the Order provides baseline requirements and is still enforceable. To achieve this, the Order prescribes baseline or default requirements, such as receiving water limitations, discharge prohibitions, TMDL provisions, and minimum control measures, while providing the Permittees with flexibility to propose customized actions as part of their watershed management program.

C. Schedule for Development or Revision of the Watershed Management Program

Timelines to submit a Watershed Management Program to the Los Angeles Water Board for approval are indicated in Part IX of the Order. To encourage community and stakeholder involvement in the development of the Watershed Management Programs, the Order requires that the draft Watershed Management Programs are made available for public review prior to approval by the Los Angeles Water Board or Executive Officer on behalf of the Los Angeles Water Board.

The deadlines for Ventura County Permittees to develop the WMP(s) considered various factors such as: the small number of Ventura County Permittees compared to Los Angeles County Permittees (12 compared to 87); the well-established collaboration among Ventura County Permittees through their Ventura Countywide Stormwater Quality Management Program; the significantly fewer applicable TMDLs (16 compared to 35); and their decade long experience implementing watershed based TMDL implementation plans to achieve the 2010 Ventura County MS4 Permit TMDL provisions including WQBELs. Therefore, the timeframe to submit the draft plan(s) is adequate and consistent with the WMP timeframe provided in the previous 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit.

The deadlines for Los Angeles County Permittees to submit a revised RAA and revised WMP were included in the Los Angeles 2012 MS4 Permit. These deadlines were established in State Water Board Order WQ 2015-0075. The State Board Order also

specified a date of June 30, 2021 for Los Angeles County Permittees under the 2012 Los Angeles County MS4 Permit to submit a revised RAA and revised WMP to the Los Angeles Water Board. Although the State Water Board Order did not amend the 2014 City of Long Beach MS4 Permit, the City of Long Beach was also subject to this deadline due to its participation in three WMPs under the 2012 Los Angeles County MS4 Permit (Lower Los Angeles River WMP, Lower San Gabriel River WMP, Los Cerritos Channel WMP). However, the Nearshore Watersheds WMP, which was developed pursuant to the 2014 City of Long Beach MS4 Permit, was not subject to the deadline in the State Water Board Order WQ 2015-0075. Nevertheless, the Order requires all Los Angeles County MS4 Permittees to update their WMPs to conform to the requirements of the Regional MS4 Permit Order (e.g. address new or revised TMDL deadlines) within 3 months of receipt of comments from the Los Angeles Water Board that revisions are necessary, or as otherwise directed by the Executive Officer.

D. Participation in Watershed Management Programs

1. Ventura County Permittees

Ventura County Permittees that elect to develop a Watershed Management Program or join an existing Watershed Management Program must submit a Notice of Intent (NOI) to the Los Angeles Water Board. During the development of the WMP, Ventura County Permittees are deemed in compliance with the receiving water limitations pursuant to Part V of the Order for the waterbody pollutant combinations that are identified in the NOI provided they continue to implement their existing stormwater management programs and comply with all other parts of the Order (e.g. discharge prohibitions, standard provisions, minimum control measures) as discussed in Part IX.F.4 of the Order.

Ventura County Permittees may request an extension of the deadlines for submission of the NOI, submission of a draft plan, and submission of a final plan. The extension is subject to approval by the Los Angeles Water Board or the Executive Officer. Ventura County Permittees that are granted an extension for any deadlines for development of the Watershed Management Program shall be subject to the baseline requirements in Part VIII of the Order and shall demonstrate compliance with all receiving water limitations pursuant to Part V of the Order until Ventura County Permittees have an approved Watershed Management Program in place. Likewise, Ventura County Permittees that do not opt to develop a Watershed Management Program are subject to the baseline stormwater management program requirements in the Order and must demonstrate compliance with applicable WQBELs and receiving water limitations through monitoring data collected from the Permittee's outfall(s) and/or receiving waters as described in Part VII of the Order.

2. Los Angeles County Permittees

Los Angeles County Permittees that were on baseline requirements of the 2012 Los Angeles County MS4 Permit may choose to join an existing Watershed Management Program but may not develop a new individual Watershed Management Program. The City of Long Beach under the 2014 City of Long Beach MS4 Permit can choose to join another existing Watershed Management Program. Los Angeles County Permittees that participated in a Watershed Management Program approved under the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit are presumed to be participating in the Watershed Management Program in this Order unless the Permittee notifies the Los Angeles

Water Board of its intent to discontinue its participation. Los Angeles County Permittees that do not elect to continue participation in a Watershed Management Program are subject to the baseline stormwater management program requirements in the Order and must demonstrate compliance with applicable WQBELs and receiving water limitations through monitoring data collected from the Permittee's outfall(s) and/or receiving waters as described in Part VII of the Order.

Los Angeles County Permittees that opt to continue implementing an approved Watershed Management Program were required to revise their RAA and submit a revised Watershed Management Program per the timelines indicated in the 2012 Los Angeles County MS4 Permit. No changes to this requirement have been proposed consistent with deadlines established pursuant to State Water Board Order WQ 2015-0075 and WQ 2020-0038. Until a revised Watershed Management Program is approved by the Los Angeles Water Board, Los Angeles County Permittees are required to continue implementing their existing Watershed Management Program. Also note that any WMP development related provisions added by the aforementioned State Water Board 2015 WQ Order to the 2012 Los Angeles County MS4 Permit, including a section in the Watershed Management Program provisions titled "Watershed Management Program Resubmittal Process" is now integrated in Part IX of the Regional MS4 Permit Order as applicable and appropriate in context of the Regional MS4 Permit.

E. Program Development

The goal of a Watershed Management Program is to facilitate cooperative implementation of strategies, control measures, and BMPs among Permittees and, potentially, other partners within a watershed or subwatershed to control discharges of pollutants from the MS4 to levels that achieve WQBELs and do not cause or contribute to exceedances of receiving water limitations, and which are also implement the MEP standard for stormwater discharges and the requirement to effectively prohibit non-storm discharges through the MS4 to receiving waters. Each Watershed Management Program must:

- Prioritize water quality issues resulting from stormwater and non-stormwater discharges through the MS4 to receiving waters within each Watershed Management Area,
- Identify and implement strategies, control measures, and BMPs to achieve applicable water quality-based effluent limitations and/or receiving water limitations, consistent with applicable compliance schedules in the Order,
- Execute an integrated monitoring and assessment program to determine progress towards achieving applicable limitations, and
- Modify strategies, control measures, and BMPs as necessary based on analysis of monitoring data collected pursuant to the MRP to ensure that applicable water quality-based effluent limitations and receiving water limitations and other milestones set forth in the Watershed Management Program will be achieved.

Watershed Management Programs must be developed using the Los Angeles Water Board's Watershed Management Areas (see Attachments B and C of the Order). Where appropriate, Watershed Management Areas may be separated into subwatersheds to focus water quality prioritization and implementation efforts by receiving water. Furthermore, Permittees have the flexibility to format their WMP as appropriate (e.g.,

Ventura County Permittees can submit one WMP with subchapters for each watershed; a group of Los Angeles County Permittees can submit one WMP that includes portions of two adjacent watersheds; Ventura and Los Angeles County Permittees can submit one WMP for a watershed that straddles the two counties).

Permittees must identify the water quality priorities within each Watershed Management Area that will be addressed by the Watershed Management Program consistent with 40 CFR section 122.26(d)(2)(iv) and Part IX of the Order. At a minimum, these priorities must include achieving some or all applicable water quality-based effluent limitations and/or receiving water limitations established pursuant to TMDLs and included in the Order.

The Watershed Management Program must include an evaluation of existing water quality conditions, including characterization of stormwater and non-stormwater discharges from the MS4 and receiving water quality, consistent with 40 CFR §§ 122.26(d)(1)(iv) and 122.26(d)(2)(iii), to support identification and prioritization/sequencing of management actions.

On the basis of the evaluation of existing water quality conditions, water body-pollutant combinations must be classified into one of the three categories listed in in Part IX.B.3 of the Order. If a Watershed Management Program does not identify a particular water body-pollutant combination, compliance with that water body-pollutant combination will not be covered under the Watershed Management Program and the Permittees have to demonstrate compliance with the baseline requirements (i.e., applicable receiving water limitations pursuant to Part V of the Order and with applicable interim and final water quality-based effluent limitations in Part IV and Attachments K-S of the Order for that water body-pollutant combination through monitoring collected from the Permittee's outfall(s) and/or receiving waters as described in Part VII of the Order).

Consistent with 40 CFR sections 122.26(d)(1)(iii) and 122.26(d)(2)(ii), Permittees must utilize existing information to identify known and suspected stormwater and non-stormwater pollutant sources in discharges to the MS4 and from the MS4 to receiving waters and any other stressors related to the highest water quality priorities (Categories 1 and 2). Based on the findings of the source assessment, the issues within each watershed must be prioritized and sequenced per the provisions in the Order.

Permittees must identify strategies, control measures, and BMPs to implement through their jurisdictional stormwater management programs, or collectively on a watershed scale, with the goal of creating an efficient program to focus individual and collective resources on watershed priorities, particularly achieving WQBELs and receiving water limitations addressed by the Watershed Management Program. The following provisions of the Order may be part of the watershed control measures within a Watershed Management Program:

- **Minimum Control Measures.** Permittees may assess the minimum control measures (MCMs) as defined in the Order to identify opportunities for focusing resources on the high priority issues in each watershed. For each of the 6 minimum control measures identified in the Order, Permittees may propose modifications that will achieve equivalent pollutant control given watershed priorities.
- **Non-Stormwater Discharge Measures.** Where Permittees identify non-stormwater discharges from the MS4 as a source of pollutants in the source assessment, the Watershed Control Measures must include strategies, control measures, and/or BMPs that will be implemented to effectively eliminate the source of pollutants.

These may include measures to prohibit the non-stormwater discharge to the MS4, additional BMPs to reduce pollutants in the non-stormwater discharge or conveyed by the non-stormwater discharge, or strategies to require the non-stormwater discharge to be separately regulated under a general NPDES permit. Note that the BMPs to comply with Part III.A (Prohibitions – Non-Stormwater Discharges) of the Order are customizable but the requirement to prohibit non-stormwater from being a source of pollutants is not customizable.

- **TMDL Control Measures.** Permittees must compile control measures that have been identified in TMDLs and corresponding implementation plans. If not sufficiently identified in previous documents, or if implementation plans have not yet been developed (e.g., EPA established TMDLs), the Permittees must evaluate and identify control measures to achieve water quality based effluent limitations and/or receiving water limitations established in the Order pursuant to these TMDLs.

As part of the Watershed Management Program, Permittees must conduct a Reasonable Assurance Analysis (RAA) that consists of an assessment (through quantitative analysis or modeling) to demonstrate that the activities and control measures (i.e., BMPs) identified in the Watershed Control Measures will achieve applicable water quality based effluent limitations and/or receiving water limitations with compliance deadlines during the permit term. The objective of the RAA shall be to demonstrate the ability of Watershed Management Programs to ensure that Permittees' MS4 discharges achieve applicable water quality-based effluent limitations and do not cause or contribute to exceedances of receiving water limitations.

Permittees must incorporate and, where necessary develop, interim requirements and compliance schedules into the plan consistent with 40 CFR section 122.47(a). Interim requirements and schedules shall be used to measure progress towards addressing the highest water quality priorities and achieving applicable water quality-based effluent limitations and/or receiving water limitations. Where the TMDL provisions do not include interim or final water quality based effluent limitations and/or receiving water limitations with compliance deadlines during the permit term, Permittees must identify interim requirements and compliance schedules to ensure significant progress toward achieving interim and final water quality based effluent limitations and/or receiving water limitations with deadlines beyond the permit term (40 CFR § 122.47(a)(3)).

Schedules must be developed for both the strategies, control measures and BMPs to be implemented by each individual Permittee within its jurisdiction and for those that will be implemented by multiple Permittees on a watershed scale. Schedules must be adequate for measuring progress throughout the permit term and incorporate deadlines as specified in Part IX.B.9 of the Order.

Where compliance schedules are not available (e.g., final TMDL deadlines), Permittees may request a Time Schedule Order as discussed in Part XI.E of this Fact Sheet. Permittees may propose a schedule in the Watershed Management Program that is longer than the compliance schedule set forth by the TMDL if a TSO has been approved by the Los Angeles Water Board for a waterbody pollutant combination in that TMDL.

F. Watershed Management Program Implementation

Each Permittee must implement the Watershed Management Program immediately after determination by the Los Angeles Water Board that the Watershed Management Program meets the requirements of the Order and is approved.

Permittees may request an extension of deadlines for achievement of interim milestones and final compliance deadlines established pursuant to Part IX.C.3 of the Order, only with the exception of those final compliance deadlines established in a TMDL program of implementation adopted through the state's basin plan amendment process. Permittees shall provide requests in writing sufficiently in advance of the deadline to allow the Los Angeles Water Board to evaluate the request and shall include in the request the justification for the extension. Extensions must be affirmatively approved by the Los Angeles Water Board.

G. Integrated Watershed Monitoring and Assessment

Clean Water Act section 402(a)(2) among other statutory and regulatory provisions as identified in the MRP (Attachment E) requires the permitting authority to prescribe conditions for MS4 permits to ensure compliance, including conditions on data and information collection, reporting, and such other requirements as appropriate. Consistent with this requirement, Permittees in each Watershed Management Area must develop an integrated monitoring program to assess the progress toward achieving the water quality based effluent limitations and/or receiving water limitations per the compliance schedules, and the progress toward addressing the highest water quality priorities for each Watershed Management Area. The integrated watershed monitoring and assessment program shall contain the basic elements (receiving water monitoring, stormwater outfall monitoring, non-stormwater outfall monitoring), and achieve the objectives of, the Monitoring and Reporting Program (MRP) (Attachment E of the Order).

Note that unlike the WMP which is voluntary, the development of an integrated monitoring program pursuant to the MRP is a requirement for all Permittees regardless of participation in a WMP. Therefore, participants in an integrated monitoring program do not have to match the participants in a Watershed Management Program. For example, if a Permittee indicates in their WMP NOI that they are leaving a Watershed Management Program, this does not automatically apply to the corresponding integrated monitoring program. The Permittee shall continue to be part of the existing integrated monitoring program unless the Permittee specifically provides the Los Angeles Water Board written notification. In such a case, Part III.D.1.d of the MRP applies.

H. Adaptive Management Process

Permittees in each Watershed Management Program must implement an adaptive management process, which is a periodic, comprehensive program evaluation, including re-analysis of data and/or modeling, and modification process to determine progress toward achieving WQBELs and receiving water limitations and to adapt the Watershed Management Program to become more effective at achieving WQBELs and receiving water limitations. Permittees shall submit the results in conjunction with their ROWD. In implementing the adaptive management process, Permittees shall consider the elements specified in Part IX.E of the Order. Note that in the 2012 Los Angeles County Permit and the 2014 City of Long Beach MS4 Permit, the adaptive management process was required to be implemented every 2 years and the results were submitted in conjunction with the Annual Report and the ROWD. Many Permittees in their ROWDs requested to decrease the adaptive management results submittal frequency. This is a reasonable request because requiring Permittees to implement the adaptive management process every 2 years is unnecessary given the multi-year nature of many projects and programs where the design, construction, and implementation often span

more than 2 years. Furthermore, Permittees are already reporting their progress on an annual basis through their Annual Reports and may propose modifications to their Watershed Management Programs at any point in response to this annual evaluation. Therefore, the Order requires Permittees to submit adaptive management results in conjunction with the ROWD (180 days prior to the Order expiration date) with the expectation that Permittees are implementing their adaptive management process throughout the implementation of their Watershed Management Program when necessary.

Permittees are required to report on the adaptive management process results per Part IX.E.4 of the Order. Based on the results of the adaptive management process, Permittees may propose any modifications necessary to improve the effectiveness of the Watershed Management Program as a separate submittal to the Los Angeles Water Board as necessary. Permittees must implement any modifications to the Watershed Management Program upon approval by the Los Angeles Water Board.

XI. RATIONALE FOR COMPLIANCE DETERMINATION PROVISIONS

The Order adds Part X, Compliance Determination for WQBELs and receiving water limitations. In the previous permits, there was no single compliance determination section. Rather, the previous permits included individual compliance determination provisions within many different sections and Permittees were required to read them all together to determine how their compliance would be determined.³⁰⁰ For better organization and for ease of determining compliance, the Order consolidates many of these provisions where appropriate, particularly those related to WQBELs and receiving water limitations, into one section to reduce redundancies and improve clarity.

Provisions specifying that compliance with the Watershed Management Program provisions in Part IX of the Order may constitute compliance with the receiving water limitation provisions in Part V of the Order were previously included in the 2012 Los Angeles County Permit and the 2014 Long Beach Permit. They were not previously included in the 2010 Ventura County Permit. In the Order, the Los Angeles Water Board continues to offer multiple paths to compliance with receiving water limitations. The number of TMDLs, and myriad water quality issues that the TMDLs address, is unprecedented anywhere else in California. The Los Angeles Water Board worked closely with U.S. EPA in implementing the requirements of the 1999 consent decree between U.S. EPA and several environmental groups when developing these TMDLs. As shown in Table F-24, the TMDLs implemented in the Order cover every coastal watershed in the Los Angeles Region. Most of these TMDLs were initially incorporated in the prior MS4 permits (Order No. R4-2010-0108, Order No. R4-2012-0175, and Order No. R4-2014-0024). The extensive and enforceable TMDL implementation programs, coupled with Permittee commitments to implement watershed solutions to address all impairments in regional waters, allowed this Board to incorporate alternative compliance mechanisms contingent upon implementation of approved Watershed Management Programs. This unique compliance mechanism provided an incentive and robust framework for Permittees in the 2012 Los Angeles County MS4 Permit and the 2014 Long Beach MS4 Permit to craft comprehensive pathways to achieve compliance with receiving water limitations – both those addressed by TMDLs and those not addressed by TMDLs. In the Order, the Los Angeles Water Board extends this approach to Ventura County Permittees that choose to take advantage of this compliance alternative.

³⁰⁰ For example, the 2012 Los Angeles County Permit included compliance related provisions in the following sections among others: interim and final WQBELs, Watershed Management Programs, Time Schedule Orders, and Monitoring and Reporting Program Requirements.

The Compliance Determination provisions in Part X of the Order are organized as follows. The first section addresses some general provisions related to compliance determination. The second section addresses WQBELs and receiving water limitations for pollutants other than trash. The third section addresses a WQBELs and receiving water limitations for trash. The fourth section addresses commingled discharges. The last section addresses Time Schedule Orders. Each of these sections are discussed in turn below.

A. General Compliance Provisions

Consistent with State precedent, compliance with water quality standards is and remains the ultimate goal of the Order.³⁰¹ To that end, the Order requires compliance with WQBELs and receiving water limitations. Pursuant to section 13360 of the Water Code, the Water Board may not dictate the manner of compliance. Permittees may comply with the WQBELs and receiving water limitations in the Order in any lawful manner. Part X.A.1 of the Order describes where compliance will be determined for these limitations. Part X.A.2 of the Order restates longstanding precedent that the so-called “iterative process” (as Part V.C of the Order is often referred to as) does not constitute compliance with receiving water limitations in Part V.A and V.B of the Order. This issue is discussed in greater detail in Part VII of this Fact Sheet.

B. WQBELs and Receiving Water Limitations for Pollutants Other Than Trash

As described in Parts V.B (WQBELs), VI (Rationale for TMDL Provisions), and VII (Rationale for Receiving Water Limitations) of this Fact Sheet, the Order incorporates WQBELs and receiving water limitations to ensure MS4 discharges do not cause or contribute to exceedances of water quality standards.

1. Compliance Paths

The Los Angeles Water Board is in a unique position to be able to offer multiple paths to compliance with WQBELs and receiving water limitations in the Order. Alternative compliance options, however, differ depending on whether the limitation is considered an “interim limitation” or “final limitation”.

For waterbody pollutant combinations addressed by TMDL, the compliance path is as follows. The Order includes requirements in Part IV to implement WLAs assigned to MS4 discharges from 45 TMDLs. The TMDL provisions in Part IV.B and Attachments K-S of the Order include WQBELs and/or receiving water limitations based on the applicable WLAs. TMDLs adopted through the State’s basin planning process are required to include programs of implementation pursuant to California Water Code section 13242, including implementation schedules, for attaining water quality standards. TMDLs adopted by U.S. EPA do not include implementation schedules; however, in some instances the Los Angeles Water Board has adopted an implementation schedule through the State’s basin planning process (see Part VI.F of this Fact Sheet).

The TMDL provisions in Part IV and Attachments K-S of the Order incorporate compliance schedules consistent with the associated TMDL implementation schedule to achieve the final WQBELs and/or receiving water limitations for the pollutants addressed by the TMDL. For EPA established TMDLs where there is no state program of implementation, Permittees must comply with the WQBELs as of the effective date of the Order in the following circumstances: 1) if the WLAs assigned to MS4 discharges was based on existing pollutant loads at the time the

³⁰¹ Order WQ 2015-0075, p. 14.

TMDL was established, meaning that no reduction in pollutant load was required or 2) Permittees are already in compliance with the WQBEL. (For additional information on the implementation of EPA established TMDLs in the Order see the discussion in Part VI.F of this Fact Sheet.) For all TMDLs with implementation schedules established in a state program of implementation, Permittees may comply with these provisions directly or through a Watershed Management Program as described in subparts 2 and 3 below. Compliance with TMDL implementation schedules may also be used as an alternative means to demonstrate compliance with the receiving water limitations in Part V of the Order for the waterbody-pollutant combination addressed by the TMDL as described in subpart 2 below.

For waterbody pollutant combinations not addressed by TMDL, Permittees are subject to the receiving water limitations in Part V of the Order. Permittees may comply with these provisions directly or through a Watershed Management Program as described below.

2. Alternative Demonstrations of Compliance with Certain Receiving Water Limitations Using a TMDL Implementation Schedule

The Los Angeles Water Board recognizes that, in the case of impaired waters subject to a TMDL, the permit's receiving water limitations for the pollutants addressed by the TMDL may be exceeded during the period of TMDL implementation. Therefore, the Order provides, in Part X.B.1.a, that a Permittee in full compliance with the applicable TMDL requirements in the Order, including the compliance schedules, shall be deemed in compliance with the receiving water limitations provisions in Part V of the Order for the particular pollutant-waterbody combination addressed by the TMDL. Permittees may take advantage of this compliance path without implementing a Watershed Management Program.

3. Alternative Demonstrations of Compliance Using A Watershed Management Program

The provisions in Part IX of the Order to allow Permittees to develop a Watershed Management Program to address certain TMDL provisions in Part IV.B and Attachments K-S of the Order as well as the receiving water limitations in Part V of the Order using watershed, regional, and jurisdictional strategies. Watershed Management Programs are discussed in greater detail in Part X of this Fact Sheet. As discussed in Part VI.F of this Fact Sheet, Watershed Management Programs may not be used to address Trash or pollutants addressed by a U.S. EPA TMDL that does not require a load reduction. For each of the drainage areas covered by a Watershed Management Program, the Watershed Management Program must either demonstrate that strategies, control measures, and BMPs cumulatively retain the runoff volume of the 85th percentile, 24-hour storm event for the drainage area tributary to the applicable receiving water, or for areas not addressed as aforementioned, shall include a Reasonable Assurance Analysis (RAA) to demonstrate that applicable WQBELs and receiving water limitations shall be achieved through implementation of other watershed control measures. The RAA must be quantitative and performed using a peer-reviewed model in the public domain. For WQBELs and receiving water limitations associated with a TMDL, the objective of the RAA is to demonstrate that the selected water quality control measures will achieve the applicable TMDL provisions. In the case of WQBELs and receiving water limitations not addressed by a TMDL implementation plan

(either because there is no TMDL or because its U.S. EPA TMDL without a state adopted program of implementation), the objective of the RAA is to demonstrate the ability of the selected water quality control measures in the Watershed Management Program to ensure that Permittees' MS4 discharges do not cause or contribute to exceedances of applicable WQBELs and receiving water limitations.

A Permittee opting to use a Watershed Management Program to comply with WQBELs and receiving water limitations in Part IV.B and Attachments K-S of the Order and/or the receiving water limitations Part V of the Order demonstrates compliance by implementing the applicable actions and schedules in its approved Watershed Management Program for a waterbody-pollutant combination. For waterbody-pollutant combinations addressed by a TMDL, any schedule in the Watershed Management Program must be consistent with any applicable compliance schedule in the permit, which is based on the TMDL implementation schedule, unless a TSO has been approved by the Los Angeles Water Board for a waterbody-pollutant combination in that TMDL. For pollutants not addressed by a TMDL, or where there is no TMDL implementation schedule, Permittees may incorporate control measures to address the exceedance provided that the Watershed Management Program incorporates a final date for achieving the applicable WQBEL and/or receiving water limitation.

Given the significant time and effort required to develop and implement a Watershed Management Program, the Order allows Permittees to be deemed in compliance with WQBEL(s) and/or receiving water limitation(s), irrespective of actual attainment of the applicable limitation. Permittees are only deemed in compliance with these limitations up until the final deadline for the achievement of the relevant WQBEL(s) and/or receiving water limitation(s) in the Watershed Management Program. Permittees may not be deemed in compliance with TMDL deadlines that have passed, unless a TSO has been approved by the Los Angeles Water Board for a waterbody-pollutant combination in that TMDL, or unless they have chosen to comply with TMDL-based requirements by retaining all non-stormwater runoff and the volume of stormwater runoff from the 85th percentile 24-hour storm and the Permittee is continuing to engage in monitoring and adaptive management through an approved Watershed Management Program.

A Permittee that fails to meet any requirement or date for its achievement related to implementation of an approved Watershed Management must directly comply with the provisions of Part IV.B, Part V, and Attachments K-S of the Order for the waterbody-pollutant combination(s) that should have been addressed by that requirement unless the Permittee requests and receives an extension through a modification of its Watershed Management Program or a Time Schedule Order as discussed below in Part XI.E. The Los Angeles Water Board understands that the implementation of the actions, milestones, and schedules in a Watershed Management Program may depend on a host of factors (e.g. funding, staff resources, etc.). As such, the Order adds provisions authorizing minor deviations from the actions, milestones, and schedules in an approved WMP provided certain conditions are met.

4. Direct Demonstrations of Compliance

Direct compliance with WQBELs and/or receiving water limitations is determined by verification through monitoring that the TMDL provisions in Part IV.B and Attachments K-S of the Order and/or the receiving water limitation provisions in

Parts V.A and B have been achieved. The Order provides Permittees with several means of demonstrating direct compliance with applicable WQBELs and receiving water limitations. In general, compliance is established by either showing that the discharge or the receiving water is in compliance with the applicable limit for a specific waterbody-pollutant combination or that there was no discharge from a Permittee's MS4 outfall(s) during the relevant time period. Additionally, in some instances compliance with receiving water limitations and/or WQBELs may be excused when the exceedance is the result of an authorized non-stormwater discharge identified in Part III.A.2 of the Order.

C. WQBELs and Receiving Water Limitations for Trash

For trash, a Permittee may demonstrate compliance with an applicable TMDL through one of any lawful means. Compliance options typically fall into one of four compliance options: Full Capture (Part IV.B.3.b.i of the Order), Mass Balance (Part IV.B.3.b.ii of the Order), Scientifically Based Alternative (Part IV.B.3.b.iii of the Order), or Minimum Frequency of Assessment and Collection (Part IV.B.3.b.iv of the Order). These provisions are discussed in further detail in Part VI.E of this Fact Sheet. For areas not subject to a TMDL and that are not addressed through a WMP, a Permittee may use compliance with the discharge prohibition as evidence of compliance with the receiving water limitations in Part V of the Order in priority land use areas, equivalent alternate land uses and designated land uses only.

D. Commingled Discharges

Due to the inherently complex and interconnected nature of MS4s, this permit assigns joint responsibility to Permittees to meet the requirements of the Order. "Joint responsibility" means that the Permittees that have commingled MS4 discharges are responsible for implementing programs in their respective jurisdictions, or within the MS4 for which they are an owner or operator, to meet the WQBELs and/or receiving water limitations assigned to such commingled MS4 discharges.

In these cases, federal regulations state that co-permittees need only comply with permit conditions relating to discharges from the MS4 for which they are owners or operators. (40 CFR § 122.26(a)(3)(vi).) Individual Permittees are only responsible for their contributions to the commingled discharge. The Order does not require a Permittee to individually ensure that a commingled MS4 discharge meets the applicable WQBELs included in the Order unless such Permittee is shown to be solely responsible for the exceedances.

Part X.D of the Order includes provisions identifying how Permittees with commingled discharges may clarify and distinguish their individual contributions and demonstrate that its MS4 discharge did not cause or contribute to an exceedance of an applicable WQBEL and/or receiving water limitation. If such a demonstration is made, though the Permittee's discharge may commingle with that of other Permittees, the Permittee would not be held jointly responsible for the exceedance of the applicable limitation. Individual Permittees who demonstrate compliance with the applicable at the limitations will not be held responsible for violations by non-compliant Permittees.

Given the interconnected nature of most Permittees' MS4s, Permittees are required to work cooperatively to control the contribution of pollutants from one portion of the MS4 to another portion of the system through inter-agency agreements or other formal arrangements as set forth in 40 CFR section 122.26(d)(2)(i)(D).

E. Time Schedule Orders

This section generally discusses under what circumstances a Time Schedule Order (TSO) may be requested. Under Water Code 13300, a Permittee may submit for the Los Angeles Water Board's consideration a time schedule setting forth the actions it will take to address an actual or threatened discharge of waste in violation of permit requirements. If the discharge of waste implicates a violation subject to the mandatory minimum penalty provisions in Water Code section 13385(h) or (i), a TSO issued pursuant to 13385(j)(3) may be considered. TSOs issued pursuant to Water Code sections 13300 and/or 13385(j)(3) do not provide protection from potential citizen suits. In the Order, TSOs will typically be considered where a Permittee determines that its MS4 discharge may not meet WQBELs and/or receiving water limitations in Part IV.B and Attachments K through S and Part V of the Order for which (1) final TMDL compliance deadlines have passed as listed in Table F-26, or (2) no compliance schedule has been provided in the Order. Nothing in this section prevents the Los Angeles Water Board from issuing a TSO pursuant to Water Code section 13300, when appropriate. During the term of the 2012 Los Angeles County MS4 Permit, the Los Angeles Water Board issued three TSOs for various Permittees to comply with bacteria requirements.³⁰²

Permittees may individually request a TSO or may jointly request a TSO with all Permittees subject to the WQBELs and/or receiving water limitations. Requests must be made far enough in advance to allow for evaluation of the request, submittal of additional information if necessary, drafting, public comment, and issuance by the Los Angeles Water Board, which may require a publicly noticed meeting. To ensure that enough information is provided to the Los Angeles Water Board to evaluate the request and, if appropriate, draft a TSO, Part X.E.5 of the Order specifies the information that must be included in the request.

Permittees are not guaranteed to receive a TSO or a WMP modification and Permittees should not rely on the certainty of a deadline extension. Permittees are strongly encouraged to implement control measures that will in fact get them into compliance with applicable deadlines.

The Los Angeles Water Board does not intend to take enforcement action against a Permittee for violations of specific WQBELs and/or receiving water limitations if a Permittee is fully complying with the requirements of a TSO to resolve exceedances of the WQBELs and/or receiving water limitations for the specific pollutant(s) in the MS4 discharge.

XII. RATIONALE FOR MONITORING AND REPORTING REQUIREMENTS

The Monitoring and Reporting Program (MRP) (Attachment E of the Order) establishes monitoring, reporting, and recordkeeping requirements that implement the federal and state laws and/or regulations. Monitoring, and reporting of the monitoring results as well as other information on implementation of permit requirements are critical components of the Order. Monitoring is performed to determine compliance with the Order, identify sources of pollutants in MS4 discharges, assess and improve the effectiveness of BMPs and other pollutant control measures, and characterize pollutant loading in MS4 discharges and receiving water. "Without clear monitoring objectives and a detailed monitoring plan, it will

³⁰² TSO No. R4-2014-023 (later amended in TSO No. R4-2014-023-A01), TSO No. R4-2014-0142, and TSO No. R4-2015-0108.

be difficult for permittees and permitting authorities to evaluate the effectiveness of the municipal stormwater program.”³⁰³

The following provides the legal, factual, technical, and policy rationales for the monitoring and reporting requirements contained in the Order and MRP.

The structure of the MRP follows the 2012 Los Angeles County and the 2014 City of Long Beach MS4 Permits. For the most part, the substantive requirements from all three previous permits have been carried over to the MRP, and any significant changes are discussed below. Requirements in the MRP apply to all Permittees unless otherwise specified.

A. Legal Authorities Supporting Monitoring and Reporting

1. Authorities Supporting Monitoring and Reporting Generally

Sections 308(a) and 402(a)(2) of the federal Clean Water Act³⁰⁴, and 40 CFR sections 122.41(h), (j)-(l), 122.44(i), and 122.48 require that all NPDES permits specify monitoring and reporting requirements and establish substantive monitoring and reporting requirements for NPDES permits. Federal regulations applicable to large and medium MS4s also specify additional monitoring and reporting requirements. (40 CFR §§ 122.26(d)(2)(i)(F) & (d)(2)(iii)(D), 122.42(c).) California Water Code section 13383 further authorizes the Los Angeles Water Board to establish monitoring, inspection, entry, reporting, and recordkeeping requirements.³⁰⁵

The regulations specific to monitoring and reporting requirements for MS4 discharges are prescriptive and require the permitting agency to include requirements for both stormwater and non-stormwater effluent sampling at representative outfalls, representative receiving water monitoring, sampling of specific pollutants, monitoring at specified intervals (e.g., at least three storm events per year), use of analytical methods specified in 40 CFR Part 136, use of field collection methods (e.g., grab vs. composite samples), among other requirements.³⁰⁶

As the Ninth Circuit Court of Appeal stated in a case concerning the 2001 Los Angeles County MS4 Permit (Order No. 01-182): “First and foremost, 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

³⁰³ U.S. EPA, *MS4 Permit Improvement Guide*, p. 97 (April 2010, EPA 833-R-10-001); NPDES Permit Writers’ Manual (2010) at p. 8-2, section 8.1.1.

³⁰⁴ CWA § 308(a) mandates, in part, that “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...” CWA § 402(a)(2) mandates that “[t]he 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.”

³⁰⁵ See, In the Matter of the Petitions of The City of Oceanside, Fallbrook Public Utilities District, and the Southern California Alliance of Publicly Owned Treatment Works, For Review of WDR Order Nos. R9-2019-0166 [NPDES No. CA0107433] and R9-2019-0169 [NPDES No. CA0108031] (“Fallbrook”), State Water Board Order WQ 2021-0005, at p. 12-13, n. 31 (the plain language of section 13383 provides the Water Boards with authority to establish monitoring and reporting requirements for MS4 discharges).

³⁰⁶ 40 CFR § 122.26(d)(2).

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.”³⁰⁷ The Court also stated:

But while otherwise more flexible than the traditional NPDES permitting system, nothing in the MS4 permitting scheme relieves permittees of the obligation to monitor their compliance with their NPDES permit in some fashion...Rather, EPA regulations make clear that while ms4 NPDES permits need not require monitoring of each stormwater source at the precise point of discharge, they may instead establish a monitoring scheme “sufficient to yield data which are *representative of the monitored activity*...”³⁰⁸

The federal authority described herein mandates that the Los Angeles Water Board impose a monitoring and reporting program on MS4 permittees that is sufficient to determine compliance with permit terms, as with all NPDES permittees.

In part, federal regulation requires MS4 Permittees, specifically, to “[c]arry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer,” including a “monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations) ...”³⁰⁹ The Regional MS4 Permit MRP requirements, including the receiving water monitoring during wet and dry weather and stormwater and non-stormwater outfall-based monitoring, are necessary to meet these federal requirements. Further, because the Los Angeles Region is characterized by two distinct periods, wet weather and dry weather, the frequency of monitoring required by the MRP, generally three wet weather events and two dry weather events per year, is necessary to meet federal requirements for representative data collection. The MRP provides definitions to guide data collection during wet weather conditions to ensure it is representative.

Additionally, federal regulations require that a program to detect and remove illicit discharges includes “on-going field screening activities during the life of the permit” and “procedures to be followed to investigate portions of the separate storm sewer system that ... based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges ... (such procedures may include: sampling procedures ...)...”³¹⁰ Therefore, the MRP provisions that pertain to non-stormwater screening and outfall monitoring requirements, are necessary to meet this federal requirement.

2. Monitoring Is Necessary to Assess BMP Effectiveness

Assessment of BMP implementation and effectiveness is specifically required by federal regulations at 40 CFR sections 122.26(d)(2)(v) and 122.42(c)(3).³¹¹ Specifically, section 122.26(d)(2)(v) requires an assessment of controls [BMPs]

³⁰⁷ *Natural Resources Defense Council v. County of Los Angeles* (9th Cir. 2013) 725 F.3d 1194, 1207, cert. den. (citing CWA § 402(a)(2) and 40 CFR §§ 122.44(i)(1) and 122.26(d)(2)(i)(F) (emphasis in original).)

³⁰⁸ *Id.*, at p. 1209 (citations omitted; emphasis in original) (citing CWA § 402(a)(2) and 40 CFR §§ 122.41(i)(1) and 122.48(b).)

³⁰⁹ 40 CFR § 122.26, subds. (d)(2)(i)(F) and (d)(2)(iii)(D).

³¹⁰ *Id.*, subd. (d)(2)(iv)(B)(2)-(3).

³¹¹ 40 CFR § 122.42(c) are the *additional* reporting requirements for MS4 permittees. MS4 permittees are also subject to all reporting requirements that apply to NPDES permittees generally.

proposed to be implemented as a result of the Permittees' stormwater quality management programs, while section 122.42(c)(3) requires that Permittees revise the assessment of their stormwater quality management program as necessary in each annual report based on actual program implementation outcomes (e.g., water quality monitoring data, reduction in non-stormwater discharges, changes in public behavior, BMP effectiveness data).³¹² Furthermore, 40 CFR section 122.41(h), which applies to all NPDES permits, including MS4 permits, requires that the permittee furnish to the permitting agency any information that it requests to determine compliance with the permit.

Additionally, a 2008 U.S. EPA publication, "Evaluating the Effectiveness of Municipal Stormwater Programs," states that "EPA stormwater regulations require that the effectiveness of the SWMP [Storm Water Management Program] be evaluated, including assessment of SWMP implementation, evaluation of BMP effectiveness, and the extent to which improvements in storm water outfall discharge quality have occurred."³¹³

Monitoring and reporting requirements to evaluate BMP effectiveness are included in U.S. EPA issued MS4 Permits issued to the District of Columbia³¹⁴, Middle Rio Grande,³¹⁵ and Boise/Garden City.³¹⁶ Inclusion of similar provisions in U.S. EPA-issued permits further supports the Los Angeles Water Board's determination that federal law requires the inclusion of monitoring and reporting requirements in the permit to evaluate BMP effectiveness.

Federal regulations direct tracking and reporting of "[t]he status of implementing the components of the storm water management program that are established as permit conditions;" "[a] summary of data, including monitoring data, that is accumulated throughout the reporting year;" and "[a] summary describing the number and nature of enforcement actions, inspections, and public education programs," among others.³¹⁷

Further, U.S. EPA's *MS4 Permit Improvement Guide* states:

An important part of any municipal storm water program is to document and track information on activities the permittee undertakes to comply with the Permit Requirements ... In addition, adequate tracking is necessary to generate and provide reports of program progress not only to the permitting authority, but to a permittee's internal management for planning and funding

³¹² Note also that 40 CFR § 122.34(d)(1) dictates that permits "must require the permittee to evaluate compliance with the terms and conditions of the permit, including the effectiveness of the components of its storm water management program, and the status of achieving the measurable requirements in the permit."

³¹³ U.S. EPA, *Evaluating the Effectiveness of Municipal Stormwater Programs*.

³¹⁴ See U.S. EPA, NPDES Permit No. DC0000221, *Authorization to Discharge Under the National Pollutant Discharge Elimination System, Municipal Separate Storm Sewer System Permit*, issued to the District of Columbia (Oct. 7, 2011), Part 6.2.1, pp. 39-40.

³¹⁵ See U.S. EPA, NPDES Permit No. NMR04A000, *Authorization to Discharge Under the National Pollutant Discharge Elimination System, Municipal Separate Storm Sewer System Permit*, issued to the Middle Rio Grande Watershed (Dec. 22, 2014), Parts III.A and III.B.3, pp. 1, 7 of Part III.

³¹⁶ See U.S. EPA, NPDES Permit No. IDS-027561, *Authorization to Discharge Under the National Pollutant Discharge Elimination System, Municipal Separate Storm Sewer System Permit*, issued to Ada County Highway District, Boise State University, City of Boise, City of Garden City, Drainage District #3, and the Idaho Transportation Department District #3 (Dec. 12, 2012), Part IV.C.3.c(ii)-(iii), p. 47.

³¹⁷ 40 CFR § 122.42(c)(1), (c)(4), and (c)(6).

purposes ... To assist the permittee in ensuring appropriate data is gathered and analyzed, the permitting authority should be very clear regarding annual reporting requirements.³¹⁸

U.S. EPA's guide also suggests the following model MS4 permit provision, "Within the first [insert time frame which corresponds to the development of the monitoring program e.g. first two years of permit], the permittee must develop a tracking system to track the information required in the permit as well as the information required to be reported in the annual report."³¹⁹

3. Federal Requirements for Non-Stormwater Outfall-Based Screening and Monitoring

Phase I (see 40 CFR 122.26 (d)(1)(v)(B) and (d)(1)(iv)(B)) and Phase II stormwater management programs (see 40 CFR 122.26(d)(2)(iv)(B)) are required to address illicit discharges into the MS4. An illicit discharge is defined as any discharge to a municipal separate storm sewer system that is not composed entirely of storm water, except allowable discharges pursuant to an NPDES permit (40 CFR 122.26(b)(2)). In addition to requiring permittee to have the legal authority to prohibit non-stormwater discharges from entering storm sewers (CWA Section 402(p)(3)(B)(ii)), MS4 permits must also require the development of a comprehensive, proactive Illicit Discharge Detection Elimination (IDDE) program."³²⁰

The Los Angeles Water Board has incorporated the Non-Stormwater Outfall-Based Screening and Monitoring Program and crossover requirements of the Illicit Discharge Detection and Elimination Program into the Regional MS4 Permit per the following federal requirements:

Clean Water Act section 402(p)(3)(B)(ii) states that permits "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers;..."

40 CFR section 122.26(d)(2)(i)(F) requires the applicant for a Phase I MS4 permit demonstrate they have legal authority to "carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer."

40 CFR section 122.26(d)(2)(iv)(B)(2) requires a program to detect and remove illicit discharges and improper disposal that includes "(2) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;..."

40 CFR section 122.41(j)(1) states "samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity."

40 CFR section 122.42(c) requires the owner or operator of an MS4 to submit an annual report that includes in part "(1) The status of implementing the components of the storm water management program that are established as

³¹⁸ U.S. EPA, *MS4 Permit Improvement Guide*, Chapter 8, p. 96.

³¹⁹ *Id.*, at p. 95.

³²⁰ U.S. EPA. 2010. *MS4 Permit Improvement Guide*. Office of Water, Office of Wastewater Management, Water Permits Division. April. 2010. P. 24, Ch. 3.

permit conditions; (2) Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with §122.26(d)(2)(iii) of this part...”, “(4) A summary of data, including monitoring data, that is accumulated throughout the reporting year...”, and “(6) A summary describing the number and nature of enforcement actions, inspections, and public education programs...”

40 CFR section 122.48(b), requires that all permits shall 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;...”

B. General Monitoring Provisions

As explained in Attachment D at Part III, all monitoring, sampling, sample preservation, and analyses must be conducted according to sufficiently sensitive test procedures approved under 40 CFR Part 136 for the analysis of pollutants, unless another test procedure is required under 40 CFR subchapter N or is otherwise specified in the Order for such pollutants. (40 CFR § 122.41(j)(4); 40 CFR § 122.21(e)(3); 79 Fed. Reg. 49001 (Aug. 19, 2014).) If a Permittee fails to use a lab that can conduct the most sensitive test method set forth in 40 CFR Part 136 for a particular pollutant, then the Permittee will be in violation of the monitoring and reporting requirements.

The General Monitoring Provisions section of the MRP carries over standard monitoring requirements from the previous permits with updates where necessary. The MRP requires Permittees to submit a written request for any modifications to monitoring and reporting requirements in the MRP including an approved Monitoring Program to the Executive Officer of the Los Angeles Water Board for approval. The previous 2012 Los Angeles County and the 2014 City of Long Beach MS4 Permits had similar requirements in Part IX.G.5 of Attachment E for non-stormwater discharges. This is also consistent with the standard practice in these two previous permits where Permittees would submit monitoring and reporting program modification requests to the Los Angeles Water Board for Executive Officer approval. The previous 2010 Ventura County MS4 Permit included prescribed monitoring requirements that were not customizable and, therefore, Permittees could not request substantive modifications. Rather, the EO on behalf of the Los Angeles Water Board could modify the MRP as necessary.

Analytical procedure requirements in the previous permits were updated in the MRP of the Order. The most important changes, which are reflected in Attachment E, include the following:

First, the MRP no longer requires Permittees to test for Aroclors. Instead, at a minimum, it requires analyzing all 55 PCBs congeners listed in Table A-7 of the Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1, Sediment Quality Provisions, using a high-resolution EPA method.

The MRP also requires the laboratories analyzing monitoring samples to be certified by the State Water Board Environmental Laboratory Accreditation Program (ELAP), and requires that Permittees include quality assurance/quality control data with their reports. This provision is a standard requirement in NPDES permits. ELAP certified labs must

be compliant with lab methods in 40 CFR Part 136 therefore assuring the Los Angeles Water Board that data collected meets federal standards.³²¹

Part XIV.J of the MRP of the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit included a requirement for Permittees to provide to the Los Angeles Water Board upon request, standard operating procedures (SOP). For clarity, a requirement in the MRP of the Regional MS4 Permit was added requiring Permittees to continue to develop and maintain a SOP.

C. Monitoring Programs

The MRP requires the Los Angeles County Permittees to continue implementing their most recent Monitoring Program listed in Table E-1 of the MRP, and the Ventura County Permittees to amend their existing monitoring program to include additional TMDL and monitoring station requirements in a Monitoring Program consistent with the provisions of the MRP.

The MRP also allows Permittees to implement a customized monitoring program with the primary objective of allowing for the customization of the outfall monitoring programs and that achieves the five Primary Objectives set forth in Part I.A of the MRP and includes the elements set forth in Part I.C of the MRP. When proposing a customized monitoring program, the Permittees must provide sufficient justification for each element of the program that differs from the monitoring program as set forth in the MRP. The MRP provides options for each Permittee to individually develop and implement an Integrated Monitoring Program (IMP), or alternatively, Permittees may cooperate with other Permittees to develop a Coordinated Integrated Monitoring Program (CIMP). Both the IMP and CIMP are intended to facilitate the effective and collaborative monitoring of receiving waters, stormwater, and non-stormwater discharges and to report the results of monitoring to the Los Angeles Water Board.

The IMP and CIMP requirements within the MRP largely summarize the requirements and reinforce that, at a minimum, the IMP or CIMP must address all TMDL and non-TMDL monitoring requirements of the Order, including receiving water monitoring, stormwater outfall based monitoring, and non-stormwater outfall-based monitoring.

Both the IMP and CIMP approach provide opportunities to increase the cost efficiency and effectiveness of the Permittees monitoring program as monitoring can be designed, prioritized and implemented on a watershed basis. The IMP/CIMP approach allows the Permittees to prioritize monitoring resources between watersheds based on TMDL compliance schedules, and coordinate outfall-based monitoring programs and implement regional studies (if participating). Cost savings can also occur when Permittees coordinate their monitoring programs with other Permittees.

The previous 2012 Los Angeles County and the 2014 City of Long Beach MS4 Permits' IMPs and CIMPs, the City of Rolling Hills' non-stormwater Monitoring Program, and the two Board directed individual monitoring programs (for Compton and Gardena) are incorporated in Table E-1 of the MRP by reference. In the MRP, the cities of Compton and Gardena are required to develop an IMP or join a CIMP. The Los Angeles Water Board does not intend to issue a Board directive to these two Permittees unless their IMP is not approved. Los Angeles County Permittees including the City of Long Beach with an existing Monitoring Program(s) shall submit an updated Monitoring Program(s) to the Los Angeles Water Board for approval to incorporate the modifications in

³²¹ Sotelo, Christine. State Water Board California Environmental Laboratory Accreditation Program. Updates to California ELAP Field of Testing Forms. May 31, 2019.

requirements of the MRP, and specifically, to be consistent with the requirements in Attachments K through S of the Order. The most recent approved Monitoring Programs shall remain in effect until the Executive Officer of the Los Angeles Water Board approves the updated ones. If the updated and/or the new Monitoring Program(s) are disapproved, the Executive Officer of the Los Angeles Water Board will issue a monitoring directive for the Permittee(s).

Ventura County Permittees are required to submit a new IMP or CIMP or join an existing CIMP for Los Angeles Water Board approval. The TMDL Monitoring Plans listed in Table E-2 of the MRP, which are applicable to Ventura County Permittees, shall remain in effect until the Executive Officer of the Los Angeles Water Board approves the IMP(s) or CIMP(s). Approved TMDL Monitoring Plans by Watershed Management Area that were approved by the Executive Officer of the Los Angeles Water Board prior to the effective date of the Order are incorporated into the Order by reference. If the updated and/or the new Monitoring Program(s) are disapproved, the Executive Officer of the Los Angeles Water Board will issue a monitoring directive for the Permittee(s).

D. Monitoring Locations for Ventura County MS4 Permittees

1. Receiving Water Monitoring Location

The receiving water monitoring locations listed in Table E-3 of the MRP were in the previous 2010 Ventura County Permit. Ventura County Permittees shall include these locations in their IMP or CIMP and shall continue to monitor at these locations. Ventura County Permittees may propose additional and/or alternative receiving water monitoring locations in their IMP or CIMP. In addition, Ventura County Permittees shall propose a receiving water monitoring location in Malibu Creek subwatershed within Ventura County in their IMP or CIMP. The proposed location must be representative of the impacts from MS4 discharges. The 2010 Ventura County MS4 Permit did not have a receiving water station within Malibu Creek subwatershed. Therefore, to assess MS4 impacts on receiving water within the Malibu Creek subwatershed, the Los Angeles Water Board is adding a requirement to add a receiving water monitoring location for that subwatershed.

Mass Emission stations were designed to identify pollutant loads to the ocean, and long-term trends in pollutant concentrations, and characterize surface water quality in major receiving waters. The three Mass Emission stations are located in the major Ventura County watersheds: Calleguas Creek (ME-CC), Ventura River (ME-VR), and Santa Clara River (ME-SCR). Stations ME-CC and ME-VR were installed and monitored for the first time during the 2000/01 monitoring season, while ME-SCR was first installed and monitored during the 2001/02 monitoring season. High flows during January and February of 2005 resulted in the relocation of the ME-VR due to landslide activity and associated safety concerns to approximately one mile downstream from the historical ME-VR site to the Ojai Valley Sanitation District's Treatment Plant above the POTW outfall. The relocated station on the Ventura River (ME-VR2) was first monitored using portable sampling equipment in May 2005; and by September 2005 a permanent station was established. Stations ME-CC, ME-SCR, and ME-VR/ ME-VR2 were required to sample for 6 monitoring events per year, including a minimum of 2 dry weather samples during the permit term. The samples from stations ME-CC and ME-VR/ ME-VR2 are composed of flow-based composite and toxicity grab samples, and samples from station ME-SCR are composed of time-based composite samples and toxicity grab samples.

All three Mass Emission stations collected wet and dry weather water quality samples and analyzed for chronic toxicity.

2. Shoreline Monitoring Locations

The 2010 Ventura County MS4 Permit included various shoreline monitoring locations. The MRP of the Regional MS4 Permit also includes shoreline monitoring locations, which are listed in Table E-4 of the MRP. Note that some locations in the MRP are different from the previous Permit. These new monitoring sites were initially proposed by Ventura County MS4 Permittees in an email dated September 1, 2016 because they are considered “MS4 impacted sites.” MS4 impacted sites are defined as beaches that are within 400 yards³²² of municipal storm drain outfalls (not including discharges from creeks, rivers, or estuaries). In a meeting with Ventura County on July 15, 2016 Los Angeles Water Board staff concurred with Ventura County that the proposed monitoring stations were appropriate except shoreline monitoring location 42000 (Ormond Beach at J Street Drain, now Tsumas Creek). This location is not included in the MRP because MS4 discharges do not reach the ocean most of the year but are captured by the Ormond Beach lagoon. The Ormond Beach lagoon only breaches to the ocean in large storm events, and when it does, the outlet can move hundreds of yards up and down the beach. Also note that Ventura County Permittees are now required to monitor only for fecal coliform (or *E. coli*)³²³ and enterococcus consistent with the Ocean Plan Amendment for inclusion of Bacteria Provisions.

3. Stormwater Outfall-Based Monitoring Locations

The stormwater outfall monitoring locations listed in Table E-5 of the MRP were in the previous 2010 Ventura County Permit. Ventura County Permittees shall include these locations in their IMP or CIMP and continue to monitor at these locations. Ventura County Permittees may propose additional and/or alternative stormwater outfall monitoring locations in their IMP or CIMP. In addition, the Permittee(s) are required to propose an outfall monitoring location in Malibu Creek subwatershed within Ventura County in their IMP or CIMP. Monitoring at this proposed location is important to demonstrate compliance at the proposed receiving water location in Malibu Creek subwatershed within Ventura County.

E. Receiving Water Monitoring Requirements

General requirements are listed for all Permittees in this section. The requirements are similar to the previous 2012 Los Angeles County and the 2014 City of Long Beach MS4 Permits. Table E-6 of the MRP includes a suite of constituents that all Permittees are required to monitor. Ventura County Permittees were required to monitor for similar suite of constituents in their previous Attachment G of the 2010 Ventura County MS4 Permit. The purpose of receiving water monitoring is to measure the effects of stormwater and non-stormwater discharges from the MS4 to the receiving water, to identify water quality exceedances, to evaluate compliance with TMDL WLAs and receiving water limitations, and to evaluate whether water quality is improving, staying the same or declining.

³²² The 400-yard criterion is used by the Ventura County Environmental Health Department.

³²³ Appendix III of the Ocean Plan authorizes regional water boards to substitute testing for fecal coliform with *E. coli* when there is sufficient information “to support comparability with approved methods.” (Appendix III, Standard Operating Procedures, § 11, p. 92.)

1. Receiving Water Monitoring Stations

Receiving water monitoring is linked to outfall-based monitoring to gauge the effects of MS4 discharges on receiving water. Receiving water monitoring stations must be downstream of outfall monitoring stations.

The IMP, CIMP, or stand-alone receiving water monitoring program (in the case of a Board directed jurisdictional monitoring program) must include a map identifying proposed wet weather and dry weather monitoring stations. Receiving water monitoring stations may include historical mass emission stations, TMDL compliance monitoring stations, and other selected stations. The Permittee must describe how monitoring at the proposed locations will accurately characterize the effects of the discharges from the MS4 on the receiving water during both wet weather and dry weather, and meet other stated objectives. The proposed program must also state whether historical mass emission stations will continue to be monitored, and if not, provide sufficient justification for discontinuation of monitoring at the historical mass emissions stations, and describe the value of past receiving water monitoring data in performing trends analysis to assess whether water quality is improving, staying the same or declining.

2. Minimum Wet and Dry Receiving Water Monitoring Requirements

Receiving waters are to be monitored during both dry and wet weather conditions to assess the impact of non-stormwater and stormwater MS4 discharges on receiving waters. Wet weather and dry weather are defined in each watershed, consistent with the definitions in TMDLs approved within the watershed. In the previous 2012 Los Angeles County and the 2014 City of Long Beach MS4 permits, Permittees were required to conduct monitoring during three wet and two dry weather events. Ventura County Permittees were required to conduct monitoring during three wet and one dry weather events in their 2010 Permit. This Regional MS4 Permit retained the wet and dry weather definitions from the previous Los Angeles County and the City of Long Beach Permits. Wet weather receiving water monitoring is to commence as soon as possible (within 6 hours) of linked outfall monitoring to be reflective of potential impacts from MS4 discharges. At a minimum, the parameters to be monitored and the monitoring frequency are the same as those required for the linked outfalls.

3. Reporting Levels

The previous permits specified Minimum Levels (MLs) for monitoring stormwater constituents. MLs correspond to the approved analytical methods for reporting a sample result either from Appendix 4 of the SIP in accordance with section 2.4.2 of the SIP or established in accordance with section 2.4.3 of the SIP. The ML represents the lowest quantifiable concentration in a sample based on the proper application of method-based analytical procedures and the absence of any matrix interferences. Other factors may be applied to the ML depending on the specific sample preparation steps employed. For example, the treatment typically applied in cases where there are matrix-effects is to dilute the sample or sample aliquot by a factor of ten. In such cases, this additional factor must be applied in the computation of the Reporting Level (RL). The Method Detection Limit (MDL) is the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is distinguishable from method blank results, as defined in 40 C.F.R. part 136, Appendix B.

In general, the MDL is lower than the RL (typically half the RL). In contrast to the previous permits where required MLs were specified, the Regional MS4 Permit no longer specifies required Reporting Levels (RLs) in the MRP. Rather, the Regional MS4 Permit specifies recommended Reporting Levels (RLs) in the MRP for monitoring stormwater constituents. This change from MLs to RLs allows the provision to be more user-friendly therefore streamlining Board staff data analysis efforts and related enforcement. Additionally, per Part II.H.1 of the MRP, Permittees are required to use the most sufficiently sensitive EPA-approved lab analytical methods available consistent with requirements in Attachment D of the Order (see, 40 CFR § 122.21(e)(3); 79 Fed. Reg. 49001 (Aug. 19, 2014).). Per Part II.H.7 of the MRP, recommended RLs are intended to serve as guidance for Permittees to choose the most sufficiently sensitive test method to attain RLs that are less than or equal to the lowest applicable water quality standard.

Information considered to incorporate recommended RLs in the MRP include previous permits' MLs, water quality goals³²⁴, and other information provided by labs. In determining what is the lowest water quality goal, standards that apply to drinking water and water for agricultural use were not considered because they do not apply to stormwater. On August 5, 2016, Ventura County Permittees as a follow-up item to the July 15, 2016 meeting with Board staff, provided information on the lowest MDLs and RLs that their labs can achieve. However, this information was not considered because Ventura County Permittees stated in a follow-up email on June 9, 2020 that they included drinking water and non-40 CFR methods to try to get RLs low enough to meet the Permit MLs. They further stated that some of the stormwater methods (e.g. EPA 625) frequently require dilutions due to the turbid nature of stormwater, so they often end up with RLs higher than quoted due to matrix issues.

To solicit more information about lab methods for stormwater samples, Board staff also looked at information from ELAP certified labs in Los Angeles County. Using information from the State Board's Drinking Water Program³²⁵, Board staff compiled a list of 14 ELAP certified labs within Los Angeles County. Board staff contacted each lab with a list of constituents in Table F-27 below and requested the labs to report their lowest MDL and RL values for stormwater samples along with the pertinent analytical method. Two of the 14 labs reported that they do not perform stormwater analysis. Of the twelve remaining labs, six labs did not respond. The other six labs³²⁶ responded by submitting the requested information. However, while six labs responded with the requested information, not all of them analyze all the constituents listed in Table F-27 below.

Board staff used the lowest MDL and RL values received from these labs to populate Table F-27 below. When water quality goal or lab information was

³²⁴ In this context, water quality goals include any objectives, criteria, targets, or limits within TMDLs, California Toxics Rule (CTR), Basin Plan, Ocean Plan, ISWEEB, and other water quality values found on the State Water Board Water Quality Goals searchable database at http://www.waterboards.ca.gov/water_issues/programs/water_quality_goals/search.shtml.

³²⁵ The State Board provides this information using an interactive GIS map at: <https://waterboards.maps.arcgis.com/apps/webappviewer/index.html?id=bd0bd8b42b1944058244337bd2a4ebfa>

³²⁶ Between April 2020 and June 2020, the six labs that submitted the requested information were Advanced Technology Laboratories, Alpha Scientific Corporation, American Scientific Laboratories, Enviro-Chem, Inc., Positive Lab Service, and Weck Laboratories, Inc.

unavailable, Board staff looked at RLs and MDLs in CEDEN data for the Surface Water Ambient Monitoring Program (SWAMP). For many constituents, the recommended RLs in the Regional MS4 Permit were set equal to the previous permit MLs. Where the water quality goal was lower than the previous permit ML, and a lab could achieve a lower RL using a more sensitive analytical method, the recommended RL was set equal to the lowest lab RL. However, for PCBs, the recommended RLs were set equal to the lowest water quality goals. The table below indicates the MLs in the previous permits, the recommended RLs included in the Regional MS4 Permit, and the basis for the recommended RL. Under “Basis for Recommended RL”, “no change” indicates that the recommended RL was set equal to the ML from the previous permits. The term “Lowest WQ Goal” indicates that the recommended RL was set equal to the lowest water quality goal. The term “Lowest Lab RL” was set equal to the lowest recommended RL considering the lowest MDL a lab could achieve.

The previous MS4 Permits required Total Suspended Solids (TSS) monitoring but did not require Suspended Sediment Concentration (SSC) to be monitored as part of the table of constituents below. However, studies conducted by the United States Geological Survey (USGS) have found that the TSS procedure may not capture the full range of sediment particle sizes contributing to sediment impairments.³²⁷ Therefore, both TSS and SSC are required to be monitored for in the MRP.

Also, note that dissolved phosphorus was replaced with orthophosphate as P (dissolved) in the MRP. In general, phosphorus exists in two main forms in water; dissolved (soluble) and particulate. Orthophosphate is the primary dissolved form of phosphorus that is more bioavailable to algae and aquatic plants.

With regards to PCBs, previous MS4 Permits required monitoring for Aroclors. Permittees in practice inconsistently monitored for Aroclors and/or congeners. Therefore, the Regional MS4 Permit MRP does not require Permittees to test for Aroclors (with subsequent reporting of total PCBs concentrations based on the sum of the Aroclor concentrations). Moreover, RLs for Aroclors are very high and detections are extremely rare. Additionally, the relevant total PCBs concentrations of concern for protection of human health and aquatic life are extremely low and detection of these low concentrations can only be achieved through using methods which analyze for individual PCB congeners (the various Aroclors were composed of mixes of multiple congeners in addition to other constituents at times). Thus, the MRP requires at a minimum analyzing all 55 PCBs congeners listed in Table A-7 of the Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1, Sediment Quality Provisions. Furthermore, Permittees are encouraged to use a high resolution EPA-approved method which attains a reporting level of at least 0.00002 µg/L (20 pg/L) for ocean waters per congener, and 170 pg/L for non-ocean marine waters and freshwater per congener. Using a high-resolution EPA method along with analyzing for a minimum of 55 congeners will result in fewer non-detects, which will allow for the ability to conduct trend analyses of PCBs in the Region. In addition, higher resolution PCB monitoring using congeners will aid in “fingerprinting” potential sources through providing information on PCB homologs (those congeners with the same number of chlorines). The goal is to identify

³²⁷ Gray, John et, al. US Geological Survey. Comparability of Suspended-Sediment and Total Suspended Sediment Data. August 2000.

sources and eventually eliminate this highly persistent legacy pollutant from the watersheds.

Table F-27. Rationale for Recommended Reporting Levels (RLs) in the Regional MS4 Permit³²⁸

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|-------------------------|--|---|---|--|--------------------------|-------------------------------------|--------------------------|
| CONVENTIONAL POLLUTANTS | mg/L | mg/L | - | mg/L | mg/L | mg/L | - |
| Oil and Grease | 0.28 Enviro Chem | 1 EnviroChem | EPA 1664A | - | 5 | 5 | No change |
| Total Phenols | 0.00016 Weck | 0.001 Weck | EPA 624.1 | - | 0.1 | 0.1 | No change |
| Cyanide | 0.0038 Weck | 0.005 Weck | EPA 335.4 | 0.0052 / 0.001 (CTR - freshwater / saltwater) | 0.005 | 0.005 | No change |
| pH | 0.1 Weck | 0.1 Weck | SM 4500H+ B | - | 0-14 | 0-14 units | No change |
| Temperature | - | - | - | - | N/A | N/A | No change |
| Dissolved Oxygen | 0.1 | 0.5 | SM 2580B | 5 (Basin Plan) | Sensitivity to 5 mg/L | N/A | Field measurement |

³²⁸ Table Abbreviations: CTR = California Toxics Rule; EPA Rec. = National Recommended Water Quality Criteria; ISWEBE = Inland Surface Waters, Enclosed Bays, and Estuaries (ISWEBE) Plan; TMDL = Total Maximum Daily Load; HH = Human Health; WQ = Water Quality.

³²⁹ Water quality goals include any objectives, criteria, targets, or limits within TMDLs, California Toxics Rule (CTR), Basin Plan, Ocean Plan, ISWEBE, and other water quality values found on the State Water Board Water Quality Goals searchable database at http://www.waterboards.ca.gov/water_issues/programs/water_quality_goals/search.shtml.

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|-----------------|--|---|---|--|----------------------|-------------------------------------|--|
| | American Scientific Lab | American Scientific Lab | | | | | |
| BACTERIA | MPN/100 ml | MPN/100 ml | - | MPN/100 ml | MPN/100 ml | MPN/100 ml | - |
| Total coliform | 1.8 Weck | 1.8 Weck | SM 991B | 1,000 (TMDL) | 10,000 | Not required | Removed requirement for consistency with ISWEBE & Ocean Plan |
| Enterococcus | 1 Weck | 1.8 Weck | SM 9230B | 30 (ISWEBE & Ocean Plan) | 104 | 30 | Lowest WQ Goal |
| Fecal coliform | 1.8 Weck | 1.8 Weck | SM 9221E | 200 (Bacteria Provisions– Ocean Plan) | 400 | 200 | Lowest WQ Goal |
| E. coli | 1.8 Weck | 1.8 Weck | SM 9221F | 100 (Bacteria Provisions– ISWEBE) | 235 | 100 | Lowest WQ Goal |
| GENERAL | mg/L | mg/L | - | mg/L | mg/L | mg/L | - |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|---|---|--|--|--|---|--|---------------------------------|
| Orthophosphate as P (Dissolved) | 0.003 Weck | 0.01 Weck | EPA 365.3 | - | 0.05 (formerly Dissolved Phosphorus) | 0.05 | No change |
| Total Phosphorus | 0.0063 Advanced Tech Lab | 0.02 Advanced Tech Lab | EPA 365.3 | 0.1 (TMDL) | 0.05 | 0.05 | No change |
| Turbidity | 0.5 Positive Lab | 0.5 Positive Lab | EPA 180.1 | - | 0.1 NTU | 0.1 NTU | No change |
| Total Suspended Solids (TSS) | 2 Alpha Scientific | 4 Alpha Scientific | SM 2540D | - | 2 | 2 | No change |
| Total Dissolved Solids (TDS) | 1 Positive Lab | 5 Positive Lab | SM 2540E | 250 (Basin Plan) | 2 | 2 | No change |
| Suspended Sediment Concentration (SSC) | 1 Positive Lab | 5 Positive Lab | ASTM D3977- 97 | - | Not required | 5 | Lowest lab RL |
| Volatile Suspended Solids | 1 Positive Lab | 5 Positive Lab | SM 2540E | - | 2 | Not required | Removed Requirement |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|---------------------------------|--|---|---|--|----------------------|-------------------------------------|--|
| Total Organic Carbon (TOC) | 0.073 Weck | 0.1 Weck | SM 5310B | - | 1 | 1 | No change |
| Dissolved Organic Carbon (DOC) | 0.016 Weck | 0.1 Weck | SM 5310B | - | Not required | 0.2 | SWAMP RL (MDL is 0.1 using EPA 415.1M) |
| Total Petroleum Hydrocarbon | 1.53 Advanced Tech Lab | 2 Advanced Tech Lab | EPA 1664A | - | 5 | 5 | No change |
| Biochemical Oxygen Demand (BOD) | 2 Weck | 2 Weck | EPA 5210B | - | 2 | 2 | No change |
| Chemical Oxygen Demand (COD) | 2.43 Enviro Chem | 5 EnviroChem | SM 5220D | - | 20-900 | 20 | Low end of previous permit ML range |
| Total Ammonia-Nitrogen | 0.016 Advanced Tech Lab | 0.03 Advanced Tech Lab | ASTM D1426-08A | 0.1 (Basin Plan) | 0.1 | 0.1 | No change |
| Total Kjeldahl Nitrogen | 0.018 Weck | 0.1 Weck | EPA 351.2 | - | 0.1 | 0.1 | No change |
| Nitrate+Nitrite | 0.01 Enviro Chem | 0.05 EnviroChem | SM 4500-NO3-E | 5 (TMDL) | 0.1 | 0.1 | No change |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|---|--|---|---|---|----------------------|--|--------------------------|
| Alkalinity | 0.031 Enviro Chem | 1 EnviroChem | SM 2320B | - | 2 | 2 | No change |
| Specific Conductance | 0.005 Positive Lab | 0.005 Positive Lab | EPA 120.1 | - | 1 umho/cm | 1 umho/cm | No change |
| Total Hardness | 0.016 Weck | 0.1 Weck | EPA 200.7 | - | 2 | 2 | No change |
| MBAS | 0.01 Positive Lab | 0.02 Positive Lab | SM 5540C | 0.5 (Basin Plan) | 0.5 | 0.5 | No change |
| Chloride | 0.2 Positive Lab | 0.4 Positive Lab | EPA 300.0 | 10 (Basin Plan) | 2 | 2 | No change |
| Fluoride | 0.009 Weck | 0.1 Weck | EPA 300.0 | 2 (Basin Plan-MCL) | 0.1 | 0.1 | No change |
| Methyl tertiary butyl ether (MTBE) | 0.00026 Advanced Tech Lab | 0.0005 Advanced Tech Lab | EPA 624.1 | 0.013 (Basin Plan-MCL) | 1 | 0.013 | Lowest WQ Goal |
| Perchlorate | 0.00109 Advanced Tech Lab | 0.002 Advanced Tech Lab | EPA 314.0 | 0.006 (Basin Plan-MCL) | 0.004 | 0.006 | Lowest WQ Goal |
| METALS (Dissolved & Total) | µg/L | µg/L | - | µg/L | µg/L | µg/L | - |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|-----------------------|--|---|---|--|----------------------|-------------------------------------|--------------------------|
| Aluminum | 1.3 Weck | 5 Weck | EPA 200.8 | 1000 (Basin Plan-MCL) / 87 (EPA rec. – freshwater) | 100 | 87 | Lowest WQ Goal |
| Antimony | 0.045 Weck | 0.5 Weck | EPA 200.8 | 6 (Basin Plan-MCL) / 5.6 (EPA Rec. – HH) | 0.5 | 0.5 | No change |
| Arsenic | 0.074 Weck | 0.4 Weck | EPA 200.8 | 8 (Ocean Plan) / 0.018 (EPA Rec. – HH) | 1 | 1 | No change |
| Beryllium | 0.033 Weck | 0.1 Weck | EPA 200.8 | 0.033 (Ocean Plan) | 0.5 | 0.5 | No change |
| Cadmium | 0.041 Weck | 0.1 Weck | EPA 200.8 | 1 (Ocean Plan) | 0.25 | 0.25 | No change |
| Chromium (total) | 0.035 Weck | 0.2 Weck | EPA 200.8 | 2 (Ocean Plan) | 0.5 | 0.5 | No change |
| Chromium (Hexavalent) | 0.0079 Weck | 0.02 Weck | EPA 218.6 | 2 (Ocean Plan) | 5 | 2 | Lowest WQ Goal |
| Copper | 0.13 Weck | 0.5 Weck | EPA 200.8 | >9 (CTR-freshwater) | 0.5 | 0.5 | No change |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|--------------|--|---|---|---|----------------------|-------------------------------------|--------------------------|
| | | | | hardness-based) | | | |
| Iron | 1.1 Weck | 10 Weck | EPA 200.7 | 300 (EPA Rec.- HH) | 100 | 100 | No change |
| Lead | 0.031 Weck | 0.2 Weck | EPA 200.8 | >2.5 (CTR-freshwater hardness-based) | 0.5 | 0.5 | No change |
| Mercury | 0.017 Weck | 0.05 Weck | EPA 245.1 | 0.04 (Ocean Plan) | 0.5 | 0.04 | Lowest WQ Goal |
| Nickel | 0.045 Weck | 0.8 Weck | EPA 200.8 | >52 (CTR-freshwater hardness-based) | 1 | 11.88 | No change |
| Selenium | 0.14 Weck | 0.4 Weck | EPA 200.8 | 5.0 (TMDL & CTR-freshwater) / 1.5 (EPA Rec. – freshwater) | 1 | 1 | No change |
| Silver | 0.062 Weck | 0.2 Weck | EPA 200.8 | >3.4 (CTR-freshwater hardness-based) | 0.25 | 0.25 | No change |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|---|--|---|---|--|----------------------|-------------------------------------|--------------------------|
| Thallium | 0.014 Weck | 0.2 Weck | EPA 200.8 | 1.7 (CTR – HH) / 0.24 (EPA Rec. – HH) | 1 | 0.24 | Lowest WQ Goal |
| Zinc | 0.94 Weck | 5 Weck | EPA 200.8 | 20 (Ocean Plan) | 1 | 1 | No change |
| SEMIVOLATILE ORGANIC COMPOUNDS - ACIDS | µg/L | µg/L | - | µg/L | µg/L | µg/L | - |
| 2-Chlorophenol | 0.28 Weck | 1 Weck | EPA 625.1 | 1 (Ocean Plan) / 0.1 (EPA Rec. – HH) | 2 | 1 | WQ Goal |
| 4-Chloro-3-methylphenol (3-Methyl-4-Chlorophenol) | 0.23 Weck | 1 Weck | EPA 625.1 | 1 (Ocean Plan) | 1 | 1 | No change |
| 2,4-Dichlorophenol | 0.26 Weck | 1 Weck | EPA 625.1 | 1 (Ocean Plan) / 0.3 (EPA Rec. – HH) | 1 | 1 | WQ Goal |
| 2,4-Dimethylphenol | 0.3 Weck | 1 Weck | EPA 625.1 | 30 (Ocean Plan) | 2 | 2 | No change |
| 2,4-Dinitrophenol | 0.4 | 1 | 8270C | 4 (Ocean Plan) | 5 | 4 | Lowest WQ Goal |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|---|--|---|---|--|----------------------|-------------------------------------|--------------------------|
| | American Scientific | American Scientific | | | | | |
| 2-Nitrophenol | 0.26 Weck | 1 Weck | EPA 625.1 | 30 (Ocean Plan) | 10 | 10 | No change |
| 4-Nitrophenol | 0.5 American Scientific | 1 American Scientific | 8270C | 30 (Ocean Plan) | 5 | 5 | No change |
| Pentachlorophenol | 0.2 American Scientific | 1 American Scientific | 8270C | 0.28 (CTR – HH) / 0.03 (EPA Rec. – HH) | 2 | 1 | Lowest lab RL |
| Phenol | 0.16 Weck | 1 Weck | EPA 625.1 | 30 (Ocean Plan) | 1 | 1 | No change |
| 2,4,6-Trichlorophenol | 0.22 Weck | 1 Weck | EPA 625.1 | 0.29 (Ocean Plan) | 10 | 1 | Lowest lab RL |
| SEMIVOLATILE ORGANIC COMPOUNDS –BASE / NEUTRAL | µg/L | µg/L | - | µg/L | µg/L | µg/L | - |
| Acenaphthene | 0.38 Weck | 1 Weck | EPA 625.1 | 1,200 (CTR-HH) / 20 (EPA Rec. – HH) | 1 | 1 | No change |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|---|--|---|---|---|----------------------|--|--------------------------|
| Acenaphthylene | 0.17 Weck | 1 Weck | EPA 625.1 | 0.0088 (Ocean Plan) | 2 | 1 | Lowest lab RL |
| Anthracene | 0.12 Weck | 1 Weck | EPA 625.1 | 0.0088 (Ocean Plan) | 2 | 1 | Lowest lab RL |
| Benzidine | 1.4 Weck | 10 Weck | EPA 625.1 | 0.000069 (Ocean Plan) | 5 | 5 | No Change |
| 1,2 Benzanthracene (Benzo(a)anthracene) | 0.19 Weck | 1 Weck | EPA 625.1 | 0.0044 (CTR-HH) / 0.0012 (EPA Rec. – HH) | 5 | 1 | Lowest lab RL |
| Benzo(a)pyrene | 0.39 Weck | 1 Weck | EPA 625.1 | 0.0044 (CTR-HH) / 0.00012 (EPA Rec. – HH) | 2 | 1 | Lowest lab RL |
| Benzo(g,h,i)perylene (1,12-benzoperylene) | 0.42 Weck | 2 Weck | EPA 625.1 | 0.0088 (Ocean Plan) | 5 | 2 | Lowest lab RL |
| 3,4 Benzofluoranthene (benzo[b]fluoranthene) | 0.46 Weck | 1 Weck | EPA 625.1 | 0.0044 (CTR-HH) / | 10 | 1 | Lowest lab RL |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|---|--|---|---|--|----------------------|-------------------------------------|--------------------------|
| | | | | 0.0012 (EPA Rec. – HH) | | | |
| Benzo(k)fluoranthene | 0.22 Weck | 1 Weck | EPA 625.1 | 0.0044 (CTR-HH) | 2 | 1 | Lowest lab RL |
| Bis(2-chloroethoxy) methane | 0.25 Weck | 1 Weck | EPA 625.1 | 4.4 (Ocean Plan) | 5 | 4.4 | Lowest WQ Goal |
| Bis(2-chloroisopropyl) ether | 0.38 Weck | 1 Weck | EPA 625.1 | 122 (EPA Rec. – freshwater) | 2 | 2 | No change |
| Bis(2-chloroethyl) ether | 0.27 Weck | 1 Weck | EPA 625.1 | 0.031 (CTR – HH) / 0.03 (EPA Rec. HH) | 1 | 1 | No change |
| Bis(2-ethylhexyl) phthalate | 1.69 Advanced Tech Lab | 5 Advanced Tech Lab | EPA 625.1 | 1.8 (CTR – HH) / 0.32 (EPA Rec. – HH) | 5 | 5 | No change |
| 4-Bromophenyl phenyl ether | 0.36 Weck | 1 Weck | EPA 625.1 | 122 (EPA Rec. - freshwater toxicity chronic) | 5 | 5 | No change |
| Butyl benzyl phthalate (Benzyl butyl phthalate) | 0.18 Weck | 1 Weck | EPA 625.1 | 3,000 (CTR – HH) / 0.1 | 10 | 1 | Lowest lab RL |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|-----------------------------|--|---|---|--|----------------------|-------------------------------------|--------------------------|
| | | | | (EPA Rec. – HH) | | | |
| 2-Chloroethyl vinyl ether | 1 Positive Lab | 1 Positive Lab | EPA 625.1 | - | 1 | 1 | No change |
| 2-Chloronaphthalene | 0.45 Weck | 1 Weck | EPA 625.1 | 1,700 (CTR - HH) / 7.5 (EPA Rec. – saltwater toxicity acute) | 10 | 7.5 | Lowest WQ Goal |
| 4-Chlorophenyl phenyl ether | 0.41 Weck | 1 Weck | EPA 625.1 | - | 5 | 5 | No change |
| Chrysene | 0.19 Weck | 1 Weck | EPA 625.1 | 0.0044 (CTR -HH) | 5 | 1 | Lowest lab RL |
| Dibenzo(a,h)anthracene | 0.5 Positive Lab | 1 Positive Lab | EPA 625.1 | 0.0044 (CTR -HH) / 0.00012 (EPA Rec. – HH) | 0.1 | 0.1 | No change |
| 1,3-Dichlorobenzene | 0.42 Weck | 1 Weck | EPA 625.1 | 400 (CTR – HH) / 7 (EPA Rec. – HH) | 1 | 1 | No change |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|------------------------|--|---|---|--|----------------------|-------------------------------------|--------------------------|
| 1,4-Dichlorobenzene | 0.48 Weck | 1 Weck | EPA 625.1 | 5 (Basin Plan-MCL) | 1 | 1 | No change |
| 1,2-Dichlorobenzene | 0.46 Weck | 1 Weck | EPA 625.1 | 600 (Basin Plan-MCL) / 50 (EPA Rec. – freshwater toxicity other) | 1 | 1 | No change |
| 3,3'-Dichlorobenzidine | 0.99 Weck | 5 Weck | EPA 625.1 | 0.0081 (Ocean Plan) | 5 | 5 | No change |
| Diethyl phthalate | 0.15 Weck | 1 Weck | EPA 625.1 | 23,000 (CTR -HH) / 3 (EPA Rec. – freshwater toxicity chronic) | 2 | 2 | No change |
| Dimethyl phthalate | 0.18 Weck | 1 Weck | EPA 625.1 | 313,000 (CTR – HH) / 3 (EPA Rec. – freshwater | 2 | 2 | No change |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|---|--|---|---|---|----------------------|-------------------------------------|--------------------------|
| | | | | toxicity chronic) | | | |
| di-n-Butyl phthalate | 0.1 Weck | 1 Weck | EPA 625.1 | 2,700 (CTR – HH) 3 (EPA Rec. – freshwater toxicity chronic) | 10 | 3 | Lowest WQ Goal |
| 2,4-Dinitrotoluene | 0.18 Weck | 1 Weck | EPA 625.1 | 0.11 (CTR – HH) / 0.049 (EPA Rec. – HH) | 5 | 1 | Lowest lab RL |
| 2,6-Dinitrotoluene | 0.27 Weck | 1 Weck | EPA 625.1 | 230 (EPA Rec. – freshwater toxicity chronic) | 5 | 5 | No change |
| 4,6 Dinitro-2-methylphenol (2-Methyl-4,6-dinitrophenol) | 1.4 Weck | 5 Weck | EPA 625.1 | 13.4 (CTR – HH) / 2 (EPA Rec. – HH) | 5 | 5 | No change |
| 1,2-Diphenylhydrazine | 0.3 Weck | 1 Weck | EPA 625.1 | 0.04 (CTR – HH) / 0.03 (EPA Rec. – HH) | 1 | 1 | No change |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|----------------------------|--|---|---|---|----------------------|-------------------------------------|--------------------------|
| di-n-Octyl phthalate | 0.46 Weck | 1 Weck | EPA 625.1 | 3 (EPA Rec. – freshwater toxicity chronic) | 10 | 3 | Lowest WQ Goal |
| Fluoranthene | 0.08 Weck | 1 Weck | EPA 625.1 | 15 (Ocean Plan) | 0.05 | 0.05 | No change |
| Fluorene | 0.35 Weck | 1 Weck | EPA 625.1 | 0.0088 (Ocean Plan) | 0.1 | 0.1 | No change |
| Hexachlorobenzene | 0.49 Weck | 1 Weck | EPA 625.1 | 0.00021 (Ocean Plan) / 0.000079 (EPA Rec. – HH) | 1 | 1 | No change |
| Hexachlorobutadiene | 0.47 Weck | 1 Weck | EPA 625.1 | 0.44 (CTR - HH) / 0.01 (EPA Rec. – HH) | 1 | 1 | No change |
| Hexachloro-cyclopentadiene | 0.98 Weck | 1 Weck | EPA 625.1 | 50 (Basin Plan-MCL) / 1 (EPA Rec. – HH) | 5 | 1 | Lowest WQ Goal |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|----------------------------|--|---|---|--|----------------------|-------------------------------------|--------------------------|
| Hexachloroethane | 0.5 Weck | 1 Weck | EPA 625.1 | 1.9 (CTR – HH) / 0.1 EPA Rec. – HH) | 1 | 1 | No change |
| Indeno(1,2,3-c,d)pyrene | 0.5 Positive Lab | 1 Positive Lab | EPA 625.1 | 0.0044 (CTR-HH) / 0.0012 (EPA Rec. - HH) | 0.05 | 0.05 | No change |
| Isophorone | 0.21 Weck | 1 Weck | EPA 625.1 | 8.4 (CTR – HH) | 1 | 1 | No change |
| Naphthalene | 0.49 Weck | 1 Weck | EPA 625.1 | 620 (EPA Rec. – freshwater toxicity chronic) | 0.2 | 0.2 | No change |
| Nitrobenzene | 0.36 Weck | 1 Weck | EPA 625.1 | 4.9 (Ocean Plan) | 1 | 1 | No change |
| N-Nitrosodimethyl amine | 0.5 Weck | 1 Weck | EPA 625.1 | 0.00069 (CTR – HH) | 5 | 1 | Lowest lab RL |
| N-Nitrosodiphenyl amine | 0.19 Weck | 1 Weck | EPA 625.1 | 2.5 (Ocean Plan) | 1 | 1 | No change |
| N-Nitrosodi-n-propyl amine | 0.26 Weck | 1 Weck | EPA 625.1 | 0.005 (CTR - HH) | 5 | 1 | Lowest lab RL |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|-------------------------------|--|---|---|--|----------------------|-------------------------------------|--------------------------|
| Phenanthrene | 0.32 Weck | 1 Weck | EPA 625.1 | 0.0088 (Ocean Plan) | 0.05 | 0.05 | No change |
| Pyrene | 0.25 Weck | 1 Weck | EPA 625.1 | 0.0088 (Ocean Plan) | 0.05 | 0.05 | No change |
| 1,2,4-Trichlorobenzene | 0.49 Weck | 1 Weck | EPA 625.1 | 0.071 (EPA Rec.- HH) | 1 | 1 | No change |
| CHLORINATED PESTICIDES | µg/L | µg/L | - | µg/L | µg/L | µg/L | - |
| Aldrin | 0.004 Positive Lab | 0.005 Positive Lab | EPA 608.3 | 0.000022 (Ocean Plan) / 0.00000077 (EPA Rec. – HH) | 0.005 | 0.005 | No change |
| alpha-BHC | 0.002 Positive Lab | 0.01 Positive Lab | EPA 608.3 | 0.0039 (CTR -HH) | 0.01 | 0.01 | No change |
| beta-BHC | 0.004 Positive Lab | 0.01 Positive Lab | EPA 608.3 | 0.004 (Ocean Plan for HCH) | 0.005 | 0.005 | No change |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|---------------------|--|---|---|--|----------------------|-------------------------------------|--------------------------|
| delta-BHC | 0.004 Positive Lab | 0.01 Positive Lab | EPA 608.3 | 0.004 (Ocean Plan for HCH) | 0.005 | 0.005 | No change |
| gamma-BHC (lindane) | 0.003 Positive Lab | 0.01 Positive Lab | EPA 608.3 | 0.004 (Ocean Plan for HCH) | 0.02 | 0.01 | Lowest lab RL |
| alpha-chlordane | 0.0029 Advanced Tech Lab | 0.025 Advanced Tech Lab | EPA 608.3 | 0.000023 (Ocean Plan for total chlordane) / 0.00059 (TMDL) | 0.1 | 0.025 | Lowest lab RL |
| gamma-chlordane | 0.0014 Advanced Tech Lab | 0.025 Advanced Tech Lab | EPA 608.3 | 0.000023 (Ocean Plan for total chlordane) / 0.00059 (TMDL) | 0.1 | 0.025 | Lowest lab RL |
| 4,4'-DDD | 0.007 Positive Lab | 0.025 Positive Lab | EPA 608.3 | 0.00017 (Ocean Plan for DDTs) / 0.00012 (EPA Rec. – HH) / | 0.05 | 0.025 | Lowest lab RL |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|------------------|--|---|---|---|----------------------|-------------------------------------|--------------------------|
| | | | | 0.00059 (TMDL) | | | |
| 4,4'-DDE | 0.007 Positive Lab | 0.025 Positive Lab | EPA 608.3 | 0.00017 (Ocean Plan for DDTs) / 0.00059 (TMDL) / 0.000018 (EPA Rec. – HH) | 0.05 | 0.025 | Lowest lab RL |
| 4,4'-DDT | 0.0025 Positive Lab | 0.005 Positive Lab | EPA 608.3 | 0.00017 (Ocean Plan for DDTs) / 0.00003 (EPA Rec. – HH) | 0.01 | 0.005 | Lowest lab RL |
| Dieldrin | 0.0025 Positive Lab | 0.005 Positive Lab | EPA 608.3 | 0.00004 (Ocean Plan) / 0.0000012 (EPA Rec. – HH) | 0.01 | 0.005 | Lowest lab RL |
| alpha-Endosulfan | 0.0032 | 0.025 Positive Lab | EPA 608.3 | 0.0087 (CTR – saltwater) | 0.02 | 0.02 | No change |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|--------------------|--|---|---|---|----------------------|-------------------------------------|--------------------------|
| | Advanced Tech Lab | | | | | | |
| beta-Endosulfan | 0.0025 Positive Lab | 0.01 Positive Lab | EPA 608.3 | 0.0087 (CTR – saltwater) | 0.01 | 0.01 | No change |
| Endosulfan sulfate | 0.002 Positive Lab | 0.01 Positive Lab | EPA 608.3 | 0.009 (Ocean Plan for endosulfan) / 0.0087 (EPA Rec. – saltwater) | 0.05 | 0.01 | Lowest lab RL |
| Endrin | 0.0025 Positive Lab | 0.005 Positive Lab | EPA 608.3 | 0.002 (Ocean Plan) | 0.01 | 0.005 | Lowest lab RL |
| Endrin aldehyde | 0.003 Positive Lab | 0.01 Positive Lab | EPA 608.3 | 0.76 (CTR - HH) | 0.01 | 0.01 | No change |
| Heptachlor | 0.001 Positive Lab | 0.01 Positive Lab | EPA 608.3 | 0.00005 (Ocean Plan) / 0.0000059 (EPA Rec. – HH) | 0.01 | 0.01 | No change |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|----------------------------------|--|---|---|---|----------------------|--|--------------------------|
| Heptachlor Epoxide | 0.002 Positive Lab | 0.01 Positive Lab | EPA 608.3 | 0.00002 (Ocean Plan) / 0.000032 (EPA Rec. – HH) | 0.01 | 0.01 | No change |
| Toxaphene | 0.2 Positive Lab | 0.5 Positive Lab | EPA 608.3 | 0.0002 (CTR – freshwater) | 0.5 | 0.5 | No change |
| POLYCHLORINATED BIPHENYLS | µg/L | µg/L | - | µg/L | µg/L | pg/L | - |
| Congeners | - | - | - | 0.000019 (Ocean Plan) / 0.00017 (CTR – HH) / 0.000064 (EPA Rec. – HH) | Not required | 20 (ocean waters) / 170 (non-ocean marine waters & freshwater) | Lowest WQ Goals |
| Aroclor-1016 | 0.15 Positive Lab | 0.25 Positive Lab | EPA 608.3 | 0.000019 (Ocean Plan) / 0.00017 (CTR – HH) | 0.5 | Not required | Removed requirement |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|--------------|--|---|---|---|----------------------|-------------------------------------|--------------------------|
| | | | | / 0.000064 (EPA Rec. – HH) | | | |
| Aroclor-1221 | 0.15 Positive Lab | 0.25 Positive Lab | EPA 608.3 | 0.000019 (Ocean Plan) / 0.00017 (CTR – HH) / 0.000064 (EPA Rec. – HH) | 0.5 | Not required | Removed requirement |
| Aroclor-1232 | 0.15 Positive Lab | 0.25 Positive Lab | EPA 608.3 | 0.000019 (Ocean Plan) / 0.00017 (CTR – HH) / 0.000064 (EPA Rec. – HH) | 0.5 | Not required | Removed requirement |
| Aroclor-1242 | 0.15 Positive Lab | 0.25 Positive Lab | EPA 608.3 | 0.000019 (Ocean Plan) / 0.00017 (CTR – HH) | 0.5 | Not required | Removed requirement |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|--------------|--|---|---|---|----------------------|-------------------------------------|--------------------------|
| | | | | / 0.000064 (EPA Rec. – HH) | | | |
| Aroclor-1248 | 0.15 Positive Lab | 0.25 Positive Lab | EPA 608.3 | 0.000019 (Ocean Plan) / 0.00017 (CTR – HH) / 0.000064 (EPA Rec. – HH) | 0.5 | Not required | Removed requirement |
| Aroclor-1254 | 0.15 Positive Lab | 0.25 Positive Lab | EPA 608.3 | 0.000019 (Ocean Plan) / 0.00017 (CTR – HH) / 0.000064 (EPA Rec. – HH) | 0.5 | Not required | Removed requirement |
| Aroclor-1260 | 0.15 Positive Lab | 0.25 Positive Lab | EPA 608.3 | 0.000019 (Ocean Plan) / 0.00017 (CTR – HH) | 0.5 | Not required | Removed requirement |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|----------------------------|--|---|---|---|----------------------|-------------------------------------|--------------------------|
| | | | | / 0.000064 (EPA Rec. – HH) | | | |
| ORGANOPHOSPHATE PESTICIDES | µg/L | µg/L | - | µg/L | µg/L | µg/L | - |
| Atrazine | 0.034 Weck | 0.1 Weck | EPA 525.2 | 1 (Basin Plan-MCL) | 2 | 1 | Lowest WQ Goal |
| Chlorpyrifos | 0.0069 Weck | 0.01 Weck | EPA 625.1M | 0.014 (TMDL) / 0.009 (EPA Rec. – saltwater) | 0.05 | 0.01 | Lowest lab RL |
| Cyanazine | 0.024 Weck | 0.1 Weck | EPA 525.2 | - | 2 | 2 | No change |
| Diazinon | 0.0052 Weck | 0.01 Weck | EPA 625.1M | 0.1 (TMDL) / 0.05 (EPA Rec. - freshwater) | 0.01 | 0.01 | No change |
| Malathion | 0.0076 Weck | 0.01 Weck | EPA 625.1M | 0.1 (EPA Rec. - freshwater) | 1 | 0.1 | Lowest WQ Goal |
| Prometryn | 0.036 Weck | 0.1 Weck | EPA 525.2 | - | 2 | 2 | No change |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|--------------------|--|---|---|---|----------------------|--|--------------------------|
| Simazine | 0.015 Weck | 0.1 Weck | EPA 525.2 | 4 (Basin Plan-MCL) | 2 | 2 | No change |
| HERBICIDES | µg/L | µg/L | - | µg/L | µg/L | µg/L | - |
| 2,4-D | 0.14 Weck | 0.4 Weck | EPA 515.4 | 70 (Basin Plan-MCL) | 10 | 10 | No change |
| Glyphosate | 1.8 Weck | 5 Weck | EPA 547 | 700 (Basin Plan-MCL) | 5 | 5 | No change |
| Dacthal (DCPA) | 0.053 Weck | 0.1 Weck | EPA 515.4 | 0.008 (EPA Rec. – HH) | Not required | 0.1 | Lowest lab RL |
| 2,4,5-TP (SILVEX) | 0.046 Weck | 0.2 Weck | EPA 515.4 | 50 (Basin Plan-MCL) | 0.5 | 0.5 | No change |
| PYRETHROIDS | µg/L | µg/L | - | µg/L | µg/L | µg/L | |
| Bifenthrin | 0.00079 Weck | 0.002 Weck | EPA 8270M | - | Not required | 0.002 | Lowest lab RL |
| Cyfluthrin | 0.00083 Weck | 0.002 Weck | EPA 8270M | - | Not required | 0.002 | Lowest lab RL |
| Cypermethrin | 0.00066 Weck | 0.002 Weck | EPA 8270M | 0.002 (EPA Rec. - freshwater) | Not required | 0.002 | Lowest WQ Goal |
| Esfenvalerate | 0.00098 Weck | 0.002 Weck | EPA 8270M | - | Not required | 0.002 | Lowest lab RL |
| Lambda-cyhalothrin | 0.0012 Weck | 0.002 Weck | EPA 8270M | - | Not required | 0.002 | Lowest lab RL |

| CONSTITUENTS | Lowest Lab MDL in ELAP Certified Los Angeles County Labs | Lowest Lab RL in ELAP Certified Los Angeles County Labs | Lab Method for ELAP Certified Los Angeles County Labs | Lowest Water Quality Goal ³²⁹ | Previous Permits MLs | Regional MS4 Permit Recommended RLs | Basis for Recommended RL |
|--|--|---|---|---|----------------------|--|--------------------------|
| Permethrin | 0.005 Weck | 0.005 Weck | EPA 8270M | 0.001 (EPA Rec.- saltwater) | Not required | 0.005 | Lowest lab RL |
| FIPRINOL AND ITS DEGRADATES | µg/L | µg/L | - | µg/L | µg/L | µg/L | - |
| Fipronil | 0.002 Weck | 0.002 Weck | EPA 8270M | - | Not required | 0.002 | Lowest lab RL |
| Fiprinol Sulfide | 0.002 Weck | 0.002 Weck | EPA 8270M | - | Not required | 0.002 | Lowest lab RL |
| Fiprinol Sulfone | 0.002 Weck | 0.002 Weck | EPA 8270M | - | Not required | 0.002 | Lowest lab RL |
| Fiprinol Desulfinyl | 0.002 Weck | 0.002 Weck | EPA 8270M | - | Not required | 0.002 | Lowest lab RL |
| NEONICOTINOIDS | µg/L | µg/L | - | µg/L | µg/L | µg/L | - |
| Imidacloprid | 0.092 Weck | 0.5 Weck | EPA 538 | - | Not required | 0.5 | Lowest lab RL |

F. Stormwater Outfall-Based Monitoring Requirements

The primary purpose of outfall monitoring is to characterize the stormwater MS4 discharges from each Permittee's drainages within each subwatershed. Outfall-based monitoring is also conducted to assess compliance with WQBELs and receiving water limitations. Factors that may impact stormwater runoff volume include percent effective impervious cover (connected to the storm drain system), vegetation type, soil compaction and soil permeability.

Stormwater outfall monitoring is linked to receiving water monitoring (see Part XII.E of this Fact Sheet). Monitoring must be conducted at least three times per year during qualifying rain events, including the first rain event of the year and conducted concurrently (within 6 hours) before the commencement of the downstream receiving water monitoring. The MRP retained similar wet and dry weather definitions from the previous 2012 Los Angeles County and the 2014 City of Long Beach MS4 Permits. Note that the previous Ventura County Permit had a different wet and dry weather definition in comparison to the 2012 Los Angeles County and 2014 City of Long Beach MS4 Permits. However, to accommodate the differences between the previous permits, the Regional MS4 Permit MRP includes a provision allowing Permittees, if they choose, to propose their own weather condition definition for Executive Officer approval. This flexibility is necessary to accommodate the geographic and climate differences between Los Angeles County and Ventura County.

Monitoring is conducted for pollutants of concern including all pollutants with assigned WQBELs. Parameters to be monitored during wet weather include: flow, pollutants subject to a TMDL applicable to the receiving water, and pollutants listed on the Clean Water Act Section 303(d) list for the receiving water or a downstream receiving water. Flow is necessary to calculate pollutant loading.

For water bodies listed on the Clean Water Act section 303(d) list as being impaired due to sedimentation, siltation or turbidity, suspended sediment concentration (SSC) must be analyzed. Total suspended solids (TSS) and hardness must be analyzed when metals are monitored. TSS is the parameter most often required in NPDES permits to measure suspended solids.

For freshwater, the following field measurements are also required: pH, dissolved oxygen, temperature, and specific conductivity. Temperature and pH are parameters impacting the effect of pollutants in freshwater (i.e., ammonia toxicity is dependent on pH and temperature). Temperature and dissolved oxygen are interdependent and fundamental to supporting aquatic life beneficial uses. Specific conductivity is a parameter important to assessing potential threats to MUN and freshwater aquatic life beneficial uses.

Note that the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permits included requirements to monitor stormwater discharges for exceedances of municipal action levels (MALs). These requirements are discontinued in the Regional MS4 Permit. At this time, the Los Angeles Water Board has concluded that TMDL requirements and a robust monitoring program provide sufficient criteria to assess the impact of stormwater discharges and therefore, MALs are unnecessary.

Aquatic toxicity monitoring is required in the receiving water once per year during wet weather conditions. Aquatic toxicity is a direct measure of toxicity and integrates the effects of multiple synergistic effects of known and unidentified pollutants. When

samples are found to be toxic, a Toxicity Identification Evaluation (TIE) must be performed to identify the pollutants causing toxicity. If a toxicant or class of toxicants that is identified through a TIE conducted during wet weather at a receiving water monitoring location, then, Permittees must analyze for the toxicant(s) during the next scheduled sampling event in the discharge from the outfall(s) upstream of the receiving water location.

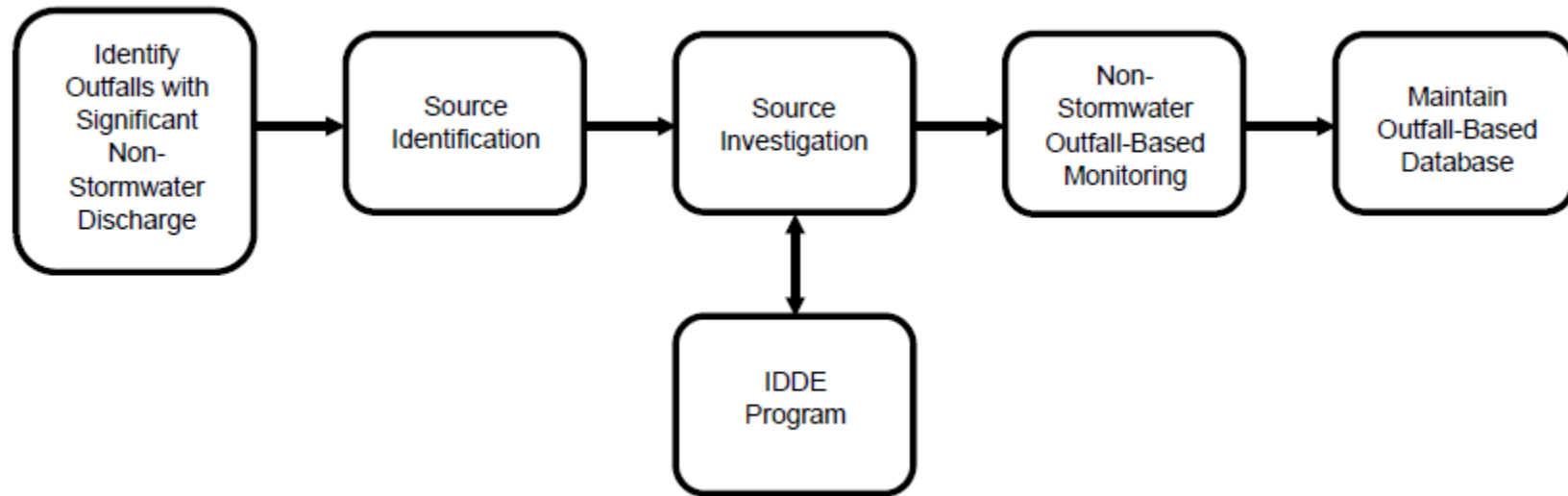
For many analytical procedures, 40 CFR Part 136 specifies that grab samples must be collected for pH, temperature, dissolved oxygen, and coliform bacteria. The MRP also allows the Permittees to collect specific conductivity and turbidity samples using grab sampling. Federal regulations specify that grab samples must be taken for the abovementioned parameters because they evaluate characteristics that may change during the time necessary for compositing. A grab sample is a single sample collected at a particular time and place that represents the composition of the stormwater only at that time and place. When the quality and flow of the stormwater being sampled is not likely to change over time, a grab sample is appropriate. A composite sample is a collection of individual samples obtained at regular intervals, usually based upon time or flow volume. A composite sample is desirable when the material being sampled varies significantly over time either as a result of flow or quality changes. Flow-proportional compositing is usually preferred when effluent flow volume varies appreciably over time.

Sampling requirements, including methods for collecting flow-weighted composite samples, are consistent with provisions set forth in 40 CFR section 122.21(g)(7), which establish specific requirements for collecting flow-weighted composite samples. Per these provisions, the aliquots for flow-weighted composite samples must be collected during a representative storm for the first 3 hours, or for the duration of the storm event if it is less than 3 hours long.

G. Non-Stormwater Outfall-Based Screening and Monitoring Requirements

The Non-Stormwater Outfall-Based Monitoring Program is a step-wise framework for identifying illicit discharges and connections and assessing whether Permittees are effectively prohibiting non-stormwater discharges to the MS4. Under previous MS4 Permits for the 2012 Los Angeles County and the 2014 City of Long Beach, Permittees developed a Non-Stormwater Outfall-Based Screening and Monitoring Program. The requirements in the Regional MS4 Permit allow Permittees to build upon past efforts to advance the program and focus monitoring on the most significant areas of non-stormwater quality concerns. Los Angeles County Permittees will continue to implement the existing program, making modifications to address new permit requirements. Ventura County Permittees are required to submit an IMP/CIMP and explain how the non-stormwater outfall-based screening and monitoring requirements in the MRP will be implemented. Figure F-1 below illustrates the general process for the Non-Stormwater Outfall-Based Screening and Monitoring Program. The previous permit for Ventura County addressed the need to eliminate illicit discharges through the Illicit Connection and Illicit Discharges program and the Dry Weather Monitoring Program. Several elements of these programs are similar to the Regional MS4 Permit requirements and in many cases Ventura County Permittees can integrate the new requirements into their existing efforts. The Regional MS4 Permit Non-Stormwater Screening and Monitoring Program requirements establish consistency among all Permittees.

Figure F-1. Non-Stormwater Outfall-Based Screening and Monitoring Program General Process



1. Objectives

The objectives listed in Part VII.A of the MRP are based on the federal requirements listed above, including but not limited to Clean Water Act section 402(p)(3)(B)(ii) and 40 CFR section 122.26(d)(2)(i)(F). The purpose of the Non-Stormwater Outfall-Based Screening and Monitoring Program is to identify and investigate where necessary non-stormwater discharges including illicit discharges, non-stormwater discharges conditionally exempt from the prohibition, and discharges that are issued a separate discharge permit. Program objectives are listed to provide Permittees with guide points as they design and implement their program. Many of the objectives from the previous 2012 Los Angeles County and the 2014 City of Long Beach MS4 Permits are retained but have been updated to build upon past efforts of Permittees. Although the previous permit for Ventura County did not list objectives for analogous programs (Dry-weather Monitoring Program and Illicit Discharge and Detection Program), objectives in Part VII.A of the MRP reflect elements of Ventura County Permittees' existing programs.

2. Screening and Monitoring Program Procedures and Requirements

Parts VII.B through E of the MRP implement federal requirements, including those in 40 CFR section 122.26(d)(2)(i)(F), which require inspection, surveillance, and monitoring to demonstrate compliance with permit conditions. The Non-Stormwater Outfall-Based Screening and Monitoring Program addresses the permit condition prohibiting the discharge of non-stormwater discharges through the MS4 to receiving waters based on Clean Water Act section 402(p)(3)(B)(ii). Requirements in Parts VII.B through E of the MRP are a series of systematic procedures for characterizing non-stormwater discharges and eliminating illicit discharges to ensure compliance with the effective prohibition. The Non-Stormwater Outfall-Based Screening and Monitoring Program is intended to maximize the use of the Permittee's resources by integrating the screening and monitoring process into existing or planned IMP/CIMP efforts of Los Angeles County Permittees including the City of Long Beach. It is also intended to rely on the illicit discharge source investigation and elimination requirements and MS4 mapping requirements for Los Angeles County Permittees including the City of Long Beach, and Ventura County Permittees. Finally, the Regional MS4 Permit builds upon dry-weather monitoring requirements in the previous Ventura County permit. Figure F-1 depicts the process of implementing Non-Stormwater Outfall-Based Screening and Monitoring Program elements.

To implement broader federal requirements for non-stormwater outfall-based screening and monitoring, the Regional MS4 Permit includes clear, specific, measurable requirements to achieve the objectives in Part VII.A of the MRP. U.S. EPA demonstrates examples of clear, specific, measurable requirements to control non-stormwater discharges in the *MS4 Permit Improvement Guide*.³³⁰ This guidance document contains examples of field screening, prioritizing source investigations, mapping (similar to inventory requirements in the Regional MS4 Permit), and monitoring. In addition, the *MS4 Program Evaluation Guidance Document*, describes important dry weather monitoring program components such as a database for tracking dry-weather outfall inspections and prioritized source

³³⁰ U.S. EPA. 2010. *MS4 Permit Improvement Guide*. Office of Water, Office of Wastewater Management, Water Permits Division. April. 2010. p. 24-34.

identification of dry-weather discharges.³³¹ The *Compendium of MS4 Permitting Approaches*³³² cites permit examples for inventory, prioritization for screening, and monitoring of non-stormwater discharges. Moreover, U.S. EPA issued MS4 permits to the Middle Rio Grande Area and Washington D.C. that require field screening for prioritized areas, comparable to the Regional Permit.³³³

As the monitored activity is dry weather MS4 discharges, the Regional MS4 Permit defines conditions of dry weather. The 0.1-inch requirement is consistent with U.S. EPA's determination of a "measurable" storm event, as indicated in 40 CFR section 122.26(d)(2)(iii)(2) and the NPDES Storm Water Sampling Guidance Document.³³⁴ MS4 permits commonly delineate wet and dry weather at 0.1 inch with 72 hours as a precedent dry period.³³⁵

3. Changes from the Previous Permits

Most of the requirements in Parts VII.B through E of the MRP are continued from previous 2012 Los Angeles County, 2014 City of Long Beach, and 2010 Ventura County MS4 permits. As described above in this Fact Sheet, the Los Angeles Water Board has determined that these requirements are necessary to comply with federal requirements. The previous 2010 Ventura County permit had a different framework than the Regional MS4 Permit requirements; therefore, some of the specific requirements in Parts VII.B through E of the MRP will require the Ventura County Permittees to perform new or different tasks. However, Ventura County Permittees as explained in subpart a below, have already performed activities under their previous permit requirements that will allow them to tailor their existing efforts to satisfy Regional MS4 Permit requirements. To synchronize programs among the three groups of Permittees, Parts VII.B through E of the MRP include separate schedules for Los Angeles County (including City of Long Beach) Permittees versus Ventura County Permittees, but the requirements are the same. Other changes from the three previous permits are intended to allow the program to progress beyond earlier screening efforts. The most notable differences are highlighted below.

a. Non-Stormwater Outfall-Based Screening and Monitoring Program

The previous 2010 Ventura County Permit addressed non-stormwater discharges through the IDDE program and through the dry-weather monitoring program. The IDDE program requirements required mapping and inventorying of outfalls and field screening for illicit connections to the storm drain system. Additionally, the previous 2010 Ventura County Permit's dry weather monitoring program required Permittees to select outfall sites for dry weather

³³¹ U.S. EPA. 2007. MS4 Program Evaluation Guidance. Office of Water, Office of Wastewater Management, Water Permits Division. January 2007. pp.34, 89.

³³² Compendium of MS4 Permitting Examples, Part 1: Six Minimum Control Measures. Office of Wastewater Management, Water Permits Division. November 2016. 810-U-16-001. Pp. 12-14.

³³³ NPDES Permit No. NMR04A000 issued to Middle Rio Grande Watershed, effective December 22, 2014. p. 40; NPDES permit (*IDS-027561*) issued to Ada County Highway District, Boise State University, City of Boise, City of Garden City. Drainage District #3, and the Idaho Transportation Department District #3. Effective February 1, 2013. pp. 27-29.

³³⁴ U.S. EPA. 1992. NPDES Storm Water Sampling Guidance Document. EPA-833-B-92-001. Office of Water. July 1992. P. 15.

³³⁵ For example, NPDES Permit No. CAS612008, issued to San Francisco Bay Region (Order No. R2-2015-0049, issued November 19, 2015, p. 125) and NPDES Permit No. DC0000221 issued to the Government of the District of Columbia, as modified November 9, 2012, p. 35).

monitoring based on certain criteria. Monitoring consisted of analytical testing, field measurements and observations at the selected outfall stations. The main difference between the Regional MS4 Permit and the previous Ventura County permit is that the Ventura County Permit focused on screening for illicit connections under the IDDE program, whereas the Regional MS4 Permit MRP, Part VII provides a system of requirements for all non-stormwater discharges. Depending on the nature of the illicit discharge information collected, Ventura County Permittees may have addressed the plan requirements in Part VII of the MRP. Therefore, the Regional MS4 Permit requires Ventura County Permittees to develop a Non-Stormwater Outfall-Based Screening and Monitoring Program in their IMP or CIMP that complies with requirements in Parts VII.B through E of the MRP. In this manner, Ventura County Permittees can build upon and advance their existing non-stormwater screening efforts to better control discharges of pollutants to the MS4.

For Los Angeles County Permittees, the non-stormwater program remains largely the same except that this Permit allows to further streamline the requirements.

b. Screening of Outfalls with Significant Non-Stormwater Discharge

Part VII.B of the MRP requires identification of significant non-stormwater MS4 discharges. Ventura County Permittees have already collected information under the IDDE program, which will enable them to distinguish significant non-stormwater discharges. This is a necessary step in prioritizing non-stormwater discharges for source identification.

The requirements in Part VII.B of the MRP are retained from the previous permits for Los Angeles County and the City of Long Beach. Part VII.B of the MRP establishes criteria for the Permittees to consider when delineating “significant” non-stormwater discharges and provides flexibility for other factors to be considered. Evidence of ongoing potential illegal dumping or illicit connections must be used along with other criteria based on field and/or laboratory measurements for defining a significant non-stormwater discharge. Where the Permittee uses other factors, they must provide a definition or a criterion for how a significant non-stormwater discharge will be determined. In particular, the thresholds for field measurements must be specified, (e.g., flow greater than 10 gallons per minute) and/or water quality data (e.g., bacteria counts exceeding a certain level) that will be used to determine whether the non-stormwater discharge is significant.

c. Source Investigation for Outfalls with Significant Non-Stormwater Discharge

Source investigation is ongoing among the Los Angeles County and City of Long Beach Permittees. This is an enhancement for Ventura County Permittees that is a necessary step in eliminating non-stormwater discharges and/or preventing the discharge of pollutants to the MS4. The step is necessary to focus efforts on non-stormwater dischargers with the greatest potential to affect water quality. Once prioritized, Permittees initiate source investigation efforts required under Part VII.C of the MRP.

The requirements in Part VII.C of the MRP are retained from the previous 2012 Los Angeles County and the 2014 City of Long Beach MS4 Permits. The

previous 2010 Permit for Ventura County included similar requirements in the IDDE program, with some differences in wording. Source investigation from Non-Stormwater Outfall-Based Monitoring Program is conducted simultaneously with IDDE procedures in Part VIII.I of the Order so that sources may be tracked from both an upstream and downstream direction.

Per Part VII.D.2 of the MRP, Permittees within Los Angeles County shall determine if re-screening is necessary for any of the previously screened outfalls with no significant non-stormwater discharge. Rather than requiring re-screening of all outfalls, the Regional MS4 Permit requires a review of dry weather receiving water monitoring data downstream of the outfalls and other relevant information to determine if re-screening is necessary for any of the previously screened outfalls that did not have significant non-stormwater discharge.

Part VII.D.1 of the MRP provides the schedule for Ventura County Permittees to screen their outfalls for significant non-stormwater discharges. This is shorter than what was provided in the previous 2012 Los Angeles County and 2014 City of Long Beach MS4 Permits where they had 3 years from the effective dates of the Orders respectively, to conduct source investigations for no less than 25% of the outfalls in the inventory and 5 years from the effective date of the aforementioned Orders to conduct source investigations for 100% of the outfalls in the inventory. However, the shorter interim schedule (i.e., 3 years for 50% of the outfalls) for Ventura County Permittees in comparison to Los Angeles County Permittees in the previous permits (i.e., 3 years for 25% of the outfalls) is reasonable considering the often isolated MS4 networks for each city in Ventura County and the significantly less number of outfalls in comparison to LA County Permittees.

d. Non-Stormwater Outfall-Based Monitoring

Part VII.E.2 of the MRP allows Los Angeles County Permittees 90 days after completing non-stormwater source investigation to begin monitoring the non-stormwater discharge. These 90 days is the same as previously allowed in the 2012 Los Angeles County and 2014 City of Long Beach MS4 Permits.

Non-stormwater monitoring for Los Angeles County and City of Long Beach Permittees is decreased from previous permits to allow the Permittees flexibility in directing program resources to where they are most effective. Previous requirements in the 2012 Los Angeles County and 2014 City of Long Beach MS4 permits required sampling at established frequencies unless granted alternative frequencies by the Executive Officer of the Los Angeles Water Board. The Regional MS4 Permit recognizes that in some instances, non-stormwater that has been fully characterized and investigated for illicit discharges remains static in quantity and quality, such that repeated sampling and analyses does not produce useful information. Nevertheless, illicit discharges may recur at any time. To provide monitoring relief while still being proactive in protecting water quality, the Regional MS4 Permit allows the Permittee to record field observations (e.g., visual, presence of odor, etc.), in lieu of analytical testing, for non-stormwater discharges that are: 1) to waters not subject to a TMDL, 2) have been fully characterized and investigated for illicit discharges, and 3) do not cause or contribute to exceedances of water quality standards. This approach is consistent with recommendations in the

EPA MS4 improvement Guide,³³⁶ which states that for dry weather flows, permit writers “may consider allowing permittees the flexibility to look for indicators of an illicit discharge before conducting water quality tests due to baseline flow (baseflow, groundwater flow, irrigation return flows) in certain areas. In these cases, permit writers could require that sensory indicators (i.e., odor, color, turbidity, and floatables) be evaluated.”

The previous 2010 permit for Ventura County required the Principal Permittee to select (based on certain criteria) and monitor five outfalls during dry weather at a frequency of once per year. The Regional MS4 Permit allows the Ventura County Permittees to assess their significant non-stormwater discharges and create a prioritization for conducting source identification.

Non-stormwater outfall-based monitoring requirements are also consistent with 40 CFR section 122.41(j)(1), which requires “samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity”. The Regional MS4 Permit requires grab samples be collected for non-stormwater outfall discharges. This is a change from the 2012 Los Angeles County and 2014 City of Long Beach MS4 Permits which required composite samples. Dry weather outfall flows are likely to be consistent in quality such that a grab sample would be representative of the discharge and would require less effort and/or equipment. The *EPA Permit Writer’s Manual* discusses the appropriateness of grab versus composite samples, stating “Grab samples are appropriate when the flow and characteristics of the wastestream being sampled are relatively constant.”³³⁷ In addition, the 2015 *EPA Multi-sector General Permit for Industrial Storm water Discharges Associated with Industrial Activity* requires grab samples for compliance monitoring, with the exception of some specific receiving waters.³³⁸

Previous permits for Los Angeles County and the City of Long Beach established Non-stormwater Action Levels (NALs) for non-stormwater to gauge potential impact to water quality and to identify the potential need for additional controls for non-stormwater discharges. The Regional MS4 Permit discontinues the use of action levels. During the previous permit term, the majority of Los Angeles County Permittees addressed non-stormwater outfall-based screening and monitoring through WMPs and EWMPs using means other than action levels. Based on practical knowledge gained through implementing the previous 2012 Los Angeles County and 2014 City of Long Beach MS4 permits, the Los Angeles Water Board believes that at this time, TMDL requirements and WQBELs provide sufficient criteria to assess the impact of non-stormwater discharges. This is also consistent with the Ventura Countywide Stormwater Quality Management Program’s³³⁹ reapplication

³³⁶ U.S. EPA. 2010. *MS4 Permit Improvement Guide*. Office of Water, Office of Wastewater Management, Water Permits Division. April. 2010. p. 32.

³³⁷ U.S. EPA. 2010. NPDES Permit Writer’s Manual. EPA-833-K-10-001. Office of Wastewater Management, Water Permits Division. September 2010. P. 8-7.

³³⁸ U.S. EPA. Multi-Sector General Permit for Industrial Storm water Discharges Associated with Industrial Activity. June 4, 2015.

³³⁹ The Ventura Countywide Stormwater Quality Management Program is collective term for Ventura County Permittees which include the Ventura County Watershed Protection District, the County of Ventura, and the cities of Camarillo, Fillmore, Moorpark, Ojai, Oxnard, Port Hueneme, Santa Paula, Simi Valley, Thousand Oaks, and Ventura.

package which states that it “does not support the inclusion of NALs within the next Ventura County MS4 Permit.”³⁴⁰

H. TMDL Monitoring

Like other monitoring and reporting requirements, TMDL-related monitoring is also necessary to implement federal law. The Clean Water Act and its implementing regulations require monitoring and reporting as a major component of *all* NPDES permits, not just MS4 permits. As a condition of receiving a NPDES permit, a permittee agrees to monitor its discharges to ensure compliance with the permit’s terms.³⁴¹ Here, this would include any WQBELs or receiving water limitations based on TMDLs.

Further, MS4 permits issued by U.S. EPA support the conclusion that TMDL-related monitoring is a federal requirement for MS4 permits. For example, the District of Columbia MS4 Permit states under Section 5, Monitoring and Assessment of Controls, that the monitoring must meet several objectives, including “any additional necessary monitoring for purposes of source identification and wasteload allocation tracking. This strategy must align with the Consolidated TMDL Implementation Plan....monitoring must be adequate to determine if relevant WLAs are being attained within specified timeframes in order to make modifications to relevant management programs, as necessary.”³⁴²

Also note that other local agencies also have TMDL monitoring requirements. The MS4 permit issued to Caltrans requires that Caltrans conduct effluent and receiving water monitoring and implement a “Comprehensive TMDL Monitoring Plan.”³⁴³ The Industrial General Storm Water Permit requires industrial facilities to collect samples of their discharge and analyze them for various parameters, including “[a]dditional applicable industrial parameters related to receiving waters with 303(d) listed impairments or approved TMDLs...”³⁴⁴ The NPDES permit for stormwater discharges from Sentinel Peak Resources (Inglewood Oil Field) includes effluent limitations based on TMDLs and corresponding effluent and receiving water monitoring requirements.³⁴⁵

³⁴⁰ Ventura Countywide Stormwater Quality Management Program. Report of Waste Discharge. January 2015.

³⁴¹ CWA § 402(a)(1) (“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.”)

³⁴² U.S. EPA, Permit for District of Columbia Municipal Separate Storm Sewer System, Modified Permit No. DC0000221 (Oct. 7, 2011, mod. Nov. 9, 2012), Part 5, pp. 32-38.

³⁴³ State Water Board, Order 2012-0011-DWQ (as amended by Orders WQ 2014-0006-EXEC, WQ 2014-0077-DWQ, and WQ 2015-0036-EXEC), NPDES Statewide Storm Water Permit, Waste Discharge Requirements for State of California, Department of Transportation, Finding 40, Part E.2.c, and Attachment IV, Section III.A.1.

³⁴⁴ State Water Board, Order No. 2014-0057-DWQ, NPDES General Permit for Storm Water Discharges Associated with Industrial Activities, Part XI.B.6.e, pp. 39-40.

³⁴⁵ Los Angeles Water Board, Order No. R4-2018-0020, NPDES Permit for Sentinel Peak Resources California, LLC Inglewood Oil Field, pp. E-6 to E-9, E-13 to E-15.

I. Outfall-Based Database

The requirements in the MRP with regards to maintaining an outfall-based database are similar to the previous 2012 Los Angeles County, the 2014 City of Long Beach and 2010 Ventura County Permits.

Per Part VIII.A of the MRP, the Permittee must continue to maintain a map or geographic database of storm drains, channels and outfalls to aid in the development of the outfall monitoring plan and to assist the Los Angeles Water Board in reviewing the logic and adequacy of the number and location of outfalls selected for monitoring. The map/database must include the storm drain network, receiving waters, other surface waters that may impact hydrology, including dams and dry weather diversions. In addition, the map must identify the location and identifying code for each major outfall within the Permittee's jurisdiction. The map must include overlays including jurisdictional boundaries, subwatershed boundaries and storm drain outfall catchment boundaries. The map must distinguish between storm drain catchment drainage areas and subwatershed drainage areas, as these may differ. In addition, the map must include overlays displaying land use, impervious area and effective impervious area (if available). To the extent known, outfalls that convey significant non-stormwater discharges per Part VII.B of the MRP, must also be identified on the map, and the map must be updated annually to include the total list of known outfalls conveying significant flow of non-stormwater discharge.

J. Aquatic Toxicity Monitoring Methods

Aquatic toxicity monitoring is required in receiving waters during both wet and dry weather conditions to determine whether designated beneficial uses are fully supported. Further, Attachment E requires additional monitoring at MS4 outfalls where aquatic toxicity is present above a certain effect level in downstream receiving waters to determine whether MS4 discharges are causing or contributing to the aquatic toxicity. In this situation, outfall monitoring must either entail monitoring for specific pollutants identified in a TIE in the downstream receiving water, or for aquatic toxicity itself, where the specific pollutants could not be identified through the TIE conducted on the downstream receiving water.

Based on the stated goals of the Clean Water Act, the U.S. EPA and individual states implement three approaches to monitoring water quality. These approaches include chemical-specific monitoring, toxicity testing, and bioassessments (USEPA 1991a).³⁴⁶ Each of the three approaches has distinct advantages and all three work together to ensure that the physical, chemical, and biological integrity of our waters are protected. Water quality objectives have been developed for only a limited universe of chemicals. For mixtures of chemicals with unknown interactions or for chemicals having no chemical-specific objectives, the sole use of chemical-specific objectives to safeguard aquatic resources would not ensure adequate protection. Aquatic life in southern California coastal watersheds are often exposed to nearly 100% effluent from wastewater treatment plants, urban runoff, or stormwater; therefore, toxicity testing and bioassessments are also critical components for monitoring programs as they offer a more direct and thorough confirmation of biological impacts. The primary advantage of using the toxicity testing approach is that this tool can be used to assess toxic effects (acute and chronic) of all the chemicals in aqueous samples of effluent, receiving water,

³⁴⁶ U.S. EPA. 1991a. Technical support document for water quality-based toxics control. Office of Water. Washington, DC. EPA/505/2-90-001.

or stormwater. This allows the cumulative effect of the aqueous mixture to be evaluated, rather than the toxic responses to individual chemicals.³⁴⁷

For freshwater, the MRP requires Permittee(s) to conduct chronic and acute toxicity tests on water samples, by methods specified in *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms* (EPA/821/R-02/013, 2002; Table IA, 40 CFR Part 136) and *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms* (EPA/821/R-02/012, 2002; Table IA, 40 CFR Part 136), or a more recent edition.

The Los Angeles Water Board has traditionally requested stormwater dischargers to use a list of three organisms – algae, crustacean, and fish - (specifically, *Selanastrum capricornutum*, *Ceriodaphnia dubia*, and *Pimephales promelas*) to screen for the most sensitive species to be used during toxicity testing. This list has been in use for many decades; however, *Selanastrum* was removed from the screening list due to its almost complete lack of sensitivity and two additional species were added to the MRP: the freshwater amphipod *Hyalella azteca* and the midge *Chironomus dilutes*. This is consistent with the approach being used at the San Francisco Regional Water Board where they have also noted that several emerging groups of pesticides, including fipronil, neonicotinoids, and pyrethroids, are increasingly dominating pesticide applications in urban and agricultural environments and the older list of test organisms do not respond to most of these pesticides. Now that urban uses of diazinon have been banned for a decade, highly toxic pyrethroids are more commonly found, and *Hyalella azteca* is the most sensitive species to that class of chemicals, while *Chironomus dilutes* is most sensitive to fipronil, which is being observed in urban waters in the State. *Pimephales* tended to be most sensitive to ammonia in the past and while ammonia may still at times occur for various reasons, detections at toxic concentrations of the chemical are reduced. *Ceriodaphnia* is most sensitive to organophosphate pesticides, such as diazinon, which is also less frequently detected at toxic concentrations due to its ban and subsequent reduced use.

During the first year of the permit term, to determine the most sensitive test species, the Permittee(s) shall conduct two wet weather and two dry weather toxicity tests with the species listed in the MRP for freshwater and non-ocean marine waters, as appropriate³⁴⁸. After this screening period, the results of the test species sensitivity screening shall be included in the IMP or CIMP and subsequent monitoring shall be conducted using the most sensitive test species. Sensitive test species determinations shall also consider the most sensitive test species used for proximal receiving water monitoring. The MRP requirements for the most sensitive test species screening are consistent with the previous 2010 Ventura County Permit's aquatic toxicity requirements. The previous 2012 Los Angeles County and the 2014 City of Long Beach MS4 Permits allowed the Permittees to use a sensitive test species that had already been determined, or if there was prior knowledge of potential toxicant(s), and a test species was sensitive to such toxicant(s). However, due to inconclusive results for toxicity testing, the MRP requires screening for the most sensitive species instead of allowing Permittees to choose species from existing studies.

For non-ocean marine waters, the MRP requires the Permittee(s) to conduct the chronic toxicity test in accordance with U.S. EPA's *Short-Term Methods for Estimating the*

³⁴⁷ U.S. EPA, EPA Regions 8, 9, and 10 Toxicity Training Tool, January 2010.

³⁴⁸ Southern California Coastal Water Research Project, Stormwater Monitoring Coalition: Toxicity Testing Laboratory Guidance Document- SCCWRP Technical Report 956, December 2016.

Chronic Toxicity of Effluent and Receiving Waters to West Coast Marine and Estuarine Organisms, First Edition, August 1995, (EPA/600/R-95/136), or *Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms*, Third Edition, October 2002, (EPA/821-R-02-014), or a more recent edition. In contrast to the previous MS4 permits, the Regional MS4 Permit no longer requires ocean water aquatic toxicity monitoring because, in light of the other ocean monitoring requirements, and evaluation of data collected under prior permits, aquatic toxicity monitoring was not providing significant added value and the Board understands that aquatic toxicity monitoring is costly. All monitoring included in the Regional MS4 Permit, however, will result in appropriate data needed to evaluate water quality impacts of the discharges and ensure that beneficial uses are protected. Aquatic toxicity monitoring remains in non-marine ocean waters and inland estuarine and surface waters, which gives the Board the information it needs to evaluate toxicity. (See *In the Matter of the Petitions of the City of Oceanside, Fallbrook Public Utilities Dist. and the Southern California Alliance of Publicly Owned Treatment Works*, State Water Board Order WQ 2021-0005 at pp. 12, 13.)

Furthermore, the toxicity component of the MRP includes toxicity identification procedures so that pollutants that are causing or contributing to acute or chronic effects in aquatic life exposed to these waters can be identified and others can be discounted. TIEs are needed to identify the culprit constituents to be used to prioritize management actions. Where toxicants are identified in a MS4 discharge, the MRP requires a Toxicity Reduction Plan (TRE).

TRE development and implementation is directly tied to the integrated monitoring programs and watershed management program, to ensure that management actions and follow-up monitoring are implemented when problems are identified. Permittees are encouraged to coordinate TREs with concurrent TMDLs where overlap exists. If a TMDL is being developed or implemented for an identified toxic pollutant, much of the work necessary to meet the objectives of a TRE may already be underway, and information and implementation measures should be shared.

Overall, the toxicity monitoring program will assess the impact of stormwater and non-stormwater discharges on the overall quality of aquatic fauna and flora and implement measures to ensure that those impacts are eliminated or reduced. As stated previously, chemical monitoring does not necessarily reveal the totality of impacts of stormwater on aquatic life and habitat-related beneficial uses of water bodies. Therefore, toxicity requirements are a necessary component of the MS4 monitoring program.

The Los Angeles Water Board provided clarification and recommendations to Permittees for the monitoring programs under the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit regarding aquatic toxicity monitoring, particularly pertaining to the requirement to conduct chronic and acute toxicity tests in dry and wet weather conditions and requirements for conducting a TIE and outfall monitoring. Further clarification was necessary regarding requirements for follow-up monitoring when aquatic toxicity is present in downstream receiving waters. A memo dated August 7, 2015 was sent to all Los Angeles County MS4 Permittees including the City of Long Beach to provide additional clarification and applies to all monitoring directives and IMPs and CIMPs (in Los Angeles County) developed pursuant to Part VI.B of the previous 2012 Los Angeles County MS4 Permit and Part VII.B of the previous 2014 City of Long Beach MS4 Permit. This guidance is provided in Attachment G of the Order and thus now applies to all Permittees including Ventura County.

K. Regional Studies

The regional studies are optional in this Permit, and are similar to the previous Los Angeles County, the City of Long Beach and Ventura County Permits. Permittees are encouraged to continue to participate in the two regional studies listed below.

1. Southern California Storm Water Monitoring Coalition Watershed Monitoring Program

- a.** The Southern California Storm Water Monitoring Coalition (SMC) Regional Watershed Monitoring Program was initiated in 2008. This program is conducted in collaboration with the Southern California Coastal Water Research Project (SCCWRP), State Water Board's Surface Water Ambient Monitoring Program (SWAMP), three Southern California Regional Water Quality Control Boards (Los Angeles, Santa Ana, and San Diego) and several county stormwater agencies (Los Angeles, Ventura, Orange, Riverside, San Bernardino and San Diego). SCCWRP acts as the facilitator to organize the program and completes data analysis and report preparation.
- b.** The SMC monitoring program seeks to coordinate and leverage existing monitoring efforts to produce regional estimates of the condition of streams and rivers, improve data comparability and quality assurance, and maximize data availability, while conserving monitoring expenditures. The primary goal of this program is to implement an ongoing, large-scale regional monitoring program for southern California's coastal streams and rivers.
- c.** A comprehensive program was designed by the SMC, in which each participating group assesses its local watersheds and then contributes their portion to the overall regional assessment. Types of data being collected include water quality, physical habitat and riparian condition, and biological communities, including benthic invertebrates and algae. Sampling occurs in 17 coastal southern California watersheds between Ventura to the Tijuana Rivers. Sites are allocated each year based on current study design.

2. Southern California Bight Project

The Southern California Bight Project (SCBP) is an ongoing marine monitoring collaboration that was started in 2008 between the Southern California Coastal Water Research Project (SCCWRP) and nearly 100 participating organizations that examines how human activities have affected the health of 1,539 square miles of Southern California's coastal waters. The objective is to investigate the condition of marine ecosystems across both time and space.

L. Special Studies

The special studies included in Part XI of the MRP are optional for all Permittees in Los Angeles and Ventura counties. It is encouraged that Permittees consider conducting these special studies. The results of these studies may support future Basin Plan amendments to revise TMDLs and/or water quality standards.

M. Reporting Requirement Objectives

Part XII of the MRP outlines objectives for the Order's reporting requirements. These objectives are consistent with the previous MS4 permits.

N. Standard Monitoring and Reporting Provisions

Part XIII of the MRP and Attachment D of the Order includes standard monitoring and reporting provisions. These provisions are consistent with the previous MS4 permits.

O. Reporting Requirements

All reporting requirements in Attachments D, E, H, and I, were carried over from the previous MS4 permits.

1. Program Reports

The Annual Report requirement was required in the previous 2012 Los Angeles County, 2014 City of Long Beach and 2010 Ventura County MS4 Permits, per federal regulations. The Reporting Forms provide summary information to the Los Angeles Water Board on each Permittee's implementation of the minimum control measures (MCMs); participation in one or more Watershed Management Programs; the impact of each Permittee's stormwater and non-stormwater discharges on the receiving water; each Permittee's compliance with receiving water limitations and water quality based effluent limitations; and the effectiveness of each Permittee(s) control measures in reducing discharges of pollutants from the MS4 to receiving waters.

In addition, the Reporting Forms allow the Los Angeles Water Board to assess whether the quality of MS4 discharges and the health of receiving waters is improving, staying the same, or declining as a result of watershed management program efforts, and/or TMDL implementation measures, or other control measures and whether changes in water quality can be attributed to pollutant controls imposed on new development, re-development, or retrofit projects. The Reporting Forms provide Permittees a forum to discuss the effectiveness of its past and ongoing control measure efforts and to convey its plans for future control measures as well as a way to present data and conclusions in a transparent manner so as to allow review and understanding by the general public. Overall, the Reporting Forms allow Permittees to focus reporting efforts on watershed condition, water quality assessment, and an evaluation of the effectiveness of control measures.

Permittees must use the Reporting Forms contained in Attachment H of the Order (i.e., Annual Report Form and Watershed Management Program Progress Report Form). As attachments to the Annual Report Form, Permittees are also required to report on compliance with Trash TMDLs and Trash Discharge Prohibitions using the Trash TMDL Reporting Form and/or Trash Discharge Prohibition Reporting Form contained in Attachment I of the Order or a revised form approved by the Los Angeles Water Board. This option is included so that Permittees are not constrained to the reporting structure of the forms in Attachment I of the Order. Regardless of the reporting format, Permittees are required to report on all the elements within Attachment H and I of the Order.

In the previous permits, Ventura County Permittees developed their own Annual Report form while Los Angeles County Permittees including the City of Long Beach initially used Attachment U-4 (Individual Annual Report Form) from the 2001 Los Angeles County MS4 Permit for reporting on permit implementation. For the 2015/2016 reporting year and onwards, the Los Angeles Water Board provided Los Angeles County Permittees including the City of Long Beach an Individual Form and a Watershed Form for annual reporting. Although the Watershed Form was to

be filled out for Permittees participating in a Watershed Management Program, the Individual Form also contained overlapping questions that pertained to Permittees participating in a Watershed Management Program. To eliminate overlaps and simplify reporting, the Annual Report Forms provided by the Los Angeles Water Board have been revised for the Regional MS4 Permit. These forms still contain all of the elements in the previous forms, but questions have been refined to match the requirements of the Order. Additionally, Permittees participating in a Watershed Management Program will now report on the majority of their Watershed Management Program activities in a separate Watershed Management Program Progress Report form (see below).

The Program Reports shall be submitted electronically by the deadlines specified in Part XIV of the MRP. This is per 40 CFR Part 127 that requires Permittees to electronically report information. According to this requirement, Permittees are required to submit their reports through the Storm Water Multiple Application and Report Tracking System (SMARTS), which is compliant with U.S. EPA's Cross-Media Electronic Reporting Rule (40 CFR Part 3). However, until SMARTS is able to accommodate and accept all Permittee submittals, Permittees are required to submit their Program Reports and semi-annual monitoring data to the Los Angeles Water Board electronically via CDs, DVDs, flash drives, email, etc.

2. Watershed Management Program Progress Report

The Watershed Management Program Progress Report Form, contained in Attachment H, serves as reporting requirements for Watershed Management Program implementation and shall be completed by each Watershed Management Program. The items in this report are directly based on Annual Report requirements included in the previous 2012 Los Angeles County and 2014 City of Long Beach MS4 Permits and are refinements of reporting items contained in the previous Watershed Form used by Los Angeles County Permittees including the City of Long Beach.

Additionally, Part XIV.A.2 of Attachment E has been modified to include a requirement that each Permittee participating in a Watershed Management Program provide the Watershed Management Program Progress Report to the public, including through direct outreach and on its website or a website specifically dedicated for the Watershed Management Program group. This change was made to ensure greater accountability and transparency. The U.S. EPA similarly requires Permittees to post their progress reports on their websites (e.g., Washington, D.C. MS4 NPDES Permit, NPDES Permit No. DC0000221).

3. Monitoring Report

Part XIV.B of the MRP requires Permittees to submit a Monitoring Report twice a year that includes monitoring results and certification. Moreover, Permittees are required to annually submit summary of sampling events, a summary of exceedances of receiving water limitations and WQBELs, QA/QC, and a summary of aquatic toxicity monitoring. The Monitoring Report includes monitoring-related reporting requirements contained in the previous 2012 Los Angeles County, 2014 City of Long Beach, and 2010 Ventura County MS4 Permits.

Permittees must submit monitoring results for sampling events per the schedule indicated in the MRP. This schedule is the same as the 2012 Los Angeles County

and 2014 City of Long Beach MS4 Permits. The Order's reporting schedules are a refinement of the due dates in these previous permits.

In the 2012 Los Angeles County and 2014 City of Long Beach MS4 Permits, receiving water and outfall monitoring results were required to be submitted to the Los Angeles Water Board semi-annually. However, these permits did not identify an actual date for submittal. During permit implementation, Los Angeles County Permittees were directed by the Los Angeles Water Board to submit monitoring results for sampling events for the period, January 1 to June 30, one hundred and sixty-eight (168) days later on December 15; and monitoring results for sampling events for the period, July 1 to December 31, one hundred and sixty-six (166) days later on June 15.

In the 2010 Ventura County MS4 Permit, Permittees were required to submit monitoring data electronically to the Los Angeles Water Board: (1) 90 days from the sample collection date for mass emissions, major outfalls, aquatic toxicity, and TMDL compliance monitoring; and (2) 30 days from the sample collection date for beach water quality monitoring.

The Monitoring Report in the MRP includes a summary of the sampling events that is consistent with the requirements in the previous 2012 Los Angeles County, 2014 City of Long Beach and 2010 Ventura County MS4 Permits. This information will allow the Permittees and the Los Angeles Water Board to evaluate the effects of differing storm events in terms of stormwater runoff volume and duration and in-stream effects.

4. Receiving Water Limitations Compliance Report

The Receiving Water Limitations Compliance Report was required in the previous Los Angeles County, City of Long Beach and Ventura County MS4 Permits within the Receiving Water Limitations Provisions and is being carried over to the Regional MS4 Permit. Permittees participating in a Watershed Management Program are exempt from the requirement to submit this report under the conditions specified in Part XIV.C.4 of the MRP.

P. TMDL Reporting

Part XV of the MRP includes TMDL reporting requirements in the Basin Plan similar to Part XIX in the MRP of the 2012 Los Angeles County and 2014 City of Long Beach Permits. Additionally, it includes clarifying provisions to address unique situations where a Permittee has no MS4 infrastructure or MS4 discharge to waterbodies addressed in a TMDL.

XIII. CALIFORNIA WATER CODE SECTION 13241

California Water Code section 13241 requires the Los Angeles Water Board to consider certain factors when establishing water quality objectives, including:

- (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.

The Los Angeles Water Board is not establishing any water quality objectives in the Order. However, California Water Code section 13263 requires the Board to take into consideration the provisions of section 13241 in prescribing waste discharge requirements, when such requirements are more stringent than what federal law requires.

In *City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613, the California Supreme Court considered whether a regional water board must consider the provisions of section 13241 when issuing waste discharge requirements that serve as a NPDES permit by taking into account the costs a permittee will incur in complying with the permit requirements. The Court concluded that whether it is necessary to consider such cost information “depends on whether those restrictions meet or exceed the requirements of the federal Clean Water Act.” (*Id.* at p. 627.) The Court ruled that regional water boards may not consider the factors in section 13241, including economics, to justify imposing pollutant restriction that are less stringent than the applicable federal law requires. (*Id.* at pp. 618, 626-627 [“[Water Code s]ection 13377 specifies that [] 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...Because section 13263 cannot authorize what federal law forbids, it cannot authorize a regional board, when issuing a [] discharge permit, to use compliance costs to justify pollutant restrictions that do not comply with federal clean water standards”].) However, when the pollutant restrictions in an NPDES permit are more stringent than federal law requires, California Water Code section 13263 requires that the Water Boards consider the factors described in section 13241 as they apply to those specific restrictions.

The Los Angeles Water Board finds that each of the requirements in the Order are not more stringent than what federal law requires for the control of MS4 discharges of pollutants in the Los Angeles Region. The Board makes additional findings with respect to specific program areas throughout the Fact Sheet. Clean Water Act section 402(p)(3)(B) requires MS4 permits to include requirements to effectively prohibit non-stormwater discharges through the MS4 to receiving waters, as well as “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.” The permitting agency, be it the Los Angeles Water Board or U.S. EPA, must therefore include provisions when it finds it is appropriate to do so and to exercise its discretion to determine what permit conditions are necessary to control pollutants in a specific geographic area.

MS4 discharges in the Los Angeles Region are a continuing and significant source of pollutants to receiving waters, many of them impaired. As such, the Board finds that inclusion of all of the requirements in the Order are necessary and appropriate to control MS4 discharges in the Los Angeles Region including, but not limited to, requirements for non-stormwater discharges, technology and water quality-based effluent limitations, TMDLs, receiving water limitations, stormwater management program minimum control measures, and monitoring and reporting to ensure that the requirements of the Order are being met. See Parts IV, V, VI, VII, IX, and XII, in particular. To the extent the requirements in the Order may be more specific or detailed than those enumerated in federal regulations under 40 CFR § 122.26 or in U.S. EPA guidance, the requirements have been designed to be consistent with and within the federal statutory mandates described in Clean Water Act section

402(p)(3)(B) and the related federal regulations and guidance. Consistent with federal law, all the requirements in the Order could have been included in a permit adopted by U.S. EPA in the absence of California's delegated authority to issue NPDES permits. (See *Defs. of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, 1166.) Each of the requirements in the Order, especially when implemented together, constitute the critical means towards achieving the requirements and goals of the Clean Water Act. Therefore, since the Board determines that each of the requirements in the Order are not more stringent than what federal law requires, there is no legal requirement for the Board to consider the factors of California Water Code section 13241. The State Water Board recently confirmed this conclusion with respect to the 2012 Los Angeles County MS4 Order. (*In the Matter of Review of Approval of Watershed Management Programs and an Enhanced Watershed Management Program Submitted Pursuant to Los Angeles Regional Water Quality Control Board Order R4-2012-0175*, Order WQ 2020-0038, at p. 30, stating “[t]his requirement [to conduct a 13241 analysis], however, does not apply when the waste discharge requirements imposed by the regional board are not more stringent than required by federal law, as is the case here. (emphasis added) (footnotes omitted).”³⁴⁹ The Regional MS4 Permit does not contain any requirements that would result in a different conclusion here.

Further, the issue of whether numeric WQBELs are considered more stringent than what federal law requires, prompting a required consideration of the section 13241 factors, was the subject of recent litigation between the Board and some permittees, which was previously discussed in Part II.F. The Los Angeles Water Board disagrees that the inclusion of numeric WQBELs in the Order is more stringent than what federal law requires, as explained in Part V.B. This is supported by U.S. EPA in its guidance on incorporating TMDL WLAs for stormwater in NPDES permits, which explains that the permit's administrative record needs to demonstrate that WQBELs will achieve the WLAs, whether the WQBEL is expressed numerically or as a BMP.³⁵⁰

Notwithstanding the above, the Los Angeles Water Board has nevertheless considered the factors set forth in California Water Code section 13241 in issuing the Order. The Board's consideration of each of the factors is provided below. The Board has also considered all the evidence that has been presented to the Board regarding the section 13241 factors in issuing the Order. This includes specific costs of compliance information presented to the Board by Permittees and stakeholders, as well as specific cost information developed by the Board itself and that evidence is contained in the Administrative Record.

It is important to note that neither California Water Code section 13241 or section 13263 specifies the type or level of consideration required. Neither do these sections dictate what, if anything, a regional water board must do upon consideration of the factors. Several courts have interpreted the type of consideration required by California Water Code section 13241, primarily in the context of disputes over the “economic considerations” factor. In *City of Arcadia et al. v. State Water Resources Control Board and Los Angeles Regional Water*

³⁴⁹ In Order WQ 2020-0038, the State Water Board also found that the Los Angeles Water Board's consideration of costs of compliance for the 2012 Los Angeles MS4 Permit went “well beyond what is required of them by law to assess the costs associated with their permits and assist municipalities in creating a manageable pathway to address water quality concerns.” (Order WQ 2020-0038 at p. 30.)

³⁵⁰ U.S. EPA, Memorandum, “Revisions to the November 22, 2002 Memorandum ‘Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs,’” (Nov. 26, 2014), p. 6. See also, comment letter from U.S. EPA Region IX on the draft Regional MS4 Permit, dated April 28, 2021, in which U.S. EPA states, “[n]either the Clean Water Act nor the 2014 TMDL Memorandum suggest that expressing WLAs as NELs is any more or less stringent than BMPs.”

Quality Control Board (2006) 135 Cal.App.4th 1392 (“City of Arcadia I”), which involves a challenge to a trash TMDL, the Court of Appeal held that section 13241 does not specify a particular manner of compliance and thus the matter is within a regional water board’s discretion. (*Id.* at p. 1415.) Further, the court found that section 13241 does not define “economic considerations” and there is “no authority for the proposition that a consideration of economic factors under Water Code section 13241 must include an analysis of every conceivable compliance method or combinations thereof or the fiscal impacts on permittees.” (*Id.* at pp. 1415, 1417; State Water Board Order WQ 2020-0038 at p. 31.) In *City of Arcadia et al v. State Water Resources Control Board and Los Angeles Regional Water Quality Control Board* (2011) 191 Cal.App.4th 156 (“City of Arcadia II”), which involved a challenge to a triennial review of water quality standards,³⁵¹ the Court of Appeal held that section 13241 “does not specify how a water board must go about considering the specified factors. Nor does it require the board to make specific findings on the factors.” (*Id.* at p. 177; see also *California Association of Sanitation Agencies and City of Vacaville v. State Water Resources Control Board and Central Valley Regional Water Quality Control Board* (2008) 208 Cal.App.4th 1438, 1464-1465 [in a challenge to certain water quality objectives, the Court of Appeal found that there was no support for the municipalities’ contention that each and every component part of the Water Quality Objectives must be tied to an economic analysis].) In *City of Duarte v. State Water Resources Control Board* (2021) 60 Cal.App.5th 258, 272 (“City of Duarte”), relying on prior case law, the Court of Appeal again affirmed that the “manner in which the Water Control Boards consider and comply with Water Code section 13241 is within their discretion.” It also held that “...the Water Control Boards are charged with taking into account economic considerations, not merely costs of compliance with a permit ... economic considerations also include, among other things, the costs of not addressing the problems of contaminated water.” (*Id.* at p. 276.) Lastly, consideration of section 13241 does not require a “cost-benefit analysis.” (See State Water Board Order WQ 2020-0038 at p. 31.) In the 2001 Los Angeles County MS4 Permit litigation, the trial court held: “[w]here these statutes required ‘consideration’ of economics, the requirement is just that: a consideration. Water Code section 13241 does not require a ‘cost-benefit analysis,’ as Petitioners suggest. Economics is merely a factor to be considered.” (*In re Los Angeles County Municipal Storm Water Permit Litigation* (Super. Ct. Los Angeles County, 2005, No. BS 080548, Statement of Decision from Phase II Trial).) Further, in *City of Duarte*, the Court of Appeal held that the Los Angeles Water Board complied with Water Code section 13241 “as a matter of law” when adopting the 2012 Los Angeles County MS4 permit notwithstanding the absence of a cost-benefit analysis. (*City of Duarte*, supra, 60 Cal.App.5th at pp. 274-275.) The above case law demonstrates that the Los Angeles Water Board has broad discretion in how it considers the section 13241 factors.

Having considered the factors in California Water Code section 13241, the Los Angeles Water Board finds that the requirements in the Order are necessary to ensure the reasonable protection of beneficial uses of waterbodies in the Los Angeles Region and the prevention of nuisance. None of the factors of section 13241, including costs of compliance, is sufficient to justify failing to protect those beneficial uses. Nor is it sufficient to justify omitting any requirement in the Order, as the Board finds that doing so would unreasonably affect the designated beneficial uses of the region’s waters. Additionally, it would be wholly inconsistent with federal requirements to not include the requirements in the Order as the Board has deemed them necessary for the control of MS4 discharges in the Los Angeles Region. Where appropriate, the Board has provided Permittees with additional time to implement control measures to achieve final WQBELs and/or receiving water limitations. In addition, the Board

³⁵¹ 33 U.S.C. §1313(c)(1).

has provided significant flexibility for Permittees to choose how to implement the requirements of the Order, including by working with other Permittees to implement cost-effective control measures. The Order allows Permittees the flexibility to address critical water quality priorities, namely discharges to waters subject to TMDLs, but aims to do so in a focused and cost-effective manner while maintaining the level of water quality protection mandated by the Clean Water Act.

A. Past, Present, and Probable Future Beneficial Uses of Water

Chapter 2 of the Basin Plan identifies designated beneficial uses for surface water bodies in the Los Angeles Region, which are the receiving waters for MS4 discharges. The Basin Plan identifies whether the beneficial use is existing (i.e., attained on or after November 28, 1975 per 40 CFR section 131.3(e)) or a potential beneficial use. Beneficial uses are designated as a potential beneficial use for several reasons, including implementation of the State Water Board's policy entitled "Sources of Drinking Water Policy" (State Water Board Resolution No. 88-63); plans to put the water to such future use; potential to put the water to such future use; designation of a use by the Los Angeles Water Board as a regional water quality goal; or public desire to put the water to such future use.

The beneficial uses identified in the Basin Plan for the Los Angeles Region include water contact and non-contact recreation (REC-1 and REC-2), commercial and sport fishing (e.g., COMM), various types of aquatic life and wildlife habitats (e.g., WARM, COLD, WILD), groundwater recharge (GWR), drinking water supply (MUN), agricultural water supply (AGR), various types of industrial water supply (IND, PROC, POW), and navigation (NAV).³⁵² The Ocean Plan also identifies designated beneficial uses for ocean waters of the State that must be protected, including industrial water supply, water contact and non-contact recreation, including aesthetic enjoyment, navigation, commercial and sport fishing, mariculture, preservation and enhancement of designated Areas of Special Biological Significance (ASBS), rare and endangered species, marine habitat, fish migration, fish spawning and shellfish harvesting. The Los Angeles Region has several ASBS, one of which is within the area covered by the Regional MS4 Permit. This ASBS extends from Latigo Point in Los Angeles County to Mugu Lagoon in Ventura County.³⁵³

Beneficial uses of inland surface waters in the region generally include water contact recreation (REC-1) and WARM, COLD and/or COMM, reflecting the "swimmable/fishable" goal of section 101(a)(2) of the federal Clean Water Act. In addition, inland waters are usually designated as IND, PROC, REC-2, and WILD, and are sometimes designated as waters "that support habitats necessary, at least in part for the survival and successful maintenance of plant or animal species established under state or federal law as rare, threatened, or endangered" (RARE).³⁵⁴ Furthermore, many regional streams are primary sources of replenishment for major groundwater basins that supply water for drinking and other uses, and as such must be protected as waters used for recharge of groundwater (GWR). Beneficial uses of coastal waters in the Los Angeles Region, including bays, estuaries, lagoons, harbors, beaches, and the Pacific Ocean, include habitat for marine life and recreation, boating, shipping, and commercial and sport fishing. Beneficial uses of wetlands include many of the same uses designated for the rivers, lakes, and coastal water to which they are connected.

³⁵² Definitions of beneficial uses are contained in Chapter 2 of the Basin Plan.

³⁵³ Basin Plan, pp. 5-4 to 5-7.

³⁵⁴ Ibid.

In the 1990s, the Los Angeles Water Board contracted with California State University to survey and research beneficial uses of all waterbodies throughout the region and relied on these studies in the 1994 update to the Basin Plan. In 2014, the Los Angeles Water Board re-evaluated the current recreational beneficial use designations of the engineered channels in the Los Angeles River Watershed and resolved to retain the current recreational beneficial use designations (Resolution No. R14-011). Beneficial uses of the region's waterbodies are also described by others in documents including, but not limited to, the Los Angeles River Revitalization Master Plan, Lower LA River Revitalization Plan, Los Angeles River Master Plan, the Ballona Creek Trail and Bikeway Environmental and Recreational Enhancement Study, and the Matilija Dam Ecosystem Feasibility Study Final Report.

Beneficial uses of waters impacted by MS4 discharges covered by the Order are also discussed in Part II.A "Description of Receiving Waters and Watershed Management Areas" and Part II.B "Geographic Coverage and Watershed Management Areas" of this Fact Sheet.

As discussed in Part II.C and Part II.D, MS4 discharges of stormwater and non-stormwater convey myriad pollutants to surface waters in every watershed of the region, including bacteria, trash, metals, organic compounds (including various pesticides), and nutrients, among others. These pollutants have damaging effects on both human health and aquatic and riparian ecosystems. Water quality assessments conducted by the Los Angeles Water Board have identified impairment of beneficial uses of water bodies in the Los Angeles Region caused or contributed by these pollutants in MS4 discharges. As a result of these impairments, there are beach postings, fish consumption advisories, ecosystem and recreational impacts from trash and debris, and toxic conditions for aquatic life, among others. Forty-five TMDLs established by the Los Angeles Water Board and U.S. EPA identify MS4 discharges as one of the pollutant sources causing or contributing to impairments of beneficial uses. The requirements of the Order are necessary to protect and restore the past, present, and probable future beneficial uses of surface waters in the region.

B. Environmental Characteristics of the Hydrographic Unit Under Consideration, Including the Quality of Water Available Thereto

Environmental characteristics of each of the Watershed Management Areas (WMAs) covered by the Order, including the quality of water, is discussed in Part II.A and Part II.B of this Fact Sheet. Additional information can be found in the Los Angeles Region's *Watershed Management Initiative Chapter* and the State's Clean Water Act Section 303(d) List of impaired waters.

Watershed Management Initiative Chapter:

http://www.waterboards.ca.gov/losangeles/water_issues/programs/regional_program/watershed/index.shtml

Clean Water Act Section 303(d) List of impaired waters:

https://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2014_2016.shtml

The quality of water in receiving waters as impacted by MS4 discharges has been routinely monitored by Permittees through the Monitoring and Reporting Programs under all three previous permits (Order No. R4-2010-0108, Order No. R4-2012-0175, and Order No. R4-2014-0024). An analysis of the monitoring data collected under the

three previous permits is provided in Part II.E of this Fact Sheet and in the MS4 Monitoring Data Review Report (July 2020 [Section 3]; November 2020 [Sections 8-11]) as well as in a series of three presentations to the Board at regularly scheduled Board meetings on May 18, 2018, July 12, 2018, and September 13, 2018.

C. Water Quality Conditions that Could Reasonably be Achieved Through the Coordinated Control of All Factors Which Affect Water Quality in the Area

Subsection (c) of section 13241 provides for the consideration of “[w]ater quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.” As with the other factors in 13241, there is no formal guidance or interpretation on how this factor is to be specifically considered, especially in the context of issuing a permit for a particular type of discharge under Water Code section 13263. In the context of establishing water quality objectives, it is necessary to consider all factors that affect water quality, including an analysis of all sources of the applicable pollutant. However, this factor does not lend itself to being reconsidered later when issuing waste discharge requirements as water quality objectives have already been established and the focus during the permitting stage is regulating a particular type of discharge or a discharge from a specific source, and not all possible sources of pollutants to a receiving water. The water quality objectives implemented by the Order have already been established in the Basin Plan and other water quality control plans through a separate regulatory process, and those water quality objectives were deemed reasonable and achievable when they were promulgated in order to protect beneficial uses.

Some permittees have previously interpreted this factor as requiring the Los Angeles Water Board to determine that water quality conditions or specific permit requirements are “reasonably achievable” and that such a determination includes a consideration of economics or costs of compliance as part of the “reasonably be achieved” language in section 13241(c). No support has been provided to the Board for this interpretation. It is important to note for this analysis that this factor in section 13241(c) does not include a consideration of economics or costs of compliance. The Board interprets this factor as requiring a consideration of the water quality conditions that could reasonably be achieved by the Order from a technical or scientific standpoint only. A consideration of economics, including the costs of compliance, in this factor would be completely superfluous to the wholly separate consideration in section 13241(d) – “economic considerations” – which is discussed in Part XIII.D, below.

When it comes to the permitting stage, the Los Angeles Water Board is required to implement any relevant water quality control plans, including water quality objectives, in its permits. (Water Code § 13263(a).) In so doing, the Board “shall” (among other things) “take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose,” “other waste discharges,” (*id.*), “together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses.” (Water Code § 13377.) The Board has previously established numerous TMDLs as part of its Basin Plan, including state programs of implementation and schedules for achievement of water quality objectives. In addition, USEPA has established several TMDLs for waters in the Los Angeles Region. USEPA established these TMDLs for the protection of beneficial uses. In addition, for several USEPA-established TMDLs, the Los Angeles Water Board has established state programs of implementation and schedules as part of its Basin Plan. The Los Angeles Water Board must therefore also include WQBELs in the permit to

implement the TMDLs and the WLAs established therein to achieve water quality objectives.

Through the prior establishment of the water quality objectives and TMDLs, the Board has found that such water quality conditions can reasonably be achieved, in many cases over time in accordance with implementation schedules, through the coordinated control of all factors which affect water quality in the area. To be sure, implementation of the TMDLs and associated WLAs are expected to reasonably achieve the water quality objectives in the Basin Plan and other water quality control plans if they are applied not only to MS4 discharges, but also to other discharges contributing to water quality impairment, such as industrial discharges and discharges from POTWs (see for example, the Los Angeles River Metals TMDL, which assigns a large portion of the responsibility for pollutant reductions to POTWs, and the Calleguas Creek Organochlorine Pesticides and PCBs TMDL, which assigns a large portion to agricultural dischargers). That said, permitting and regulation of MS4 discharges are a key component of achieving the water quality objectives in the Basin Plan and other water quality control plans. As noted in various places throughout this Fact Sheet, one of the key factors necessary to achieve the water quality objectives in the Los Angeles Region is proper control of MS4 discharges. Indeed, “urban runoff is causing and contributing to impacts on receiving waters throughout the state and impairing their beneficial uses.” (State Water Board Order WQ 2001-15, p. 7; State Water Board Order WQ 2015-0175, p. 15.) Accordingly, and as explained in further detail below, the Los Angeles Water Board finds that the conditions contained in this permit, including numeric WQBELs, are key to ensuring reasonable achievement of water quality objectives in the Los Angeles Region.

Coordinated Control of all Factors Affecting Water Quality

The Los Angeles Water Board and State Water Board regulate water quality in the Los Angeles Region through various permitting actions. The different types of surface water discharges that the Water Boards regulate include point sources such as POTWs, industrial facilities, dewatering activities, groundwater cleanup activities, and MS4 discharges of stormwater and non-stormwater; and nonpoint sources such as agricultural discharges and littering. These discharges are regulated through NPDES permits, waste discharge requirements, waivers of waste discharge requirements, and memorandums of understanding in accordance with State and federal law, regulation, and policy. These various permits and other regulatory mechanisms contain provisions and requirements to achieve water quality objectives and TMDLs, ranging from compliance with pollution prevention plans to compliance with effluent limitations. The regulatory mechanisms are issued as part of a watershed management approach, often according to a TMDL program of implementation, to ensure coordinated implementation by all sources at the watershed scale to attain water quality objectives. TMDLs in particular consider all the likely means of compliance, including a mix of treatment strategies and control measures to be implemented by all sources, which are reflected in the monitoring requirements, implementation schedules, and direction for incorporation of pollutant wasteload and load allocations into permits.

With respect to stormwater specifically, the Los Angeles Water Board and State Water Board regulate many types of stormwater discharges, including those of municipalities,

universities and other non-traditional Phase II discharges³⁵⁵, industrial sites³⁵⁶, construction sites³⁵⁷, and state agencies like Caltrans.³⁵⁸ The Phase II MS4 Permit effectively prohibits non-stormwater discharges and contains effluent and receiving water limitations. The Phase II MS4 Permit specifies the actions necessary to reduce the discharge of pollutants in stormwater to the MEP and comply with TMDLs, including participation in the watershed management programs of Phase I MS4 permittees³⁵⁹ or alternative plan to demonstrate reasonable assurance of compliance with WLAs. The Industrial General Permit contains non-stormwater prohibitions, effluent limitations expressed as numeric action levels and, TMDL requirements, including numeric effluent limitations, and receiving water limitations.³⁶⁰ The Construction General Permit contains non-stormwater prohibitions, effluent limitations expressed as numeric action levels, TMDL requirements, and receiving water limitations.³⁶¹ The Caltrans MS4 Permit effectively prohibits non-stormwater discharges and contains effluent and receiving water limitations, and categorical pollutant requirements to attain TMDLs within 20 years.³⁶²

The Permittees subject to the Order are not solely responsible for ensuring that water quality objectives in the receiving waters are met; rather, achieving and maintaining water quality objectives is a coordinated effort and all regulated dischargers must contribute. That said, as previously noted in Part II.E of this Fact Sheet, MS4 discharges are a significant source of pollutants to receiving waters and their regulation plays an important role in the achievement of water quality objectives. To not regulate discharges from MS4s -- from the Permittees subject to the Order in particular -- would place an undue burden on other types of discharges, especially since, as discussed in Part II.E of this Fact Sheet, MS4 discharges constitute a leading cause of water quality impairment in the Los Angeles Region.

Water Quality Objectives as Incorporated into the Order are Reasonably Achievable

When considering the achievability of water quality objectives from the singular perspective of the Order requirements, the application of the established water quality objectives to the Permittees' MS4 discharges is reasonably achievable.

Permittees can and do coordinate several factors that affect water quality under their jurisdiction. Generally, improvements in the quality of receiving waters impacted by MS4 discharges can be achieved by reducing the volume of stormwater or non-stormwater discharged into the MS4 to receiving waters; reducing pollutant loads to stormwater and

³⁵⁵ State Water Board, Order No. 2013-0001-DWQ (as amended by Orders WQ 2015-0133-EXEC, ORDER WQ 2016-0069-EXEC, WQ ORDER 2017-XXXX-DWQ, ORDER WQ 2018-0001-EXEC, AND ORDER WQ 2018-0007-EXEC), NPDES Permit for Stormwater Discharges from Small MS4s.

³⁵⁶ State Water Board, Order No. 2014-0057-DWQ, NPDES General Permit for Stormwater Discharges Associated with Industrial Activities (as amended by Order No. 2015-0122-DWQ).

³⁵⁷ State Water Board, Order 2009-0009-DWQ (as amended by 2010-0014-DWQ and 2012-0006-DWQ), NPDES General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities.

³⁵⁸ State Water Board, Order 2012-0011-DWQ (as amended by Orders WQ 2014-0006-EXEC, WQ 2014-0077-DWQ, and WQ 2015-0036-EXEC), NPDES Statewide Storm Water Permit for State of California Department of Transportation.

³⁵⁹ Ibid. Attachment G, pages 37-55.

³⁶⁰ Ibid. Page 21 and Attachment E.

³⁶¹ Ibid. Page 28-31.

³⁶² Ibid. Page 31.

non-stormwater through source control/pollution prevention, including operational source control such as street sweeping and public education, controlling illicit connections and illicit discharges, and conducting inspections of industrial and commercial facilities; and removing pollutants that have been loaded into stormwater or non-stormwater before they enter receiving waters, through infiltration, treatment, or diversion to a sanitary sewer.

The Order is designed to reduce pollutants to waterbodies from MS4 discharges through the implementation of multi-faceted stormwater management programs at the municipal and watershed levels. Overall improvements in MS4 discharge quality are expected to occur over time with ongoing implementation of the requirements in the Order. Information obtained through the robust monitoring programs implemented through the previous permits; implementation of stormwater management measures by individual municipalities within a watershed since the issuance of the first MS4 permits in the Los Angeles Region; analysis during TMDL establishment, including source analysis, loading capacity analysis and linkage analysis; and available predictions from the RAAs of many Watershed Management Programs clearly demonstrate that water quality objectives can be reasonably achieved over time through the coordinated control of all factors that affect MS4 discharge impacts on receiving waters.

Since the issuance of the previous MS4 permits, municipalities both locally and nationally have gained considerable experience in the management of municipal stormwater and non-stormwater discharges. The technical capacity to monitor stormwater and its impacts on water quality has also increased. In many areas, monitoring of the impacts of stormwater on water quality has become more sophisticated and widespread. Better information on the effectiveness of stormwater controls to reduce pollutant loadings and address water quality impairments is now available. The International Stormwater BMP Database (<http://www.bmpdatabase.org/>) provides extensive information of the performance capabilities of stormwater controls and continues to be updated with new studies. Locally, the Southern California Stormwater Monitoring Coalition's California LID Evaluation and Analysis Network (SMC CLEAN) has developed a standard protocol for monitoring of BMPs³⁶³ and a guidance document for constructing, maintaining, and monitoring BMPs.³⁶⁴ The Southern California Coastal Water Research Project (SCCWRP) has analyzed BMP treatment effectiveness using monitoring data specifically from BMPs implemented in California³⁶⁵ and has made their findings readily available to Permittees and regulatory agencies through a web application.³⁶⁶

In fact, some of the many advances in how to effectively control stormwater and pollutants in stormwater have occurred locally within the Los Angeles Region and include the development of cost effective trash full capture devices; stormwater diversion, treatment and beneficial use facilities such as the Santa Monica Urban Runoff Recycling Facility (SMURRF) and Carriage Crest Park; stormwater capture, storage, and reuse facilities such as in Sun Valley; low impact development/site design practices;

³⁶³ SMC CLEAN. LID/GI Monitoring Protocol (August 1, 2017)

³⁶⁴ SMC CLEAN. Low Impact Development & Green Stormwater Infrastructure Construction, Inspection, Maintenance, and Monitoring Guidance Manual (May 2019)

³⁶⁵ Afrooz, N., M. Beck, T. Hale, L. McKee, K.C. Schiff. 2019. BMP Performance Monitoring Data Compilation to Support Reasonable Assurance Analysis. Technical Report 1081. Southern California Coastal Water Research Project. Costa Mesa, CA.

³⁶⁶ SCCWRP. California BMP effective calculator (v1.2.0). https://sccwrp.shinyapps.io/bmp_eval/ (accessed September 3, 2019)

and innovative/opportunistic culvert inlet multi-media filters. There are many other case studies of municipalities that have implemented innovative and effective stormwater management measures, many of which have been demonstrated through the implementation of Watershed Management Programs by Permittees in Los Angeles County.

In addition to the advances in monitoring and individual stormwater treatment technologies, there have been advances in watershed-wide planning and implementation of stormwater treatment technologies through state-of-the-art computer modeling. Historically, some have argued that while BMPs may be effective at treating stormwater on a small scale, their effectiveness at treating stormwater on a watershed scale is less certain. However, in recent years, there have been significant advances in the planning and design of watershed wide BMPs to achieve WQBELs and receiving water limitations. These advances are demonstrated by the 11 WMPs and 12 EWMPs submitted by groups of Permittees in compliance with the 2012 Los Angeles County and 2014 Long Beach MS4 Permits. Many of the WMPs and EWMPs were based on the Watershed Management Modeling System (WMMS) developed by Los Angeles County³⁶⁷ in 2010. WMMS is a comprehensive planning tool based on computer models that can simulate hydrologic and pollutant transport processes for all the major watersheds within Los Angeles County. WMMS further predicts the pollutant load reductions that can be achieved by the implementation of various stormwater treatment control technologies throughout the watersheds. This modeling system combines a watershed runoff and receiving water quality model (Loading Simulation Program in C++ (LSPC)) with a BMP performance model (System for Urban Stormwater Treatment and Analysis Integration (SUSTAIN)) to determine the most cost-effective combination of stormwater management measures to achieve desired water quality outcomes. Los Angeles County updated WMMS in 2020 (WMMS 2.0) based on more recent input and water quality calibration data to further refine and improve its predictive capabilities.³⁶⁸ Eight of the WMPs and 12 EWMPs all used WMMS or similar cutting edge modeling systems as part of their RAAs to characterize their current pollutant loading, determine the required reductions to meet WQBELs and receiving water limitations, and prescribe the number, location, and design specifications for BMPs that could meet their required load reductions to achieve water quality objectives within prescribed timeframes. These RAAs prove that the Permittees' MS4 discharges can reasonably achieve the required water quality conditions, either immediately or over time.

The Water Quality Objectives Incorporated in the Order Consider Local Conditions and Provide Flexibility in Implementation

The Order contains requirements based on water quality objectives and TMDLs, which, where appropriate, incorporate information regarding local conditions and flexibility such that they can reasonably be achieved by Permittees. The following paragraphs give examples of how local conditions are already incorporated into receiving water limitations and water quality-based effluent limitations for bacteria and metals, two of the most pervasive categories of pollutants found in MS4 discharges.

³⁶⁷ Los Angeles County Flood Control District and Los Angeles County Department of Public Works. 2020b. *Watershed Management Modeling System Version 2.0 Phase II Report: BMP Model and Optimization Framework*. Los Angeles County Department of Public Works, Stormwater Quality Division.

³⁶⁸ Ibid.

Bacteria

Bacteria TMDLs in the Los Angeles Region implement single sample water contact recreation bacteria water quality objectives by using a reference system/antidegradation approach. This approach ensures that “bacteriological water quality is at least as good as that of a [local] reference system and that no degradation of existing bacteriological water quality is permitted where existing bacteriological water quality is better than that of the selected reference system.”³⁶⁹ As a result of this approach, the Order’s bacteria receiving water limitations are expressed in the form of annual allowable exceedance days, which allow Permittees to exceed bacterial water quality objectives in receiving waters at the same frequency as a local reference water body. This approach takes into consideration natural sources of bacteria, which may cause or contribute to exceedance of the single sample water quality objectives.³⁷⁰

Additionally, engineered channels are subject to an exception called the high flow suspension, which suspends bacterial water quality objectives associated with REC-1 (water contact recreation) and REC-2 (non-contact water recreation) beneficial uses during days with rainfall greater than or equal to 0.5 inch and the 24 hours following the rain event. Receiving waters that are engineered channels in which this suspension applies include portions of Ballona Creek, Dominguez Channel, Los Angeles River, and San Gabriel River.³⁷¹ This exception, which is implicitly incorporated into the Order’s receiving water limitations, is also included in the Order’s compliance determination provisions (Part X.A.3) for clarity.

Furthermore, in the Ballona Creek watershed specifically, the Los Angeles Water Board removed the REC-1 use in Ballona Creek Reach 1 and revised the REC-1 use in Ballona Creek Reach 2 to Limited REC-1 based on the results of a Use Attainability Analysis. The analysis was conducted between March and August of 2002 to determine actual and potential recreational uses of the creek in conformance with 40 CFR § 131.10(g). The result of the remaining REC-2 use designation in Reach 1 and the new Limited REC-1 use designation in Reach 2 are higher single sample geometric mean limits for the bacteria water quality objectives to protect those uses.

Metals

Metals receiving water limitations and WQBELs are derived from 40 CFR section 131.38 (also known as the California Toxics Rule or CTR). The CTR specifies water quality objectives for metals as a function of water-effect ratios (WERs) which, by default, have a value of 1.0. The Los Angeles Water Board has approved several site-specific WERs in the Los Angeles River and Calleguas Creek watersheds, ranging in values from 1.32 to 9.69, that account for local water quality conditions that may influence the bioavailability and/or toxicity of metals. These site-specific WERs, all being greater than 1.0, have adjusted receiving water limitations and WQBELs, including those for MS4 discharges, to more accurately reflect the toxicity of metals to aquatic life in these receiving waters.

³⁶⁹ Basin Plan Chapter 3

³⁷⁰ Tiefenthaler, L.L., E.D. Stein, G.S. Lyon. 2008. Fecal Indicator Bacteria (FIB) levels during dry weather from southern California reference streams. Technical Report 542. Southern California Coastal Water Research Project. Costa Mesa, CA.

³⁷¹ Basin Plan Table 2-1a

Similarly, the Los Angeles Water Board adopted site specific water quality objectives for lead based on the results of a Permittee-led special study. The study recalculated the acute and chronic lead objectives for portions of the Los Angeles River using an expanded nation-wide dataset provided by USEPA following USEPA procedures. The Los Angeles Water Board revised the existing Los Angeles River Metals TMDL to update the numeric targets and WLAs, including those for MS4 discharges, based on the recalculated lead objectives. The resulting numeric targets and WLAs for lead were greater than those in the original TMDL.

Additionally, several metals TMDLs considered and, where appropriate, used site-specific metals translators. These translators represent the fraction of total recoverable metals in a receiving water that is in the dissolved form. Site-specific metals translators were used to calculate the metals waste load allocations in the metals TMDLs for Ballona Creek, Los Angeles River, Los Cerritos Channel, and San Gabriel River. These waste load allocations are incorporated into the Order as water quality-based effluent limitations.

Conclusion

Based on a consideration of all factors controlling water quality in the region, including the multiple types of discharges regulated by the Los Angeles Water Board and State Water Board, the multiple types of stormwater-specific discharges regulated by the Los Angeles Water Board and the State Water Board, the multiple actions that Permittees can take to reduce pollutants in their discharges, and the effectiveness of these actions as demonstrated by monitoring and the RAAs in existing watershed management programs, the Los Angeles Water Board finds that water quality conditions based on the requirements of this Order to implement water quality objectives can reasonably be achieved, even if such conditions are achieved over time (see Table F-26). The water quality objectives themselves have already been established and found to be reasonably achievable. In many cases, the Los Angeles Water Board has considered special studies and site-specific information to ensure that the water quality objectives are no more stringent than necessary to protect beneficial uses without degradation of water quality. The requirements of the Order based on these water quality objectives, including numeric WQBELs to implement TMDL WLAs, are reasonably achievable.

D. Economic Considerations

The Los Angeles Water Board recognizes that economic information, including cost information, is invaluable for informed decision-making and for the evaluation and improvement of policies and practices. Economic information is also critical for Permittees to manage their assets, implement cost-effective programs, and develop successful funding strategies to achieve overall improvements in water quality within the region.

The Legislature did not define “economic considerations” in California Water Code section 13241. As noted in *City of Arcadia I*, there is no reported court decision analyzing the “economic considerations” phrase of the statute. In *City of Burbank*, the California Supreme Court, “without discussion, concluded that in adopting Water Code section 13241 the Legislature intended ‘that a regional board consider the cost of compliance [with numeric pollutant restrictions] when setting effluent limitations in a wastewater discharge permit.’ (Italics added.)” (135 Cal.App.4th at 1415.) While the California Supreme Court assumed “economic considerations” includes costs of compliance, it did indicate that this factor is broader. (*City of Burbank*, 35 Cal.4th at 618 [noting that when a regional board is considering whether to make pollutant restrictions in a permit more

stringent than federal law requires, “California law allows the board to take into account economic factors, *including* the wastewater discharger's cost of compliance.” (emphasis added.)] As discussed in the introduction to this Part XIII, in *City of Duarte*, the Court of Appeal held that “...the Water Control Boards are charged with taking into account economic considerations, not merely costs of compliance with a permit ... economic considerations also include, among other things, the costs of not addressing the problems of contaminated water.” (*City of Duarte, supra*, 60 Cal.App.5th at 276.) Since the Los Angeles Water Board has broad discretion in how it considers this factor, the Board interprets this factor as not only requiring a consideration of the costs of compliance, but also other relevant economic factors such as the societal and environmental costs of not adequately controlling MS4 discharges and cost savings associated with capture and beneficial use of stormwater and non-stormwater to offset the need to purchase imported water.

Many of the costs that will be incurred by permittees as a result of implementing the Order are not fundamentally new. MS4 permits, and stormwater and urban runoff management programs to implement MS4 permit requirements, have been in place in the Los Angeles Region for 30 years. Since the MS4 permits issued in the 1990s, Permittees have been required to effectively prohibit non-stormwater (i.e., dry weather urban runoff) discharges that are a source of pollutants to receiving waters. Since the late 1990s and early 2000s, Permittees have been required to ensure that their MS4 discharges do not cause or contribute to an exceedance of water quality standards (also known as “receiving water limitations”) in receiving waters. Costs incurred by Permittees to implement the Order will largely be related to continued efforts to meet these longstanding requirements. Furthermore, all three prior permits included requirements to implement WQBELs consistent with the assumptions and requirements of applicable TMDL wasteload allocations. There are only a limited number of new TMDL-related requirements in the Order (see Table F-25). Nonetheless, as described below, the two methods used to project the cost of compliance assume that no costs have been incurred to date (i.e., expenditures incurred to date to implement TMDLs and WMPs/EWMPs have not been subtracted from the total projected costs). This was done for consistency and ease of calculation. As a result, projected costs are conservative overestimates.

The Los Angeles Water Board recognizes that these costs of compliance are significant and that many Permittees have limited resources to implement actions to address their MS4 discharges. Based on the economic considerations below, the Board has structured the permit as flexibly as possible to give Permittees the opportunity to sequence actions to address the highest water quality priorities; options to demonstrate compliance; the ability to customize their control measures based on local conditions, including the “minimum control measures”; sufficient time to comply (in many cases decades from the time the TMDL was established); opportunities to request time extensions based on economic factors among others; and the ability to collaborate and pool their resources to implement programs and projects to achieve compliance and to also collaborate and pool their resources to monitor their compliance. The inclusion of a voluntary watershed management program alternative compliance pathway allows Permittees to submit a plan, either individually or in collaboration with other Permittees, for Los Angeles Water Board approval that allows for actions to be customized and prioritized based on specific watershed conditions and needs. The Order also allows Permittees to customize monitoring requirements, which they may do individually, or in collaboration with other Permittees. Permittees can choose to implement the least expensive measures that are effective in meeting the requirements of the Order.

The Permittees' choices regarding how to comply can take into account the specific conditions within the watershed, such as:

- Types of pollutants targeted
- Site characteristics (e.g., existing infrastructure, land use, infiltration potential)
- Costs of controls
- Compliance schedules
- Current compliance rates
- Other socio-economic factors, technology, inflation, risks, regulatory framework

Further, the WMP/EWMP compliance alternative provided in the prior Los Angeles County MS4 Permit and City of Long Beach MS4 Permit, and which is included in the Order, allows Permittees to adapt their programs based on new data and information to be more cost-effective.

The Watershed Management Program proposed by the Rio Hondo/San Gabriel River Water Quality Group is an example of this. The Los Angeles County Permittees participating in this group are the cities of Arcadia, Bradbury, Duarte, Monrovia, and Sierra Madre, the County of Los Angeles, and the Los Angeles County Flood Control District. On April 21, 2016, the Los Angeles Water Board approved the Group's EWMP pursuant to the 2012 Los Angeles County MS4 Permit. At that time, the Group estimated that the cost for the entire program exceeded \$1.4 billion. On March 30, 2018, the Group submitted proposed modifications to its approved EWMP pursuant to the adaptive management provisions of the 2012 Los Angeles County MS4 Permit. The proposed revised EWMP entailed extensive and significant modifications to the approved EWMP, including an updated Reasonable Assurance Analysis, changes to watershed control measures, and changes to interim compliance deadlines. From March 2018 to December 2018, the Los Angeles Water Board worked closely with the Group on its proposed revisions. On December 17, 2018, the Group submitted its proposed revised EWMP. On April 2, 2019, the Los Angeles Water Board approved the modifications to the Group's EWMP proposed on December 17, 2018. The Group now estimates the cost of their revised program to be \$121.8 million, or approximately 9% of the original estimated cost. The deadlines for completion of these projects are 2026 for the San Gabriel River watershed portion, and 2028 for the Los Angeles River/Rio Hondo watershed portion.³⁷²

The Order also does not require permittees to fully implement all requirements within a single permit term; if Permittees demonstrate they are meeting established interim requirements and schedules that demonstrate progress toward final compliance, then they are complying during the term of the Order, i.e., Permittees do not have to comply with many final WQBELs and receiving water limitations during the 5-year term of the Order. Therefore, the costs to achieve final compliance will be spread out and incurred incrementally over several permit terms. Permittees may also request time schedule orders, where justified, to meet WQBELs and receiving water limitations where final compliance deadlines have passed, and Permittees need additional time to achieve compliance. Lastly, the Order includes several reopener provisions whereby the Board

³⁷² Rio Hondo/San Gabriel River Water Quality Group, Rio Hondo/San Gabriel River Revised Watershed Management Program, May 17, 2019. Note that approximately 30% of the original cost estimate was for implementation in the City of Azusa, which is no longer a participant in this group.

can modify the Order based on new information gleaned during the term of the Order and/or to modify the Order to reflect revisions to TMDLs, including schedules and final deadlines.

1. Los Angeles Water Board's Consideration of Projected Costs to Comply with the Order

The following is a high-level estimate of the possible range of projected costs to comply with the Order, including compliance with the WQBELs that have been incorporated consistent with available TMDL wasteload allocations. The Board notes that cost of compliance with the WQBELs is inextricably tied to compliance with the other requirements in the Order, including compliance with receiving water limitations, the prohibition on discharges of non-stormwater, and stormwater management program minimum control measures.

a. Sources of data. The costs of implementing the Order were examined by primarily utilizing three sources of data:

- i. Estimates of the cost of complying with TMDL wasteload allocations assigned to MS4 discharges, which the Board developed and considered during the establishment of each TMDL. (Used in Method 1.) These estimates were presented in TMDL Staff Reports. As this indicates, there are instances outside of the Order where the Board previously considered economics as it relates to Permittees' costs of compliance. In the case of TMDLs, these considerations resulted in many lengthy schedules for TMDL implementation, particularly for pollutants associated with stormwater (i.e., wet weather) discharges from MS4s. Similarly, the State Water Board considered costs when adopting the Trash Amendments, which included a new water quality objective for trash and implementation provisions, including a discharge prohibition, which have been incorporated into the Order.³⁷³
- ii. Estimates of the cost of fully implementing Watershed Management Programs and Enhanced Watershed Management Programs developed to comply with MS4 permit requirements. (Used in Method 2.)
- iii. Annual expenditure and budget data that are self-reported by the Permittees in their annual reports. (Used in Methods 1 and 2.)

b. Methods of Estimating Costs and Reported Costs. The Los Angeles Water Board used two methods to estimate a possible range of costs to comply with the Order.

Method 1: In the first method, the Los Angeles Water Board analyzed cost estimates that the Board had developed during the adoption of TMDLs and documented in TMDL Staff Reports. Note that for this method, we conservatively assume that no costs have already been incurred by Permittees. However, we know that Permittees have incurred costs associated with implementation of their programs such that the remaining cost for achieving final compliance under the Order is some fraction (less than 100%) of the original cost estimate.

³⁷³ State Water 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](#). Web. 20 June 2019.

Method 2: In the second method, for Permittees in Los Angeles County, the Los Angeles Water Board staff compiled cost estimates of implementing structural BMPs presented in Watershed Management Programs and Enhanced Watershed Management Programs. For Permittees in Ventura County, Los Angeles County Permittees' anticipated costs were used to project costs to implement similar Watershed Management Programs in Ventura County. Note that in this method, similar to above, we apply the conservative assumption that little to no money has been spent during the prior and current permit terms to implement projects in the Watershed Management Programs and Enhanced Watershed Management Programs that were approved in 2015-2016 or, in the case of Ventura County Permittees, to implement projects to achieve TMDLs that were first incorporated into the 2009 Ventura County MS4 Permit.

Additional EWMP Development Costs: Estimates from Methods 1 and 2 were considered along with Ventura County's initial costs of developing EWMPs and WMPs. Ventura County currently does not participate in any EWMP or WMP but may develop EWMPs (now referred to as WMPs) in the next permit term. Ventura County conducted its own analysis in order to estimate development costs.³⁷⁴

Additional Stormwater Management Program Costs: Estimates from Methods 1 and 2 were considered along with Permittees' annual reported costs for existing elements of their stormwater management programs. These annual reported costs were tabulated based on the reported costs of implementing their stormwater management programs as well as costs associated with program management, monitoring programs, and a category described as "Other." Most of these annual reported costs are incurred in addition to structural BMP costs calculated in Methods 1 and 2. In these annual reported costs, some Permittees reported costs for capital projects, Regional Projects, Green Streets, and Restoration Projects, which were removed to avoid double counting. As noted below, there is wide variability in the Permittees' reported cost of compliance, which is not easily explained.³⁷⁵

c. Method 1: Projected Costs from TMDL Staff Reports

As noted above, in the first method for estimating the projected cost to comply with the Order, the Los Angeles Water Board used its analyses regarding costs of TMDL compliance.

As noted earlier, for the most part, the TMDL provisions in the Order are not new but rather continuing requirements from the prior three permits. Of the 45 TMDLs incorporated in the Order, only three are new for Los Angeles County Permittees, including the City of Long Beach, and six are new for Ventura County Permittees (see Table F-25). Nevertheless, the Los Angeles Water Board acknowledges Permittees will need to complete additional implementation actions during the term of the Order to make progress

³⁷⁴ Larry Walker Associates, "Preliminary Ventura County MS4 Permit Structural BMP Implementation Cost Estimate," dated June 1, 2017.

³⁷⁵ See Attachment (PG Environmental. Technical Memorandum: WA 1-67 – Task D – Revised Cost Analysis and Identification of Representative Permittees with Relatively Higher Costs. April 8, 2018; PG Environmental. Technical Memorandum: WA 1-67 – Task D3 – Analysis of Costs for Select MS4 Permittees. June 29, 2018.)

towards, and ultimately achieve, compliance with the TMDL provisions where final compliance deadlines have not yet passed and/or compliance has not yet been achieved.

As also noted earlier, the Board previously considered the cost of complying with TMDL wasteload allocations assigned to MS4 discharges during the establishment of each TMDL. The costs of complying with these TMDLs, including the WQBELs derived from the TMDL WLAs, which are incorporated into the Order, are not additive. For example, the costs estimated for compliance with a TMDL for one pollutant in a watershed, such as metals, can be applied to the costs to achieve compliance with a TMDL for another pollutant in the same watershed, such as pesticides, because the same implementation strategies can be used for both pollutants. Several MS4 permittees have recognized this opportunity in the multi-pollutant TMDL implementation plans they have submitted (e.g. Ballona Creek Metals/Bacteria TMDLs and Machado Lake Pesticides/Nutrients TMDLs). In other words, the estimated cost of complying with the Ballona Creek Metals TMDL can apply to metals, pesticides, PCBs, and bacteria. The costs for complying with trash TMDLs are based on different implementation strategies (e.g., full capture devices), but those strategies are effective at removing metals and toxic pollutants as well.³⁷⁶ Thus, the costs estimated for each TMDL should not be added to determine the cost of compliance with all TMDLs. The staff reports for the various TMDLs include this explanation, and also discuss the cost efficiencies that can be achieved by treating multiple pollutants. Further, as noted earlier, the Board's consideration of the cost of compliance in establishing each TMDL has resulted in lengthy implementation schedules to achieve water quality standards. These implementation schedules have been used to establish compliance schedules in the Order.

The Los Angeles Water Board compiled the cost of complying with TMDL wasteload allocations assigned to MS4 discharges in a staff memo titled "2020 Regional MS4 TMDL Compliance Costs," dated July 17, 2020 (TMDL Staff Report Cost Memo). Using costs estimated during the establishment of TMDLs, the TMDL Staff Report Cost Memo estimated the total capital cost of implementing the 45 TMDLs included in the Order to be \$5.0B with total annual operation and maintenance (O&M) costs of \$419.2M, yielding a total 20-year cost of \$13.4B in 2019 dollars, undiscounted. This estimate is broken down by watershed in Table F-28, below. The estimated cost by Permittee is available in the Administrative Record for the Order.

³⁷⁶ In connection with the Statewide Trash Amendments, the Los Angeles Water Board sent Permittees California Water Code Section 13383 Orders directing Permittees to notify the Los Angeles Water Board regarding how they intended to comply with the statewide trash control provisions. In so doing, Permittees have proposed a variety of implementation strategies (e.g., full capture devices as well as institutional controls), some of which may be effective at removing other pollutants as well and therefore may offset the cost of compliance with the TMDLs.

Table F-28. Estimated Costs of Implementing TMDLs Through the Order by Watershed (millions, 2019 dollars).

| Watershed | Capital Cost | Annual Operation and Maintenance Cost | Total 20-Year Cost |
|-------------------------------|---------------------|--|---------------------------|
| Ballona Creek | \$466.27 | \$61.40 | \$1,694.26 |
| Calleguas Creek | \$46.35 | \$2.90 | \$104.30 |
| Dominguez Channel | \$259.13 | \$1.21 | \$283.30 |
| Los Angeles River | \$2,297.78 | \$287.38 | \$8,045.42 |
| Los Cerritos Channel | \$322.24 | \$14.51 | \$612.42 |
| Machado Lake | \$18.87 | \$1.82 | \$55.27 |
| Malibu Creek | \$255.35 | \$6.46 | \$384.59 |
| Marina Del Rey | \$44.49 | \$0.04 | \$45.34 |
| Miscellaneous Ventura Coastal | \$4.86 | \$0.27 | \$10.32 |
| San Gabriel River | \$536.42 | \$26.82 | \$1,072.83 |
| Santa Clara River | \$163.65 | \$8.18 | \$327.35 |
| Santa Monica Bay | \$561.56 | \$5.73 | \$676.20 |
| Ventura River | \$27.81 | \$2.47 | \$77.24 |
| Total Cost | \$5,004.77 | \$419.20 | \$13,388.85 |

Source: Los Angeles Water Board analysis of TMDL Staff Reports

The TMDL Staff Report Cost Memo includes costs already incurred and costs expected to be incurred over the course of the TMDL implementation periods. The TMDL Staff Report Cost Memo does not include costs incurred from implementing the six stormwater management program elements, commonly referred to as “minimum control measures” or “MCMs.” Implementation of these requirements can be effective in reducing TMDL pollutants. For example, bacteria discharges can be reduced by implementing the effective prohibition on non-stormwater discharges as required by Clean Water Act section 402(p)(3)(B)(ii) and an illicit discharge detection and elimination program as required by “minimum control measures” established under 40 C.F.R. section 122.26(d)(2)(iv), which could largely, if not entirely, implement bacteria TMDLs, particularly during dry weather. The Order would include these requirements even in the absence of TMDLs, and their costs are therefore not included in the TMDL Staff Report Cost Memo. For purposes of considering Permittees’ cost of compliance, this estimate also does not include monitoring and reporting costs, which are included in Permittees’ annual reported costs presented further below, or costs for non-MS4-related TMDL implementation methods, such as dredging.

The projected cost estimates in the TMDL Staff Report Cost Memo were calculated by adding the costs estimated for each TMDL when they were established, accounting for costs which overlap in order to avoid double

counting. Many BMPs will implement multiple TMDLs at the same time so the cost of the BMP does not need to be included multiple times for each TMDL. For example, a BMP such as an infiltration project in the Los Angeles River watershed will reduce both bacteria and metals, as required by the Los Angeles River bacteria and metal TMDLs, therefore the cost is represented only once in this cost estimate.

For each watershed, TMDLs with overlapping BMPs and geography were identified, and the TMDL most costly to implement was chosen to represent the set of overlapping TMDLs. Where appropriate, MS4-related costs for the set of overlapping TMDLs were then added to costs of non-overlapping TMDLs implemented in the same watershed. For example, BMPs that implement trash TMDLs were assumed to not affect the progress of meeting other TMDLs. Therefore, for example, in the case of the Los Angeles River Watershed, the cost of implementing the bacteria and metal TMDLs (overlapping TMDLs) were added to the cost of implementing the trash TMDL (non-overlapping TMDL).

The TMDL Staff Report Cost Memo relied on cost estimates as included in the staff reports for Los Angeles Water Board-established TMDLs or the cost estimates as included in the staff reports for Los Angeles Water Board-established programs of implementation for U.S. EPA-established TMDLs. In some cases, costs for U.S. EPA-established TMDLs without Los Angeles Water Board-established programs of implementation were represented by an overlapping Los Angeles Water Board-developed TMDL. In other cases, the TMDL was based on “existing conditions,” meaning that pollutant limits were based on existing pollutant concentrations, which were attaining water quality standards, and no additional costs were included in the TMDL Staff Report Cost Memo for that TMDL. When ranges were given for potential costs, the average of the range was used. When multiple implementation options were presented in the TMDL Staff Report, the mid-priced treatment option was chosen, or if only two options were available, the more expensive option was used. For certain TMDLs, where a preferred method of compliance was presented or where a certain compliance option was the overwhelmingly selected option for compliance by MS4 Permittees (e.g., catch basin inserts for trash), the costs of that preferred method were used. All costs were adjusted to 2019 dollars based on the Federal Reserve GDP Implicit Price Deflator.³⁷⁷

d. Method 2: Projected Costs from EWMPs and WMPs

As noted above, in the second method for estimating projected costs of complying with the Order, for Permittees in Los Angeles County, the Los Angeles Water Board compiled projected cost estimates contained in Watershed Management Programs and Enhanced Watershed Management Programs.³⁷⁸ Permittees developing Watershed Management Programs were

³⁷⁷ U.S. Bureau of Economic Analysis, Gross Domestic Product: Implicit Price Deflator [GDPDEF], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/GDPDEF>, April 14, 2020.

³⁷⁸ Los Angeles County Department of Public Works provided a Microsoft Excel spreadsheet of Permittees’ projected cost estimates from September 2015. Upon review by Board staff, discrepancies were found in their total projected cost estimate values, and thus, LA County’s projected cost estimate values are

not required to include a financial strategy; therefore, for some individual and group programs implementation cost estimates were not available. In these cases, “NR” is included in the tables below. For Permittees in Ventura County, Watershed Management Programs from similar jurisdictions in LA County were used to project compliance costs.³⁷⁹

i. Los Angeles County Permittees

Of the 87 Los Angeles County Permittees, the majority (83 out of 87³⁸⁰) elected to develop and implement Watershed Management Programs or Enhanced Watershed Management Programs as a compliance pathway for MS4 permit requirements. Of these 83 Permittees, most (80³⁸¹) have chosen to collaboratively develop and implement these programs. There are 12 Enhanced Watershed Management Programs and 7 Watershed Management Programs that are being implemented by groups of Los Angeles County Permittees. These programs include estimates of the projected costs associated with their full implementation.

For EWMPs, Board staff calculated total costs over a 20-year timeframe, as shown in Table F-29. Most groups presented breakdowns of capital and O&M costs. Some groups reported cost ranges, therefore low and high estimates were calculated. Values were converted to 2019 dollars using the Federal Reserve GDP Implicit Price Deflator. A few EWMPs explicitly reported dollar years, but most did not. For those that did not, staff assumed that the dollar year was the same as the year that the plan was submitted or the year that the most recent plan revision was submitted. Capital costs range from \$34.5M for North Santa Monica Bay to \$6.5B for Upper LA River. Annual O&M costs range from \$1.15M for North Santa Monica Bay to \$123.4 for Upper LA River. Total costs for all EWMPs were estimated to be \$19.8B to \$19.9B in 2019 dollars, undiscounted.

Table F-29. Permittees’ Projected Cost Estimates for EWMP Full Implementation (millions of dollars, 2019\$).

| EWMP Group | Capital (Low) | Capital (High) | Annual O&M (Low) | Annual O&M (High) | Total 20-Year Cost (Low) | Total 20-Year Cost (High) |
|---------------|---------------|----------------|------------------|-------------------|--------------------------|---------------------------|
| Ballona Creek | \$2,892.12 | \$2,892.12 | \$82.55 | \$82.55 | \$4,543.09 | \$4,543.09 |

not presented in this document. Instead, staff independently compiled cost estimates from Permittees’ EWMPs and WMPs, as noted above.

³⁷⁹ Larry Walker Associates, “Preliminary Ventura County MS4 Permit Structural BMP Implementation Cost Estimate,” dated June 1, 2017.

³⁸⁰ The cities of Compton, Gardena, Irwindale, and Rolling Hills opted not to develop and implement a Watershed Management Program or Enhanced Watershed Management Program. The City of Azusa has chosen to not continue its participation in a Watershed Management Program; however, the \$1.46B cost estimate in Table F-29, below, includes the estimate developed for the original program, of which they were a participating Permittee.

³⁸¹ The cities of El Monte, La Habra Heights, and Walnut each opted to develop an individual Watershed Management Program that only addresses their jurisdictional area. The City of Long Beach participates in several Watershed Management Programs with other Los Angeles County Permittees. Additionally, it developed an individual Watershed Management Program for the nearshore areas that are exclusively within its jurisdiction.

| EWMP Group | Capital (Low) | Capital (High) | Annual O&M (Low) | Annual O&M (High) | Total 20-Year Cost (Low) | Total 20-Year Cost (High) |
|--|---------------|----------------|------------------|-------------------|--------------------------|---------------------------|
| Dominguez Channel | \$1,340.65 | \$1,340.65 | \$15.39 | \$15.39 | \$1,648.41 | \$1,648.41 |
| Malibu Creek | \$201.54 | \$201.54 | \$3.86 | \$3.86 | \$278.71 | \$278.71 |
| Marina del Rey ^a | \$368.12 | \$368.12 | \$2.39 | \$2.39 | \$415.91 | \$415.91 |
| North Santa Monica Bay ^a | \$34.51 | \$34.51 | \$1.15 | \$1.15 | \$57.55 | \$57.55 |
| Palos Verdes Peninsula Cities | \$90.00 | \$129.50 | \$1.34 | \$1.52 | \$116.80 | \$159.90 |
| Rio Hondo/San Gabriel River ^b | NR | NR | NR | NR | \$121.80 | \$121.80 |
| Santa Monica Bay J2 & J3 ^a | \$660.02 | \$660.02 | \$4.82 | \$4.82 | \$756.38 | \$756.38 |
| South Bay Beach Cities | \$46.13 | \$95.48 | \$2.15 | \$3.33 | \$89.04 | \$162.00 |
| Upper LA River ^c | \$6,541.98 | \$6,541.98 | \$123.38 | \$123.38 | \$9,009.65 | \$9,009.65 |
| Upper San Gabriel River | \$1,216.34 | \$1,216.34 | \$44.31 | \$44.31 | \$2,102.59 | \$2,102.59 |
| Upper Santa Clara River ^d | \$669.12 | \$669.12 | NR | NR | \$669.12 | \$669.12 |
| Total | | | | | \$19,809.06 | \$19,925.11 |

a. Some EWMPs presented total O&M costs over 20 years. These values were divided by 20 to calculate annual O&M costs.

b. Rio Hondo/San Gabriel River presented total costs including 20 years of O&M but did not present the breakdown between capital and O&M costs.

c. Upper LA River presented varying O&M costs in their EWMP. These values were averaged to obtain an annual O&M cost.

d. Upper Santa Clara River explicitly did not present O&M costs and assumed that they would be managed with existing resources.

Source: Los Angeles Water Board Analysis

WMP costs were not presented with breakdowns between capital and O&M costs, nor was it clear in most WMPs over what timeframe their projected costs would occur. Only the East San Gabriel Valley Cities and Long Beach Nearshore WMPs mentioned any analysis timeframes, which were 22 years and 5 years, respectively. Therefore, only raw total costs from WMPs are presented in Table F-30. Consistent with EWMP costs, WMP costs were also converted to 2019 dollars using the Federal Reserve GDP Implicit Price Deflator. Total costs for WMPs were estimated to be \$1.1B to \$1.4B.

Table F-30. Permittees' Projected Cost Estimates for WMP Full Implementation (millions of dollars, 2019\$).

| WMP Group | Total Cost (Low) | Total Cost (High) |
|---|------------------|-------------------|
| Alamitos Bay | NR | NR |
| East San Gabriel Valley Cities ^{a,b} | \$55.96 | \$55.96 |

| WMP Group | Total Cost (Low) | Total Cost (High) |
|-------------------------------------|-------------------------|--------------------------|
| LA River Upper Reach 2 ^c | \$226.57 | \$226.57 |
| Long Beach Nearshore ^a | \$318.56 | \$392.89 |
| Los Cerritos Channel | \$356.18 | \$356.18 |
| Lower LA River | \$168.19 | \$314.15 |
| Lower San Gabriel River | \$37.15 | \$69.34 |
| Santa Monica Bay J7 | NR | NR |
| Total | \$1,163 | \$1,415 |

a. East San Gabriel Valley Cities and Long Beach Nearshore were the only groups to mention an analysis timeframe. East San Gabriel Valley Cities estimated costs over 22 years; Long Beach Nearshore estimated costs over 5 years.

b. Costs for East San Gabriel Valley Cities are from their Adaptive Management Report Addendum from December 2019. Their original WMP costs were \$251.4M to \$545.3M.

In a presentation to the Los Angeles Water Board on March 2, 2017, the LA River Upper Reach 2 WMP Permittees shared that their order-of-magnitude estimate for the capital cost of their six regional projects decreased from approximately \$210M to \$102M after evaluating site conditions. This reduced the overall cost of fully implementing the WMP by one third from approximately \$300M to \$200M.

Source: Los Angeles Water Board Analysis

The total estimated projected cost for each individual Los Angeles County Permittee participating in one or more of the 19 WMPs/EWMPs is provided where possible in Table F-31. Seven of the 12 EWMPs and three of the eight WMPs reported costs by jurisdiction. If the individual Permittee is an EWMP member, its costs usually comprise capital costs plus 20 years of O&M. Some EWMPs, however, presented capital costs only when they presented their costs by jurisdiction, which is noted in Table F-31. Also noted are WMP costs, which did not present any breakdown between capital and O&M costs. A few WMPs presented an analysis timeframe, which is also noted in Table F-31.

Table F-31. Permittees' Projected Cost Estimates for WMP/EWMP Full Implementation, by Permittee (millions, 2019\$)

| Los Angeles County Permittee | Total Cost | Description |
|-------------------------------------|-------------------|-----------------------------------|
| Agoura Hills | \$86.72 | Capital cost only |
| Alhambra | \$268.53 | Capital cost plus 20 years of O&M |
| Arcadia | NR | |

| Los Angeles County Permittee | Total Cost | Description |
|------------------------------|------------|--|
| Artesia | \$0.69 | WMP cost, breakdown unknown, 10-year timeframe |
| Azusa | -- | |
| Baldwin Park | \$187.52 | Capital cost plus 20 years of O&M |
| Bell | \$53.12 | WMP cost, breakdown, and timeframe unknown |
| Bell Gardens | \$45.42 | WMP cost, breakdown, and timeframe unknown |
| Bellflower | \$3.19 | WMP cost, breakdown unknown, 10-year timeframe |
| Beverly Hills | \$169.35 | Capital cost plus 20 years of O&M |
| Bradbury | NR | |
| Burbank | \$305.93 | Capital cost plus 20 years of O&M |
| Calabasas | \$180.10 | Capital cost only |
| Carson | \$252.88 | Capital cost only |
| Cerritos | \$4.13 | WMP cost, breakdown unknown, 10-year timeframe |
| Claremont | NR | |
| Commerce | \$56.37 | WMP cost, breakdown, and timeframe unknown |
| Compton | -- | |
| Covina | \$146.13 | Capital cost plus 20 years of O&M |
| Cudahy | \$33.61 | WMP cost, breakdown, and timeframe unknown |
| Culver City | \$220.80 | Capital cost plus 20 years of O&M |
| Diamond Bar | \$5.26 | WMP cost, breakdown unknown, 10-year timeframe |
| Downey | \$29.73 | WMP cost, breakdown unknown, 10-year timeframe |
| Duarte | NR | |
| El Monte | NR | |
| El Segundo | \$174.69 | Capital cost only |
| Gardena | -- | |
| Glendale | \$423.25 | Capital cost plus 20 years of O&M |
| Glendora | \$224.17 | Capital cost plus 20 years of O&M |
| Hawaiian Gardens | \$1.27 | WMP cost, breakdown unknown, 10-year timeframe |
| Hawthorne | \$154.76 | Capital cost only |
| Hermosa Beach | NR | |
| Hidden Hills | \$15.16 | Capital cost only |
| Huntington Park | \$53.77 | WMP cost, breakdown, and timeframe unknown |

| Los Angeles County Permittee | Total Cost | Description |
|---|------------|--|
| Industry | \$475.80 | Capital cost plus 20 years of O&M |
| Inglewood | \$231.94 | Capital cost only |
| Irwindale | -- | |
| La Cañada Flintridge | \$96.49 | Capital cost plus 20 years of O&M |
| La Habra Heights | NR | |
| La Mirada | \$4.56 | WMP cost, breakdown unknown, 10-year timeframe |
| La Puente | \$132.80 | Capital cost plus 20 years of O&M |
| La Verne | NR | |
| Lakewood | \$2.02 | WMP cost, breakdown unknown, 10-year timeframe |
| Lawndale | \$32.28 | Capital cost only |
| Lomita | \$50.29 | Capital cost only |
| Long Beach | \$432.26 | WMP cost, breakdown, and timeframe unknown |
| Los Angeles City ^b | \$7,259.29 | Capital cost plus partial O&M |
| Los Angeles County and Los Angeles County Flood Control District ^b | \$2,474.05 | Capital cost plus partial O&M |
| Lynwood | \$28.63 | WMP cost, breakdown, and timeframe unknown |
| Malibu | NR | |
| Manhattan Beach | NR | |
| Maywood | \$33.50 | WMP cost, breakdown, and timeframe unknown |
| Monrovia | NR | |
| Montebello | \$207.34 | Capital cost plus 20 years of O&M |
| Monterey Park | \$189.11 | Capital cost plus 20 years of O&M |
| Norwalk | \$2.95 | WMP cost, breakdown unknown, 10-year timeframe |
| Palos Verdes Estates | NR | |
| Paramount | \$22.93 | WMP cost, breakdown, and timeframe unknown |
| Pasadena | \$407.00 | Capital cost plus 20 years of O&M |
| Pico Rivera | \$18.60 | WMP cost, breakdown, and timeframe unknown |
| Pomona | NR | |
| Rancho Palos Verdes | NR | |
| Redondo Beach | NR | |
| Rolling Hills | -- | |

| Los Angeles County Permittee | Total Cost | Description |
|------------------------------|------------|--|
| Rolling Hills Estates | NR | |
| Rosemead | \$166.51 | Capital cost plus 20 years of O&M |
| San Dimas | NR | |
| San Fernando | \$40.50 | Capital cost plus 20 years of O&M |
| San Gabriel | \$127.77 | Capital cost plus 20 years of O&M |
| San Marino | \$93.98 | Capital cost plus 20 years of O&M |
| Santa Clarita | \$394.27 | Capital cost only |
| Santa Fe Springs | \$4.02 | WMP cost, breakdown unknown, 10-year timeframe |
| Santa Monica | \$913.36 | Capital cost plus 20 years of O&M |
| Sierra Madre | NR | |
| Signal Hill | \$6.62 | WMP cost, breakdown, and timeframe unknown |
| South El Monte | \$108.77 | Capital cost plus 20 years of O&M |
| South Gate | \$50.42 | WMP cost, breakdown, and timeframe unknown |
| South Pasadena | \$60.98 | Capital cost plus 20 years of O&M |
| Temple City | \$92.44 | Capital cost plus 20 years of O&M |
| Torrance | NR | |
| Vernon | \$38.70 | WMP cost, breakdown, and timeframe unknown |
| Walnut | NR | |
| West Covina | NR | |
| West Hollywood | \$98.66 | Capital cost plus 20 years of O&M |
| Westlake Village | \$32.45 | Capital cost only |
| Whittier | \$12.12 | WMP cost, breakdown unknown, 10-year timeframe |

- a. Individual Permittee projected cost estimates are not reported (“NR”) for those Permittees participating in the North Santa Monica Bay, Palos Verdes Peninsula Cities, Rio Hondo/San Gabriel River, and South Bay Beach cities EWMPs, as well as the Alamitos Bay, East San Gabriel Valley Cities, Los Cerritos Channel, and Santa Monica Bay Jurisdictional Group 7. Costs are also not available for the cities with individual WMPs, except for Long Beach. For Permittees that are not participating in a WMP or EWMP, “—” is indicated.
- b. Bellflower, Los Angeles, Los Angeles County, Los Angeles Flood Control District, and Signal Hill costs are underestimates because some EWMP/WMP groups that include them did not break down costs by jurisdiction.

Source: Los Angeles Water Board Analysis

ii. Ventura County Permittees

While the prior Ventura County MS4 Permit (Order No. R4-2010-0108) included requirements to implement WQBELs consistent with the assumptions and requirements of TMDL wasteload allocations assigned to MS4 discharges, it did not include provisions allowing Ventura County

Permittees to develop and implement watershed management programs as a compliance pathway for permit requirements. Therefore, Permittee estimates of projected costs specific to the watershed areas in Ventura County are not generally available. However, Ventura County Permittees have estimated projected costs based on information contained in EWMPs developed in Los Angeles County. The analysis and estimates are presented in a technical memorandum prepared by Larry Walker Associates for Ventura County Permittees, "Preliminary Ventura County MS4 Permit Structural BMP Implementation Cost Estimate," dated June 1, 2017.

The EWMPs considered include those for the Upper Santa Clara River, Malibu Creek (the portion within Los Angeles County only), Santa Monica Bay J2 and J3, Upper San Gabriel River, and North Santa Monica Bay Coastal Watersheds. According to the technical memorandum, these EWMPs were selected given their similarity to land use characteristics in Ventura County and to capture the various approaches to selecting the EWMP control measures used in Los Angeles County. As described in the technical memorandum, capital costs per acre of urban area treated were extracted from each of these Los Angeles County EWMPs. A series of unit cost summary statistics were computed including average (mean), median, 25th percentile and 75th percentile. The urban MS4 jurisdictional area for each Ventura County Permittee was multiplied by the 25th percentile unit cost and was assumed to represent the low end of the range of anticipated capital costs. Similarly, the urban MS4 jurisdictional area was multiplied by the 75th percentile unit cost and was assumed to represent the high end of range of expected capital costs. Based on this analysis, total projected capital cost estimates range from \$272M to \$2.0B in 2019 dollars for full implementation through 2040. The total estimated projected cost for each individual Ventura County Permittee is provided in Table F-32.

Table F-32. Ventura County Permittees' Projected Capital Cost Estimates for Full Implementation through 2040, by Permittee (millions, 2019\$).

| Permittee | 25th percentile EWMP Costs | 75th percentile EWMP Costs | Average EWMP Costs | Median EWMP Costs |
|---------------|----------------------------|----------------------------|--------------------|-------------------|
| Camarillo | \$23.40 | \$173.46 | \$88.56 | \$49.07 |
| Fillmore | \$3.56 | \$26.39 | \$13.47 | \$7.47 |
| Moorpark | \$13.00 | \$96.37 | \$49.20 | \$27.26 |
| Ojai | \$5.71 | \$42.34 | \$21.62 | \$11.98 |
| Oxnard | \$41.89 | \$310.56 | \$158.55 | \$87.85 |
| Port Hueneme | \$3.55 | \$26.35 | \$13.45 | \$7.45 |
| Ventura | \$33.43 | \$247.82 | \$126.52 | \$70.10 |
| Santa Paula | \$6.90 | \$51.15 | \$26.11 | \$14.47 |
| Simi Valley | \$42.20 | \$312.84 | \$159.71 | \$88.49 |
| Thousand Oaks | \$53.86 | \$399.29 | \$203.85 | \$112.95 |

| Permittee | 25th percentile EMWP Costs | 75th percentile EMWP Costs | Average EMWP Costs | Median EMWP Costs |
|--|----------------------------|----------------------------|--------------------|-------------------|
| Unincorporated County | \$44.93 | \$333.06 | \$170.04 | \$94.21 |
| Watershed Protection District ^a | - | - | - | - |
| Total Projected Cost Estimate | \$272.42 | \$2,019.62 | \$1,031.08 | \$571.29 |

Note: O&M costs and land acquisition costs (if they are necessary) are not included in the estimates.

- a. A projected cost estimate could not be computed for the Ventura County Watershed Protection District using this method, since the land area within the Watershed Protection District is already accounted for in the jurisdictional area of the 10 cities and unincorporated area of Ventura County.

Source: Larry Walker Associates, June 1, 2017, "Preliminary Ventura County MS4 Permit Structural BMP Implementation Cost Estimate"

The technical memorandum also separately included estimates of projected operation and maintenance (O&M) costs for the capital projects anticipated in the table above for each Ventura County Permittee. Total O&M costs range from \$9.5M to \$119.2M, as shown in Table F-33.

Table F-33. Ventura County Permittees' Projected Annual O&M Cost Estimates for Capital Projects (millions, 2019\$).

| Permittee | Watershed(s) | Low Annual O&M Cost Estimate | High Annual O&M Cost Estimate |
|--------------|---|------------------------------|-------------------------------|
| Camarillo | Calleguas Creek Watershed (CCW) | \$0.82 | \$10.23 |
| Fillmore | Lower Santa Clara River Watershed (LSCRW) | \$0.13 | \$1.56 |
| Moorpark | CCW | \$0.46 | \$5.69 |
| Ojai | Ventura River Watershed (VRW) | \$0.20 | \$2.50 |
| Oxnard | LSCRW, CCW, Coastal | \$1.47 | \$18.32 |
| Port Hueneme | CCW | \$0.12 | \$1.56 |
| Ventura | LSCRW, VRW | \$1.17 | \$14.62 |
| Santa Paula | LSCRW | \$0.24 | \$3.02 |
| Simi Valley | CCW | \$1.48 | \$18.46 |

| Permittee | Watershed(s) | Low Annual O&M Cost Estimate | High Annual O&M Cost Estimate |
|-----------------------|---|------------------------------|-------------------------------|
| Thousand Oaks | CCW, MCW | \$1.89 | \$23.56 |
| Unincorporated County | LSCRW, CCW, VRW, Malibu Creek Watershed (MCW), Coastal (Countywide) | \$1.57 | \$19.65 |
| Total | - | \$9.54 | \$119.16 |

Source: Larry Walker Associates, June 1, 2017, "Preliminary Ventura County MS4 Permit Structural BMP Implementation Cost Estimate"

Combining low and high estimates of capital costs and O&M costs yields total 20-year cost estimates of \$463.2M to \$4.4B for Ventura County, as shown in Table F-34.

Table F-34. Ventura County Permittees' Projected Total Cost Estimates for Capital Projects (millions, 2019\$).

| Permittee | 25th percentile EMWP Costs | 75th percentile EMWP Costs | Low Annual O&M Cost | High Annual O&M Cost | Low Total 20-Year Cost | High Total 20-Year Cost |
|--------------------------------------|----------------------------|----------------------------|---------------------|----------------------|------------------------|-------------------------|
| Camarillo | \$23.40 | \$173.46 | \$0.82 | \$10.23 | \$39.78 | \$378.16 |
| Fillmore | \$3.56 | \$26.39 | \$0.13 | \$1.56 | \$6.06 | \$57.53 |
| Moorpark | \$13.00 | \$96.37 | \$0.46 | \$5.69 | \$22.11 | \$210.07 |
| Ojai | \$5.71 | \$42.34 | \$0.20 | \$2.50 | \$9.71 | \$92.31 |
| Oxnard | \$41.89 | \$310.56 | \$1.47 | \$18.32 | \$71.22 | \$677.01 |
| Port Hueneme | \$3.55 | \$26.35 | \$0.12 | \$1.56 | \$6.03 | \$57.45 |
| Ventura | \$33.43 | \$247.82 | \$1.17 | \$14.62 | \$56.84 | \$540.25 |
| Santa Paula | \$6.90 | \$51.15 | \$0.24 | \$3.02 | \$11.73 | \$111.49 |
| Simi Valley | \$42.20 | \$312.84 | \$1.48 | \$18.46 | \$71.73 | \$681.98 |
| Thousand Oaks | \$53.86 | \$399.29 | \$1.89 | \$23.56 | \$91.57 | \$870.45 |
| Unincorporated County | \$44.93 | \$333.06 | \$1.57 | \$19.65 | \$76.38 | \$726.07 |
| Total Projected Cost Estimate | \$272.42 | \$2,019.62 | \$9.54 | \$119.16 | \$463.17 | \$4,402.77 |

| Permittee | 25th percentile EMWP Costs | 75th percentile EMWP Costs | Low Annual O&M Cost | High Annual O&M Cost | Low Total 20-Year Cost | High Total 20-Year Cost |
|-----------|----------------------------|----------------------------|---------------------|----------------------|------------------------|-------------------------|
|-----------|----------------------------|----------------------------|---------------------|----------------------|------------------------|-------------------------|

Source: Larry Walker Associates, June 1, 2017, "Preliminary Ventura County MS4 Permit Structural BMP Implementation Cost Estimate"; Los Angeles Water Board Analysis

e. WMP Development Costs

In addition to costs of implementing structural BMPs, Permittees in Ventura County may incur initial costs to develop WMPs. Los Angeles County and the City of Long Beach have already undergone the development process for EWMPs and WMPs under their permits for 2012 and 2014, respectively. Thus, we present development costs for only Ventura County. Although Ventura County currently does not have any WMPs, the County estimated potential development costs were they to participate in the WMP process, as shown in Table F-35. Costs were inflated to 2019 dollars using the GDP implicit price deflator and assumed to be incurred in the next permit period. Potential development costs were based on the development process in the 2012 Los Angeles County MS4 Permit, which included creating a Work Plan (for EWMPs), preparing a draft WMP or EWMP, and preparing a final WMP or EWMP. Groups were also required to submit Notices of Intent and, in the case of Permittees developing an EWMP, Memoranda of Understanding to the Board at the beginning of the development process. Additionally, Permittees incur costs to develop companion CIMPs. While this process has been streamlined in this Order (e.g., elimination of Work Plan and MOU requirements, reduction in requirements for Notices of Intent), the projected costs were not reduced.

Table F-35. Ventura County WMP Development Costs (millions, 2019\$).

| Watershed | Overall |
|---|---------------|
| Coastal watersheds | \$0.26 |
| Calleguas Creek Watershed (CCW) | \$0.26 |
| Lower Santa Clara River Watershed (LSCRW) | \$0.26 |
| Malibu Creek Watershed (MCW) | \$0.68 |
| Ventura River Watershed (VRW) | \$0.68 |
| Total | \$2.14 |

Source: Larry Walker Associates, June 1, 2017, "Preliminary Ventura County MS4 Permit Structural BMP Implementation Cost Estimate"

The Ventura Countywide Stormwater Quality Management Program estimated development costs of about \$260,000 for smaller, less complex watersheds (Coastal, CCW, and LSCRW) and \$680,000 for more complex watersheds (MCW and VRW). Total estimated WMP development costs for Ventura County are \$2.14M.

f. Costs of Stormwater Management Program

In addition to the estimates of projected costs for TMDL implementation and projected costs from WMPs and EWMPs, it is generally assumed that Permittees will continue to incur costs similar to or less than those they have reported under Order Nos. R4-2010-0108, R4-2012-0175 and R4-2014-0024 to implement their stormwater management programs’ “minimum control measures” and conduct monitoring and reporting.³⁸² These costs have been reported by Permittees in their Annual Reports and, therefore, are captured by the cost estimates in Table F-36 and Table F-37. For LA County, annual total costs were averaged over three fiscal years, FY16/17-18/19. Over this more recent period, the cost reporting was more consistent across Permittees and reflects the costs, inclusive of enhanced “minimum control measures” in WMPs and EWMPs and CIMP, almost all of which were approved by FY15/16. For Ventura County, annual total costs were averaged over the term of the prior permit, from FY10/11-FY18/19. Structural BMP costs were removed from the tabulation, as these costs are accounted for in Methods 1 and 2. Due to different cost reporting formats for Ventura County and LA County, capital costs were omitted for Permittees in Ventura County, whereas for Permittees in LA County, costs for Distributed Projects and Green Streets, Regional Projects, and Restoration Projects were omitted.

i. Ventura County Permittees: For Ventura County Permittees, these projected annual stormwater program costs are provided in Table F-36 based on the average anticipated budgets reported in the Ventura Countywide Storm Water Quality Management Program Annual Reports during the term of the prior permit (i.e., FY10/11 through 18/19).³⁸³ Costs for each year were converted to 2019 dollars using the Federal GDP Implicit Price Deflator then averaged to calculate projected annual costs.

Table F-36. Estimated Annual Costs Incurred by Ventura County MS4 Permittees for Stormwater Programs (2019\$)

| Permittee | Watershed(s) | Projected Annual Stormwater Program Costs ^a |
|--------------|---------------------|--|
| Camarillo | CCW | \$1,442,616.9 |
| Fillmore | LSCRW | \$191,449.1 |
| Moorpark | CCW | \$509,800.0 |
| Ojai | VRW | \$124,773.8 |
| Oxnard | LSCRW, CCW, Coastal | \$2,170,929.7 |
| Port Hueneme | CCW | \$435,384.0 |

³⁸² For example, instrumenting outfalls with autosamplers is not a recurring activity and was conducted under the prior permits. Additionally, the Order’s minimum control measures provide more flexibility to the Permittees for implementation, relative to the prior permits, allowing Permittees to explore more cost-effective and efficient approaches to implementing their stormwater management programs.

³⁸³ These estimates were calculated by Los Angeles Water Board staff based on a review of the Ventura County Permittees’ Annual Reports.

| Permittee | Watershed(s) | Projected Annual Stormwater Program Costs ^a |
|-------------------------------|-------------------------------|--|
| Ventura | LSCRW, VRW, Coastal | \$1,601,130.5 |
| Santa Paula | LSCRW | \$130,806.0 |
| Simi Valley | CCW | \$2,057,068.4 |
| Thousand Oaks | CCW, MCW | \$1,427,586.4 |
| Unincorporated County | LSCRW, CCW, VRW, MCW, Coastal | \$2,851,452.0 |
| Watershed Protection District | LSCRW, CCW, VRW, MCW, Coastal | \$3,073,985.6 |
| Total | - | \$18,252,525.2^p |

- a. Projected costs based on analysis period FY10/11 through 18/19.
- b. Note that the total includes a separate line item for “Principal Co-Permittee” that was identified in the Annual Reports. As discussed in Part II.C of this Fact Sheet, the Principal Co-Permittee designation given to VCWPD is not being carried over to the Regional MS4 Permit. Where the anticipated budget for the Principal Co-Permittee addresses ongoing requirements under the Regional MS4 Permit, it is assumed that those will either be incurred by VCWPD or will be divided among all Ventura County Permittees in some manner.

Source: Los Angeles Water Board analysis of Ventura County Permittees’ Annual Reports

- ii. **Los Angeles County Permittees:** For Los Angeles County Permittees, these projected annual stormwater program costs are provided in Table F-37 based on the average expenditures reported in the Permittees’ Annual Reports from FY16/17-18/19 to account for enhanced MCMs in approved WMPs and EWMPs and monitoring in CIMPs, which were almost all approved by FY15/16. Costs for each year were converted to 2019 dollars using the Federal GDP Implicit Price Deflator then averaged to calculate projected annual costs.

Table F-37. Estimated Annual Costs Incurred by Los Angeles County Permittees for Implementation of Stormwater Programs (2019\$)

| Permittee | Projected Annual Stormwater Program Costs ^a |
|--------------|--|
| Agoura Hills | \$677,283 |
| Alhambra | \$841,390 |
| Arcadia | \$277,536 |
| Artesia | \$183,471 |
| Azusa | \$400,831 |
| Baldwin Park | \$1,974,599 |

| Permittee | Projected Annual Stormwater Program Costs^a |
|----------------------|--|
| Bell | \$382,957 |
| Bell Gardens | \$465,451 |
| Bellflower | \$467,739 |
| Beverly Hills | \$2,778,077 |
| Bradbury | \$339,200 |
| Burbank | \$4,454,050 |
| Calabasas | \$335,262 |
| Carson | \$152,071 |
| Cerritos | \$879,717 |
| Claremont | \$2,601,725 |
| Commerce | \$2,007,753 |
| Compton | \$499,531 |
| Covina | \$599,559 |
| Cudahy | \$226,321 |
| Culver City | \$750,840 |
| Diamond Bar | \$704,592 |
| Downey | \$1,153,964 |
| Duarte | \$372,344 |
| El Monte | \$843,327 |
| El Segundo | \$2,324,868 |
| Gardena | \$601,689 |
| Glendale | \$749,602 |
| Glendora | \$363,889 |
| Hawaiian Gardens | \$137,594 |
| Hawthorne | \$893,207 |
| Hermosa Beach | \$763,531 |
| Hidden Hills | \$121,853 |
| Huntington Park | \$1,001,928 |
| Industry | \$1,089,656 |
| Inglewood | \$2,248,635 |
| Irwindale | \$656,161 |
| La Cañada Flintridge | \$255,438 |

| Permittee | Projected Annual Stormwater Program Costs^a |
|-----------------------|--|
| La Habra Heights | \$72,521 |
| Lakewood | \$718,609 |
| La Mirada | \$106,913 |
| La Puente | \$4,677,491 |
| La Verne | \$3,580,505 |
| Lawndale | \$79,132 |
| Lomita | \$223,980 |
| Long Beach | \$3,040,065 |
| Lynwood | \$726,912 |
| Malibu | \$1,744,270 |
| Manhattan Beach | \$4,854,454 |
| Maywood | \$197,794 |
| Monrovia | \$405,408 |
| Montebello | \$4,129,272 |
| Monterey Park | \$488,995 |
| Norwalk | \$1,676,191 |
| Palos Verdes Estates | \$203,724 |
| Paramount | \$740,156 |
| Pasadena | \$3,111,035 |
| Pico Rivera | \$927,212 |
| Pomona | \$1,898,263 |
| Rancho Palos Verdes | \$546,507 |
| Redondo Beach | \$2,210,476 |
| Rolling Hills | \$112,642 |
| Rolling Hills Estates | \$407,961 |
| Rosemead | \$369,839 |
| San Dimas | \$436,425 |
| San Fernando | \$206,698 |
| San Gabriel | \$296,542 |
| San Marino | \$314,506 |
| Santa Clarita | \$3,465,294 |
| Santa Fe Springs | NR |

| Permittee | Projected Annual Stormwater Program Costs^a |
|---|--|
| Santa Monica | \$8,792,906 |
| Sierra Madre | \$302,128 |
| Signal Hill | \$820,861 |
| South El Monte | \$253,312 |
| South Gate | \$2,600,109 |
| South Pasadena | \$211,808 |
| Temple City | \$305,325 |
| Torrance | \$4,382,214 |
| Vernon | \$1,167,982 |
| Walnut | \$205,501 |
| West Covina | \$889,398 |
| West Hollywood | \$807,661 |
| Westlake Village | \$303,071 |
| Whittier | \$633,310 |
| Los Angeles | \$47,099,437 |
| Los Angeles County | \$49,739,440 |
| Los Angeles County Flood Control District | \$38,748,435 |
| Total | \$234,810,330 |

a. Projected costs based on analysis period FY 16/17 through 18/19.

Source: Los Angeles Water Board analysis of Los Angeles County Permittees' Annual Reports

Using the Stormwater Management Program costs reported by the Permittees, Los Angeles County Permittees expended a high of \$315 per capita per year (Bradbury) to a low of \$1.66 per capita per year (Carson) over the period 2016-2019.³⁸⁴ Ventura County Permittees expended a high of \$21.49 per capita per year (Camarillo) and a low of \$4.35 per capita per year (Santa Paula) over the period 2010-2019.³⁸⁵

³⁸⁴ For calculations, see Stormwater_Management_Program_Cost_Analysis_LAC_Final.xlsx in the Administrative Record; the cities of Industry, Irwindale and Vernon were not considered when presenting this range of per capita cost due to their very low populations relative to their land area.

³⁸⁵ For calculations, see Ventura_Storwmater_Management_Program_Cost_Final.xlsx in the Administrative Record

g. Summary of total costs estimated from Method 1, Method 2, and Stormwater Management Program Costs

A summary of total cost estimates of complying with the Order is presented in Table F-38 for Method 1 and Table F-39 for Method 2. Costs from Methods 1 and 2 were added to WMP development costs (for Ventura County Permittees) and Stormwater Management Program costs (for all Permittees). Calculating costs using Method 1, which analyzed structural BMP costs estimated in Staff Reports at the time of TMDL development, yielded a total compliance cost of about \$13.4B for structural BMPs. Combined with WMP development and Stormwater Management Program costs, total costs were estimated to be \$18.5B. With Method 2, which analyzed structural BMP costs presented in EWMPs and WMPs, total costs ranged from about \$21.4B to \$25.7B for structural BMPs. Adding WMP development and Stormwater Management Program costs yielded a total cost of \$26.5B to \$30.8B.

Table F-38. Total 20-Year MS4 Costs Estimated from Method 1 (millions, 2019\$)

| Method 1 Costs | TMDL Staff Report Costs | WMP Development | Stormwater Management Program | Total Projected MS4 Costs |
|----------------|-------------------------|-----------------|-------------------------------|---------------------------|
| LA County | – | – | \$4,696.21 | – |
| Ventura County | – | \$2.14 | \$365.05 | – |
| Total | \$13,388.85 | \$2.14 | \$5,061.26 | \$18,452.24 |

Source: Los Angeles Water Board Analysis

Table F-39. Total 20-Year MS4 Costs Estimated from Method 2 (millions, 2019\$)

| Method 2 Costs | EWMP/WMP Costs | | WMP Development | Stormwater Management Program | Total Projected MS4 Costs | |
|----------------|--------------------|--------------------|-----------------|-------------------------------|---------------------------|--------------------|
| | Low | High | | | Low | High |
| LA County | \$20,972.06 | \$21,340.11 | – | \$4,696.21 | \$25,668.27 | \$26,036.32 |
| Ventura County | \$463.17 | \$4,402.77 | \$2.14 | \$365.05 | \$828.22 | \$4,767.82 |
| Total | \$21,435.23 | \$25,742.88 | \$2.14 | \$5,061.26 | \$26,498.62 | \$30,806.27 |

Source: Los Angeles Water Board Analysis

2. Uncertainties in Projected Costs of Compliance

As set forth above, the projected costs, and actual costs, to implement stormwater programs are a significant issue for Permittees. However, it has been, and continues to be, difficult to ascertain the cost at a planning level of fully implementing decades-long stormwater and urban runoff management programs, especially where significant flexibility has been provided to the Permittees to comply both with regard to the manner of compliance and the timeframes for achieving compliance, including permit provisions that allow Permittees to request modifications to both how they achieve compliance and the timeframes for doing so.

There are myriad reasons for this, including but not limited to:

- Innovations in BMPs over time that reduce costs and/or increase pollutant removal;
- Changes in consumer products that reduce or eliminate pollutants in MS4 discharges;
- Limitations of modeling used to identify BMPs that need to be implemented to achieve required water quality outcomes, requiring water quality data for verification/periodic recalibration;
- Imprecise data at the planning stage on site-specific conditions for siting BMPs, which can significantly affect BMP sizing requirements as well as the types of BMPs that can be used at a site; and
- Evolving science and evaluation of local conditions that may support site-specific water quality objectives.

a. Actual Costs: Implementation of Water Quality Improvements Through EWMPs and WMPs

As noted earlier, costs are difficult to reliably estimate at the planning stage. Data collected thus far from some Los Angeles County Permittees participating in WMPs and EWMPs indicate that these initial planning-level projected costs were sometimes over-estimated. For example, Permittees implementing the Los Angeles River Upper Reach 2 WMP found that site-specific conditions (namely, infiltration rates) for their regional BMPs were much more favorable than anticipated, allowing them to significantly reduce the BMP footprint size. This, in turn, reduced the estimated cost of their proposed regional BMPs by half from \$209M to \$102M.³⁸⁶

Several other examples illustrate the same point:

- Ladera Park Stormwater Capture Project (Ballona Creek EWMP): The projected construction cost in the EWMP was \$7M, while the actual construction cost was \$4.9M, a savings of 30%.³⁸⁷
- Roosevelt Park Stormwater Capture Project (Upper LA River EWMP): The projected construction cost was \$33M, while the actual construction cost was \$9M, a savings of over 70%.³⁸⁸
- Carriage Crest Stormwater Capture Project (Dominguez Channel EWMP): The projected construction cost was \$8.7M for a BMP capacity of 9 acre-feet. During design, the BMP capacity was increased by threefold to 27 acre-feet. Additionally, the BMP type was modified from an infiltration project to a diversion to the adjacent wastewater reclamation facility. The actual construction cost for the BMP was \$15.6M.³⁸⁹ This equates to a reduction in the cost per acre-foot from \$967,000 to \$578,000.

³⁸⁶ Presentation by CWE and Tetra Tech on behalf of Permittees in the Los Angeles River Upper Reach 2 WMP, "Los Angeles River Upper Reach 2 Watershed Management Area: Watershed Management Program Implementation Status Update," presented at March 2, 2017 meeting of the Los Angeles Regional Water Quality Control Board. Note that the Permittees had proposed six regional BMPs; given favorable site conditions, the group was able to eliminate one of these BMPs, while still addressing permit requirements.

³⁸⁷ Los Angeles County Dept. of Public Works, "DRAFT: EWMP Planning Cost vs. Actual Cost for Unincorporated County Projects," handout at July 17, 2019 meeting with Los Angeles Water Board staff.

³⁸⁸ Ibid.

³⁸⁹ Ibid.

Permittees also have discretion in deciding how to comply with permit requirements, including requirements to comply with WQBELs and receiving water limitations. What is practicable in one community may not work in another because of differences in population, land use, hydrology, pollution sources, water uses, municipal infrastructure, and community priorities, among other things. For example, as discussed earlier, Permittees participating in the Rio Hondo/San Gabriel River EWMP were prompted to adapt their program to address an error in the initial modeling that overestimated the necessary load reduction for lead, which was identified when reviewing monitoring data, and to be more practicable for their communities by changing the suite of BMPs to be implemented while still addressing permit requirements. These changes reduced the estimated cost by over 90% from \$1.4B to \$121.7M.³⁹⁰ In other cases, however, site conditions may have been less favorable than anticipated, which can increase the cost. For example, the cost estimate for the Gates Canyon Stormwater Capture Project in the Malibu Creek EWMP was \$4.1M, while the actual construction cost was twice that amount at \$8.5M. This increase was because the original concept included an infiltration basin but due to geological constraints the project was modified to a water harvesting system with emergency bypass dry wells.³⁹¹

Furthermore, some EWMPs present assumed land acquisition costs in their cost functions that equate to \$5.6M-\$6.1M per acre for BMPs installed on private parcels³⁹², which would not need to be incurred if Permittees engage in public-private partnerships as municipalities elsewhere in the U.S. have begun doing within the last several years (further discussed in Part XIII.D.2.d of this Fact Sheet). This would result in substantial cost savings.

b. Difficulties in Estimating Costs

Many of the disparities between estimated and reported costs such as those described above are due to the difficulties in reliably estimating costs at the planning stage. Additionally, as noted earlier, reported costs of compliance for the same program element can vary widely from permittee to permittee. To date, standardized methods to estimate the costs of stormwater pollution reduction approaches, particularly on a watershed or subwatershed scale, have not been developed. While there are appropriate grounds for differences among MS4 permits, differences of a very wide margin are not easily explained.³⁹³ As noted, some cost estimates have been over-reported. In other

³⁹⁰ Rio Hondo/San Gabriel River Water Quality Group, "Rio Hondo/San Gabriel River Revised Watershed Management Program," May 17, 2019. It is noted that \$379M of the original cost, about 30%, was attributable to EWMP implementation in the City of Azusa, which discontinued its participation in the revised WMP.

³⁹¹ Los Angeles County Department of Public Works, "DRAFT: EWMP Planning Cost vs. Actual Cost for Unincorporated County Projects," handout presented at July 17, 2019 meeting with Los Angeles Water Board staff.

³⁹² Ballona Creek, Malibu Creek, Upper LA River, Upper Santa Clara River assumed a land acquisition cost of \$129 per square foot, or \$5.6M per acre. Upper San Gabriel River assumed a land acquisition cost of \$139.01 per square foot, or \$6.1M per acre.

³⁹³ Radulescu, Dan, and Xavier Swamikannu. [Review and Analysis of Budget Data Submitted by the Permittees for Fiscal Years 2000-2003](#). Los Angeles Regional Water Quality Control Board, January 2003. p. 2. Web. 20 June 2019.

cases, costs are reported that Permittees would have incurred regardless of their MS4 permit requirements. Not all reported program costs are solely attributable to compliance with requirements of the MS4 permit. Many program components, and their associated costs, existed before the first MS4 permits were issued in the 1990s. A 2005 State Water Board study found that certain reported costs included activities that provide separate and additional municipal benefits such as street sweeping and storm drain and channel cleaning and that the inclusion of these activities and their associated costs was not uniform across municipalities. These costs along with others like solid waste/litter collection costs are not solely or even principally attributable to MS4 permit compliance since these practices have long been implemented by municipalities. Also, some stormwater control measures may be integrated into multi-benefit projects serving many objectives (e.g., a public park whose mowing maintenance schedule is designed to maximize stormwater retention). Other measures may start out as stormwater control measures only to become expected by residents for their other benefits (e.g., dog waste bags at public parks). Therefore, the program cost related to complying with MS4 permit requirements is often some fraction of the total reported costs.

The State Water Board study also noted inherent limitations in the cost data quality. The most significant data quality limitation cited is that the costs provided by the municipalities were not sufficiently detailed or referenced to provide opportunity for independent review of the accuracy and completeness of the cost data. Similarly, the costs presented in the prior MS4 permits in the Los Angeles Region were not presented with supporting data or references so that they can be independently reviewed. Los Angeles Water Board staff often had to seek additional information and clarification from Permittees regarding their reported costs.³⁹⁴

Note that these issues were evaluated in detail in the 2012 Los Angeles County MS4 Permit Fact Sheet and in the State Water Board study. A key finding of the State Water Board study was that a significant portion (greater than 50%) of the costs attributed to stormwater compliance activities also provides additional municipal benefits.³⁹⁵ The remainder of program costs was either pre-existing or resulted from enhancement of pre-existing programs.³⁹⁶ The County of Orange found that an even lesser amount of program costs was solely attributable to MS4 permit compliance, reporting that the cost attributable to implementation of its Drainage Area Management Plan is less than 20 percent of the total budget. The remaining 80 percent is attributable to pre-existing programs.³⁹⁷

Despite these problems, the Board has endeavored to estimate the possible range of costs of compliance with the Order, including WQBELs as presented in Part XIII.D.1 above.

³⁹⁴ See select Annual Report review letters, for example.

³⁹⁵ Currier, Brian K., Joseph M. Jones, Glenn L. Moeller. "NPDES Stormwater Cost Survey, Final Report," Prepared by California State Water Resources Control Board, California State University Sacramento, Office of Water Programs, January 2005.

³⁹⁶ *Ibid.*, p. 58.

³⁹⁷ County of Orange, 2000. *A NPDES Annual Progress Report*. p. 60.

c. Improvements in Cost Estimation & Reporting

There are several initiatives in progress to address the challenges of accurately quantifying and reporting the costs to implement stormwater programs, including an effort undertaken by the State Water Board's Office of Research Planning and Performance (ORPP)³⁹⁸ to provide guidance on estimation of costs to implement TMDLs and consistent tracking and reporting by municipalities of costs of permit compliance. The Environmental Finance Center (EFC)³⁹⁹ at California State University, Sacramento recently compiled existing resources on stormwater infrastructure costs and developed suggested guidance to explain best practices for estimating costs. EFC's effort evolved from the State Water Board study in 2005 and includes estimates of costs for permit compliance activities, technical resources that assist stormwater managers, and project costs for both green and grey infrastructure.

ORPP's guidance describes methods for obtaining information on compliance approaches and associated costs and for completing an independent analysis of costs. The guidance strives to promote greater consistency and transparency related to estimation of costs to implement TMDLs. ORPP notes that, even with improved guidance, precise cost estimation remains challenging and the level of precision possible may be low in many cases. For example, industry-wide, there is no uniform database of projects' components and costs to date.

ORPP's guidance as well as the EFC's initiative and others are improving the basis for cost reporting by municipalities and, as a result, the Water Boards' consideration of economics in issuing permits. Los Angeles Water Board staff has participated in developing the ORPP guidance and has provided input on the EFC's initiative, and has considered this information when drafting the Order and associated reporting requirements in Attachments E (Monitoring and Reporting Program or MRP) and H (Annual Report Form). Using this guidance, section 2 (Program Expenditures) of Attachment H requires that all Permittees report costs in a uniform manner based on clearly defined program categories and cost elements. See, also, Table 2.2 in Attachment H.

d. Increasing cost-effectiveness through public-private partnerships

Estimated compliance costs as presented in this Fact Sheet are based on current and past compliance methods. However, Permittees in the Los Angeles region could use relatively new financing and contracting mechanisms that fall under the umbrella of pay-for-performance, a form of public-private partnership, to contribute towards meeting MS4 requirements more cost-effectively while also implementing multi-benefit green infrastructure on private property without needing to acquire private land, which a number of local jurisdictions in the U.S. have done. These pay-for-

³⁹⁸ State Water Board, Office of Research Planning and Performance (ORPP), Guidance for Future Total Maximum Daily Load (TMDL) Municipal Storm Water Cost Estimation, April 16, 2019; State Water Board, ORPP, Guidance for Obtaining Phase I Municipal Separate Storm Sewer System Permit (MS4) Compliance Costs, December 19, 2019.

³⁹⁹ Environmental Finance Center at Sacramento State. 2020 May. Estimating Benefits and Costs of Stormwater Management, Part II: Evaluating Municipal Spending in California. <https://www.efc.csus.edu/reports/efc-cost-project-part-2.pdf>

performance models, also known as pay-for-success, incentivize contractors to find private properties on which to construct green infrastructure, leading to more distributed stormwater capture and benefits, as well as lower costs and faster project timelines than traditional BMP implementation. For example, Philadelphia's Green Acres Retrofit Program encourages contractors to develop portfolios of multiple projects, spreading out risk, and property owners can reduce their stormwater fee if they accept a project on their property. Another example is Prince George's County's Clean Water Partnership, a community-based public-private partnership that prioritizes local minority-owned contractors and develops a local workforce specializing in green infrastructure. These municipalities have used public-private partnerships to supplement gray stormwater infrastructure with green infrastructure, which could also reduce the need for gray infrastructure. By adapting elements of existing public-private partnerships from other parts of the U.S., Permittees in the Los Angeles region have opportunities to green urban landscape and meet MS4 requirements more quickly, cost-effectively, and in the manner that works best locally.

Public-private partnerships can be more cost-effective than traditional stormwater BMP implementation for several reasons. Public-private partnerships structured under a pay-for-performance model shifts risk from municipalities to private partners.⁴⁰⁰ While details of specific pay-for-performance models established by different municipalities vary, municipalities essentially pay private contractors for outcomes, such as when BMPs promised to capture a certain amount of stormwater are successfully completed. Municipalities are not involved in the specific design and management of the BMPs. Municipalities may choose to pay only after construction completion, or they may make payments at certain stages of construction. They may also structure payment models to pay contractors for operations and maintenance over certain time intervals if BMPs are shown to still be effective over those time intervals. In addition, because municipalities would solicit bids from multiple parties, this fosters competition and increases cost-effectiveness. For example, Prince George's County saved more than 40% on costs compared to traditional procurements.⁴⁰¹ And Philadelphia pays a maximum of \$90,000 per acre on private land in its Greened Acre Retrofit Program, compared to the \$250,000-\$300,000 per acre for green infrastructure on public land, a savings of 64%-70%.⁴⁰²

Public-private partnerships could also achieve faster BMP construction due to the nature of being located on private property. There would be fewer administrative steps compared to BMP implementation on public land. Also, projects on private property are more likely to be smaller, simpler projects that could be completed much faster than intensive, major projects on public

⁴⁰⁰ Environmental Incentives. 2017. Pay for Performance Contract Mechanisms for Stormwater Management. <https://enviroincentives.com/wp-content/uploads/2017/05/Pay-for-Performance-Contract-Mechanisms-for-Stormwater.pdf>

⁴⁰¹ WaterWorld. 2019. Prince George's County, Corvias complete stormwater partnership ahead of schedule, under budget. <https://www.waterworld.com/environmental/article/16218798/prince-georges-county-corvias-complete-stormwater-partnership-ahead-of-schedule-under-budget>

⁴⁰² Valderrama, Alisa and Paul Davis. 2015. How Philadelphia's Greened Acre Retrofit Program is catalyzing low-cost green infrastructure retrofits on private property. Natural Resources Defense Council. <https://www.nrdc.org/sites/default/files/philadelphia-green-infrastructure-retrofits-IB.pdf>

property that require specialized equipment and expertise. Furthermore, there is significantly more land that is private than public. Encouraging public-private partnerships would open up many more available locations for BMPs.

Public-private partnerships can be structured in a way to prioritize certain areas for green infrastructure and steer employment towards communities who need it most. Private properties with more impervious surface already present greater opportunity for green infrastructure installation, and higher levels of impervious surface are often correlated with lower levels of neighborhood income, so contractors would already find more green infrastructure opportunities in lower-income neighborhoods. In Los Angeles County, where property owners are subject to the Measure W parcel tax, the opportunity to reduce the tax could be an incentive for property owners to accept the installation of green infrastructure on their property, particularly for lower-income property owners. However, municipalities can offer further incentives, paying more for projects located in neighborhoods with higher need, as was done in a stormwater credit trading program in Washington, D.C.⁴⁰³ Municipalities can also offer to pay more for local and/or minority-owned contractors, as was done in Prince George's County, where greater than 80% of contracts went to local minority-owned businesses. This would provide areas with the greatest need, i.e. low-income, often non-white, and disproportionately impacted by the COVID-19 pandemic, with opportunities for green jobs and greener neighborhoods.⁴⁰⁴

3. Sources of Funding for Permittees and Potential Impacts to Funding Sources Due to COVID-19 and Recovery Efforts

Permittees are required to secure the resources necessary to meet the requirements of the Order, including those necessary to achieve the receiving water limitations and WQBELs. As discussed elsewhere in the Fact Sheet, these permit provisions are required by federal regulations. That said, the Los Angeles Water Board recognizes that in light of the recession caused by the COVID-19 pandemic, local governments around the country are facing significant challenges in financing and constructing stormwater management infrastructure required by the CWA and federal NPDES regulations. However, as of May 2021, the number of vaccinations completed continues to rise both in the region and around the country, and the Biden administration has proposed trillions in new infrastructure spending on top of the \$1.9 trillion dollar American Rescue Plan effective in March 2021, all of which improve the outlook for stormwater funding.

The pandemic brought extraordinary hardship, and it hit society unequally. The unemployment rates in Los Angeles and Ventura Counties in the spring of 2020 hit highs of 18.8% and 14.5%, respectively.⁴⁰⁵ Low-income residents experienced

⁴⁰³ Parrish, Janet. 2018. Off-Site Stormwater Crediting: Lessons from Wetland Mitigation. U.S. EPA. https://www.epa.gov/sites/production/files/2018-10/documents/off-site_stormwater_crediting_lessons_from_wetland_mitigation-2018-04.pdf

⁴⁰⁴ Clean Water Partnership. 2020, December 11. Community-Based Public Private Partnerships (CBP3s) for Delivering Sustainability, Environmental Justice and Community Health and Resilience. Presentation. <https://thecleanwaterpartnership.com/sustainability-seminar-series-community-based-public-private-partnerships-cbp3s/>

⁴⁰⁵ FRED. 2021. Unemployment Rate in Los Angeles County, CA. <https://fred.stlouisfed.org/series/CALOSA7URN>; FRED. 2021. Unemployment Rate in Ventura County, CA. <https://fred.stlouisfed.org/series/CAVENT2URN>

higher rates of unemployment than middle- and high-income residents, many of whom were able to work remotely and more easily avoid becoming infected by COVID-19.⁴⁰⁶ Jobs disappeared in leisure, hospitality, and entertainment, on which Los Angeles County relies heavily. The agricultural industry in Ventura County was also hit hard, and on average received less federal aid compared to growers in other parts of the country.⁴⁰⁷ Due to systemic inequities, COVID-19 has disproportionately hit African Americans and Latinos nationwide.⁴⁰⁸ This has occurred in Los Angeles as well, in addition to disproportionate impacts on the local Pacific Islander population.⁴⁰⁹ Before the pandemic, Permittee municipalities where these underserved communities comprise a significant portion of their populations already had constrained opportunities for revenue generation due to lower average incomes and tax bases.⁴¹⁰ Existing disadvantages in resources have been exacerbated by the pandemic because underserved communities bear a heavier burden in healthcare costs and deaths. In Los Angeles, areas with high poverty had almost four times the death rate on average than areas with low poverty.⁴¹¹ Furthermore, African Americans and Latinos were more likely to be laid off or furloughed because of the pandemic.⁴¹²

Despite the real hardships, at the macro level economic suffering was not as bad as feared in early predictions. As of May 2021, during the course of the pandemic, the federal government has put more than \$5 trillion into the economy.⁴¹³ Congress passed the American Rescue Plan, which extended unemployment benefits, sent stimulus checks to the public, and sent \$350 billion to state and local governments, with stormwater infrastructure being one of the many intended uses of this funding.⁴¹⁴ President Biden has also ordered that 40% of benefits from federal climate action go to underserved communities as part of the Justice40 initiative.⁴¹⁵

⁴⁰⁶ Chetty, Raj, John N. Friedman, Michael Stepner. 2021. Who Spent Their Last Stimulus Checks? New York Times. <https://www.nytimes.com/interactive/2021/02/08/opinion/stimulus-checks-economy.html>

⁴⁰⁷ Smith, Aaron. COVID-19 Relief Programs Have Kept U.S. Farm Income High but Shortchanged California Producers. Giannini Foundation of Agricultural Economics, University of California. https://s.giannini.ucop.edu/uploads/pub/2021/02/18/v24n3_2.pdf

⁴⁰⁸ Centers for Disease Control and Prevention. 2020, June 25. COVID-19 in Racial and Ethnic Minority Groups. <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>

⁴⁰⁹ Lin, Rong-Gong, II. 2020, June 9. "Racism and inequity fuel coronavirus-related death toll among L.A. County minorities, officials say". Los Angeles Times. <https://www.latimes.com/california/story/2020-06-09/coronavirus-deaths-racism-blacks-latinos-pacific-islanders-inequity>

⁴¹⁰ De La Cruz-Viesca, Melany, Zhenxiang Chen, Paul M. Ong, Darrick Hamilton, and William A. Darity Jr. 2016. The Color of Wealth. Duke University, The New School, UCLA, Insight Center for Community Economic Development. http://www.aasc.ucla.edu/besol/Color_of_Wealth_Report.pdf

⁴¹¹ Lin, Rong-Gong, II. 2020, June 9. "Racism and inequity fuel coronavirus-related death toll among L.A. County minorities, officials say". Los Angeles Times. <https://www.latimes.com/california/story/2020-06-09/coronavirus-deaths-racism-blacks-latinos-pacific-islanders-inequity>

⁴¹² Jan, Tracy and Scott Clement. 2020, May 6. "Hispanics are almost twice as likely as whites to have lost their jobs amid pandemic, poll finds." Washington Post. <https://www.washingtonpost.com/business/2020/05/06/layoffs-race-poll-coronavirus/>

⁴¹³ Casselman, Ben. 2021. America is on a Road to a Better Economy. But Better for Whom?. New York Times. <https://www.nytimes.com/2021/05/18/magazine/stimulus-us-economy.html>

⁴¹⁴ U.S. Department of the Treasury. 2021. [Coronavirus State and Local Fiscal Recovery Funds](#).

⁴¹⁵ White House. 2021. Fact Sheet: President Biden Takes Executive Actions to Tackle the Climate Crisis at Home and Abroad, Create Jobs, and Restore Scientific Integrity Across Federal Government. <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/27/fact-sheet-president-biden->

As of May 2021, predictions are that the California 2021-2022 budget will have a surplus of \$38B-\$75B.⁴¹⁶ Economists in 2021 have consistently revised their outlooks to be more optimistic, expecting unemployment to return to pre-pandemic levels in 2022.⁴¹⁷ As of March 2021, the unemployment rates in Los Angeles and Ventura Counties were 10.9% and 6.4%, respectively.⁴¹⁸ While this is a significant improvement compared to the early months of the pandemic, there is still a ways to go to full recovery. At the local level, Los Angeles property tax revenues from the past year were higher than expected, and it is likely that funding for Measure W will remain largely intact.⁴¹⁹ Los Angeles County is set to receive \$1.9 billion, and the city of Los Angeles is set to receive \$1.4 billion from the American Rescue Plan.⁴²⁰ These amounts are greater than LA County and the city of Los Angeles's previously projected budget deficits of \$935 million and \$750 million, respectively.⁴²¹ While the specific magnitude of the effect on municipal revenues is unclear as of May 2021, there will be continued or increased funding of state and federal grants that can be used towards stormwater projects. There has been increased spending by the general public as more people have received vaccinations and the economy has continued to reopen, which will increase local tax revenues.

The pandemic's economic impacts largely affect general funds, which present a limited and less reliable source of revenue. Permittees are compelled more than before to identify alternative sources such as fees, assessments, grants, and loans. In the past, municipalities throughout the State have been successful in securing alternative funding for stormwater services through fees, assessments, or special taxes, as well as through developer fees, and gas taxes.⁴²² Many Permittees have

[takes-executive-actions-to-tackle-the-climate-crisis-at-home-and-abroad-create-jobs-and-restore-scientific-integrity-across-federal-government/](#)

⁴¹⁶ Walters, Dan. 2021. Newsom budget surplus gets reality check. CalMatters. <https://calmatters.org/commentary/2021/05/newsom-budget-surplus-lao/>

⁴¹⁷ Casselman, Ben. 2021. America is on a Road to a Better Economy. But Better for Whom?. New York Times. <https://www.nytimes.com/2021/05/18/magazine/stimulus-us-economy.html>

⁴¹⁸ FRED. 2021. Unemployment Rate in Los Angeles County, CA. <https://fred.stlouisfed.org/series/CALOSA7URN>; FRED. 2021. Unemployment Rate in Ventura County, CA. <https://fred.stlouisfed.org/series/CAVENT2URN>

⁴¹⁹ LA Controller. Revenue Forecast Report for Fiscal Years 2020-2021. <https://lacontroller.org/financial-reports/revenue-forecast-report-fy21/>

⁴²⁰ U.S. Department of the Treasury. 2021. [Coronavirus State and Local Fiscal Recovery Funds](#).

⁴²¹ Denkmann, Libby. 2020. LA County Supervisors Approve Downsized Budget: No Department is Spared From Cuts and Layoffs. LAist. <https://laist.com/news/la-county-supervisors-budget-cuts-layoffs-pandemic>; Zahniser, David, Dakota Smith, and Julia Wick. 2021. L.A. expects to receive \$1.35 billion from the relief bill. Garcetti is 'ecstatic'. Los Angeles Times. <https://www.latimes.com/california/story/2021-03-10/federal-relief-cities-states-could-end-los-angeles-city-budget-crisis>

⁴²² Generally, there is a willingness to pay for improvements in water quality. For example, U.S. EPA estimated household willingness to pay for improvements in freshwater quality to support fishing and boating to be \$182 to \$242 per year (adjusted for inflation using Bureau of Labor Statistics on-line CPI Inflation Calculator). (National Pollutant Discharge Elimination System – [Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges, Final Rule](#). Federal Register 64 (8 December 1999): p. 68793. Web. 20 June 2019.) This estimate can be considered conservative, since it does not include important considerations such as the benefits to marine waters, wildlife, or flood control. California State University - Sacramento's 2005 study corroborates U.S. EPA's estimates, reporting annual household willingness to pay for statewide clean water to be \$240 (adjusted for inflation using Bureau of Labor Statistics on-line CPI Inflation Calculator). (State Water Board, 2005. Currier, Brian

also taken steps to establish a stable funding source, which will help fund stormwater projects despite the current economic downturn. The following Parts XIII.D.3.a-e provide examples of these efforts. Part XIII.D.3.f of this Fact Sheet provides examples of state and federal grants and loans.

a. Los Angeles County Safe, Clean Water Program

In November 2018 Los Angeles County gained voter approval of Measure W, a special parcel tax of 2.5 cents per square foot of impermeable surface that will raise up to \$285 million annually to capture and clean up stormwater. Measure W required approval by a two-thirds majority to pass. The tax will help cities across Los Angeles County comply with the Order. It will also help make the region more water resilient in the face of drought and climate change, particularly in underserved communities that are often hit harder by environmental and public health stresses.⁴²³

Of the annual revenue, forty percent will be returned to the municipality of origin to create new local projects and programs and fund operation and maintenance. Table F-40 provides the estimated “local return” revenues that will be allocated to Los Angeles County Permittees based on the estimated annual revenue of \$285M. It is anticipated that a total of \$112.6M will go directly to municipalities through the local return.

K., et al. *NPDES Storm Water Cost Survey Final Report*. Office of Water Programs, California State University, Sacramento, January 2005. p. iv.)

⁴²³ “L.A. County stormwater tax officially passes.” Los Angeles Times, November 30, 2018.

Table F-40. Estimated Annual Safe, Clean Water Program Municipal Program Funds, by Permittee⁴²⁴

| | | | | | |
|---------------|---------|----------------------|----------|-----------------------|----------|
| Agoura Hills | \$0.34M | Hawaiian Gardens | \$0.13M | Pasadena | \$1.56M |
| Alhambra | \$0.86M | Hawthorne | \$0.79M | Pico Rivera | \$0.90M |
| Arcadia | \$1.02M | Hermosa Beach | \$0.16M | Pomona | \$1.88M |
| Artesia | \$0.21M | Hidden Hills | \$0.08M | Rancho Palos Verdes | \$0.69M |
| Azusa | \$0.62M | Huntington Park | \$0.43M | Redondo Beach | \$0.72M |
| Baldwin Park | \$0.72M | Industry | \$1.61M | Rolling Hills | \$0.10M |
| Bell | \$0.31M | Inglewood | \$0.97M | Rolling Hills Estates | \$0.16M |
| Bell Gardens | \$0.32M | Irwindale | \$0.44M | Rosemead | \$0.57M |
| Bellflower | \$0.83M | La Canada Flintridge | \$0.38M | San Dimas | \$0.60M |
| Beverly Hills | \$0.55M | La Habra Heights | \$0.17M | San Fernando | \$0.28M |
| Bradbury | \$0.05M | La Mirada | \$0.92M | San Gabriel | \$0.45M |
| Burbank | \$1.45M | La Puente | \$0.34M | San Marino | \$0.23M |
| Calabasas | \$0.39M | La Verne | \$0.57M | Santa Clarita | \$3.25M |
| Carson | \$2.40M | Lakewood | \$1.10M | Santa Fe Springs | \$1.45M |
| Cerritos | \$0.94M | Lawndale | \$0.23M | Santa Monica | \$0.81M |
| Claremont | \$0.57M | Lomita | \$0.23M | Sierra Madre | \$0.15M |
| Commerce | \$0.99M | Long Beach | \$4.60M | Signal Hill | \$0.28M |
| Compton | \$1.21M | Los Angeles | \$36.74M | South El Monte | \$0.45M |
| Covina | \$0.74M | Lynwood | \$0.58M | South Gate | \$1.00M |
| Cudahy | \$0.17M | Malibu | \$0.39M | South Pasadena | \$0.25M |
| Culver City | \$0.52M | Manhattan Beach | \$0.41M | Temple City | \$0.45M |
| Diamond Bar | \$0.84M | Maywood | \$0.18M | Torrance | \$2.13M |
| Downey | \$1.44M | Monrovia | \$0.53M | Unincorporated | \$11.24M |
| Duarte | \$0.25M | Montebello | \$0.90M | Vernon | \$0.93M |
| El Monte | \$1.10M | Monterey Park | \$0.74M | Walnut | \$0.50M |
| El Segundo | \$0.57M | Norwalk | \$1.09M | West Covina | \$1.36M |
| Gardena | \$0.83M | Palos Verdes Estates | \$0.26M | West Hollywood | \$0.26M |
| Glendale | \$1.68M | Paramount | \$0.65M | Westlake Village | \$0.23M |
| Glendora | \$0.90M | Hawaiian Gardens | \$0.13M | Whittier | \$1.21M |

Fifty percent of the annual revenue will be spread across nine watershed areas to develop Stormwater Investment Plans and implement regional projects and programs, including a Technical Resources Program (TRP) that will provide technical assistance to underserved communities in developing feasibility studies, which are required before a project is considered for funding, and facilitating community and stakeholder engagement. Anticipated annual revenues available to each watershed area are provided in Table F-41.

⁴²⁴ <https://safecleanwaterla.org/wp-content/uploads/2020/09/SCW-Local-Return-Funds-by-Municipality-20200809.pdf>

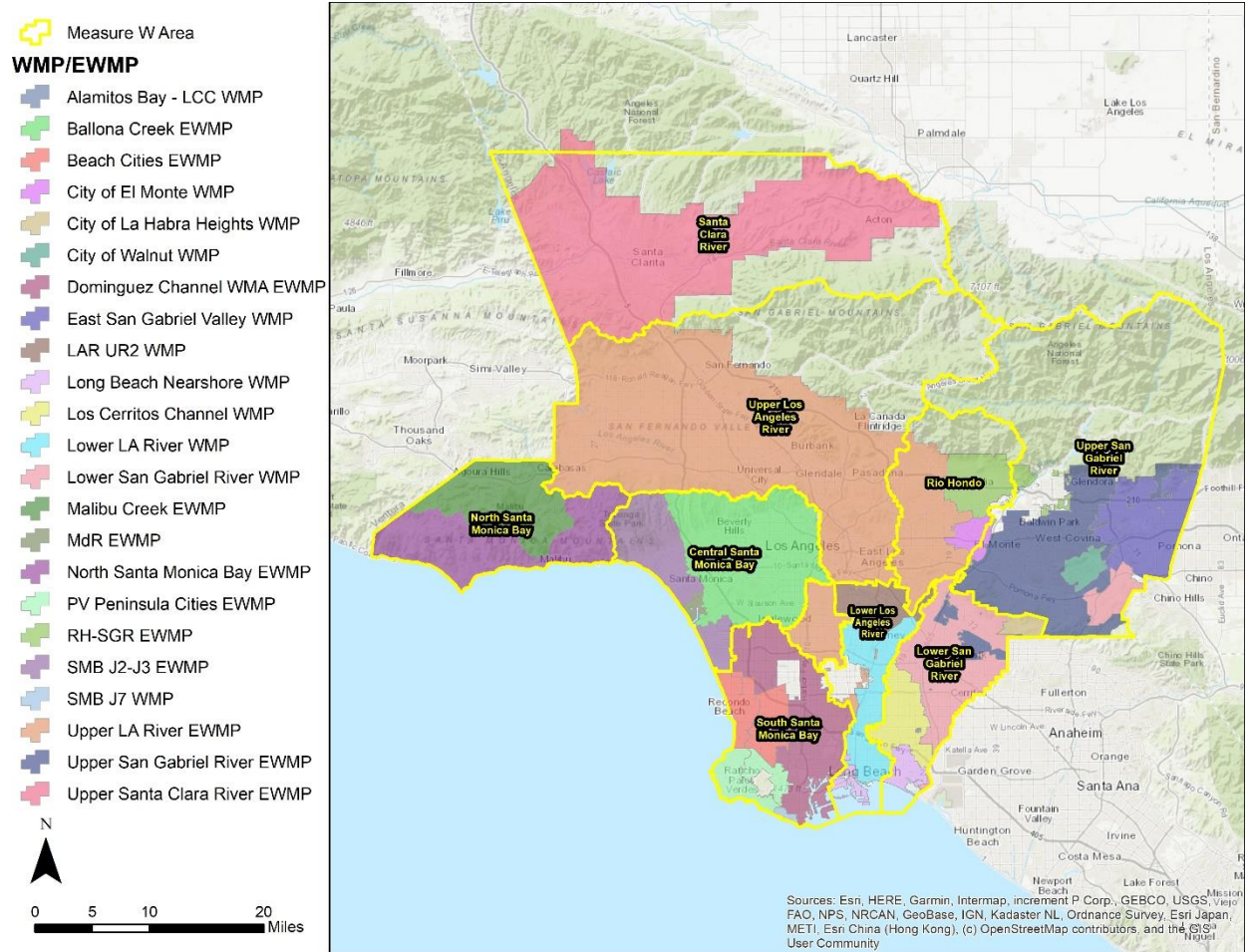
Table F-41. Estimated Annual Safe, Clean Water Program Regional Program Funds by Watershed Area

| Watershed Area | Estimated Annual Revenue (millions) |
|--------------------------|--|
| Central Santa Monica Bay | \$ 17.42 |
| Lower Los Angeles River | \$ 12.72 |
| Lower San Gabriel River | \$ 16.56 |
| North Santa Monica Bay | \$ 1.83 |
| Rio Hondo | \$ 11.49 |
| Santa Clara River | \$ 5.87 |
| South Santa Monica Bay | \$ 17.58 |
| Upper Los Angeles River | \$ 38.44 |
| Upper San Gabriel River | \$ 18.78 |
| REGIONAL TOTAL | \$ 140.6 |

Source: County of Los Angeles Safe, Clean Water Program (<https://safecleanwaterla.org/wp-content/uploads/2020/09/SCW-Regional-Return-Funds-by-Watershed-Area-20200809.pdf>)

Figure F-2 shows the overlap between the nine watershed areas and the Watershed Management Program and Enhanced Watershed Management Program areas.

Figure F-2. Map of Watershed Areas, Watershed Management Program Areas, and Enhanced Watershed Management Program Areas



The remaining ten percent of the annual revenues would be allocated to the Los Angeles County Flood Control District for administration of the program and other district water quality projects and programs.

The Los Angeles County Department of Public Works has evaluated the planning-level projected costs for full implementation of some of the Watershed Management Programs and Enhanced Watershed Management Programs, and the anticipated revenue from the Safe, Clean Water Program for corresponding watershed areas relative to the WMP/EWMP milestones. The preliminary working draft of their analysis suggests that, without any additional sources of funding and assuming the accuracy of the projected costs, significant additional time will be needed to meet most milestones. However, the projected costs used by the Los Angeles County Department of Public Works were higher than values from the Board staff analysis, presented above, and in many cases Permittees have succeeded in significantly lowering these projected costs at both a program scale and project scale. Additionally, as discussed below, Permittees have, and can continue to, leverage additional funds through partnerships with other entities and securing grants and/or low-interest loans.

In summary, the passage of Measure W, with nearly 70% of the vote in LA County, suggests strong support for improved water quality. The revenue generated will go toward funding the Permittees' WMPs and EWMPs, thereby significantly assisting in compliance with the Order.

b. Los Angeles County's Measure A

Los Angeles County voters in November 2016 approved Measure A, the Safe, Clean Neighborhood Parks and Beaches Measure, to support local parks, beaches, open space, and water resources with an annual parcel tax of 1.5 cents per square foot. The measure received overwhelming support, with the approval of 75% of voters. The county's Regional Park and Open Space District disburses the funding through grant programs, divided over multiple categories of projects. Category 3, the Protecting Open Space, Beaches, and Watersheds Program, has about \$7.4M annually for competitive grants. The program considers projects that capture stormwater and protect drinking water and waterbodies, as well as projects that provide multiple benefits, such as increasing recreational opportunities, protecting habitats, and improving public health.⁴²⁵

c. Culver City's Measure CW

During the November 8, 2016 Special Municipal Election, over two thirds of Culver City residents voted in favor of Measure CW, the Clean Water, Clean Beach Parcel Tax. Single family residential parcels are taxed \$99 annually, while each multi-family residential dwelling unit is taxed \$69 annually. Each parcel owner of a non-residential property is taxed \$1,096 per acre of land (or portion thereof) annually. The \$1,096 is pro-rated for non-residential parcels less than one acre. Charges first appeared on the tax statements in fall 2017. Funds raised by Measure CW will be used for improvements in water quality in Ballona Creek, Marina del Rey, and Santa Monica Bay. Measure CW is expected to generate about \$2 million per year, beginning in fall 2017. All Measure CW money will be used in Culver City to improve water quality through measures such as low-flow diversions, multi-benefit stormwater capture projects, green streets, and trash controls, among others. Measure CW was directly designed to pay for Culver City's cost of compliance with the Order, including Culver City's responsibilities in implementing programs and projects in the Ballona Creek and Marina del Rey EWMPs in which it is participating.⁴²⁶

d. Ventura County's Benefit Assessment Program

The Ventura County Watershed Protection District Benefit Assessment (BA) Program, which levies property fees, is authorized by the Ventura County Watershed Protection District Act, as amended by Chapter 438, Statutes of 1987 and Chapter 365, Statutes of 1988. The FY2019 Benefit Assessment for Watershed Protection is based on the rates established for Fiscal Year 1997. Those same rates were approved for Fiscal Years 1998-1999 through 2017-2018.

⁴²⁵ Los Angeles County Regional Park and Open Space District. 2017. Measure A Implementation – Park Funding 102 (Fall 2017). <https://rposd.lacounty.gov/2017/09/19/park-funding-102/>

⁴²⁶ <https://www.culvercity.org/city-hall/information/election-information/ballot-measure-information/clean-culver-city>.

The Board of Supervisors approved the same rates in compliance with Proposition 218 on June 12, 2018 for fiscal year 2018-2019. Based on these assessment rates, the annual revenue generated for MS4 permit compliance is provided in Table F-42. The total annual revenue available for MS4 permit compliance for FY 2018-2019 is \$3.1 M. An increase of the Benefit Assessment rates requires a vote.

Table F-42. Fiscal Year 2018/2019 Benefit Assessment Program Revenue for NPDES Compliance

| Permittee | Zone 1 | Zone 2 | Zone 3 | Zone 4 | Total |
|-------------------------------|------------------|--------------------|--------------------|------------------|--------------------|
| Ojai | \$34,115 | -- | -- | -- | \$34,115 |
| San Buenaventura | \$58,907 | \$195,448 | -- | -- | \$254,355 |
| Fillmore | -- | \$17,685 | -- | -- | \$17,685 |
| Oxnard | -- | \$592,311 | -- | -- | \$592,311 |
| Santa Paula | -- | \$65,191 | -- | -- | \$65,191 |
| Port Hueneme | -- | \$14,925 | -- | -- | \$14,925 |
| Camarillo | -- | \$1,117 | \$155,023 | -- | \$155,140 |
| Moorpark | -- | -- | -- | -- | -- |
| Thousand Oaks | -- | -- | \$254,540 | \$47,387 | \$301,927 |
| Simi Valley | -- | -- | \$187,303 | -- | \$187,303 |
| Unincorporated County | \$20,495 | \$35,545 | -- | -- | \$56,040 |
| Watershed Protection District | \$118,788 | \$539,544 | \$716,353 | \$66,075 | \$1,440,760 |
| Total | \$232,306 | \$1,461,768 | \$1,313,220 | \$113,462 | \$3,120,756 |

Source: Ventura County Watershed Protection District. Report on Benefit Assessment Program, Fiscal Year 2018/2019.

e. Other Los Angeles County Municipalities

In addition to Los Angeles County, Culver City and Ventura County, other municipalities within the Los Angeles region have secured funding that supports projects to improve water quality through the adoption of stormwater fees. Table F-43 identifies several of them.

Table F-43. Other Existing Municipal Stormwater Fees in the Los Angeles Region

| Permittee | Status | Monthly Unit Rate (Residential) | Funding Mechanism | Source |
|---------------------|---|----------------------------------|-------------------------------|--------|
| Beverly Hills | NI | \$35.12 (R-1), \$14.52 (R-4) | NI | OWP |
| Los Angeles (City) | Successful | \$2.33 | Special Tax – G.O. Bond | SCI |
| Monrovia | Successful | \$1.68 base + \$1.25/dwelling | Balloted | OWP |
| Rancho Palos Verdes | NI | \$7.17 | NI | WKU |
| Rancho Palos Verdes | Successful, then recalled and reduced | \$16.67 | Balloted | SCI |
| Santa Clarita | NA | \$2.00 | NI | WKU |
| Santa Clarita | Successful | \$1.75 | Balloted | SCI |
| Santa Monica | NA | NI | NI | WKU |
| Santa Monica | Successful | \$7.25 | Special Tax | SCI |

NI – Not Identified

NA – Not Available

OWP - Toolkit to Support Financial Planning for Municipal Stormwater Programs, U.S. EPA Region 9 Environmental Finance Center at Sacramento State, Office of Water Programs, 2018.

SCI - as tracked by SCI staff since 2002

WKU - Western Kentucky University Stormwater Utility Survey 2018

Note: Results are standardized to the best extent possible in combining the multiple sources, but not adjusted for inflation. Reported rates are for majority of residential customers for rate structures with multiple tiers and are shown as reported at time of passage or enactment (SCI or OWP sourced entries) or current year (WKU sourced).

Source: CASQA Stormwater Finance Web Portal, Survey of Existing Stormwater Fees in California, September 3, 2019.

f. State and Federal Funding Sources

Public agencies, both federal and state, recognize the importance of stormwater improvement projects. This section describes some sources of funding from grants and loans that have been provided in the past and will be provided in the future to help offset the costs of stormwater management and leverage ongoing funding sources such as those described above. The variety of grant programs that can support stormwater projects highlights the opportunities for creativity in incorporating stormwater BMPs into other infrastructure and community development projects, which will not only help achieve stormwater goals, but also open more avenues of funding.

Permittees in the Los Angeles Region have been receiving significant State funding through grant programs and interagency agreements with the California Department of Transportation, and so far there is no official indication that they will not continue doing so as several State-wide stormwater grant programs are expected to proceed in coming years. All Permittees have completed a Stormwater Resource Plan (SRP) or equivalent and have obtained concurrence on the SRP or equivalent from the State Water Board, making all Permittees eligible to compete for State funds to support additional stormwater projects identified in the SRP or equivalent.

The table below (Table F-44) summarizes the funds that had been allocated to stormwater management in Los Angeles County up to 2012.

Table F-44. Funds Allocated to Stormwater Management in Los Angeles County Up To 2012

| Source of Money | Dollars | % of total costs funded by State (only for those projects which included State funding) |
|---|---------------|---|
| Only State Board-awarded funding (Propositions 12, 13, 40, 50, and 84; and federal money, 319h, 205j, ARRA) | \$49,143,132 | 47% |
| Only State money from any State agency (propositions only, no federal); includes State Board, DWR, Coastal Conservancy, Fish & Game | \$67,461,699 | 58% |
| Prop A | \$4,981,772 | N/A |
| Prop O | \$508,678,258 | N/A |
| Measure V | \$9,107,959 | N/A |
| Total Public Funds (federal, State, local bonds and measures) expended on stormwater control projects | \$645,389,932 | N/A (information not available for projects funded by local bonds and measures) |

Source: Los Angeles County MS4 Permit Fact Sheet 2012

Since 2012, Permittees have received \$186.1M in state funding for 42 projects that will support Permittees' compliance with the Order. Specifically, between 2012 and 2015, Los Angeles County and Ventura County Permittees have received \$25.5M from Proposition 84 and the Drought Response Outreach Program for Schools (DROPS) for 18 projects. This funding covered over 70% of the total cost of the 18 projects. In 2016, Permittees received \$51M of Proposition 1 grant funding during Round 1 for 13 projects. The Proposition 1 grant funding is covering over 50% of the total cost of the 13 projects. In February 2021, \$18.6M was awarded to Permittees for five projects from Prop 1 Round 2 funding. Since 2012, Los Angeles County Permittees have also received over \$91M in funding from the State through Cooperative Implementation Agreements with the California Department of Transportation for 6 projects.

Permittees have also been awarded Prop 68 funding and may continue to compete for additional grant funding. According to the California Department of Fish and Wildlife, grants will not be canceled, and unspent funds will not be taken back by the state during the COVID-19 pandemic.⁴²⁷ In March 2020, the California Department of Parks and Recreation awarded about \$54 million from Proposition 68’s Statewide Park Program to Los Angeles County jurisdictions to develop new parks, multi-use paths, and improve existing facilities.⁴²⁸ In addition, in 2020 the California Natural Resources Agency awarded \$18.5 million for multi-benefit green infrastructure investments in or benefiting disadvantaged or severely disadvantaged communities through Proposition 68’s Green Infrastructure Grant Program.

Potential sources of future grant funding from state and federal programs are shown in Table F-45. In addition to Proposition 68 programs, a number of federal grant programs can be used to build stormwater infrastructure while also promoting economic development, resilience to climate change-induced hazards, green transportation alternatives, and urban greening.⁴²⁹ This highlights the increased funding opportunities that could come with projects that creatively incorporate stormwater BMPs. Some programs explicitly address the longstanding problem of underserved communities having greater need for green infrastructure but having fewer resources by explicitly prioritizing underserved communities, such as Proposition 68’s Statewide Park Program, the USDA Forest Service Urban and Community Forestry Program, and Economic Development Administration’s Public Works and Economic Adjustment Assistance programs

Table F-45. Potential Future State and Federal Grant Sources

| Grant Program | Source | Description |
|--------------------------------|---------------------------------------|---|
| Prop 68 Statewide Park Program | CA Department of Parks and Recreation | <ul style="list-style-type: none"> • \$395.3M was available for FY20/21 • For creating new parks and recreation opportunities in underserved communities |
| Prop 68 Regional Park Program | CA Department of Parks and Recreation | <ul style="list-style-type: none"> • \$23.1M was available for FY20/21 • Eligible projects: Acquisition for new or enhanced public access and use; development to create or renovate; trails, with preference given to multiuse trails over single-use trails; regional sports complexes; visitor and interpretive facilities; other types of recreation and support facilities in regional parks |

⁴²⁷ California Department of Fish and Wildlife. 2020, April 15. Frequently Asked Questions Grant Administration during COVID-19. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=178465&inline>

⁴²⁸ Sharp, Steven. 2020, March 2. \$54 Million in State Funding Awarded for L.A. County Park Projects. Urbanize Los Angeles. <https://urbanize.la/post/54-million-state-funding-awarded-la-county-park-projects>

⁴²⁹ U.S. EPA. 2017. Federal and State Funding Programs – Stormwater & Green Infrastructure Projects. https://www.epa.gov/sites/production/files/2017-05/documents/federal-and-california-sw-funding-programs_0.pdf

| Grant Program | Source | Description |
|--|---|---|
| Community Development Block Grants (CDBG) | U.S Department of Housing and Urban Development | <ul style="list-style-type: none"> • Annual grants to cities and counties on a formula basis • Eligible to fund stormwater and green infrastructure because these projects can create jobs and economic activity • Detroit, MI and Chicago, IL have used CDBG funds for stormwater infrastructure |
| Building Resilient Infrastructure and Communities (BRIC) | Federal Emergency Management Agency | <ul style="list-style-type: none"> • Funding for projects that reduce risks from disasters and natural hazards; green infrastructure and restoration projects can be used to address stormwater pollution and mitigate flood risk from climate change and sea-level rise |
| Surface Transportation Block Grant - Transportation Alternatives Set-Aside | Federal Highway Administration | <ul style="list-style-type: none"> • Annual grants to states on a formula basis • Provides funding for “transportation alternatives,” including “offroad trail facilities for pedestrians, bicyclists, and other nonmotorized forms of transportation” and "environmental mitigation related to stormwater and habitat connectivity." Funding could be used to pay for green infrastructure components of trails and sidewalks such as permeable pavements • The Southeast Michigan Council of Governments used funding in 2015 from the state of Michigan to fund the Detroit – Inner Circle Greenway Railroad Acquisition, which included 1) installation of green infrastructure such as green streets and bioretention and 2) repurposing of 8.3 miles of abandoned railway near Detroit |
| USDA Forest Service Urban & Community Forestry Program | U.S. Forest Service | <ul style="list-style-type: none"> • One of the goals is to plant trees in environmental justice communities, "where suitable tree installations can provide equitable access to shade, reduce heat exposure, improve air quality, and reduce storm water flooding, solutions should bring together community members, planners, local and state government officials, urban foresters and resilience and sustainability professionals. |
| Public Works and Economic Adjustment Assistance programs | U.S. Economic Development Administration | <ul style="list-style-type: none"> • Funding to support development in economically distressed areas by fostering job creation and attracting private investment • Funding has previously been used for stormwater infrastructure |

| Grant Program | Source | Description |
|--|----------|---|
| Sewer Overflow and Stormwater Reuse Municipal Grants Program | U.S. EPA | <ul style="list-style-type: none"> • \$225M allotted (funds available in 2022) • Funding to support planning, design, and construction of facilities to intercept, transport, control, treat, or reuse municipal stormwater, and any other measures to manage, reduce, treat, or recapture stormwater |

Moreover, loan options with below-market interest rates are available for stormwater projects, as shown in Table F-46. The Clean Water State Revolving Fund can finance a wide variety of stormwater projects, with repayment beginning one year after completion of construction and a maximum repayment period of 30 years. In November 2020, U.S. EPA invited California to apply for \$500 million in Water Infrastructure Finance and Innovation Act (WIFIA) loans through the new state infrastructure financing authority WIFIA (SWIFIA) program.⁴³⁰ This would provide additional funds to the State Revolving Fund upon approval. The California Infrastructure and Economic Development Bank, or IBank, offers loans for a wide variety of infrastructure projects under its Infrastructure State Revolving Fund, including water projects, parks, streets, and many other types of infrastructure that can incorporate stormwater BMPs. IBank also supports water conservation and infrastructure projects through its Statewide Energy Efficiency Program. Furthermore, IBank offers subsidies to borrowers in communities with high unemployment and/or low median household income. Municipalities are also eligible for loans under the U.S. Department of Housing and Urban Development’s Section 108 Loan Authority. Amounts are available in amounts up to five times a municipality’s Community Development Block Grant, and funded projects can incorporate stormwater infrastructure.

Table F-46. Potential Future State and Federal Loan Sources

| Loan Program | Source | Description |
|--|---|---|
| Clean Water State Revolving Fund Program | State Water Resources Control Board | <ul style="list-style-type: none"> • Capable of financing projects from <\$1 million to >\$100 million • No upper limit for eligible project • Repayment begins 1 year after construction completion • Maximum financing term: 30 years |
| Infrastructure State Revolving Fund (ISRF) | California Infrastructure and Economic Development Bank (IBank) | <ul style="list-style-type: none"> • Financing available in amounts \$50,000-\$25,000,000 with loan terms for useful life of project up to maximum of 30 years • Subsidies eligible based on unemployment rate and median household income • No matching fund requirement • Funds wide variety of public infrastructure and economic expansion projects |

⁴³⁰ U.S. EPA. 2020, November 18. EPA invites California, Iowa, Rhode Island to Apply for \$695 Million in Water Infrastructure Loans. <https://www.epa.gov/newsreleases/epa-invites-california-iowa-rhode-island-apply-695-million-water-infrastructure-loans>

| Loan Program | Source | Description |
|---|---|---|
| Statewide Energy Efficiency Program (SWEET) | California Infrastructure and Economic Development Bank (IBank) | <ul style="list-style-type: none"> • Financing available in amounts \$500,000-\$30,000,000 • Funds projects to help meet CA's goals for greenhouse gas reduction, water conservation, and environmental preservation |
| Section 108 Loan Authority | U.S Department of Housing and Urban Development | <ul style="list-style-type: none"> • Amounts available to municipalities in amounts 5 times the municipalities' allocated Community Development Block Grant • For three types of development: economic development, public facilities, and housing rehabilitation • Projects can incorporate green infrastructure in design and construction. Milwaukee, WI installed green infrastructure in its redevelopment of Milwaukee Road Railroad Shops to manage stormwater on site. |

In conclusion, the Los Angeles Water Board recognizes that the costs of compliance with the Order are significant and that many Permittees have limited resources to implement actions to address their MS4 discharges. However, there are also a number of funding options that Permittees can pursue to assist with compliance. Based on a consideration of the cost of compliance, as discussed above, the Board has structured the permit as flexibly as possible to give Permittees the opportunity to sequence actions to address the highest water quality priorities; options to demonstrate compliance; the ability to customize their control measures; sufficient time to comply (in many cases decades from the time the TMDL was established); opportunities to request time extensions based on economic factors among others; and the ability to collaborate and pool their resources to implement programs and projects to achieve compliance and to also collaborate and pool their resources to monitor their compliance.

4. Environmental and Societal Costs of Not Controlling MS4 Discharges

Economic considerations of stormwater and urban runoff management programs tend to focus on costs incurred by municipalities in developing and implementing the programs. This is appropriate, since as discussed above, these costs are significant and present a challenge for Permittees. However, as far back as 2000, the Water Boards recognized that it is also important to consider the costs of water quality impairment; that is, the negative impact of pollution on the economy and the positive impact of improved water quality (see, for example, Order WQ 2000-11). So, while it is important to consider the cost of compliance, it is also important to consider the costs that would be incurred by not fully regulating or controlling MS4 discharges to receiving waters. Southern California's local economy thrives on a healthy environment, as does the health of its population. Failure to regulate discharges from the Los Angeles Region's MS4 will result in greater pollution of the rivers, streams, lakes, reservoirs, bays, harbors, estuaries, coastal shorelines

and wetlands, which makes implementation of the Order vital for the protection of the region's waterbodies and public health.

By way of example, Southern California's travel industry and ocean economy plays a vital role in the region's local economy. In 2016, "47.3 million visitors to L.A. County spent an all-time high of \$21.9 billion in the region."⁴³¹ Many of those tourists visit the beaches and on average, over 129 million beach visits occur each year in Southern California.⁴³² A study that looked at beach attendance and bathing rates in Southern California approximated that, depending on the season, 26% to 54% (on average 45%) of the beach attendees have physical contact with the coastal waters.⁴³³ Urban runoff in southern California has been found to cause illness in people swimming near storm drains.^{434, 435} One study of recreational exposures in marine water impacted by MS4 discharges following storm events in San Diego County estimated gastrointestinal illness risks at 1.2 illnesses (based on epidemiological study) and 1.5 illnesses (based on quantitative microbial risk assessment) per 1000 wet weather recreation events (surfing).⁴³⁶ Another study of south Huntington Beach and north Newport Beach found that an illness rate of about 0.8 percent among bathers at those beaches resulted in about \$3 million each year in health-related expenses.⁴³⁷ Extrapolation of such numbers to the beaches and other water contact recreation in the region could result in significant expenses to the public and to public health, while improvements in coastal water quality could result in a reduction of gastrointestinal illness locally and a concurrent savings in expenditures on related health care costs.

Likewise, stormwater runoff from MS4 discharges can significantly impact ocean water quality – and this, in turn, affects public health and the economy. The County of Los Angeles Public Health recommends "beach users ... avoid contact with ocean water for a period of 3 days after significant rainfall, especially near flowing storm drains, creek and rivers".⁴³⁸ Rain advisories can have a significant impact on the region's coastal economy. According to an estimate by Pendleton and Kildow (2006), the non-market value of a beach day is worth between \$15-\$50, or about \$19-63 in 2019 dollars, to the average beach visitor in California.⁴³⁹ These values

⁴³¹ Easter, Makeda. "California Tourism Industry Grows for the 7th Straight Year, Report Says." Los Angeles Times, 9 May 2017, <https://www.latimes.com/business/la-fi-ca-economic-impact-20170504-story.html>

⁴³² Dwight, Ryan H., et al. "Beach Attendance and Bathing Rates for Southern California Beaches." *Ocean & Coastal Management*, Elsevier, 27 Apr. 2007, http://coastalwaterresearch.com/documents/Dwight_2007_Beach_Attendance.pdf

⁴³³ Ibid.

⁴³⁴ Haile, R.W., et al. An Epidemiological Study of Possible Adverse Health Effects of Swimming in Santa Monica Bay. Santa Monica Bay Restoration Project. 1996.

⁴³⁵ Soller, J.A., et al. Incidence of gastrointestinal illness following wet weather recreational exposures: Harmonization of quantitative microbial risk assessment with an epidemiologic investigation of surfers. *Water Research*, 2017 Sep 15; 121: p. 280.

⁴³⁶ Ibid.

⁴³⁷ Dwight, Ryan H., et al. "[Estimating the economic burden from illnesses associated with recreational coastal water pollution—a case study in Orange County, California.](#)" *Journal of Environmental Management*. 76.2 (2005): 95-103. 24 August 2011. Web. 20 June 2019.

⁴³⁸ LA County Department of Public Health,

http://publichealth.lacounty.gov/phcommon/public/eh/water_quality/beach_grades.cfm

⁴³⁹ Pendleton, Linwood and Kildow, Judith. "[The Non-Market Value of Beach Recreation in California.](#)" *Shore & Beach*. 74.2 (2006): 34-37. Spring 2006. Web. 27 April 2020.

represent how much someone is willing to pay just for enjoying a day at the beach, not including travel and parking costs. Considering the popularity of Southern California beaches, the economic impact of each beach posting/closure day could be significant. Atiyah, et al. (2013) found that beaches in Santa Monica Bay and Malibu that installed storm drain diversions had an average increase in beach attendance of 610,324 visits per year compared to beaches without storm drain diversions, holding all other factors constant.⁴⁴⁰ As an illustrative example of the potential increase in monetized benefits to beach visitors resulting from installing storm drain diversions, multiplying the value of an average California beach day by the change in attendance yields annual benefits ranging between \$11.6 and \$38.5 million at the average beach in 2019 dollars. Changes in water quality not only affect benefits for beachgoers, but also for local businesses that depend on sales from beachgoers, as well as municipalities that rely on sales tax revenues. The average visitor to the beach spent about \$30 for each day visit in 2001, or about \$43 in 2019 dollars, at local businesses (excluding gas and auto expenditures).⁴⁴¹ This would mean that for the average beach with storm drain diversions, nearby businesses receive about \$26.2 million in additional annual revenue from beach visitors compared to beaches without storm drain diversions, holding all other factors constant. In addition, beach postings negatively affect local home values, potentially as far as several kilometers away.⁴⁴² Failure to regulate MS4 discharges will therefore result in great costs and foregone benefits to the regional economy.

5. Benefits of Stormwater Capture and Management

As set forth above, California Water Code section 13241 requires a consideration of economics; it does not require a “cost benefit analysis.” While a rigorous quantitative “cost benefit analysis” is not required and may not be possible, the costs of not controlling MS4 discharges – and the benefits that result from controlling MS4 discharges – are both relevant to the ultimate cost of compliance. This is because the costs of compliance may be offset by the benefits of stormwater and urban dry weather runoff management, which broadly include improvements in water quality, augmentation of local water supplies, increased economic benefits, enhancement of beneficial uses, and increased employment and income. Accordingly, a discussion of some of the additional benefits from controlling MS4 discharges is included here.

As an initial matter, it should be noted that there are significant economic benefits (some of which are quantifiable, and some which are not) from stormwater management. A 2004 study conducted by USC/UCLA that assessed the costs and benefits of implementing various approaches for achieving compliance with MS4 permits in the Los Angeles Region found that non-structural systems would provide \$7.42B in benefit, adjusted to 2019 dollars. If structural systems were determined to be needed, after adjusting to 2019 dollars, the study found that total benefits

⁴⁴⁰ Atiyah, Perla, Linwood Pendleton, Ryan Vaughn, and Neil Lessem. “[Measuring the effects of stormwater mitigation on beach attendance.](#)” Marine Pollution Bulletin. 72.1 (2013): 87-93. 15 July 2013. Web. 27 April 2020.

⁴⁴¹ California Division of Boating and Waterways, January 2002. California Beach Restoration Study. Page 3-7.

⁴⁴² Kung, Megan, Dennis Guignet, and Patrick Walsh. 2021. “Comparing Pollution Where You Live and Play.” Marine Resource Economics, forthcoming.

could reach \$23.9B.⁴⁴³ Monetized benefits in this study accounted for a number of benefits – reduced need for flood control, increases in property values, additional groundwater supplies, public willingness to pay for avoided stormwater pollution, cleaner streets, improved beach tourism, preservation of ecosystem services in the marine coastal zone, and cost savings from reduction of sedimentation in local harbors. However, recreational and public health uses were not quantified in this study, and much has changed in the Los Angeles Region since 2004, including an increase in population. Therefore, the benefits value is likely higher than \$23.9B.

a. Recreational and Public Health Benefits

As an example of a portion of recreational and public health benefits that can accrue from implementing the MS4 permit, we can examine the Los Angeles River, on which multiple entities have conducted research as part of revitalization efforts. Improving water quality at the river is crucial in transforming the river into an amenity that would attract residents and visitors, and the Upper LA River EWMP has stated that certain revitalization projects are key candidates for future integration with the EWMP process. Currently only portions of the river are being utilized for recreation. If the entire river could have the same amenities as a park in terms of being a location where people could walk, exercise, enjoy the outdoors, view wildlife, and engage in water recreation, the potential benefits would be significant. There are about 728,000 working adults who live or work within one mile of the Los Angeles River.⁴⁴⁴ The Trust for Public Land found that about 43% of adults in Los Angeles visited parks, trails, and recreation centers between 2015 and 2016, and that the average frequency of these visits was 1.13 times per week, or 59 times per year. Their analysis found that the average value for each visit was \$3.04, adjusted to 2019 dollars.⁴⁴⁵ Assuming that the same proportion of adults living and working near the river would go to a newly revitalized Los Angeles River for recreation, this would yield annual recreational benefits of \$55.9M. Furthermore, the public health benefits would be substantial. The difference in average annual medical care costs between active (those who do moderate to vigorous exercise) and inactive adults ages 18-64 is \$1,242 in 2019 dollars⁴⁴⁶, and 24% of LA residents use parks as their primary place for exercise.⁴⁴⁷ Although this percentage could potentially increase with the addition of more park space and a revitalized LA River, applying this percentage to the number of adults living and working nearby the LA River

⁴⁴³ Devinny, Joseph S., Sheldon Kamieniecki, and Michael Stenstrom. "Appendix H: Alternative Approaches to Stormwater Control." *NPDES Storm Water Cost Survey Final Report*. University of Southern California; University of California at Los Angeles, 2004. Web. 20 June 2019.

⁴⁴⁴ Henson, Jessica, Mark Hanna, Andrew Dobshinsky, Michael Miller, and Rick Jacobus. 2018, December 3. Memorandum. Los Angeles River Master Plan Update: Demographics, Health, and Social Equity. http://www.larivermasterplan.org/demographics_public_health_and_social_equity

⁴⁴⁵ The Trust for Public Land. 2017, May. The Economic Benefits of the Public Park and Recreation System in the City of Los Angeles, California. https://trails.lacounty.gov/Files/Documents/125/CA_LA%20Economic%20Benefits%20Report_LowRes.pdf

⁴⁴⁶ Ibid.

⁴⁴⁷ Cohen, Deborah, Bing Han, and Kathryn Pitkin Derose. 2014, March. How Much Do Neighborhood Parks Contribute to Local Residents MVPA in the City of Los Angeles? A Meta-Analysis. Presentation. Active Living Research Annual Conference. <https://www.activelivingresearch.org/how-much-do-neighborhood-parks-contribute-local-residents-mvpa-city-los-angeles-meta-analysis>

yields annual health benefits of \$217M. These benefits values represent only a portion of potential total benefits, as the population value only comprises working adults and not children, seniors, or unemployed adults. Further research that includes seniors would likely result in substantial additional public health benefits, as the average annual medical care cost difference between an active and inactive person 65 and over is about \$2,490 in 2019 dollars, double the value for adults under 65.⁴⁴⁸

Installing green infrastructure would also deliver public health benefits by mitigating urban heat island effects, with greater returns on investment for installations located in inland areas lacking tree canopies and green spaces, which also tend to be lower-income and often non-white.⁴⁴⁹ In urban areas, buildings and pavement retain heat, making them hotter than surrounding non-urban areas, known as the urban heat island effect. Climate change will continue to exacerbate urban heat island effects, but they can be mitigated by pursuing urban greening practices. Nature-based solutions that incorporate trees and vegetation can decrease local temperatures, particularly if they are distributed throughout an area. Reduced temperatures during hot weather not only makes it more comfortable for people to recreate outside, but it can also save lives during extreme heat waves. De Guzman et al. (2020) found that relative to the average mortality rate, during an average five-day heat wave in Los Angeles County there are 4.1% more deaths on the first day and 11.9% more deaths on the fifth day.⁴⁵⁰ Using these results, they found that if Los Angeles County had tree coverage at 40%, as opposed to the baseline of 16%, during a September 2010 dry Santa Ana event there would have been a 29% reduction in mortality, equivalent to saving 23 lives. While the study only modeled mortality, it can reasonably be expected that hospitalizations and health conditions brought on by heat stress would be reduced with lower extreme temperatures as well. In addition to trees, other green infrastructure such as bioswales, rain gardens, and green roofs can also reduce temperatures.⁴⁵¹ In metropolitan areas nationwide, neighborhoods with lower median household incomes are associated with less urban tree cover.⁴⁵² In areas where the federal government historically redlined, current average

⁴⁴⁸ The Trust for Public Land. 2017, May. The Economic Benefits of the Public Park and Recreation System in the City of Los Angeles, California. https://trails.lacounty.gov/Files/Documents/125/CA_LA%20Economic%20Benefits%20Report_LowRes.pdf

⁴⁴⁹ United States Census Bureau. 2019. QuickFacts, Los Angeles County, California. <https://www.census.gov/quickfacts/fact/map/losangelescountycalifornia/PST045219>

⁴⁵⁰ De Guzman, Edith, Laurence S. Kalkstein, David Sailor, David Eisenman, Scott Sheridan, Kimberly Kirner, Regan Maas, Kurt Shickman, David Fink, Jonathan Parfrey, Yajuan Chen. 2020. Rx for Hot Cities: Climate Resilience Through Urban Greening and Cooling in Los Angeles. Tree People. <https://www.treepeople.org/wp-content/uploads/2020/09/RX-for-hot-cities-report.pdf>

⁴⁵¹ Georgetown Climate Center. N.D. Green Infrastructure Strategies and Techniques. <https://www.georgetownclimate.org/adaptation/toolkits/green-infrastructure-toolkit/green-infrastructure-strategies-and-techniques.html>

⁴⁵² Schwarz, Kirsten, Michail Fragkias, Christopher G. Boone, Weiqi Zhou, Melissa McHale, J. Morgan Grove, Jarlath O'Neil-Dunne, Joseph P. McFadden, Geoffrey L. Buckley, Dan Childers, Laura Ogden, Stephanie Pincetl, Diane Pataki, Ali Whitmer, Mary L. Cadenasso. 2015. Trees Grow On Money: Urban Tree Canopy Cover and Environmental Justice. PLoS ONE 10(4): e0122051. <https://doi.org/10.1371/journal.pone.0122051>

incomes tend to be lower and temperatures tend to be hotter because of historic disinvestment in these neighborhoods.⁴⁵³

b. Water Supply Cost Savings and Co-Benefits

Stormwater capture is an effective way for Permittees to achieve the goals of the CWA and the requirements of this permit by preventing the stormwater and associated pollutants from reaching receiving waters. Stormwater capture has also become the focus of intense interest in the wake of California's most recent 2012-2019 drought. The Water Boards have recognized the importance of treating stormwater as a valuable resource where capture and use can result in water supply cost savings, as well as multiple other benefits within a watershed. Among other efforts, the State Water Board's Strategy to Optimize Resource Management of Stormwater (STORMS) seeks to promote stormwater capture and use. STORMS' recent 2018 report *Enhancing Urban Runoff Capture and Use* points out that among a variety of benefits, "stormwater capture can also reduce reliance on imported water from distant sources, which reduces inter-basin (or inter-region) transfers and polluted runoff. Stormwater supports the fit-for-purpose water supply concept by satisfying less sensitive water demands, such as certain household, landscaping, and commercial needs, with mildly polluted water. Runoff from roads and driveways can be captured and harvested locally using distributed hybrid systems (for example, bioretention with an underdrain that feeds a cistern used for irrigation) configured to provide non-potable water for human use."⁴⁵⁴

The Order supports investment towards infrastructure for groundwater recharge to create a resilient local water supply. The potential for water usage from stormwater is significant, with Diringer et al. (2020) from Pacific Institute estimating that stormwater capture from paved surfaces and rooftops in urbanized Southern California and the Bay Area could add 420,000-630,000 acre-feet in average annual water supply, or about 6-10% of annual water usage in those areas in 2014.⁴⁵⁵ According to Porse et al. (2018), Los Angeles County "receives 55-60% of its annual water supplies from imported sources, which include northern California through the Sacramento-San Joaquin Delta, the Colorado River Basin, and the higher-altitude Owens Valley."⁴⁵⁶ The authors found that even after accounting for full-cycle costs, which include costs for all stages from the capture to end-use of water, stormwater capture can still be cheaper than importing water. Imported water costs around \$1,476-\$1,790 per acre foot, whereas the cost for existing large stormwater capture is \$995 per acre foot. As for proposed new large stormwater capture

⁴⁵³ Hoffman, Jeremy S., Vivek Shandas and Nicholas Pendleton. 2020. The Effects of Historical Housing Policies on Resident Exposure to Intra-Urban Heat: A Study of 108 US Urban Areas. *Climate*. <https://www.mdpi.com/2225-1154/8/1/12/htm>

⁴⁵⁴ State Water Board, April 10, 2018. Strategy to Optimize Resource Management of Stormwater: Projects 1a Promote Stormwater Capture and Use and 1b Identify and Eliminate Barriers to Stormwater Capture and Use. Product 1– California State University, Sacramento, Final Report: Enhancing Urban Runoff Capture and Use (pp. 18-19).

⁴⁵⁵ Diringer et al. "[Economic evaluation of stormwater capture and its multiple benefits in California](#)." *PLoS ONE* 15(3): e0230549. 24 March 2020. Web. 15 May 2020.

⁴⁵⁶ Porse, Erik, et al. "The Economic Value of Local Water Supplies in Los Angeles." *Nature Sustainability*, Vol. 1, June 2018.

projects, including converting flood control infrastructure for multipurpose use, agencies in Los Angeles estimated total costs per acre foot ranging from \$1,110-\$2,727.⁴⁵⁷ The Southern California Water Coalition examined costs for 32 stormwater projects implemented across Southern California and found an even wider cost per acre foot range of \$59 to more than \$250,000 per acre foot, with a median of \$1,070. They found that projects that can annually capture larger amounts of stormwater have a lower cost per acre-foot, and costs differ by project type. Median costs for distributed projects were \$25,000 per acre foot, new centralized projects were \$6,900 per acre foot, and retrofit projects were \$600 per acre foot.⁴⁵⁸ Cost ranges from these studies (\$59-\$250,000/acre foot) are both lower and higher than the imported water cost range (\$1,476-\$1,790/acre foot), indicating that while stormwater projects costs can be more expensive, in many cases they may not need to be, particularly when agencies can think of creative stormwater solutions.

The Order gives Permittees the flexibility to develop multi-benefit stormwater management projects that will improve water quality while also providing benefits such as recharging of groundwater basins for local water supply and implementation of Low Impact Development (LID) policies and green streets policies. Regulating MS4 discharges would not only lead to water supply cost savings for residents, but also environmental, public health, and recreational benefits resulting from reduced stormwater pollution. Shimabuku et al. (2018) from Pacific Institute emphasizes that effective urban stormwater capture provides an opportunity for addressing multiple benefits including flood control, water quality impairments, improving water supply reliability, providing habitat, reducing urban temperatures, reducing energy use, creating community recreation spaces, and increasing property values.⁴⁵⁹

Diringer et al. (2020) conducted an analysis of stormwater capture project costs and benefits as they affect the cost of an acre-foot of water. They found that failing to consider the effects of co-benefits results in inflated net project costs. They gathered data from rounds 1 and 2 of Prop 1E and Prop 84 project proposals. Of a total of fifty projects, or 26 addressed urban runoff and 24 dealt with non-urban runoff. Most of the urban runoff projects the researchers considered were in Southern California. The authors found that after accounting for the projects' benefits, the net levelized cost for urban stormwater capture projects decreased from \$1,030 per acre foot to \$150 per acre foot, with some projects even yielding net benefits. Monetized benefits considered in their calculation include flood damage reduction, water quality, energy savings, community recreations, public use, property values, habitat value, CO2 equivalents, and avoided costs. Because many projects reported limited benefits categories, the overall net cost per acre foot would likely be even lower than \$150 when other co-benefits are considered.

There are a number of projects under development to recharge the region's basins. One such project was recently completed, the Piru Groundwater Basin

⁴⁵⁷ Ibid.

⁴⁵⁸ Southern California Water Coalition. Stormwater Capture: Enhancing Recharge and Direct Use Through Data Collection. April 2018. http://www.socalwater.org/wp-content/uploads/scwc-2018-stormwater-whitepaper_75220.pdf

⁴⁵⁹ "Stormwater Capture in California: Innovative Policies and Funding Opportunities," Morgan Shimabuku, Sarah Diringer, Heather Cooley; Pacific Institute; June 2018; p. 2.

recharge project, which will capture stormwater from 123 acres in the Ventura County unincorporated area of Piru. This project will result in approximately 25 AFY recharge to the basin.⁴⁶⁰ The Tujunga Spreading Grounds Enhancement Project is a collaborative project between the Los Angeles Department of Water and Power and the Los Angeles Flood Control District that will enhance the 150-acre Tujunga spreading grounds. This project will double the facility's recharge capacity and deliver 4 billion gallons of recharge to the groundwater basin and result in an increase in groundwater recharge to the San Fernando Groundwater Basin, increasing local water supply.⁴⁶¹ Furthermore, green street projects provide an opportunity for stormwater management to serve multiple benefits such as flood control, groundwater replenishment, pollutant removal, and create aesthetic green spaces for the local community. In the City of Los Angeles, Avalon Green Alley, a green street project, creates "1.8 acres of improved art and alleys and green alleys in a 35 acre neighborhood".⁴⁶² The green street project provides "stormwater retrofits in two alley segments including permeable pavers, dry wells and infiltration trenches that harvest rainwater flowing from a 6.04-acre sub-tributary to the Los Angeles River" and "is designed capture and infiltrate 1,381,608 gallons of stormwater into underground aquifers annually".⁴⁶³ Similar green street projects have been implemented in Ventura County such as in the Government Center's parking lot by means of pervious concrete gutters. Continuing such improvements under the MS4 permit would provide benefits from flood control, improved water quality, and cost savings from reduced imported water.

c. Ecosystem Services Benefits

In addition to the foregoing, Permittees and their residents will accrue various other environmental benefits resulting from the Order. For example, the 2018 STORMS report describes a range of benefits of capture and use, suggesting that "designing stormwater infrastructure to directly support ecosystems broadens the traditional approach to stormwater management. In this broader sense, retained stormwater can be put into soil where soil biota, macrophytes, and stream interflow systems improve water quality and ecosystems supported by baseflow or high groundwater. Ecosystem benefits include habitat improvement, increased food sources, carbon sequestration, pollutant uptake, reduced ozone (Nowak 2006), and reduced heat-island effects from plant growth. Improved baseflow results in decreased water temperatures and prolonged dry weather flows, and increased amounts and types of soil biota will aid in carbon sequestration and pollutant uptake (Klaus 2015). Local stormwater capture can also lead to energy-saving schemes that (1) capture water before it becomes contaminated with the pollutants on streets and in sewers; (2) rely on energy efficient processes for removing contaminants; (3) treat water only to the extent necessary for intended use (fit-for-purpose

⁴⁶⁰ *Ventura County Storm Water Capture for Groundwater Recharge - Construction Project*, <http://bondaccountability.resources.ca.gov/Project.aspx?ProjectPK=19812&PropositionPK=48>

⁴⁶¹ *Stormwater Engineering Division: Tujunga Spreading Grounds Enhancement Project*, <https://dpw.lacounty.gov/wrd/Projects/TujungaSG/index.cfm>

⁴⁶² "Avalon Green Alley Network Project." *Parkology*, <https://www.parkology.org/ParkViewParkStory?cas=a0w4600000RyejAAC&showHeader=true>

⁴⁶³ *Ibid.*

water); and (4) obviate the need for diversion and large, centralized, energy-intensive treatment and distribution approaches.”⁴⁶⁴

d. Other Benefit Considerations

The Pacific Institute and the University of Santa Barbara’s Bren School of Environmental Science and Management elsewhere framed the topic of moving towards multiple benefit approaches for water management. The organizations plan to develop a systematic framework for identifying and incorporating the costs and benefits of water management strategies into decision making. They find a broader consideration of benefits associated with water management decisions will achieve broader project support, avoid unintended consequences, optimize resources, and cost sharing, and increase transparency.⁴⁶⁵

Such a framework would support a more robust consideration of potential economic benefits of stormwater management projects not considered in the Board’s economic analysis, such as:

- Reduced frequency, area, and impact of flooding - Stormwater capture BMPs that reduce runoff volumes and consequently flood volumes. The decrease in potential damage due to flooding provides economic benefit.
- Reduced cost of public infrastructure - On-site volume control with stormwater BMPs can downsize or eliminate stormwater conveyance infrastructure and provide public cost savings.
- Reduced pollution and water treatment costs and improved water quality - The reduction in runoff volume reduces erosion and pollutant delivery, thereby reducing the downstream costs of water treatment. The resulting improvements in water quality, stream channel stabilization, and aesthetics can also increase the value of riparian properties and increase utility of recreational visitors. The increased infiltration gained from stormwater BMPs can improve and sustain stream base flow conditions in some areas to better maintain downstream habitat.⁴⁶⁶
- Increased property values where green infrastructure and LID projects are implemented.

Other studies, too, have described the importance of co-benefits derived from proper stormwater management. For example, analysis for the San Diego Region Bacteria TMDLs found the contribution of co-benefits (non-bacteria water quality benefits) such as property value, riparian habitat and treatment of other water pollutants provide more than half of the total economic benefits.⁴⁶⁷ In a series of studies listed in a report created by the U.S. EPA in 2013, the benefit-to-cost ratios of four LID/GI projects in Sun Valley were listed. All four projects showed a benefit-to-cost ratio of greater than 1

⁴⁶⁴ State Water Resources Control Board, Division of Water Quality, “Enhancing Urban Runoff Capture and Use,” STORMS Projects 1a and 1b, April 10, 2017.

⁴⁶⁵ “Executive Summary: Moving Toward a Multi-Benefit Approach for Water Management,” Pacific Institute; and Bren School of Environmental Science and Management, University of California, Santa Barbara, April 2019, pp. II-III.

⁴⁶⁶ WERF, 2010. [Using Rainwater to Grow Livable Communities](#). Web. 20 June 2019.

⁴⁶⁷ Cost Benefit Analysis Steering Committee. [Cost-Benefit Analysis San Diego Region Bacteria Total Maximum Daily Loads](#). October 2017, p. 6. Web. 20 June 2019.

indicating that, over the 50-year evaluation period, the benefits of these projects are higher than their cost.⁴⁶⁸

The Los Angeles Water Board assumes many of the benefits described in this section accrue to Permittees and their communities as a result of implementing their stormwater programs. The Board expects further program improvements, resulting from implementation of actions required by the Order, to increase benefits over time.

For example, the Order promotes:

- Employment and stimulus in the local economy, which are especially crucial during this recession caused by COVID-19. Economic Roundtable conducted a study in 2011 that found that job stimulus for every \$1 million invested in water efficiency projects was greater than traditional Los Angeles industries such as motion picture production and new home construction. The study found that 12.6 to 16.6 annualized jobs in recycled water, groundwater, stormwater, graywater systems, and water conservation projects were created for every \$1 million invested in these types of projects. The study also showed that approximately 74% of money invested in stormwater projects at the time of the study was spent locally, on businesses located within Los Angeles County. Furthermore, every million dollars invested in stormwater projects in Los Angeles stimulated an estimated \$1.99 million in total local sales due to multiplier effects of investing in the local economy. For example, cities pay people to work on stormwater projects, who then spend their incomes on housing, goods, and services.⁴⁶⁹ Building on the findings by Economic Roundtable, Los Angeles Alliance for a New Economy estimated that over 30 years, the Safe, Clean Water Program (Measure W) will create about 6,530 construction jobs and 1,347 O&M jobs, as well as about 1,559 annual indirect and induced jobs. This would yield about \$14B in overall regional economic benefits from \$9B in investment. Furthermore, many of these jobs created would be good-paying jobs that do not require an advanced degree, accessible to those in disadvantaged communities.⁴⁷⁰ Sustained increases in these occupations depend on Los Angeles' continued investment in water use efficiency projects.
- Use of nature-based solutions to mitigate and treat stormwater (e.g. implementation LID and GI regional projects). This technique alleviates the load on the existing stormwater conveyance infrastructure and reduces potential maintenance costs, while reducing localized flooding issues.
- Utilization of stormwater as a valuable resource to replenish our groundwater basins or for direct reuse. Imported water makes up approximately 70 to 75% of Southern California region's water supply, with local groundwater, local surface water, and reclaimed water making up the remaining 25 to 30%. The State of California Department of Finance projects that from 2020 to 2025, the population of Los Angeles County and

⁴⁶⁸ U.S. EPA, Case Studies Analyzing the Economic Benefits of Low Impact Development and Green Infrastructure Programs, EPA 841-R-13-004, August 2013.

⁴⁶⁹ Burns, Patrick and Flaming, Daniel. [Water Use Efficiency and Jobs](#). Economic Roundtable. December 2011.

⁴⁷⁰ Los Angeles Alliance for a New Economy (LAANE). Liquid Assets. [How Stormwater Infrastructure Builds Resilience, Health, Jobs, and Equity](#). March 2018.

Ventura County will increase by 2% and 2.6%, respectively. This population increase will be accompanied by an increase in water consumption. This increase will require larger volumes of imported water, which will be associated with higher costs. With stormwater used as a resource to replenish local groundwater basins, local reliance on imported water can be reduced, thereby controlling the costs incurred from importing water. A report prepared by the City of Signal Hill and Richard Watson & Associates states that the Metropolitan Water District forecasts water rates (Tier 1 rates for fully treated water) to increase from \$794/acre-foot (\$/AF) in 2012 to \$910/AF in 2015 and \$1,115 in 2020.

6. Conclusions

The Los Angeles Water Board has considered economics in issuing the Order and the specific requirements therein.

This consideration includes estimates of the possible range of costs of compliance with the Order, including the WQBELs, considering the likely and proposed means of compliance. It also includes the costs to the environment and society of not controlling MS4 discharges as well as the economic benefits of controlling MS4 discharges, including through stormwater capture. The range of costs of compliance as presented in Part XIII.D.2, Table F-38 and Table F-39 is \$21.3B to \$31.4B over 20 years. Even considering the highest cost in this range, the Board finds that the requirements in the Order are necessary to ensure the reasonable protection of beneficial uses. This is because these cost estimates are associated with implementation of permit requirements to achieve water quality objectives that were set at the levels necessary to provide reasonable protection of beneficial uses. These water quality objectives were either established by the U.S. EPA or approved by the U.S. EPA pursuant to CWA section 303(c). In most cases, the water quality objectives are those necessary to protect aquatic life and public health-related beneficial uses. The fundamental objective of the federal CWA, as set forth in section 101(a)(2), is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters” and to achieve water quality that provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water. The NPDES Program, including the MS4 NPDES Program, is one of the principal regulatory tools for achieving this objective. The requirements in the Order also consider the magnitude and uncertainty in projected costs and include provisions to help defray these costs (e.g., allowances for time extensions).

Because of the difficulty in accurately projecting the cost of compliance with the Order as presented in the discussion above, and given that permit requirements extend decades into the future, the Los Angeles Water Board has incorporated provisions for adaptive management of programs as new information is gained as well as provisions that allow Permittees to request extensions for milestones based on technical, operational, and economic factors. The Los Angeles Water Board has also acknowledged that it can consider revisions to TMDLs including their schedules and final deadlines, where it determines it is appropriate, and then reflect those changes in the permit. Finally, the Board has acknowledged the currently available dedicated sources of funding for MS4 permit compliance, including the Benefit Assessment Program in Ventura County and the Safe, Clean Water Program in Los Angeles County, among others, and that it will consider how these

funds are allocated to priority projects to meet upcoming deadlines when considering any requests for extensions.

The Los Angeles Water Board has also provided the Permittees significant flexibility to choose how to implement the Order. The Order allows the Permittees the flexibility to address critical water quality priorities, namely discharges to waters subject to TMDLs, but aims to do so in a focused and cost-effective manner while maintaining the level of water quality protection mandated by the Clean Water Act. The Permittees can customize their control measures and choose to implement the least expensive measures that are effective in meeting the requirements of the Order. The Order also does not require the Permittee to fully implement all requirements within a single permit term. Where appropriate, the Board has provided Permittee with additional time outside of the permit term to implement control measures to achieve final WQBELs and Receiving Water Limitations.

Cost savings from customizing programs and shifting resources accordingly are also possible. The Permittees' affirmative steps to secure funding are noteworthy, and some other potential sources of funding are identified in the Board's economic considerations. However, the discussion of potential sources of funding is far from exhaustive. There are myriad opportunities to leverage funding; for example, Permittees could pursue low-interest loans through the State Revolving Fund that would allow access to greater sums of money needed in the near term for capital costs and pay these off over time with the ongoing revenues from dedicated funding sources. Additionally, there are a number of interrelated Propositions, including Measures W⁴⁷¹, H⁴⁷², A and M⁴⁷³ ("WHAM"), addressing stormwater/water resiliency, affordable housing, parks, and transportation, respectively, that can be creatively combined to implement multi-benefit stormwater projects. Finally, partnerships beyond the Permittees themselves should be more fully explored. Some Permittees have effectively tapped into funding or other in-kind resources from the California Department of Transportation, as mentioned above; private entities such as commercial businesses; and schools. However, this opportunity is far from fully utilized.

Stormwater capture is an effective way for Permittees to achieve the goals of the CWA and the requirements of this permit by preventing the stormwater and associated pollutants from reaching receiving waters. As noted above, the specific benefits of stormwater capture have also become the focus of intense interest in the wake of California's most recent 2012-2019 drought. The Water Boards have recognized the importance of treating stormwater as a valuable resource where capture and use can result in multiple benefits within a watershed. This consideration identifies benefits to the environment, people and the economy and clearly demonstrates the value of effective management of stormwater quality.

⁴⁷¹ Measure W led to the passage of the Safe Clean Water Program, described earlier in this section of the Fact Sheet.

⁴⁷² Measure H History. <https://homeless.lacounty.gov/history/>. N.D. Web. July 16, 2020. Measure H was expected to generate about \$355M (in 2017 dollars) annually for 10 years to provide homeless services, including increasing affordable/homeless housing.

⁴⁷³ Measure M: The Los Angeles County Traffic Improvement Plan Information Guide. August 2016. https://theplan.metro.net/wp-content/uploads/2016/10/factsheet_measurem.pdf. Web. July 13, 2020. Measure M was expected to generate an estimated \$860M annually (in 2017 dollars). It was also anticipated to add 465,690 new jobs across the region. One of the goals of Measure M is to reduce pollution.

Having considered economics along with the other factors in section 13241, the Los Angeles Water Board has also provided the Permittees with time to implement control measures to achieve interim and final WQBELs and Receiving Water Limitations. This time has been provided in various ways, including through compliance schedules that are consistent with the schedules of implementation established in TMDLs pursuant to California Water Code section 13242, compliance schedules proposed by Permittees and approved by the Los Angeles Water Board through Watershed Management Programs and Enhanced Watershed Management Programs for pollutants not addressed by TMDLs, and time schedule orders, where justified, for WQBELs and Receiving Water Limitations with final compliance deadlines that have passed. The Los Angeles Water Board is committed to continue to evaluate the costs of compliance as permit requirements are implemented and, as noted above, has included provisions that allow Permittees to request extension of deadlines, where warranted.

E. The Need for Developing Housing Within the Region

According to the U.S. Census, between April 1, 2010 to July 1, 2018, Los Angeles County and Ventura County experienced an estimated population increase of 2.9% and 3.3%, respectively.⁴⁷⁴ An increase in population creates a demand for more housing. Based on data from the California Department of Finance, both Los Angeles and Ventura counties have been experiencing an increase in population and housing units since 2010.⁴⁷⁵ An increase in population creates a higher demand for water, exacerbates usage of natural resources, and increases generation of waste and pollution. In order to conserve and protect the quantity and quality of our natural resources, development must be done systematically. To protect human health and the environment, create economic opportunities, and provide attractive and affordable neighborhoods, U.S. EPA encourages smart growth and low impact development.⁴⁷⁶ Stormwater management is an essential smart growth strategy. According to U.S. EPA, using smart growth and low impact development strategies, communities and developers can reduce runoff quantity, protect water quality, and conserve water by developing compactly, preserving ecologically critical open space, and using green infrastructure strategies.⁴⁷⁷

Improved stormwater management may also help reduce the region's historic reliance on imported water to meet population needs. For over 100 years, this region has relied on imported water to meet many of our water resource needs. Imported water makes up approximately 70 to 75% of the Southern California region's water supply, with local ground water, local surface water, and reclaimed water making up the remaining 25 to

⁴⁷⁴ United States Census Bureau. QuickFacts. <https://www.census.gov/quickfacts/fact/table/venturacountycalifornia,losangelescountycalifornia/PST045218>

⁴⁷⁵ State of California Department of Finance. E-5 Population and Housing Estimates for Cities, Counties, and the State, 2011-2019 with 2010 Census Benchmark. May 1, 2019. <http://www.dof.ca.gov/Forecasting/Demographics/Estimates/e-5/>

⁴⁷⁶ According to U.S. EPA, “[s]mart growth’ covers a range of development and conservation strategies that help protect our health and natural environment and make our communities more attractive, economically stronger, and more socially diverse.” Principles of smart growth include, but are not limited to, use of compact building design, creating a range of housing opportunities and choices, and preserving open space and critical environmental areas. United States Environmental Protection Agency. About Smart Growth. <https://www.epa.gov/smartgrowth/about-smart-growth>. Accessed on June 23, 2020.

⁴⁷⁷ United States Environmental Protection Agency. Smart Growth and Water. <https://www.epa.gov/smartgrowth/smart-growth-and-water>

30%.⁴⁷⁸ The Los Angeles Region imports approximately 50% of its water supply. Untreated MS4 discharges collect and transport pollution to our waterbodies and detrimentally affect their beneficial uses. However, when properly managed, MS4 discharges can be used as a resource.

The Order also helps address the water needs associated with the need for housing by controlling the quality and quantity of MS4 discharges and using it as a water resource for recycling and re-use. The low impact development (LID) requirements of the Order emphasize the necessity to balance growth with the protection of water quality. LID emphasizes cost effective, lot-level strategies that replicate the natural hydrology of the site and reduce the negative impacts of development. By avoiding the installation of more costly conventional stormwater management strategies and harnessing runoff at the source, LID practices enhance the environment while providing cost savings to both developers and local governments.

The Order also supports an integrated water resources approach that manages water resources by integrating wastewater, non-stormwater, stormwater, recycled water, and potable water planning through the capture and beneficial use of MS4 discharges on a regional scale. An integrated approach can preserve and augment local groundwater resources thereby reducing imported water needs and increasing local water resiliency. Local water resiliency increases the region's capacity to support increases in population and the accompanying need for housing.

F. The Need to Develop and Use Recycled Water

During the terms of the 2012 Los Angeles County, 2014 City of Long Beach, and 2010 Ventura County MS4 permits, California experienced a severe drought which lasted 376 weeks, starting from the year 2011 to 2019. The U.S. Drought Monitor characterizes the drought based on specific criteria where D4 is defined as exceptional drought, in which widespread crop and pasture losses and shortages of water create water emergencies. Per the U.S. Drought Monitor, "[t]he most intense period of drought occurred the week of July 29, 2014 where D4 affected 58.1% of California land."⁴⁷⁹ Along with the drought, Los Angeles and Ventura counties experienced wildfires, floods, extreme heat and more, which strained the region's resources and highlighted infrastructure inefficiencies. In contrast to the drought, the 2019 water year had above average rainfalls and in some cases even breaking daily rainfall records.⁴⁸⁰ Due to climate change, the region will only continue to experience more extreme weather events.

Furthermore, as mentioned in Part XIII.E above, which considers the need for developing housing within the region, according to the U.S. Census, between April 1, 2010 to July 1, 2018, the populations in Los Angeles County and Ventura County rose by 2.9% and 3.3%, respectively. This increase in population leads to an increase demand for water supply to meet the needs of the residents. Most of the water supplied to Los Angeles County is imported from the State Water Project, Colorado River, and

⁴⁷⁸ Southern California Association of Governments. The State of the Region 2007 Measuring Regional Progress (Housing, Environment). December 6, 2007. <http://www.scag.ca.gov/publications/index.htm>.

⁴⁷⁹ "Drought in California." California | Drought.gov, 20 Sept. 2019, www.drought.gov/drought/states/california.

⁴⁸⁰ Fry, Hannah, and Gary Robbins. "Parts of Southern California Haven't Seen This Much Rain in Decades. And More Is on the Way." *Los Angeles Times*, Los Angeles Times, 15 Feb. 2019, <https://www.latimes.com/local/lanow/la-me-rain-explainer-california-storms%2020190215-story.html>.

the Los Angeles Aqueduct.⁴⁸¹ Ventura County relies on local groundwater as well as imported water.⁴⁸² The interconnected effects of water quality and the health of our communities is also becoming increasingly apparent. Water shortages and the pumping of groundwater at a rate that depletes groundwater supply further demonstrates the need to develop a robust strategy that incorporates recycled water to build resiliency to the region's most pressing issues, while being protective of public health and the environment.

Initiatives for water resiliency have passed at the state and local levels. At the state level, in April 2015, Governor Brown issued Executive Order B-29-15, which outlined actions needed to respond to the severe drought, including mandated reductions in urban potable water usage by 25% statewide. In April 2019, Governor Newsom issued Executive Order N-10-19, ordering key agencies, including the California Environmental Protection Agency, to prepare a water resilience portfolio that meets the needs of California's communities, economy, and environment through the 21st century.⁴⁸³ The draft portfolio includes a number of recommendations related to making stormwater capture a growing share of local water supply.⁴⁸⁴ At the local level, the City of Los Angeles developed L.A.'s Green New Deal, which includes plans to recycle 100% of its wastewater by 2035 as well as source 70% of all water locally by 2035 and capture 150,000 acre-feet per year (AFY) of stormwater.⁴⁸⁵ In Ventura County, the Integrated Regional Water Management Plan was developed in 2014, in which the Watersheds Coalition of Ventura County is responsible for the implementation and planning at a regional level. Through this planning effort, Ventura County has leveraged its resources through collaborations with local agencies and organizations, and grant funding in order to implement multi-benefit projects.⁴⁸⁶ Along with government recognizing the water challenges the region is facing, residents also recognize the need to develop recycled water infrastructure and the importance of water resiliency with the passing of Measure W in Los Angeles County, which provides a dedicated funding source for multi-benefit stormwater capture projects through a parcel tax on impermeable areas.⁴⁸⁷

Historically, stormwater has not been considered a viable component of the regional water portfolio. However, if stormwater is captured and treated, a new resource could be added to local water supply and numerous benefits could be achieved. These include:

- Regional reduction in reliance on imported water;
- Aid in the restoration of area aquifers both from a supply and water quality point of view;
- Reduction in the need for extensive public works projects; and

⁴⁸¹ The Future of Integrated Regional Water Management in Los Angeles County. http://www.resources.ca.gov/docs/LA_County.pdf.

⁴⁸² Watersheds Coalition of Ventura County Integrated Regional Water Management Plan. <http://wcvc.ventura.org/IRWMP/2019IRWMP.htm>.

⁴⁸³ Executive Department State of California Executive Order N-10-19.

<https://www.gov.ca.gov/wp-content/uploads/2019/04/4.29.19-EO-N-10-19-Attested.pdf>.

⁴⁸⁴ California Natural Resources Agency, California Environmental Protection Agency, and California Department of Food & Agriculture. 2020 Water Resilience Portfolio. Draft. January 3, 2020.

⁴⁸⁵ L.A.'s Green New Deal Sustainable Plan 2019. http://plan.lamayor.org/sites/default/files/pLAn_2019_final.pdf.

⁴⁸⁶ Watersheds Coalition of Ventura County Integrated Regional Water Management Plan. <http://wcvc.ventura.org/IRWMP/2019IRWMP.htm>.

⁴⁸⁷ Safe Clean Water Program. <https://safecleanwaterla.org/>.

- Improvement in the quality of impaired water bodies.

Municipalities across the region are now acknowledging the importance of recognizing stormwater as a resource and thus conducting watershed-based planning to implement multi-benefit solutions for stormwater management. Consistent with the Clean Water Act, which supports the implementation of stormwater management at a watershed scale, the 2012 Los Angeles County MS4 Permit and the 2014 City of Long Beach MS4 Permit contained provisions to allow for the abovementioned benefits to be achieved through the implementation of approved Watershed Management Programs. The Order further expands such provisions to Permittees in Ventura County. Watershed Management Programs allow Permittees the flexibility to implement requirements of the Order on a watershed scale through customized strategies, control measures, and BMPs to achieve multi-benefit solutions. Participation in a Watershed Management Program is voluntary and allows the Permittee to address the highest water quality priorities in consideration of particular socio-economic, land use, and geographic characteristics.

In addition, participation in Watershed Management Programs allows Permittees to consider the potential amount of dry weather urban runoff and precipitation and thus the amount of non-stormwater and stormwater available to capture. The exact volume of stormwater available for capture is dependent on the intensity and duration of storm events. Looking at land uses across the region and applying land use-specific runoff coefficients, the Los Angeles and San Gabriel Rivers Watershed Council estimates that, on average, about 601,000 acre-feet/year of runoff are discharged from the Los Angeles Region to the Pacific Ocean.⁴⁸⁸ The average annual rainfall in Ventura County is about 18 inches and has a total area of 1,843 square miles.⁴⁸⁹ It is not possible to capture all MS4 discharges; however, a significant portion could be captured and put to beneficial use. Capturing stormwater from a larger portion of the watershed could increase the volume of this “new” water even further.

Larger projects (and the corresponding savings) are also possible. The County of Los Angeles recharges stormwater already. While the scale of these recharge activities is limited compared to the volume of water potentially available to recharge, the value of the process is significant. For example, in 2000 “County conservation efforts captured 220,000 acre-feet of local stormwater runoff that was valued at \$80 million dollars.”⁴⁹⁰

The unknown effects of infiltrating stormwater to recharge groundwater have created some concern that such activities could introduce pollutants to the water supply. However, these concerns are likely overstated. The U.S. Bureau of Reclamation has found:⁴⁹¹

⁴⁸⁸ [Los Angeles and San Gabriel Rivers Watershed Council \(2010\) Water Augmentation Study: Research, Strategy, and Implementation Report, January 30, 2010.](https://www.usbr.gov/lc/socal/reports/LASGwtraugmentation/report.pdf) <https://www.usbr.gov/lc/socal/reports/LASGwtraugmentation/report.pdf>. Accessed on June 23, 2020.

⁴⁸⁹ Report of Waste Discharge, Ventura Countywide Stormwater Quality Management Program, January 2015.

⁴⁹⁰ Los Angeles County Department of Regional Planning. 2008. 2008 Draft General Plan-Planning Tomorrow’s Great Places.

⁴⁹¹ Los Angeles and San Gabriel River Watershed Council. 2010. Water Augmentation Study: Research, Strategy, and Implementation Report. <https://www.usbr.gov/lc/socal/reports/LASGwtraugmentation/report.pdf>. Accessed on June 23, 2020.

Based on the findings of the WAS research, decentralized stormwater management would provide a local and reliable supply of water that would not negatively impact groundwater quality. A decentralized approach could contribute up to 384,000 acre-feet of additional groundwater recharge annually if the first ¾" of each storm is infiltrated on all parcels, enough to provide water annually to approximately 1.5 million people. The value of this new water supply would be approximately \$311 million, using the MWD Tier 2 rate for 2010.

Recent studies in the urbanized area of Los Angeles County have also shown that in the process of infiltration through the soil, many contaminants are removed with no immediate impacts, and no apparent trends to indicate that stormwater infiltration will negatively impact groundwater.⁴⁹² Moreover, in groundwater basins with elevated concentrations of salts, utilizing recycled stormwater, which has low concentrations of salts, to recharge the aquifers may actually improve water quality. The value of this is difficult to quantify but is an additional benefit.

The Order addresses the need for recycled water by emphasizing stormwater capture for beneficial use as a means to control the discharge of pollutants from the MS4 to surface waters. The Order also supports the diversion of non-stormwater to wastewater reclamation facilities where it can be treated for beneficial reuse. State law and policy advocates greatly expanding the use of recycled water to help meet local demand and reduce the volumes of water that are imported from other regions. Increased utilization of recycled water will require looking beyond the traditional reclaimed wastewater and will require utilizing stormwater and non-stormwater that is wasted by conveyance in the MS4 to the ocean. Stormwater capture and use has not featured as prominently as municipal wastewater in the discussion of water recycling but is increasingly acknowledged as a valuable asset for augmenting local water supply. The use of recycled water can be accomplished in direct (such as irrigation projects) or indirect (such as infiltration) ways. Both direct and indirect methods can be completed on a variety of different scales. To maximize the benefits available from using recycled water, the direct and indirect projects will need to be completed on household, neighborhood, watershed, and regional scales. There is a growing number of projects in the region that can serve as examples of what may be accomplished through the development and implementation of recycled water projects.

Some successful examples of onsite stormwater capture are being demonstrated by TreePeople.⁴⁹³ TreePeople's demonstration projects range from small scale rainwater harvesting at single family home locations, to large scale watershed projects. At Tuxedo Green in Sun Valley, TreePeople redesigned the intersection with a flood control system that conveys most stormwater under, instead of into, the busy intersection. The water is stored in a 45,000-gallon cistern to be used for irrigating the landscaping at the new pocket park, which is planted with native and drought-tolerant species.

Another state of the art project was implemented by the City of Santa Monica called the Santa Monica Urban Runoff Recycling Facility (SMURRF).⁴⁹⁴ The project harnesses the urban runoff (primarily during the dry season) and treats it for various pollutants to create a source of high quality water for reuse in landscape irrigation, thus reducing the need

⁴⁹² Los Angeles and San Gabriel River Watershed Council. 2005. Los Angeles Basin Water Augmentation Study Phase II Final Report.

⁴⁹³ <http://www.treepeople.org/>.

⁴⁹⁴ <http://c0133251.cdn.cloudfiles.rackspacecloud.com/Case%20Study%20%20Santa%20Monica%20Urban%20Runoff%20Recycling%20Facility%20SMURRF.pdf>.

for potable water. Because the facility captures the dry weather runoff before it reaches the Santa Monica Bay, it decreases a significant amount of pollutants from negatively impacting the Bay and associated beaches. The SMURRF is also open to the public and has several exhibits to raise public awareness of Santa Monica Bay pollution and the role of each individual in the watershed's health.

The County of Los Angeles Department of Public Works, Watershed Management Division has targeted the Sun Valley Watershed "...to solve the local flooding problem while retaining all stormwater runoff from the watershed, increasing water conservation, recreational opportunities, wildlife habitat, and reducing stormwater pollution."⁴⁹⁵ This aggressive plan involves several stakeholders and has implemented a variety of on-site BMPs as well as stormwater infiltration retrofits and diversions.

In Ventura County, the Ventura Countywide Stormwater Quality Management Program has implemented various stormwater quality improvement projects and BMPs. In the City of Moorpark, College View Dog Park diverts all stormwater to infiltration basins and can retain 100% of the water during average rainfall periods. Walnut Acres Park has both on-site and off-site infiltration capability. The City of Ventura implemented downtown parking lot retrofits including curb cuts, bioswales, and permeable pavers and have applied similar features for green street projects.⁴⁹⁶ A notable green street project was implemented at the Ventura County Government Center. This project implemented an innovative infiltration system through the installation of 4,805 linear feet of pervious concrete gutters to capture stormwater from the Government Center's parking lot. The captured stormwater is filtered through an infiltration trench that flows into dry wells for groundwater recharge. Furthermore, in the Ventura River Watershed, Happy Valley Bioswale was designed to mimic natural processes to remove pollutants in stormwater runoff. This filtration system includes a baffle box at the entrance which removes trash, sediments, and small particles and is followed by a natural soil and plant filtration system to further treat the stormwater and allows for a thriving habitat.⁴⁹⁷

With the issuance of the Order, stormwater capture projects such as the abovementioned will allow for further expansion on a watershed scale and create consistency within the region.

In addition, there are a number of Total Maximum Daily Loads (TMDLs) established by the Los Angeles Water Board that incorporate recycled water programs as potential implementation actions to meet TMDL requirements. These potential actions focus on both traditional water recycling and the newer stormwater recycling approaches. Such recycled water programs reduce reliance on potable water supplies by expanding water recycling and aiding in the reclamation of poor quality, unconfined groundwater supplies. The capture, treatment and use of stormwater could augment these techniques as well. On-site capture of stormwater helps prevent the water from being contaminated by urban by-products to begin with and the use of this high-quality resource could reduce the unnecessary use of potable water for non-potable needs.

⁴⁹⁵ http://www.sunvalleywatershed.org/watershed_management_plan/wmp-0ES.pdf.

⁴⁹⁶ Ventura Countywide Stormwater Quality Management Program, Presented on September 13, 2018 https://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed_management/workshops/docs/VWCPD_20180913_RB_PermitRenewal_FINAL-1.pdf.

⁴⁹⁷ Happy Valley Bioswale, uninc.vcstormwater.org/projects/happy-valley-bioswale.

XIV. STATE MANDATES

Article XIII B, section 6(a) of the California Constitution provides that whenever “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.” No provision of the Order constitutes an unfunded state mandate subject to subvention under Article XIII B, section (6)(a) of the California Constitution.

A. Renewal of the Permits Is Not a New Program Or Higher Level of Service

As a threshold matter, MS4 permitting is not a “program” as that term is used in Article XIII B, section (6). The California Supreme Court has defined a “program” for purposes of Article XIII B, section 6, as: (1) programs that carry out the governmental function of providing services to the public, or (2) 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. (*San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874 (reaffirming the test set forth in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.)

An NPDES permit for MS4 discharges arises from the Clean Water Act, which forbids everyone – individuals, businesses, state governments, tribal governments, local governments, etc. – from discharging pollutants from point sources to waters of the United States without an NPDES permit. (33 U.S.C. §§ 1311(a), 402, 502(5); see also 40 C.F.R. §§ 122.21, 122.22, 123.25.) The Clean Water Act requires permitting of private and governmental (federal, state, and local) sources of stormwater and non-stormwater alike. (33 U.S.C. § 1342(p); 40 C.F.R. § 122.26.) The Permittees here must have a permit because they discharge pollutants, not because they operate an MS4. See, *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 58 (“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”). All polluters, whether private or public, must get a permit. (See, e.g., *City of Richmond v. Com. on State Mandates*, (1998) 64 Cal.App.4th 1190, 1199 (new law made “the workers’ compensation death benefit requirements as applicable to local governments as they are to private employers,” and therefore did not impose a new program or higher level of service.)

To be sure, the permit conditions provide a public benefit, but that is not the same thing as providing services to the public. There is a critical distinction between a law or executive order that requires local governments to provide a public service, and one that address the conduct and happens to cover local governments – and other entities such as private industry – because they engage in the conduct. This principle is best illustrated by *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538. There, the Department of Industrial Relations enacted statewide safety regulations that governed all public and private elevators. (*Id.*, at pp. 1540–1541.) The county argued that the regulations created a mandatory, reimbursable “program” because “all passenger elevators in all county buildings are necessary for the performance of peculiarly governmental functions” (*Id.*, at pp. 1545–1546, italics omitted.) Rejecting that argument, the court explained that “the critical question is whether the mandated program carries out the governmental function of providing services to the public, not whether the elevators can be used to obtain these services.”

(*Id.*, at p. 1546, italics omitted.) In other words, a state law providing that local governments have to comply with the same safety rules as everyone else does not constitute a state mandated “program.” The same is true here. The Permit does not require Permittees to operate an MS4. Rather, it implements a body of state law that provides that, if a local government operates an MS4, it must take steps to mitigate pollutant discharges, like all other polluters. The fact that the specific permit here is issued to local governments does not render the permit a program that carries out a “governmental function” particular to local government or a permit that imposes unique requirements on the local governments.

Even if an MS4 permit could be considered a “program,” the requirements of the Order do not constitute a *new* program or a *higher level* of service as compared to the requirements contained in the previous permits issued by the Los Angeles Water Board to the Permittees. The overarching requirement to impose controls to reduce the pollutants in discharges from MS4s is dictated by the Clean Water Act (33 U.S.C. § 1342(p)(3)(B)) and is not new to this permit cycle. The inclusion of new and advanced measures as the MS4 programs evolve and mature over time is specifically anticipated under the Clean Water Act (55 Fed. Reg. 47990, 48052 (Nov. 16, 1990); 61 Fed. Reg. 43761 (Aug. 26, 1996); USEPA “*Interim Permitting Approach for Water Quality Based Effluent Limitations in Storm Water Permits*,” EPA 833-D-96-001 (September 1996)) because the experience gained in implementation of existing permits and ongoing technological developments help direct appropriate adaptation of the programs to better address pollution. Such new and advanced measures refine existing measures to improve the effectiveness of the ongoing program and do not constitute a new program or higher level of service. And while the new or advanced measures may result in additional costs to the Permittees, resulting new costs is not the test for a higher level of service. “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.’” (*County of Los Angeles v. Com. on State Mandates* (2003) 110 Cal.App.4th 1176, 1191, quoting *Workers’ Compensation Mandates Decision, supra*, 43 Cal.3d. at p. 55.)

B. The Permit Requirements Fall Under Several Exceptions to Mandates Rules

Even if some of the requirements imposed on the Permittees with this renewal could be considered a new program or higher level of service, the following exceptions to a finding of unfunded mandates preclude subvention here:

1. The permit provisions are required by the federal Clean Water Act and implementing regulations:

One of the exceptions to the subvention requirements is that, if the mandate imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, no subvention is required unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. (Gov. Code, § 17556(c).) The Order implements federally mandated requirements under the federal Clean Water Act and implementing regulations and its requirements are therefore not subject to subvention of funds. This includes federal requirements to: (i) effectively prohibit non-stormwater discharges through the MS4 to receiving waters; (ii) reduce the discharge of pollutants in stormwater to the maximum extent practicable; (iii) include such other provisions as the permitting authority (here, the Los Angeles Water Board)

determines appropriate for the control of such pollutants; (iv) attain applicable TMDL wasteload allocations; and (v) conduct monitoring and reporting.

Non-stormwater discharge prohibition: Federal law requires that an MS4 permit effectively prohibit non-stormwater discharges through the MS4 to receiving waters. (33 U.S.C. § 1342(p)(3)(B)(ii).) The Order's requirements to achieve the effective prohibition of non-stormwater discharges are thus compelled by federal law.

TMDL requirements: The Clean Water Act requires TMDLs to be established for waterbodies that do not meet federal water quality standards. (33 U.S.C. § 1313(d).) The Clean Water Act also requires that MS4 permits include "such other provisions as the Administrator or the State determines appropriate for the control of [] pollutants." (33 U.S.C. § 1342(p)(3)(B)(iii).) U.S. EPA interprets this provision to mandate "controls to reduce the discharge of pollutants to the maximum extent practicable, and where necessary water quality-based controls."⁴⁹⁸

Once U.S. EPA or a state establishes a TMDL, federal law requires that NPDES permits must contain water quality-based effluent limitations (WQBELs) consistent with the assumptions and requirements of any applicable wasteload allocation. (40 C.F.R. § 122.44(d)(1)(vii)(B).) Indeed, TMDLs are developed for the purpose of specifying requirements for the achievement of water quality standards in impaired waters (33 U.S.C. § 1313(d); 40 C.F.R. § 130.7) The Order's requirements for attainment of TMDL wasteload allocations are therefore compelled by federal law. Several generations of the MS4 permits issued in California have prohibited discharges that cause or contribute to exceedances of water quality standards in the receiving water. TMDL provisions, including WQBELs, simply add a process for meeting this requirement, generally based on a compliance schedule.

Monitoring and reporting requirements: Federal law requires that NPDES permits incorporate monitoring and reporting provisions. (33 U.S.C. §§ 1318(a); 1342(a)(2); 40 C.F.R. §§ 122.26(d)(2)(i)(F); 122.41(h), (j)-(l); 122.42(c); 122.44(i); 122.48.) The Order's monitoring and reporting requirements are thus imposed pursuant to federal law.

Maximum Extent Practicable (MEP) standard: The Clean Water Act mandates that the Order "require controls to reduce the discharge of pollutants to the maximum extent practicable." (33 U.S.C. § 1342(p)(3)(B)(iii).) *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, as modified on denial of rehearing (Nov. 16, 2016) (*Department of Finance*) analyzed whether the Clean Water Act's MEP standard required four particular provisions concerning trash receptacles and inspections in the 2001 Los Angeles County MS4 permit. In concluding that the provisions were not required by federal law, the Supreme Court stated that, "[h]ad 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." (*Department of Finance, supra*, 1 Cal.5th at p. 768.) The Supreme Court further stated that "[s]uch findings

⁴⁹⁸ Phase I Stormwater Regulations, Final Rule, 55 Fed. Reg. 47990, 47994 (Nov. 16, 1990) (emphasis added); see also *Building Industry Ass'n of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 882-887; Phase II Stormwater Regulations, Final Rule, 64 Fed. Reg. 68722, 68737.

are “case specific, based among other things on factual circumstances.” (*Id.*, fn. 15.)

To be entitled to deference, regional water boards must make an express finding that the particular set of permit conditions finally embodied in a given permit is required to meet that federal standard and must support that finding with evidence. The Los Angeles Water Board expressly finds that the Order specifies requirements necessary for the Permittees to reduce the discharge of pollutants in MS4 discharges to the MEP. Parts IV and VIII establish program requirements for Stormwater Management Program Minimum Control Measures, including programs for public information and participation, industrial and commercial facilities, construction activities, planning and land development, public agency activities, and illicit discharge detection and elimination, among others pursuant to 40 CFR section 122.26(d)(2)(iv). The requirements of these programs represent structural and non-structural water quality control measures that are effective, technically feasible, and generally accepted as appropriate.

Part IX establishes elective program requirements related to Watershed Management Programs (WMP), which provide an alternative compliance path through the preparation of a WMP that allows the Permittees to prioritize water quality issues and propose the specific control measures to address the prioritized issues and achieve the receiving water limitations and numeric WQBELs in accordance with a time schedule. This allowance also provides Permittees with ample flexibility to select, in a customized fashion, the water quality control measures that will reduce pollutants in stormwater to the maximum extent practicable.

The Los Angeles Water Board finds that the programmatic requirements of the Order are necessary to meet the MEP standard. The mix of program elements reflects the necessary pollutant reduction expected by the demanding federal MEP standard, but also represents a balancing of competing interests such as effectiveness, regulatory compliance, public acceptance, cost, and technical feasibility. To the extent there may be multiple means of achieving pollutant reductions and that there could be trade-offs between program areas with potentially higher costs and greater pollutant reductions, the permit programs are structured to provide the optimum reduction of pollutants necessary to reduce pollutants to the maximum extent practicable. This finding is the expert conclusion of the principal state agency charged with implementing the NPDES program in California and therefore entitled to deference under *Department of Finance*.

Finally, the Supreme Court in *Department of Finance* suggested that the inclusion of equivalent or substantially similar provisions by the U.S. EPA in other permits may support a finding that the provisions are necessary to achieve MEP. (*Dept. of Finance, supra*, 1 Cal.5th at p. 772.) The Los Angeles Water Board has examined the following U.S. EPA issued permits, among others, and concluded that they contain equivalent and/or substantially similar provisions: Massachusetts MS4 General Permit, Washington D.C. MS4 Permit, Albuquerque MS4 Watershed Permit, Boise/Garden City MS4 Permit, and Guam MS4 Permit. Previous sections of the Fact Sheet identify the specific provisions that are similar in these U.S. EPA issued permits.

2. Permittees have authority to fund the costs through service charges, fees, or assessments:

Even if any of the permit provisions could be considered unfunded state mandates, under Government Code section 17556, subdivision (d), a state mandate is not subject to reimbursement if the local agency has the authority to fund the costs through service charges, fees, or assessments. (*Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 398.) Here, Permittees have the authority to levy service charges, fees, or assessments sufficient to pay for compliance with the Order. Permittees certainly have fee authority under their police powers. (See, Cal. Const., art. XI, § 7; *Freeman v. Contra Costa County Water Dist.* (1971) 18 Cal.App.3d 404, 408 (“It cannot be denied that prevention of water pollution is a legitimate governmental objective, in furtherance of which the police power may be exercised.”); *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 561-62 (holding in part that local governments have the authority sufficient to pay for inspection requirements for commercial and industrial facilities and construction sites to ensure compliance with various environmental regulations in an MS4 permit under their police powers for the prevention of water pollution). This Fact Sheet demonstrates that numerous activities contribute to the pollutant loading from the MS4. 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 authority 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. (*Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812 [“To the extent a local agency or school district ‘has the authority’ to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.”], quoting *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487-488.)

Permittees have argued in the past that their fee or taxation authority is constrained by article XIII D, section 6, of the California Constitution, also known as Proposition 218. (Cal. Const., art. XIII D, § 6, subd. (c); see also *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351, 1358-1359.) However, Proposition 218 is not an impediment to Permittees’ fee authority.⁴⁹⁹ The Constitution has an exception to the voter approval requirements of Proposition 218, “for fees or charges for sewer, water, and refuse collection services.” (Cal. Const. Article XIII D, section 6, subd. (c).) In recent years, the Legislature enacted two important pieces of legislation confirming fee authority without the need for voter approval. In Assembly Bill 2043 (2014), effective January 1, 2015, the Legislature amended the definition of “water” for purposes of articles XIII C and XIII D to mean “water from any source.” (Gov. Code, § 53750, subd. (n), amended by Assembly Bill 2043 (Stats. 2014, ch. 78, § 2.) In doing so, the Legislature stated that its act “is declaratory of existing law.” (Stats. 2014, ch. 78, § 1(c).) With Senate Bill 231 (2017), effective January 1, 2018, the Legislature “reaffirm[ed] and reiterate[d]” that the definition of “sewer” for purposes of article XIII D includes:

⁴⁹⁹ Such authority is also undiminished by Proposition 26, which specifically excludes assessments and property-related fees imposed in accordance with Proposition 218 from the definition of taxes. (Cal. Const., art. XIII C, § 1, subd. (e)(7).)

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.

(Gov. Code, § 53750, subd. (f), and § 53751, subd. (i), added by Senate Bill 231, Stats. 2017, ch. 536, § 2 (emphases added).) These legislative actions confirm that the Permittees have authority to raise fees or charges, without voter approval, for costs related to their MS4s.

In addition, Health and Safety Code section 5471, subdivision (a), gives dischargers fee authority for “services and facilities furnished...in connection with its water, sanitation, *storm drainage*, or sewerage system.” (Health & Safety Code, § 5471, subd. (a) (emphasis added).) Similarly, Public Resources Code section 40059, subdivision (a)(1), also confers fee authority on counties, cities, districts, or other local governmental agencies for “[a]spects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services.”

The ability of the Permittees to levy fees, assessments, or service charges to pay for compliance with the requirements of the Order cannot be disputed. In addition to the general authority above, some of the Permittees have specific authority to levy funds to pay for permit compliance. By way of example, the Ventura County Board of Supervisors approved the concept of a countywide NPDES permit program and the use of the Flood Management District (presently the Watershed Protection District) benefit assessment authority to finance it in April 1992. On June 30, 1992, the Ventura County Board of Supervisors adopted a benefit assessment fee for stormwater and flood management in the unincorporated areas of Ventura County and the cities within the County, to be used in part to finance the implementation of a countywide NPDES municipal stormwater permit program. The Ventura County MS4 Permittees entered into agreement with the Watershed Protection District to finance the activities related to the Ventura County MS4 Permit for shared and district-wide expenses. The Permittees are also given the option to use the Benefit Assessment Program to finance their respective activities related to reducing the discharge of pollutants from their MS4s under the MS4 Permit. Therefore, the Ventura County Watershed Protection District (VCWPD), through the Benefit Assessment Program, has the authority to impose a fee or charge for implementation of this permit. Furthermore, in 2005, the Legislature authorized the VCWPD to increase property related fees to fund storm drainage service and facilities within its jurisdiction.⁵⁰⁰ The VCWPD has statutory authorization to levy an ad valorem tax upon all taxable property, an assessment upon all taxable real property in the district, or a fee imposed pursuant to Article XIII D of the California Constitution, to pay the costs and expenses of the district.⁵⁰¹

⁵⁰⁰ Ventura County Watershed Protection Act, California Water Code Appendix, Chapter 46, § 46-12.

⁵⁰¹ Ibid.

The LACFCD also has specific statutory authority to levy a tax, fee, or charge to comply with the requirements of the Order, including implementation of approved WMPs. The LACFCD is authorized:

To levy a tax, in compliance with the applicable provisions of Article XIII C of the California Constitution, or impose a fee or charge, in compliance with the applicable provisions of Article XIII D of the California Constitution, to pay the costs and expenses of carrying out projects and programs to increase stormwater capture and reduce stormwater and urban runoff pollution in the district in accordance with criteria established by the ordinance adopted pursuant to subsection 8c. Projects and programs funded by the revenues from the tax, fee, or charge may include projects providing multiple benefits that increase water supply, improve water quality, and, where appropriate, provide community enhancements such as the greening of schools, parks, and wetlands, and increased public access to rivers, lakes, and streams.⁵⁰²

Revenues derived from any tax, fee, or charge imposed would be subject to specific allocations. Forty percent of any revenues derived from any LACFCD tax, fee, or charge is to be allocated to cities within the boundaries of the district and to the County of Los Angeles for implementation, operation and maintenance, and administration of project and programs within their respective jurisdictions. Fifty percent shall also be allocated to pay for the implementation, operation and maintenance, and administration of watershed-based projects and programs, including WMPs.⁵⁰³

Finally, even if voter approval may be required prior to levying fees, that does not mean that a local agency lacks the authority to levy fees. In *Paradise Irrigation Dist. v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 182, the Court considered whether the majority protest procedure added by Proposition 218 deprived local agencies of authority to impose fees for water service. Article XIII D, section 6(a) requires a local agency to identify parcels subject to a new fee, calculate the fee amount, and provide notice to affected property owners. (Cal. Const., art. XIII D, § 6, subd. (a)(1).) If a majority of the property owners submit written protests against the fee, the fee may not be imposed. (*Id.*, subd. (a)(2).) The Court held that the “majority protest procedures are properly construed as a power-sharing arrangement between the districts and their customers, rather than a deprivation of fee authority.” (33 Cal.App.5th at p. 182.) It explained that, when considering how voter powers affect the ability of local governments to impose fees, courts “presume local voters will give appropriate consideration and deference to state mandated requirements” (*Id.* at p. 194, citing *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 220.) “Although this power-sharing arrangement has the potential for conflict, we must presume that both sides will act reasonably and in good faith.” (*Id.*, at p. 192.) Further, the fact that, “as a matter of practical reality, the majority protest procedure allows water customers to defeat the District’s authority to levy fees” was not dispositive; “the inquiry into fee authority constitutes an issue of law rather than a question of fact.” (*Id.* at p. 195, citing *Connell, supra*, 59 Cal.App.4th at p. 401.) “Fee authority is a matter governed by statute rather than by factual considerations of practicality;” it

⁵⁰² Cal. Wat. Code, § App. § 28-2, subd. 8a.

⁵⁰³ *Id.*, subd. 8b.

is not controlled by whether municipalities have tried and failed to levy fees. (*Id.*) If there is statutory authority to levy fees, then there is no right to subvention. (*Id.*)

XV. PUBLIC PARTICIPATION

The Los Angeles Water Board has considered the issuance of WDRs that will serve as an NPDES permit for MS4 discharges within the Los Angeles Region. The Los Angeles Water Board staff has encouraged public participation in the permit development process. Over a period of three years from May 2018 to May 2021, the Los Angeles Water Board has held multiple listening sessions, workshops, and Board meeting agenda items focusing on issues pertinent to Permittees in both counties. Additionally, Board staff have met with Permittees and interested stakeholders upon request. The following information is provided pursuant to 40 CFR § 124.8(b)(6) and (7).

A. Permittee and Stakeholder Participation in Permit Issuance Process

1. Notification: Intent to Issue a Region-Wide Phase I MS4 Permit

On September 5, 2017, the Los Angeles Water Board sent a letter to all Permittees in the Los Angeles Region to announce the Board's intent to issue a region-wide Phase I MS4 Permit.

2. Working Proposal

On December 10, 2019, the Los Angeles Water Board released a staff Working Proposal to Permittees in the Los Angeles Region and key stakeholders for discussion purposes. This staff working proposal did not constitute either a "draft permit" or a "proposed permit" as defined in Title 40 Code of Federal Regulations (40 CFR) sections 122.2 or 124.6. The Working Proposal allowed Permittees and stakeholders to provide oral and written input that would facilitate future discussion at board meetings/workshops and aid Board staff in developing the tentative draft permit.

3. Board Meetings and Workshops

The Los Angeles Water Board on many occasions starting in May 2018 had an item on its Meeting agenda to solicit comments and feedback from the Board, Permittees, and stakeholders on the issuance of the Regional MS4 Permit. Board staff has also presented on specific topics during public workshops, some of which were held at a regularly scheduled Board Meeting or special Board meeting (Board Workshop). Most of the meeting and workshop dates are summarized as follows:

a. Board Workshop: May 10, 2018

Board staff presented their monitoring data analysis for the Los Angeles River, San Gabriel River, and Los Cerritos Channel/Alamitos Bay Watersheds and discussed solutions to improve data reporting in the Regional MS4 Permit.

b. Board Meeting: June 14, 2018

The Los Angeles Water Board had an agenda item to facilitate continued discussion of the Regional MS4 Permit ("MS4 standing item"). The purpose of the "MS4 standing item" was to provide a forum for Board members to discuss, and for Permittees and stakeholders to provide comments on, any aspect of the Regional MS4 Permit. This noticed item provided Permittees and other stakeholders with the opportunity to communicate directly with the Board regarding their interests and concerns about the current permits or pending issuance of the Regional MS4 Permit. The MS4 standing item also provided

an opportunity for the Board to provide input to staff on permit implementation or development. No action or voting took place during these items.

c. Board Workshop: July 12, 2018

Board staff presented their monitoring data analysis for the Upper Santa Clara River, Santa Monica Bay, and Dominguez Channel and Harbors Watersheds and the permit issuance timelines. Additionally, Board staff introduced the specific concepts to include in the Regional MS4 Permit such as new/revised TMDLs, Statewide Trash Amendments, and providing Ventura County Permittees the option to participate in a WMP.

d. Board Workshop: September 13, 2018

Board staff presented their monitoring data analysis for all the watersheds within Ventura County, Permittee-reported costs of implementing the 2010 Ventura County MS4 Permit, and the permit issuance timelines. The Board discussed the regional permit approach as it related to Ventura County Permittees.

e. Board Meeting: October 11, 2018

The Los Angeles Water Board had a standing MS4 item.

f. Board Meeting: November 8, 2018

The Los Angeles Water Board had a standing MS4 item.

g. Board Meeting: March 14, 2019

The Los Angeles Water Board had a standing MS4 item.

h. Board Workshop: April 11, 2019

Board staff addressed economic considerations with regard to issuance of a Regional MS4 Permit based on specific Permittee-reported costs of compliance with the previous permits and summarized some state funding sources. Permittees and stakeholders also provided information on the cost of compliance and funding related topics, such as cost reporting guidance, stormwater utility program management, and available funds from the Los Angeles County Safe Clean Water Program and Ventura County Watershed Protection District Benefit Assessment Program.

i. Board Meeting: June 13, 2019

The Los Angeles Water Board had a standing MS4 item.

j. Board Meeting: July 11, 2019

The Los Angeles Water Board had a standing MS4 item.

k. Board Meeting: September 12, 2019

The Los Angeles Water Board had a standing MS4 item.

l. Board Meeting: October 10, 2019

The Los Angeles Water Board had a standing MS4 item.

m. Board Meeting: November 14, 2019

Board staff presented a summary of stakeholder engagement, including the employment of a professional facilitator to better understand the interests, needs and perspectives of stakeholders and to explore areas of mutual agreement that could be reflected in the Regional MS4 Permit.

n. Board Meeting: December 12, 2019

The Los Angeles Water Board had a standing MS4 item.

o. Public Workshop: January 7, 2020

Los Angeles Water Board hosted a facilitated stakeholder workshop to discuss the Working Proposal and issues such as what constitutes permit success, addressing cost/timeline challenges, and measuring progress under the new permit.

p. Board Meeting: February 13, 2020

The Los Angeles Water Board had a standing MS4 item and presented on the types of comments received on the Working Proposal. Comments discussed included changes proposed to the Minimum Control Measures, monitoring and reporting requirements, watershed management programs, and TMDLs.

q. Board Meeting: May 14, 2020

The Los Angeles Water Board had a standing MS4 item and presented on the options to consider an extension for the near-term TMDL final compliance deadlines.

r. Board Meeting: July 2, 2020

The Los Angeles Water Board had a special board meeting to discuss the schedule for adopting the Regional MS4 Permit with consideration of key issues such as the economic impacts of the COVID-19 pandemic, TMDL final compliance deadlines, and inclusion of narrative/BMP-based effluent limitations versus numeric effluent limitations in the permit.

s. Board Meeting: July 9, 2020

The Los Angeles Water Board had a standing MS4 item.

t. Board Meeting: September 10, 2020

The Los Angeles Water Board had an MS4 standing item. Board staff presented information on: changes that were made in the tentative draft in response to comments received on the Working Proposal; the manner of TMDL incorporation; the status of the TMDL final deadlines extension project; economic considerations; and the proposed State Water Board Order on the WMPs and EWMP petitions.

u. Board Meeting: October 8, 2020

The Los Angeles Water Board had an MS4 standing item. Permittees and other stakeholders presented and provided oral comments on the Tentative Regional MS4 Permit.

v. Public Workshop: October 15, 2020

The Los Angeles Water Board held a public workshop to discuss the manner of TMDL incorporation in the Regional MS4 Permit. All Board Members attended. Board staff presented the basis for the proposed manner of TMDL incorporation in the Regional MS4 Permit. Permittees and other stakeholders presented and provided comments on the proposed manner of TMDL incorporation and alternatives.

w. Public Workshop: November 19, 2020

The Los Angeles Water Board held a public workshop to discuss monitoring and reporting requirements in the Regional MS4 Permit. Several Board Members attended. Board staff presented on monitoring and reporting requirements and then held a question-and-answer session.

x. Board Workshop: December 10, 2020

The Los Angeles Water Board held a Board workshop to follow-up on the October 15 and November 19, 2020 workshops. Board staff discussed the proposed manner of TMDL incorporation in comparison with that of other MS4 permits issued state-wide and by U.S. EPA. Permittees and other stakeholders also provided comments on the proposed manner of TMDL incorporation and alternatives.

y. Board Meeting: March 11, 2021

The Los Angeles Water Board had an MS4 standing item. Permittees and other stakeholders presented and provided comments on the Tentative Regional MS4 Permit.

z. Board Meeting: May 13, 2021

The Los Angeles Water Board had an MS4 standing item. Permittees and other stakeholders presented and provided comments on the Tentative Regional MS4 Permit.

aa. Public Workshop: June 22, 2021

The Los Angeles Water Board held a public workshop to discuss Permittee and stakeholder comments on the Revised Tentative Regional MS4 Permit for Permittees in Los Angeles and Ventura Counties. The first part of the workshop was dedicated to Ventura County Permittees' and stakeholders' comments on particular issues of concern and the Regional Board staff's responses thereto. The second part of the workshop was dedicated to Los Angeles County Permittees' and stakeholders' comments and the Regional Board staff's responses thereto.

4. Meetings with Permittees and Interested Persons

The Los Angeles Water Board staff met with various Permittees and stakeholders upon request. Most of these meetings are summarized below.

a. Meeting: January 25, 2016

The Los Angeles Water Board had a teleconference with the San Gabriel Valley Council of Governments to discuss submission of the ROWD, general questions about the permit issuance process, and general questions about what changes or continuation of permit provisions to expect.

b. Meeting: May 2, 2016

The Los Angeles Water Board held a kick-off meeting with Ventura County Permittees to discuss the preliminary schedule for permit development; identify potential alternative permit structures; and outline some of the major technical and policy aspects of permit development. Twenty-three individuals attended the meeting out of which eight represented the Los Angeles Water Board and the other fifteen represented Ventura County Permittees. After a presentation by Permittees on accomplishments, lessons learned, and permit renewal goals, Permittees had an opportunity to ask questions of staff, raise concerns, and explain their expectations for the new permit.

c. Meeting: May 16, 2016

The Los Angeles Water Board held a meeting with Ventura County Permittees on TMDLs and the Watershed Management Program. Twenty-three individuals attended the meeting out of which ten represented the Los Angeles Water Board, one represented the State Water Board, and the other twelve represented Ventura County Permittees. Permittees proposed a list of TMDLs to incorporate into the permit. Meeting attendees also discussed the structure of the Watershed Management Program and provisions such as the pollutant prioritization process and the use of existing TMDL implementation plans.

d. Meeting: June 8, 2016

The Los Angeles Water Board held a meeting with Ventura County Permittees on time schedule orders (TSOs) and the TSO issuance process in consideration of permit issuance timelines. Eleven individuals attended the meeting out of which three represented the Los Angeles Water Board and the other eight represented Ventura County Permittees.

e. Meeting: July 15, 2016

Ventura County Permittees held a meeting with the Los Angeles Water Board to discuss the monitoring and reporting program and follow-up on items from the previous meeting. Twenty-one individuals attended out of which five represented the Los Angeles Water Board and the other sixteen represented Ventura County Permittees. Meeting attendees discussed pre-meeting materials that were provided by the Permittees giving their recommendations on provisions of the Watershed Management Program and TMDLs. Additionally, meeting attendees discussed the following items in the monitoring and reporting program: receiving water monitoring sites, constituents to be monitored, and stormwater monitoring program constituents table and requested Permittees' feedback.

f. Meeting: August 1, 2016

The Los Angeles Water Board had a teleconference with Ventura County Permittees to discuss minimum control measures (MCMs). Seventeen individuals participated in the teleconference where five represented the Los Angeles Water Board, one represented the State Water Board, and the other eleven represented Ventura County Permittees. Meeting attendees discussed pre-meeting materials where Permittees proposed changes to the MCMs in their previous permit.

g. Meeting: October 20, 2016

The Los Angeles Water Board had a teleconference with Ventura County Permittees to provide a status update on the permit issuance process.

h. Meeting: August 29, 2017

The Los Angeles Water Board held a meeting with City of Los Angeles to introduce the concept of issuing a Regional MS4 Permit. Thirteen individuals attended out of which eight represented the Los Angeles Water Board and five represented City of Los Angeles.

i. Meeting: August 31, 2017

The Los Angeles Water Board held a meeting with Ventura County Permittees to introduce the concept of issuing a Regional MS4 Permit. Six individuals attended out of which four represented the Los Angeles Water Board and two represented Ventura County Permittees.

j. Meeting: September 5, 2017

The Los Angeles Water Board held a meeting with Los Angeles County and LACFCD to introduce the concept of issuing a Regional MS4 Permit. Five individuals attended out of which four represented the Los Angeles Water Board and one represented Los Angeles County and LACFCD.

k. Meeting: September 21, 2017

Ventura County Permittees held a meeting with the Los Angeles Water Board to present to Ventura County Public Works Directors information about the permit renewal process, the Regional MS4 Permit concept, costs, funding, and the Statewide Trash Amendments. Twenty-eight individuals attended out of which three represented the Los Angeles Water Board and twenty-five represented Ventura County Permittees.

l. Meeting: December 19, 2017

The Los Angeles Water Board had a teleconference with the City of Long Beach to introduce the concept of issuing a Regional MS4 Permit. Eight individuals attended out of which four represented the Los Angeles Water Board and four represented the City of Long Beach.

m. Meeting: April 10, 2018

The City of Long Beach held a meeting with the Los Angeles Water Board to discuss the issuance of a Regional MS4 Permit and the City of Long Beach's ROWD. Eleven individuals attended out of which four represented the Los Angeles Water Board and seven represented the City of Long Beach.

n. Meeting: August 7, 2018

The Los Angeles Water Board held a meeting with Los Angeles County and LACFCD. Los Angeles County and LACFCD proposed TSO-related fact sheet language for the Regional MS4 Permit. Six individuals attended out of which three represented the Los Angeles Water Board and three represented Los Angeles County and LACFCD.

o. Meeting: August 10, 2018

The Los Angeles Water Board held a meeting with Ventura County Permittees to discuss the addition of receiving water and outfall stations in the Malibu Creek subwatershed and the non-stormwater screening and outfall monitoring program proposals for the Regional MS4 Permit. Six individuals attended out of which three represented the Los Angeles Water Board and three represented Ventura County Permittees.

p. Meeting: August 15, 2018

The Los Water Board staff held a meeting with Los Angeles County and LACFCD. Los Angeles County and LACFCD proposed regional project downstream solutions and also proposed adding language for the Regional MS4 Permit fact sheet discussing the Biotic Ligand Model (BLM). Seven individuals attended out of which three represented the Los Angeles Water Board and four represented Los Angeles County and LACFCD.

q. Meeting: September 10, 2018

The Los Angeles Water Board held public Listening Session with San Gabriel Valley Council of Governments Water Policy Committee (SGVCOG). The Los Angeles Water Board listened to and discussed cost concerns for current WMP/EWMP implementation and timeline for the Regional MS4 Permit issuance. Eighteen individuals were present out of which two were Los Angeles Water Board Members, four were Board staff, and four represented the SGVCOG. Additionally, eight public observers attended representing various Permittees, non-governmental organizations (NGOs), and other stakeholders.

r. Meeting: September 19, 2018

The Los Angeles Water Board held a meeting with Los Angeles County and LACFCD to discuss future workshops of the Regional MS4 Permit and the state-wide bacteria provisions. Four individuals attended out of which two represented the Los Angeles Water Board and two represented Los Angeles County and LACFCD.

s. Meeting: October 26, 2018

The Los Angeles Water Board held a meeting with NGOs to discuss the Regional MS4 Permit, specifically on incorporation of robust development/redevelopment standards such as capturing the 90th or 95th percentile rainfall, potential incorporation of BLM, and provide a public platform for Permittee monitoring data. Eight individuals attended out of which four represented the Los Angeles Water Board and the other four represented Heal the Bay, Los Angeles Waterkeeper (LA Waterkeeper), and Natural Resources Defense Council (NRDC).

t. Meeting: December 19, 2018

The Los Angeles Water Board held a meeting with Los Angeles County and LACFCD to discuss the Regional MS4 Permit issuance process and the Safe, Clean Water Program. Four individuals attended out of which two represented the Los Angeles Water Board and two represented Los Angeles County and LACFCD.

u. Meeting: January 18, 2019

The Los Angeles Water Board held a meeting with the NGOs to discuss Los Angeles County monitoring data. Seven individuals attended out of which four represented the Los Angeles Water Board and the other three represented Heal the Bay, LA Waterkeeper, and NRDC.

v. The Las Virgenes – Malibu Council of Governments Governing Board Meeting: February 19, 2019

The Las Virgenes – Malibu Council of Governments Governing Board held a public Listening Session with the Los Angeles Water Board. The Los Angeles Water Board listened to and answered queries about the Regional MS4 Permit issuance timelines, concerns about funds from the Safe, Clean Water Program in relation to EWMP compliance schedules, and future special studies on natural sources. More than 22 individuals attended out of which two were Board Members, four were Board staff, and sixteen represented the Las Virgenes – Malibu Council of Governments Governing Board and the Malibu Creek EWMP group members. Public observers included NGOs and other stakeholders.

w. Meeting: February 20, 2019

The Los Angeles Water Board held a meeting with Los Angeles County and LACFCD to discuss the Safe, Clean Water Program. Eight individuals attended out of which four represented the Los Angeles Water Board and four represented Los Angeles County and LACFCD.

x. Meeting: February 26, 2019

The Los Angeles Water Board held a meeting with several Los Angeles County Permittees. Fifteen individuals attended out of which three represented the Los Angeles Water Board, and twelve represented Larry Walker Associates (LWA), Richard Watson & Associates (RWA), City of Los Angeles, and Los Angeles County. LWA proposed compliance mechanisms and Regional MS4 Permit language for addressing bacteria.

y. Meeting: March 8, 2019

The Los Angeles Water Board held a meeting with the NGOs to discuss the Regional MS4 Permit to discuss these organizations' request for a shorter permit. Eleven individuals attended out of which three represented Los Angeles Water Board, two represented State Water Board, and the other six were from Heal the Bay, LA Waterkeeper, and NRDC.

z. Meeting: March 20, 2019

The Los Angeles Water Board held a meeting with Los Angeles County and LACFCD. Los Angeles County and LACFCD proposed Regional MS4 Permit language for the Safe, Clean Water Program, discussed the upcoming April 2019 Board workshop, and proposed reconsidering TMDLs rather than requesting TSOs to extend TMDL compliance schedules. Seven individuals attended out of which two represented the Los Angeles Water Board and five represented Los Angeles County and LACFCD.

aa. Meeting: June 19, 2019

The Los Angeles Water Board held a meeting with the NGOs to discuss the Regional MS4 Permit timelines, removal of the WMP/EWMP distinction in the Regional MS4 Permit, and annual report proposals for reporting on compliance with regional projects in the WMP/EWMP. Nine individuals were in attendance out of which four represented the Los Angeles Water Board and the other five represented Heal the Bay, LA Waterkeeper, and NRDC.

bb. Meeting: June 25, 2019

Ventura County Permittees held a public Listening Session with the Los Angeles Water Board. The Los Angeles Water Board listened to and discussed WMP development and implementation concerns, cost concerns, compliance with wet weather bacteria TMDLs, and permit issuance timelines. Thirty individuals attended out of which three were Los Angeles Water Board Members, four were Board staff, twenty-one represented Ventura County Permittees, and two were public observers representing CASQ Engineering and the Las Virgenes Municipal Water District.

cc. Meeting: July 8, 2019

The Los Angeles Water Board held a meeting with Los Angeles County and LACFCD to discuss cost analysis of some EWMPs with consideration of funds from the Safe, Clean Water Program. Los Angeles County and LACFCD also proposed specific TMDLs for the Board to reconsider. Eight individuals attended out of which four represented the Los Angeles Water Board and four represented Los Angeles County and LACFCD.

dd. Meeting: July 17, 2019

The Los Angeles Water Board held a meeting with Los Angeles County and LACFCD to present information about planning versus actual costs on specific regional projects and continue the discussion on TMDL reconsiderations and cost analysis of some EWMPs with consideration of funds from the Safe, Clean Water Program. Four individuals attended out of which two represented the Los Angeles Water Board and two represented Los Angeles County and LACFCD.

ee. Meeting: August 22, 2019

The Los Angeles Water Board held a meeting with City of Los Angeles to discuss the Regional MS4 Permit issuance timeline, Safe, Clean Water Program, and TMDL final compliance deadlines. Five individuals attended out of which three represented the Los Angeles Water Board and two represented City of Los Angeles.

ff. Meeting: August 26, 2019

The Los Angeles Water Board held a meeting with Ventura County Permittees to discuss the Los Angeles County Permit markup provided to us in 2016 proposing permit language, permit issuance process, and follow-up on the previous meeting with the Ventura County public works directors. Fourteen individuals attended out of which four represented the Los Angeles Water Board and ten represented Ventura County Permittees.

gg. Meeting: August 28, 2019

The Los Angeles Water Board held a meeting with Los Angeles County and LACFCD to discuss priority TMDLs for Board's reconsideration, upcoming presentations at Board meetings on regional projects, and permit issuance schedule. Nine individuals attended out of which four represented the Los Angeles Water Board and five represented Los Angeles County and LACFCD.

hh. Meeting: September 9, 2019

The Los Angeles Water Board held a meeting with Los Angeles County and LACFCD to discuss economic considerations, including the cost of compliance, for the Regional MS4 Permit, LACFCD's dashboard for regional projects, and suggestions for the regional permit requirements. Three individuals attended out of which one represented the Los Angeles Water Board and two represented Los Angeles County and LACFCD.

ii. Meeting: September 10, 2019

The Los Angeles Water Board held a meeting with the NGOs to discuss Permittees' progress implementing their EWMPs and propose annual report language for reporting on compliance with multi-year efforts in EWMPs. Five individuals were in attendance out of which two represented the Los Angeles Water Board and the other three represented Heal the Bay, LA Waterkeeper, and NRDC.

jj. Meeting: September 18, 2019

The Los Angeles Water Board held a meeting with Los Angeles County and LACFCD to discuss the alignment of Marina del Rey TMDLs with Measure W funding, the regional permit reissuance process, and the upcoming NGO EWMP Report. Six individuals attended out of which two represented the Los Angeles Water Board and four represented Los Angeles County and LACFCD.

kk. Meeting: September 18, 2019

The Los Angeles Water Board had a teleconference with Ventura County, VCWPD, and the City of Agoura Hills to discuss the compliance with Malibu Creek TMDL requirements and the Medea/Palo Comado Stormwater Treatment System in the City of Agoura Hills. Seven individuals were in attendance out of which two represented the Los Angeles Water Board, two represented the City of Agoura Hills, two represented VCWPD, and one represented Ventura County.

II. Meeting: October 1, 2019

The Los Angeles Water Board held a meeting with Ventura County Permittees to discuss the Reasonable Assurance Analysis (RAA), source identification component of a WMP, timelines to develop a WMP, upcoming Malibu Creek Bacteria TMDL TSO request, usage of existing TMDL implementation plans for WMP proposals, and regional permit issuance schedule. Fourteen individuals attended out of which three represented the Los Angeles Water Board and eleven represented Ventura County Permittees.

mm. Meeting: October 16, 2019

The Los Angeles Water Board held a meeting with Los Angeles County and LACFCD to discuss possible extension of TMDL compliance deadlines, regional permit reissuance process, and Los Angeles County's dashboard of completed regional stormwater projects and green infrastructure projects. Ten individuals were in attendance out of which five represented the Los Angeles Water Board and five represented Los Angeles County and LACFCD.

nn. Meeting: November 20, 2019

The Los Angeles Water Board held a meeting with Los Angeles County and LACFCD to discuss the regional permit reissuance process and possible extension of TMDL compliance dates. Ten individuals were in attendance out of which five represented the Los Angeles Water Board and five represented Los Angeles County and LACFCD.

oo. Meeting: December 16, 2019

The Los Angeles Water Board held a meeting with City of Los Angeles to discuss the Ballona Creek TSO extension request and the Working Proposal of the Regional MS4 Permit. Eleven individuals were in attendance out of which five represented the Los Angeles Water Board and six represented City of Los Angeles.

pp. Meeting: December 17, 2019

The Los Angeles Water Board held a facilitated meeting with the NGOs to discuss the Regional MS4 Permit. Ten individuals were in attendance out of which four represented the Los Angeles Water Board, two represented Heal the Bay, one represented NRDC, and three represented LA Waterkeeper.

qq. Meeting: December 17, 2019

The Los Angeles Water Board held a facilitated meeting with NRDC, City of Los Angeles, San Gabriel Valley Council of Governments (SGVCOG), Los Angeles County/LACFCD, and Ventura County to discuss the Regional MS4 Permit. Fourteen individuals were in attendance out of which four represented the Los Angeles Water Board, one represented NRDC, three represented City of Los Angeles, two represented City of Monrovia/SGVCOG, two represented Los Angeles County/LACFCD, and two represented Ventura County.

rr. Meeting: January 21, 2020

The Los Angeles Water Board held a meeting with Los Angeles County and LACFCD to discuss permit reissuance schedules, TMDL reconsiderations for time extensions, and updates on Measure W. Nine individuals attended out of which five represented the Los Angeles Water Board and four represented Los Angeles County and LACFCD.

ss. Meeting: January 22, 2020

The Los Angeles Water Board held a meeting with NGOs to discuss the Regional MS4 Permit Staff Working Proposal and solicit feedback. Eight individuals attended out of which four represented the Los Angeles Water Board, and the other four represented Heal the Bay, LA Waterkeeper, and NRDC.

tt. Meeting: January 23, 2020

The Los Angeles Water Board held a meeting with City of Los Angeles to discuss the Regional MS4 Permit Staff Working Proposal and solicit feedback. The City of Los Angeles specifically discussed suggestions for the Watershed Management NOI submittal schedule and content, monitoring and reporting requirements, Planning and Land Development MCM, trash reporting requirements, Industrial/Commercial Facilities Program MCM, Illicit Discharge Detection and Elimination Program MCM, and filming BMPs under the non-stormwater discharge prohibitions. Fourteen individuals attended out of which seven represented the Los Angeles Water Board and the other seven represented the City of Los Angeles.

uu. Meeting: January 27, 2020

The Los Angeles Water Board held a meeting with The Nature Conservancy to discuss the Regional MS4 Permit Staff Working Proposal and solicit feedback. The Nature Conservancy discussed suggestions on how to incorporate and encourage nature-based solutions into the Regional MS4 Permit. Six individuals attended out of which three represented the Los Angeles Water Board and the other three were from The Nature Conservancy.

vv. Meeting: January 28, 2020

The Los Angeles Water Board held a meeting with Ventura County Permittees to discuss the Regional MS4 Permit Staff Working Proposal and solicit feedback. Ventura County Permittees specifically discussed suggestions to edit timelines for WMP submittals, Statewide Trash Amendment provisions, TMDLs, MCMs, and monitoring. Twenty individuals attended out of which eight represented the Los Angeles Water Board and the other twelve represented Ventura County Permittees.

ww. Meeting: February 19, 2020

The Los Angeles Water Board held a meeting with Los Angeles County and the LACFCD to discuss permit reissuance timelines, TMDL extension requests, and Measure W fund distribution status. Eight individuals attended out of which five represented the Los Angeles Water Board and the other three represented Los Angeles County and LACFCD.

xx. Meeting: February 21, 2020

The Los Angeles Water Board held a meeting with NGOs to discuss permit reissuance timelines and general comments on the Working Proposal of the Regional MS4 Permit. Eight individuals attended out of which five represented the Los Angeles Water Board and the other three represented Heal the Bay, LA Waterkeeper, and NRDC.

yy. Meeting: March 2, 2020

The Los Angeles Water Board held a meeting with the City of Los Angeles to discuss TSO implementation progress and the challenges of implementing the MS4 permit. Six individuals attended out of which four represented the Los Angeles Water Board and the other two represented City of Los Angeles.

zz. Meeting: March 18, 2020

The Los Angeles Water Board held a teleconference with Los Angeles County and the LACFCD to discuss the status of the Regional MS4 Permit considering the COVID-19 pandemic. Six individuals attended out of which two represented the Los Angeles Water Board and the other four represented Los Angeles County and LACFCD.

aaa.Meeting: April 15, 2020

The Los Angeles Water Board held a teleconference with Los Angeles County and the LACFCD to discuss the status of the Regional MS4 Permit, share updates on monitoring and project implementation considering the COVID-19 pandemic, and discuss the status of Measure W. Nine individuals attended out of which five represented the Los Angeles Water Board and the other four represented Los Angeles County and LACFCD.

bbb. Meeting: April 21, 2020

The Los Angeles Water Board held a teleconference with the City of La Habra Heights to discuss the Regional Permit and concerns from the City, which included TMDL compliance and comingling discharges. Ten individuals attended out of which five represented the Los Angeles Water Board and the other five represented the City of La Habra Heights.

ccc.Meeting: April 23, 2020

The Los Angeles Water Board held a teleconference with the City of Los Angeles to discuss the issuance schedule of the Regional MS4 Permit, TMDL compliance date related comments on the Regional MS4 Permit working proposal, the Inner Cabrillo Beach Bacteria TSO, and the Ballona Creek Bacteria TSO. Ten individuals attended out of which five represented the Los Angeles Water Board and the other five represented City of Los Angeles.

ddd. Meeting: May 28, 2020

The Los Angeles Water Board held a teleconference with the City of Los Angeles to discuss the extension of TMDL compliance schedules alongside Regional MS4 Permit issuance, the Inner Cabrillo Beach Bacteria TSO, and questions on shoreline monitoring considering the pandemic. Eight individuals attended out of which three represented the Los Angeles Water Board and the other five represented City of Los Angeles.

eee.Meeting: June 2, 2020

The Los Angeles Water Board held a videoconference with Los Angeles County and the LACFCD to discuss the status of the Regional MS4 Permit including a tentative issuance timeline and workshop opportunities, share updates on project implementation considering the COVID-19 pandemic, and discuss the status of Measure W. Eight individuals attended of which three represented the Los Angeles Water Board and the other five represented Los Angeles County and LACFCD.

fff. Meeting: June 8, 2020

The Los Angeles Water Board held a Listening Session with the Los Angeles River Upper Reach 2 Group to discuss their comment letter of February 5, 2020 on the Working Proposal and some of the responses to those comments.

Fourteen individuals attended out of which two represented the Los Angeles Water Board and the other twelve represented the Los Angeles River Upper Reach 2 Group.

ggg. Meeting: June 25, 2020

The Los Angeles Water Board held a videoconference with the City of Los Angeles to discuss the Regional MS4 Permit schedule and Measure W projects. Eight individuals attended out of which four represented the Los Angeles Water Board and the other four represented the City of Los Angeles.

hhh. Meeting: July 23, 2020

The Los Angeles Water Board held a videoconference with the City of Los Angeles to discuss EWMP implementation target load reduction/volume capture goals and the associated costs and schedules. Nine individuals attended out of which four represented the Los Angeles Water Board and the other five represented the City of Los Angeles.

iii. Meeting: August 27, 2020

The Los Angeles Water Board held a videoconference with the City of Los Angeles to discuss the Tentative Regional MS4 Permit, the TMDL deadline extension project, the upcoming Board meeting, and potential customization of the Industrial/Commercial Facilities MCM in the revised WMP. Nine individuals attended out of which four represented the Los Angeles Water Board and the other five represented the City of Los Angeles.

jjj. Meeting: August 27, 2020

The Los Angeles Water Board held a videoconference with Los Angeles County and the LACFCD to discuss TMDL deadline extensions and updates on the Safe Clean Water Program. Eight individuals attended out of which four represented the Los Angeles Water Board and the other four represented Los Angeles County and LACFCD.

kkk. Meeting: September 8, 2020

The Los Angeles Water Board held a videoconference with Ventura County Permittees to discuss changes between the Working Proposal and tentative draft, the manner of TMDL incorporation in the permit, and future workshops. Seventeen individuals attended out of which five represented the Los Angeles Water Board and the other twelve represented Ventura County Permittees.

III. Meeting: September 9, 2020

The Los Angeles Water Board held a videoconference with Los Angeles County and the LACFCD to discuss the Tentative Draft permit and TMDL deadline extensions. Nine individuals attended out of which four represented the Los Angeles Water Board and the other five represented Los Angeles County and LACFCD.

mmm. Meeting: September 22, 2020

The Los Angeles Water Board held a videoconference with Heal the Bay, LA Waterkeeper, and NRDC to discuss the Regional MS4 Permit Annual Report requirements and the future Manner of TMDL incorporation workshop. Nine individuals attended out of which four represented the Los Angeles Water

Board and the other five represented Heal the Bay, LA Waterkeeper, and NRDC.

nnn. Meeting: September 23, 2020

The Los Angeles Water Board held a videoconference with the City of Los Angeles to discuss the Industrial/Commercial MCM and permit language about Measure W. Ten individuals attended out of which four represented the Los Angeles Water Board and the other six represented the City of Los Angeles.

ooo. Meeting: October 21, 2020

The Los Angeles Water Board held a videoconference with Los Angeles County and the LACFCD to discuss TMDL deadline extensions, the Safe Clean Water Program, and share updates on WMMS and WRAMPS. Ten individuals attended out of which four represented the Los Angeles Water Board and the other six represented Los Angeles County and LACFCD.

ppp. Meeting: November 18, 2020

The Los Angeles Water Board held a videoconference with Los Angeles County and the LACFCD to discuss TMDL deadline extensions and the upcoming MS4 workshop on monitoring and reporting. Nine individuals attended out of which four represented the Los Angeles Water Board and the other five represented Los Angeles County and LACFCD.

qqq. Meeting: November 30, 2020

The Los Angeles Water Board held a videoconference with The Nature Conservancy to discuss comments on the Planning and Land Development MCM. Six individuals attended out of which four represented the Los Angeles Water Board and the other two represented The Nature Conservancy.

rrr. Meeting: December 16, 2020

The Los Angeles Water Board held a videoconference with Los Angeles County and LACFCD to discuss TMDL manner of incorporation into the Regional MS4 Permit and reopener language in the TMDL Basin Plan Amendments for the TMDLs being considered under the TMDL deadline extension project. Nine individuals attended out of which five represented the Los Angeles Water Board and the other four represented Los Angeles County and LACFCD.

sss. Meeting: December 17, 2020

The Los Angeles Water Board held a videoconference with City of Los Angeles to discuss potential impacts on the State Board Water Quality Order addressing the WMP/EWMP petitions, potential revisions to the RAA limiting pollutant approach, and timeline for aquatic toxicity test species sensitivity screening. Eight individuals attended out of which four represented the Los Angeles Water Board and the other four represented City of Los Angeles.

ttt. Meeting: January 20, 2021

The Los Angeles Water Board held a videoconference with Los Angeles County and LACFCD to follow-up on the schedule for the TMDL BPA extension project and any outstanding issues with regards to the Regional

MS4 Permit. Ten individuals attended out of which four represented the Los Angeles Water Board and the other six represented Los Angeles County and LACFCD.

uuu. Meeting: January 28, 2021

The Los Angeles Water Board held a videoconference with the City of Los Angeles to discuss the TMDL Basin Plan Amendment extension project, the Regional MS4 Permit adoption schedule, trash reporting forms, and future revisions to the City's WMP. Nine individuals attended out of which three represented the Los Angeles Water Board and the other six represented the City of Los Angeles.

vvv. Meeting: February 3, 2021

The Los Angeles Water Board held a videoconference with VCWPD, Los Angeles County/LACFCD, City of Los Angeles, City of Monrovia, a consultant representing the Los Cerritos Channel Watershed Management Group, and consultants from Larry Walker Associates representing Ventura County Permittees. Participants discussed the manner of TMDL incorporation in the permit (BMP versus numeric effluent limits approach), TMDL time extensions, and the schedule for permit adoption. Fifteen individuals attended out of which five represented the Los Angeles Water Board, one represented VCWPD, two represented the City of Monrovia, one represented the Los Cerritos Channel Watershed Management Group, two represented the City of Los Angeles, two represented Ventura County Permittees, and two represented Los Angeles County/LACFCD.

www. Meeting: February 17, 2021

The Los Angeles Water Board held a videoconference with Los Angeles County and LACFCD to follow-up with the TMDL Final Compliance Deadline Extension Project and the schedule for the Regional MS4 Permit. Nine individuals attended out of which five represented the Los Angeles Water Board and the other four represented Los Angeles County and LACFCD.

xxx. Meeting: February 25, 2021

The Los Angeles Water Board held a videoconference with the City of Los Angeles to discuss the Regional MS4 Permit adoption schedule, the Ballona Creek TSO, and requested continued support from the Board for City of Los Angeles's regional projects under the Safe, Clean Water Program. Nine individuals attended out of which three represented the Los Angeles Water Board and the other six represented the City of Los Angeles.

yyy. Meeting: February 25, 2021

The Los Angeles Water Board held a videoconference with the Upper Los Angeles River EWMP Group to discuss updates to the EWMP RAA and the impact of the State Board Order WQ 2020-0038 on the Regional MS4 Permit. Ten individuals attended out of which three represented Los Angeles Water Board and the other seven represented the Upper Los Angeles River Group.

zzz. Meeting: March 17, 2021

The Los Angeles Water Board held a videoconference with Los Angeles County and LACFCD to discuss the schedule for the Regional MS4 Permit

adoption and the next steps for the TMDL Final Compliance Deadline Extension Project. Eight individuals attended out of which four represented the Los Angeles Water Board and the other four represented Los Angeles County and LACFCD.

aaaa. Meeting: March 24, 2021

The Los Angeles Water Board held a videoconference with Los Angeles County, LACFCD, and various consultants representing different WMPs to discuss proposed updates to the WMP RAA in consideration of the State Board Order WQ 2020-0038. Thirteen individuals attended out of which four represented the Los Angeles Water Board, three represented Los Angeles County and LACFCD, and the other six represented various consultants representing different WMPs.

bbbb. Meeting: March 30, 2021

The Los Angeles Water Board held a videoconference with the City of Los Angeles to discuss the schedule for the Regional MS4 Permit adoption and the next steps for the TMDL Final Compliance Deadline Extension Project. Eight individuals attended out of which four represented the Los Angeles Water Board and the other four represented the City of Los Angeles.

cccc. Meeting: March 30, 2021

The Los Angeles Water Board held a videoconference with Ventura County/VCWPD, Los Angeles County/LACFCD, City of Los Angeles, City of Monrovia, a consultant representing the Los Cerritos Channel Watershed Management Group, and consultants from Larry Walker Associates representing Ventura County Permittees. This was a follow-up meeting to discuss concerns about the manner of TMDL incorporation in the Regional MS4 Permit. Twelve individuals attended out of which four represented the Los Angeles Water Board, two represented the City of Monrovia, one represented the City of Los Angeles, one represented Los Angeles County/LACFCD, one represented Ventura County/VCWPD, one represented the Los Cerritos Channel Watershed Management Group, and two represented Ventura County Permittees.

dddd. Meeting: April 19, 2021

The Los Angeles Water Board held a videoconference with the Upper Los Angeles River EWMP Group to discuss updates to the EWMP RAA in consideration of the State Board Order WQ 2020-0038 on the Regional MS4 Permit. Eleven individuals attended out of which four represented the Los Angeles Water Board and seven represented the Upper Los Angeles River EWMP Group.

eeee. Meeting: April 21, 2021

The Los Angeles Water Board held a videoconference with Ventura County Permittees to discuss past TMDL final compliance deadlines for the Ventura River Algae TMDL and Kidde and Hobie Beach Bacteria TMDL, benefits of participating in a WMP, and questions about how water quality exceedances trigger enforcement action. Seventeen individuals attended out of which four represented the Los Angeles Water Board and thirteen represented Ventura County Permittees.

ffff. Meeting: April 27, 2021

The Los Angeles Water Board held a videoconference with The Nature Conservancy to discuss the Planning and Land Development MCM in the Tentative Regional MS4 Permit. Six individuals attended out of which four represented the Los Angeles Water Board and two represented The Nature Conservancy.

gggg. Meeting: April 27, 2021

The Los Angeles Water Board held a videoconference with the City of Los Angeles to discuss the schedule for the Regional MS4 Permit issuance, TMDL extensions (e.g., TMDL revision, TSOs), and coordination with Caltrans MS4 on upcoming WMP projects. Nine individuals attended out of which three represented the Los Angeles Water Board and six represented the City of Los Angeles.

hhhh. Meeting: April 29, 2021

The Los Angeles Water Board held a videoconference with the East San Gabriel Valley Group (ESGV Group) to discuss the implications of the 2020 State Board Order, options for participating in the Watershed Management Program, and Trash Discharge Prohibitions requirements and reporting. Five individuals attended out of which two represented the Los Angeles Water Board, one was a consultant Colbert Environmental Group representing the ESGV Group, and two represented the City of Claremont.

iiii. Meeting: May 6, 2021

The Los Angeles Water Board held a videoconference with Los Angeles County/LACFCD and various consultants represented different WMP Groups to discuss the updated RAA approach to address concerns resulting from the State Board Order WQ 2020-0038 and the WMP project implementation schedule. Fifteen individuals attended out of which four represented the Los Angeles Water Board, three represented Los Angeles County/LACFCD, and eight consultants represented various Permittees.

B. Notification to Permittees and Interested Parties

The Los Angeles Water Board notified the Dischargers and interested agencies and persons of its intent to prescribe WDRs for the discharges and provided an opportunity to submit written comments, evidence, and recommendations on the draft permit, including the monitoring and reporting program and fact sheet. Notification was provided through the following: Email to the Los Angeles Water Board's MS4 Lyris lists and email to the Permittee and stakeholder mailing list on August 24, 2020.

The public had access to the agenda and any changes in dates and locations through the Los Angeles Water Board's website at https://www.waterboards.ca.gov/losangeles/board_info/agenda/

C. Written Comments

Parties and interested persons were invited to submit written comments and evidence concerning the tentative WDR as provided through the notification process. Comments and evidence were due by mail or email to the Executive Officer at the Los Angeles Water Board at:

Los Angeles Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013-2343

MS4stormwaterRB4@waterboards.ca.gov

To be fully responded to by staff and considered by the Los Angeles Water Board, the written comments and evidence were due by 5:00 p.m. on December 7, 2020.

D. Public Hearing

The Los Angeles Water Board held a public hearing on the tentative WDRs during its regular Board meeting on the following date and time and at the following location:

Date: July 8, 9, 16, and 23, 2021
Time: 9:00 a.m. each day
Location: Video and Teleconference Meeting Only

Parties and interested persons were invited to attend. At the public hearing, the Los Angeles Water Board heard testimony pertinent to the discharge, WDRs, and permit. For accuracy of the record, important testimony was requested in writing.

E. Reconsideration of Waste Discharge Requirements

Any person aggrieved by this action of the Los Angeles Water 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., within 30 calendar days of the date of adoption of the Order at the following address, except that if the thirtieth day following the adoption date of the 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:

State Water Resources Control Board
Office of Chief Counsel
P.O. Box 100, 1001 I Street
Sacramento, CA 95812-0100

Or by email at waterqualitypetitions@waterboards.ca.gov

For instructions on how to file a petition for review, see http://www.waterboards.ca.gov/public_notices/petitions/water_quality/wqpetition_instr.shtml

F. Information and Copying

The Reports of Waste Discharge, other supporting documents, and comments received are on file and may be inspected and copied at the address above at any time between 8:30 a.m. and 4:45 p.m., Monday through Friday, by appointment. Appointments may be made by following the instructions on the Los Angeles Water Board's website under "Contact Us," "Public Records Center" at:

https://www.waterboards.ca.gov/losangeles/resources/public_records_center.html

G. Register of Interested Persons

Any person interested in being placed on the mailing list for information regarding the WDRs and NPDES permit should subscribe to the Los Angeles Water Board's "Region

4 SW Regional Phase I MS4 Permit" Email List at:
https://www.waterboards.ca.gov/losangeles/resources/email_subscriptions/.

H. Additional Information

Requests for additional information or questions regarding the Order should be directed to the Unit Chief of the Municipal Storm Water Permitting Unit. The contact name, phone number, and email address are available on the Los Angeles Water Board website:

https://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/

ATTACHMENT G - AQUATIC TOXICITY: TIE AND TRE REQUIREMENTS

Requirements for follow-up monitoring in four **receiving water** scenarios where toxicity is present:

- Toxicity is present, but not above the TIE trigger as defined in Attachment E, Part IX.J.1;
- Toxicity is present above the TIE trigger and the TIE identifies the constituent(s) causing the toxicity;
- Toxicity is present above the TIE trigger during wet weather, but the TIE is inconclusive; and
- Toxicity is present above the TIE trigger during dry weather, but the TIE is inconclusive.

This attachment also addresses the several scenarios once **outfall** toxicity testing has been triggered.

An inconclusive TIE is defined as a TIE for which the cause of toxicity cannot be attributed to a constituent or class of constituents (e.g., metals, insecticides, etc.) that can be targeted for monitoring even after conducting appropriate Phase I and Phase II TIE treatments. This outcome may result from either non-persistent toxicity such that the TIE treatments cannot be successfully completed on the toxic sample, or from the inability with available Phase I and Phase II TIE treatments to isolate the constituent or class of constituents causing the toxicity. If the TIE is inconclusive due to non-persistent toxicity, Permittees shall identify and implement actions during the subsequent upstream and/or outfall toxicity sampling event to improve the likelihood of a conclusive TIE, while also following the steps below. Where a TIE is inconclusive due to the inability to determine the constituent(s) causing the toxicity, Permittees shall evaluate further steps to improve the TIE

An **inconclusive TIE** is one for which the cause of toxicity cannot be identified after the conclusion of TIE Phases I and II.

outcome including sensitive species selection, QA/QC, and the need to conduct Phases I through III of a TIE, among others.

If a TIE is inconclusive:

- ✓ Check QA/QC
- ✓ Evaluate sensitive species selection
- ✓ Initiate future TIEs earlier (to address non-persistent toxicity)
- ✓ Conduct all phases of TIE

TRIGGERS FOR ADDING TOXICITY MONITORING TO UPSTREAM RECEIVING WATER MONITORING / OUTFALL MONITORING:

1. If toxicity is present as determined based on a fail of the Test of Significant Toxicity (TST) t-test as specified in the Permit (Attachment E, Part IX.H.4) during wet or dry weather, but not above the TIE trigger (which is defined as when the survival or sublethal endpoint demonstrates a ≥ 50 Percent Effect at the IWC as per Attachment E, Part IX.J.1), then:

- a. Toxicity monitoring will be added to the next existing upstream receiving water site(s) during the same condition (wet or dry weather) for which toxicity was determined to be present. Monitoring for toxicity at the next existing upstream receiving water site(s) will occur during the next monitoring event that is at least 30 days following the original toxicity sample collection. Toxicity monitoring at individual receiving water sites will continue until (1) the deactivation criterion (i.e., two consecutive samples that pass the

- pass/fail TST t-test during the same condition) is met at the receiving water site or (2) a TIE is triggered and conclusively identifies the constituent or class of constituents causing toxicity, in which case the process outlined Part 2 below is followed. OR
- b. If there is no upstream receiving water monitoring site already established as part of the monitoring program, continue receiving water toxicity monitoring at the original site until (1) the deactivation criterion (i.e., two consecutive samples that pass the pass/fail TST t-test during the same condition) is met at the original receiving water site or (2) a TIE is triggered at the original site and conclusively identifies the constituent or class of constituents causing toxicity, in which case the process outlined in Part 2 below is followed. Also, conduct a TRE outlined in Attachment E, Part IX.K to identify, to the extent practicable, the source(s) of toxicity with the goal of identifying cause(s) of toxicity, paying particular attention to sources of potential constituent(s) causing toxicity (e.g., fipronil).
 - i. If there is no upstream receiving water monitoring site already established as part of the monitoring program and toxicity is present during dry weather, actions taken as part of the non-stormwater program (e.g., source identification and elimination or treatment of unauthorized non-stormwater discharges that are a source of pollutants) should be utilized to support the TRE.
 - ii. If there is no upstream receiving water monitoring site already established as part of the monitoring program and toxicity is present during wet weather, consider the following actions to support TRE: evaluating land uses and potential associated source(s) in the drainage area, evaluation of other permitted discharges, and evaluation of inspection activities. AND
 - c. If there is no upstream receiving monitoring site already established as part of the monitoring program and more than one occurrence of a fail of the TST t-test occurs at the original receiving water site within 3 years, then evaluate opportunities to conduct toxicity monitoring at upstream receiving water sites (either newly established or sites utilized by other monitoring programs), including tributaries.
2. If toxicity is present at a level exceeding the TIE trigger and the TIE identifies the constituent or class of constituents causing toxicity, then:
- a. Do not add toxicity monitoring to upstream sites. AND
 - b. During the same condition, add the identified constituent or constituents within the class of constituents¹ to the monitoring site where toxicity was identified, the upstream receiving water site(s), and upstream outfall site(s) starting with the next monitoring event that is at least 45 days following the toxicity sample collection. Monitoring for the identified constituent(s) will continue until the deactivation criterion (i.e., two consecutive samples do not exceed Receiving Water Limitations (RWLs), Water Quality-Based Effluent Limitations (WQBELs), or other appropriate threshold or guideline if there is no numeric RWL or WQBEL, for the identified constituents during the same condition) is met at the individual site. Where constituent(s) are identified in the outfall(s) above the RWL(s), WQBEL(s), or other appropriate threshold or guideline, commence TRE at each corresponding outfall location per Attachment E, Part IX.K.
 - c. No more than two TIEs are required at one receiving water site during the permit term if the TIEs identify the same constituent or class of constituents as the cause of toxicity.
3. If toxicity is present at a level exceeding the TIE trigger during wet weather and the TIE is inconclusive, then:
- a. Add toxicity monitoring to the next existing upstream receiving water site(s) during the next monitoring event that is at least 45 days following the original toxicity sample

¹ Using appropriate detection limits

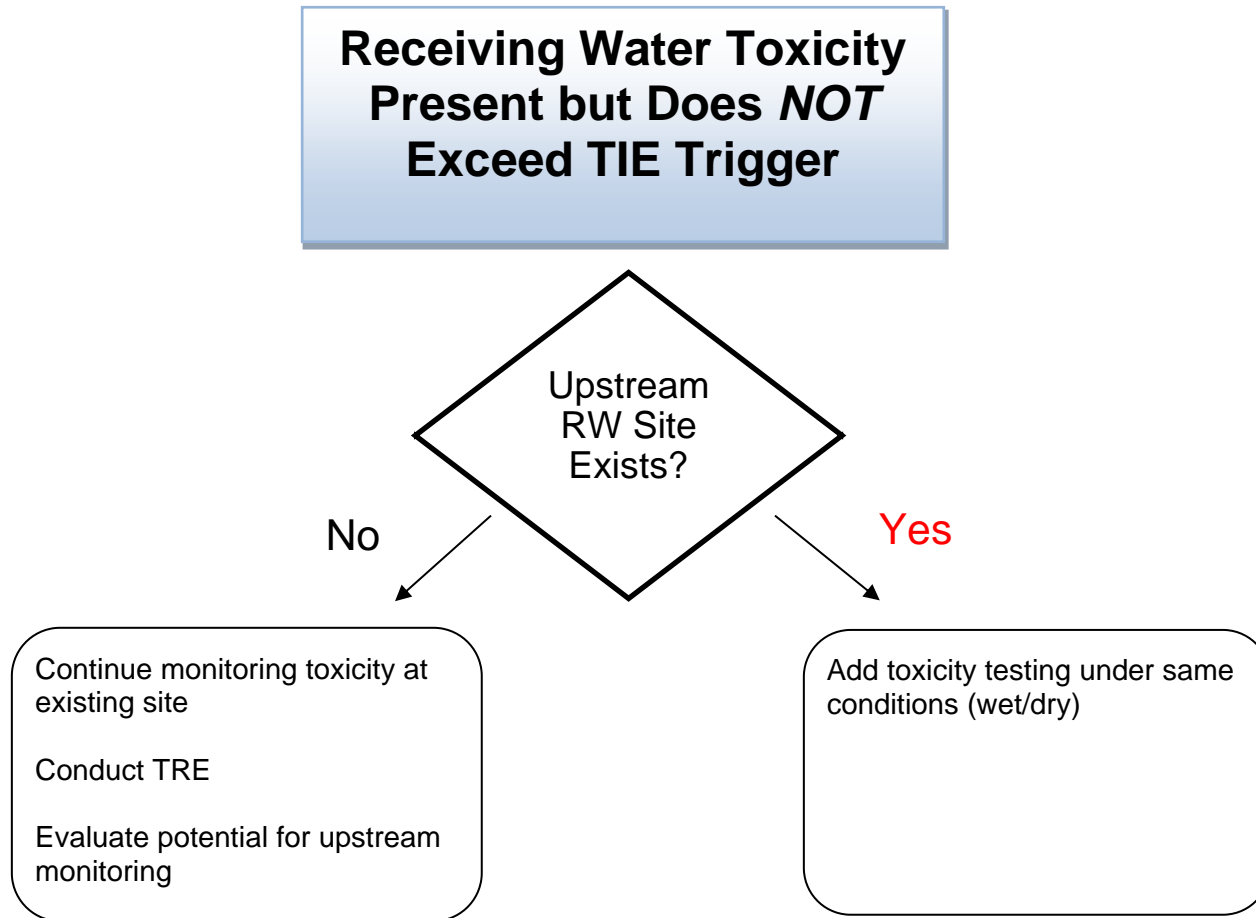
- collection. Toxicity monitoring at individual receiving water site(s) will continue until (1) the deactivation criterion (i.e., two consecutive samples that pass the pass/fail TST t-test during the same condition) is met at the receiving water site or (2) a TIE is triggered and conclusively identifies the constituent or class of constituents causing toxicity, in which case the process outlined in Part 2 above is followed. AND
- b. The second inconclusive TIE in 3 years during wet weather would trigger outfall toxicity testing at upstream outfall sites (i.e., (1) outfall sites located between the receiving water site and the nearest upstream receiving water site located on the same waterbody and (2) outfall sites located on tributaries that have a confluence with the waterbody where the confluence is located between the receiving water site and the nearest upstream receiving water site located on the same waterbody) following the process outlined below in “Steps Related Outfall Toxicity Testing” during the next monitoring event that is at least 45 days following the original toxicity sample collection.
OR
 - c. As an alternative to the outfall monitoring described in Part 3.b above, Permittees may propose an alternative approach any time after the first inconclusive TIE, which could include utilizing upstream receiving water sites (either newly established or sites utilized by other monitoring programs), including tributaries, additional outfall sites, and/or different outfall sites. However, the outfall monitoring approach described in Part 3.b above must be followed until Los Angeles Water Board EO approval of the alternative approach.
4. If toxicity is present at a level exceeding the TIE trigger during dry weather and the TIE is inconclusive, then:
- a. Add toxicity monitoring to the next existing upstream receiving water site(s) during the next monitoring event that is at least 45 days following the original toxicity sample collection. Toxicity monitoring at individual receiving water site(s) will continue until (1) the deactivation criterion (i.e., two consecutive samples that pass the pass/fail TST t-test during the same condition) is met at the receiving water site or (2) a TIE is triggered and conclusively identifies the constituent or class of constituents causing toxicity, in which case the process outlined in Part 2 above is followed during the next monitoring event that is at least 45 days following the original toxicity sample collection. AND
 - b. Add toxicity testing to upstream outfall sites (i.e., (1) outfall sites located between the receiving water site and the nearest upstream receiving water site located on the same waterbody and (2) outfall sites located on tributaries that have a confluence with the waterbody where the confluence is located between the receiving water site and the nearest upstream receiving water site located on the same waterbody) following the process outlined below in “Steps Related Outfall Toxicity Testing” during the next monitoring event that is at least 45 days following the original toxicity sample collection.
OR
 - c. As an alternative to the outfall monitoring described in Part 4.b above, Permittees may propose an alternative approach any time after the first inconclusive TIE, which could include utilizing upstream receiving water sites (either newly established or sites utilized by other monitoring programs), including tributaries, additional outfall sites, and/or different outfall sites. However, the outfall monitoring approach described in Part 4.b above must be followed until Los Angeles Water Board EO approval of the alternative approach.

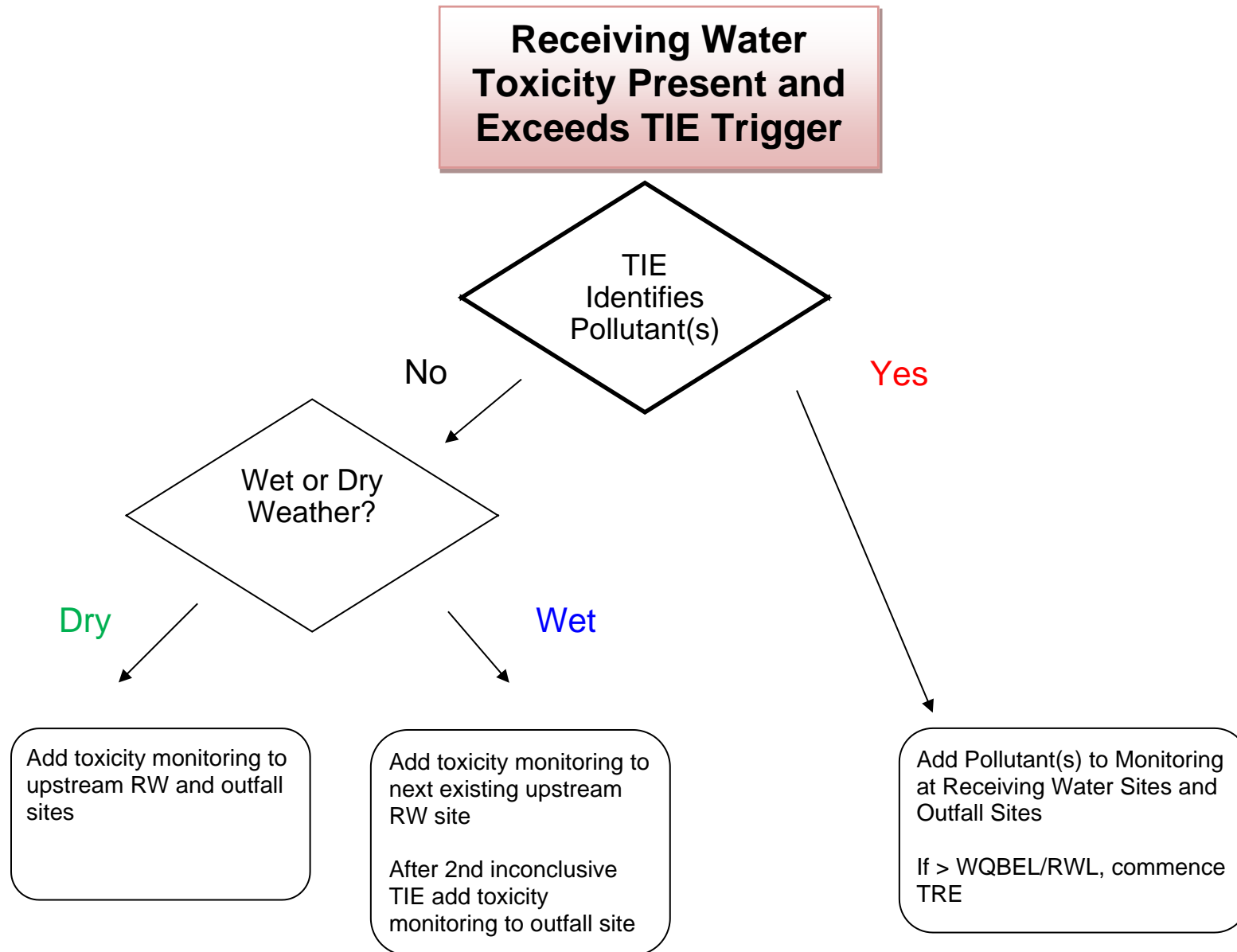
STEPS RELATED TO OUTFALL TOXICITY TESTING ONCE TRIGGERED:

1. If toxicity is not present as determined based on pass of the TST t-test as specified in the Permit, then continue toxicity testing during the same condition (i.e. wet or dry weather) until (1) meeting the deactivation criterion (i.e., two consecutive samples that pass the pass/fail

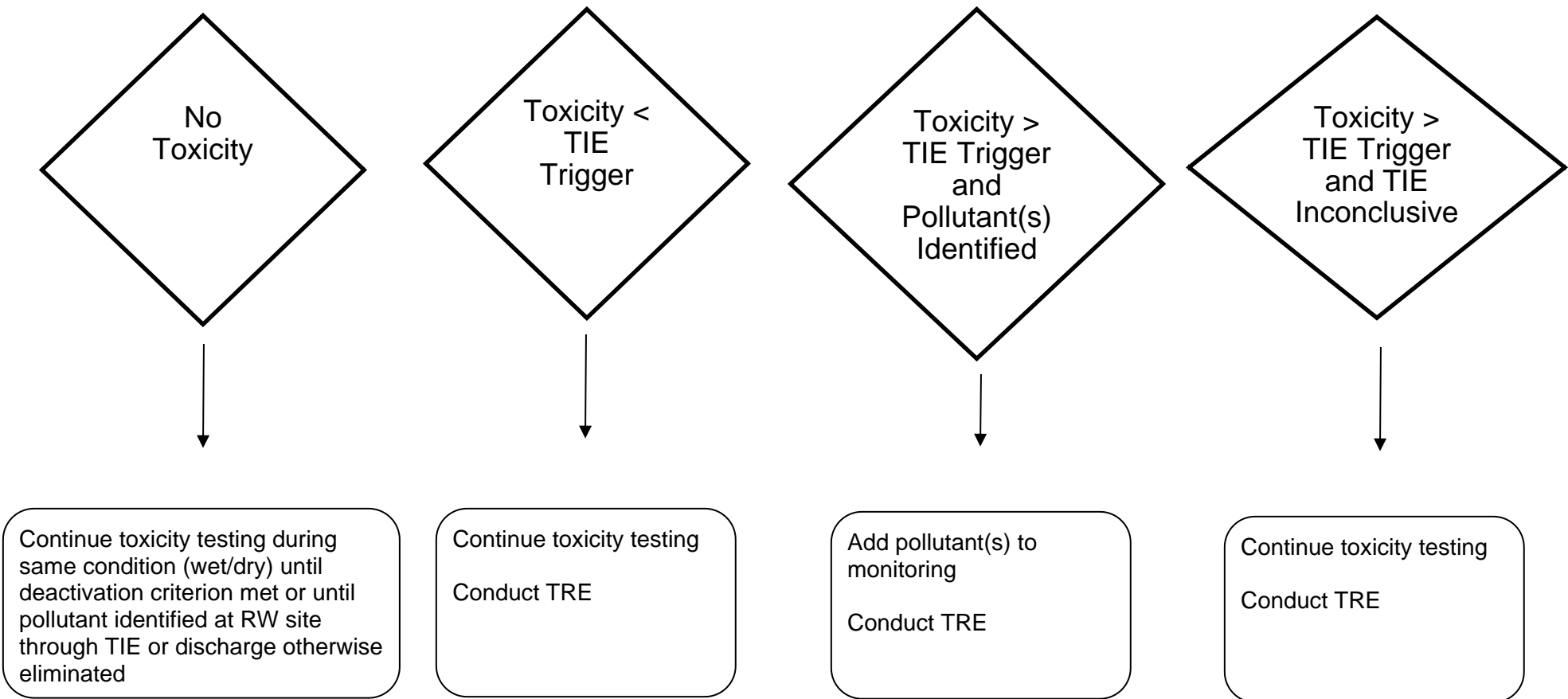
- TST t-test during the same condition), or (2) a TIE conducted at the downstream receiving water site conclusively identifies the constituent or class of constituents causing toxicity, or (3) the discharge is eliminated.
2. If toxicity is present as determined based on fail of the TST t-test as specified in the Permit, but not above the TIE trigger, then continue toxicity testing during the same condition until (1) meeting the deactivation criterion (i.e., two consecutive samples that pass the pass/fail TST t-test during the same condition), or (2) a TIE conducted at a downstream receiving water site conclusively identifies the constituent or class of constituents causing toxicity, or (3) the discharge is eliminated. Concurrently conduct a TRE in Attachment E, Part IX.K to identify, to the extent practicable, the source(s) of toxicity with the goal of addressing cause(s) of toxicity, paying particular attention to sources of potential constituent(s) causing toxicity (e.g., fipronil).
 - a. If toxicity is present in the non-stormwater discharge, actions taken as part of the non-stormwater program (e.g., source identification and elimination or treatment of unauthorized non-stormwater discharges that are a source of pollutants) should be utilized to support the TRE.
 - b. If toxicity is present in the stormwater discharge, consider the following actions to support the TRE: evaluating land uses and potential associated source(s) in the drainage area, evaluation of other permitted discharges, and evaluation of inspection activities.
 3. If toxicity is present at a level exceeding the TIE trigger and the TIE identifies the constituent or class of constituents causing toxicity, then:
 - a. Discontinue toxicity testing at the outfall. AND
 - b. Add the identified constituent or constituents within the identified class of constituents² during the same condition starting with the next monitoring event that is at least 45 days following the toxicity sample collection and monitor for those constituents at the outfall until meeting the deactivation criterion for those constituents (i.e., two consecutive samples do not exceed RWLs, WQBELs, or other appropriate threshold or guideline if there is no numeric RWL or WQBEL, for identified constituents), while simultaneously performing a TRE for the constituent(s) causing toxicity per Attachment E, Part IX.K.
 4. If toxicity is present at a level exceeding the TIE trigger and the TIE is inconclusive, then continue toxicity testing during the same condition until (1) meeting the deactivation criterion (i.e., two consecutive samples that pass the pass/fail TST t-test during the same condition), or (2) a TIE identifies the constituent or class of constituents causing toxicity (proceed with following the process outlined in Part 3, above), or (3) eliminate the discharge. Concurrently conduct a TRE in Attachment E, Part IX.K to identify, to the extent practicable, the source(s) of toxicity with the goal of addressing cause(s) of toxicity, paying particular attention to identifying sources of potential constituent(s) causing toxicity that may not have been evaluated in the TIE (e.g., fipronil).
 - a. If the TIE is inconclusive in the non-stormwater discharge, actions taken as part of the non-stormwater program (e.g., source identification and elimination or treatment of unauthorized non-stormwater discharges that are a source of pollutants) should be utilized to support the TRE.
 - b. If the TIE is inconclusive in the stormwater discharge, consider the following actions to support the TRE: evaluating land uses and potential associated source(s) in the drainage area, evaluation of other permitted discharges, and evaluation of inspection activities.

² Using appropriate detection limits





Outfall Toxicity
Testing Once
Triggered



ATTACHMENT H – REPORTING FORMS

[WMP Name]

Reporting Period [MDY-MDY]

**Regional Phase I MS4 NPDES Permit
Order No. R4-2021-0105
NPDES No. CAS004004**

**Watershed Management Program Progress Report Form
Reporting Period [MDY-MDY]**

| | |
|--|--|
| Watershed Management Program Name | |
| Participating Permittee(s) | |
| Date of Watershed Management Program Progress Report | |
| Initial Approval Date of Watershed Management Program (according to Table 12 or Part IX.G.3 of the Order) | |

Note that Permittees will not be able to propose modifications to their WMP in the Watershed Management Program Progress Report Form. Any modification(s) shall be requested in writing explaining the nature of the proposed modification and justification for consideration by the Los Angeles Water Board [*Order – IX.C and IX.E.2*].

1.1 **Watershed Control Measure Milestone Progress.** Summarize the progress on all Watershed Control Measure requirements and dates for their achievement (milestones) identified in your WMP that were required to be achieved by the end of this Reporting Period. The milestones for specific projects may be reported as cumulative number of projects to be implemented (e.g., “Recipes for Compliance”; installation of prescribed volume of BMP capacity by a certain date; Percent Load Reduction of bacteria pollutant by a certain date), cumulative storm volume addressed¹ by control measures (e.g., LID, new/re-development projects, regional projects), or other metric. However, progress must be reported as percent completion of the selected milestone metric. If any milestones were not achieved, give a clear description of the action/milestone, explain the delay in control measure implementation, and provide the revised action/milestone. The summary must also include a list of (a) Permittees and non-Permittees collaborated with for achievement of milestones, (b) funding sought, (c) funding obtained, (d) technical assistance received (e.g., through the Safe Clean Water Program Watershed Area Steering Committee), (e) additional local community co-benefits such as clean streets (including, without limitation, street sweeping, litter abatement, etc.), more parks and green spaces, reduced heat island effect, reduced flooding, water supply augmentation, neighborhood beautification, and job creation, and (f) other co-benefits and resources accruing to disadvantaged communities as identified on CalEnviroScreen². The format for this item is a text box but you are encouraged to provide this information in an appropriate format as an attachment with spreadsheets, graphs, and/or other elements that would concisely convey the required information.

(Provide information within this space or as an attachment)

¹ Includes the volume of water captured, infiltrated, retained, treated, diverted or otherwise addressed by a watershed control measure.

² <https://oehha.ca.gov/calenviroscreen>

1.2 **Watershed Control Measures Completed.** Complete Table 1a, on an Excel spreadsheet. Include all watershed control measures (aside from minimum control measures specified in Part VIII of the Order) in the Watershed Management Program completed since the effective date of the Order for Ventura County Permittees, since March 28, 2014 for the City of Long Beach, and since December 28, 2012 for other Los Angeles County Permittees. This table is cumulative—i.e., the table should include all the control measures completed from the time of the aforementioned dates to the end of this reporting period. Structural control measures as well as non-structural control measures (e.g., enhanced MCMs such as incentive programs, outreach and conservation programs, etc.) should be included in this table. If information is not available for a particular field, the field should indicate “Not Applicable” (N/A) [Order – IX].

Table 1a: Watershed Control Measures Completed

| Project Name | Previous Project Name(s) if Changed | Permittee(s) | Subwatershed | Project Type ³ | Description | Latitude ⁴ | Longitude ⁵ | Required Completion Date in WMP | Actual Completion Date | Capital Costs [\$] | Cumulative O&M Costs [\$] | Funding Source(s) | Project Footprint ⁶ [Acres] | Drainage Area ⁷ [Acres] | Projected Storage Capacity in WMP [Acre-feet] | Actual Storage Capacity ⁸ [Acre-feet] | Cumulative Volume Addressed ⁹ [Acre-feet] |
|--------------|-------------------------------------|--------------|--------------|---------------------------|-------------|-----------------------|------------------------|---------------------------------|------------------------|--------------------|---------------------------|-------------------|--|------------------------------------|---|--|--|
| | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | |

³ Choose from Regional Infiltration Facility, Regional Treatment Facility, Green Street, Diversion to Sewer, Non-Structural, or Other (specify). For Regional Treatment Facility projects, include a description of the treatment process and design specifications in section 1.2a. For Green Street projects, include linear miles of the green street in section 1.2a.

⁴ Use decimal degrees (DD) format.

⁵ Use decimal degrees (DD) format.

⁶ The area footprint of the project.

⁷ The area tributary to the project.

⁸ The project’s physical storage capacity to hold water. For example, for a regional infiltration facility, this would be the storage volume of the storage units plus the void space of backfill materials.

⁹ Includes the cumulative volume of water captured, infiltrated, retained, treated, diverted, or otherwise addressed by the project.

1.2a) Additional Information. Provide additional information regarding the Watershed Control Measures completed (e.g., other compliance metrics and a list of (a) Permittees and non-Permittees collaborated with for achievement of milestones, (b) funding sought, (c) funding obtained, (d) technical assistance received (e.g., through the Safe Clean Water Program Watershed Area Steering Committee), (e) additional local community co-benefits such as clean streets (including, without limitation, street sweeping, litter abatement, etc.), more parks and green spaces, reduced heat island effect, reduced flooding, water supply augmentation, neighborhood beautification, and job creation, and (f) other co-benefits and resources accruing to disadvantaged communities as identified on CalEnviroScreen).

(Provide information within this space or as an attachment)

1.3 **Watershed Control Measures Planned and In Progress.** Complete Table 1b, on an Excel spreadsheet. Include all watershed control measures (aside from minimum control measures specified in Part VIII of the Order) in the Watershed Management Program that are planned and in progress. Structural control measures as well as non-structural control measures (e.g., enhanced MCMs such as incentive programs, outreach and conservation programs, etc.) should be included in this table. If information is not available for a particular field, the field should indicate “Not Applicable” (N/A) [*Order – IX*].

Table 1b: Watershed Control Measures Planned and In Progress

| Project Name | Permittee(s) | Subwatershed | Project Type ¹⁰ | Description | Latitude ¹¹ | Longitude ¹² | Required Completion Date in WMP | Estimated Completion Date | Estimated Capital Costs [\$] | Estimated Annual O&M Costs [\$] | Funding Source(s) | Project Footprint ¹³ [Acres] | Drainage Area ¹⁴ [Acres] | Projected Storage Capacity in WMP ¹⁵ [Acre-feet] | Status ¹⁶ | |
|--------------|--------------|--------------|----------------------------|-------------|------------------------|-------------------------|---------------------------------|---------------------------|------------------------------|---------------------------------|-------------------|---|-------------------------------------|---|----------------------|--|
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |

¹⁰ Choose from *Regional Infiltration Facility, Regional Treatment Facility, Green Street, Diversion to Sewer, Non-Structural, or Other*. For Regional Treatment Facility projects, include a description of the treatment process and design specifications in section 1.3a.

¹¹ Use decimal degrees (DD) format.

¹² Use decimal degrees (DD) format.

¹³ The area footprint of the project.

¹⁴ The area tributary to the project.

¹⁵ The project’s physical storage capacity to hold water. For example, for a regional infiltration facility, this would be the storage volume of the storage units plus the void space of backfill materials.

¹⁶ Description of the project’s status. This may include the project implementation phase (e.g., funding, design, construction).

[WMP Name]

Reporting Period [MDY-MDY]

1.3a) Additional Information. Provide additional information regarding the Watershed Control Measures planned and in progress (e.g., other compliance metrics and a list of (a) Permittees and non-Permittees collaborated with for achievement of milestones, (b) funding sought, (c) funding obtained, (d) technical assistance received (e.g., through the Safe Clean Water Program Watershed Area Steering Committee), (e) additional local community co-benefits such as clean streets (including, without limitation, street sweeping, litter abatement, etc.), more parks and green spaces, reduced heat island effect, reduced flooding, water supply augmentation, neighborhood beautification, and job creation, and (f) other co-benefits and resources accruing to disadvantaged communities as identified on CalEnviroScreen).

(Provide information within this space or as an attachment)

1.4 **Water Body Pollutant Combination (WBPC) Compliance.** Complete Table 1c on an Excel spreadsheet for all WBPCs identified in the Watershed Management Program. If information is not available for a particular field, the field should indicate “Not Applicable” (N/A) [Order – X].

Table 1c: WBPC Compliance

| WBPC Category (1, 2, or 3) | Pollutant | Receiving Water | Weather Condition (Wet, Dry, N/A) | Interim or Final | Deadline | Deadline Met? (Yes, No, N/A) | Method of Compliance ¹⁷ |
|----------------------------|-----------|-----------------|-----------------------------------|------------------|----------|------------------------------|------------------------------------|
| | | | | | | | |

1.5 **Additional Information.** Attach any additional information or reports pertinent to the WMP to this report. Provide a brief summary of these attachments below.

(Provide information within this space or as an attachment)

¹⁷ Choose between the following four options: (1) outfall monitoring, (2) receiving water monitoring, (3) no direct or indirect discharge from MS4 to the applicable receiving water, or (4) full compliance of an approved WMP. If selecting option (4), reference applicable projects in Table 1a and 1b.

**Regional Phase I MS4 NPDES Permit
Order No. R4-2021-0105
NPDES No. CAS004004**

**Annual Report Form
Reporting Year [XX-XX]**

Sections 2-8 of this form include items to be reported individually by each Permittee for this reporting year unless otherwise indicated.

| | |
|----------------------------------|--|
| Permittee Name | |
| Permittee Program Contact | |
| Title | |
| Address | |
| City | |
| Zip Code | |
| Phone | |
| Email | |

2. Legal Authority and Certification

Complete the items on this page.

2.1 Answer the following questions on Legal Authority [Order – VI.B.2].

| Question | Yes | No |
|--|--------------------------|--------------------------|
| Is there a current statement certified by the Permittee’s chief legal counsel that the Permittee has the legal authority within its jurisdiction to implement and enforce each of the requirements contained in 40 CFR § 122.26(d)(2)(i)(A-F) and the Order? | <input type="checkbox"/> | <input type="checkbox"/> |
| Has the above statement been developed or updated within this reporting year? If yes, attach the updated legal authority statement to this report. | <input type="checkbox"/> | <input type="checkbox"/> |

2.2 Complete the required certification below [Attachment D – V.B.5].

“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.”

Signature of either a principal executive officer, ranking elected official, or by a duly authorized representative of a principal executive officer or ranking elected official. A person is a duly authorized representative only if:

- a. The authorization is made in writing by a principal executive officer or ranking elected official.
- b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)
- c. The written authorization is submitted to the Regional Board.

If an authorization of a duly authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization will be submitted to the Regional Board prior to or together with any reports, information, or applications, to be signed by an authorized representative.

Signature

Title

Date

3. Program Expenditures

Complete the following items in this section.

3.1 Source(s) of funds used in this reporting year, and proposed for the next reporting year, to meet necessary expenditures on the Permittee's stormwater management program [Order – VI.C.2].

(Provide information within this space)

3.2 Complete the table below on program expenditures for this reporting year [Attachment D – VII.A.5]. Enter “0” for any fields that do not apply.

| Category | | Capital Expenditures ¹ | Land Costs | Personnel Cost | Consultant (s) Cost | Overhead Costs | Construction Costs | Permit(s), Operation, and Maintenance (O&M) Costs | Total Expenditures for this Reporting Year | Program Budget for Next Reporting Year |
|--|--|-----------------------------------|------------|----------------|---------------------|----------------|--------------------|---|--|--|
| (1) Program Management² | | | | | | | | | | |
| (2) NPDES MS4 Permit Fees | | | | | | | | | | |
| (3) Minimum Control Measures (MCMs) | PIPP | | | | | | | | | |
| | Industrial / Commercial Facilities Program | | | | | | | | | |
| | Planning & Land Development Program³ | | | | | | | | | |
| | Construction Program | | | | | | | | | |
| | Public Agency Activities Program | | | | | | | | | |
| | IDDE Program | | | | | | | | | |
| | Additional Institutional BMPs / “Enhanced” MCMs | | | | | | | | | |

¹ Exclude land costs.

² Including but not limited to program management plans, mail, legal support, travel, conferences, printing, producing manuals and handbooks, annual/semi-annual reporting, development and maintenance of any electronic databases required by this permit including GIS, and other non-labor costs.

³ Including but not limited to environmental review, development project approval and verification, and permitting and licensing costs specific to the provisions of the Order that are beyond the scope of a normal plan review, permitting, and inspection process.

| Category | | Capital Expenditures ¹ | Land Costs | Personnel Cost | Consultant (s) Cost | Overhead Costs | Construction Costs | Permit(s), Operation, and Maintenance (O&M) Costs | Total Expenditures for this Reporting Year | Program Budget for Next Reporting Year |
|--|---|-----------------------------------|------------|----------------|---------------------|----------------|--------------------|---|--|--|
| (4) TMDL Implementation Plan / Watershed Management Program Development⁴ | | | | | | | | | | |
| (5) Projects⁵ | Distributed Projects and Green Streets | | | | | | | | | |
| | Regional Projects | | | | | | | | | |
| | Other Structural BMPs | | | | | | | | | |
| (6) Trash Compliance | Trash TMDLs⁶ | | | | | | | | | |
| | Discharge Prohibitions - Trash⁷ | | | | | | | | | |

⁴ Include costs for development and/or revision of Implementation Plans (e.g., TMDL Implementation Plan, Watershed Management Programs including Reasonable Assurance Analysis). Specify which plans these are in Section 3.3.

⁵ If a Permittee is implementing a project collaboratively, the Permittee should only include the portion of the project cost that it is assuming.

⁶ Includes full capture, partial capture, and institutional controls used to comply with trash TMDLs.

⁷ Includes full capture, partial capture, and institutional controls used to comply with Statewide Trash Provisions.

| Category | | Capital Expenditures ¹ | Land Costs | Personnel Cost | Consultant (s) Cost | Overhead Costs | Construction Costs | Permit(s), Operation, and Maintenance (O&M) Costs | Total Expenditures for this Reporting Year | Program Budget for Next Reporting Year |
|-------------------------------|---|-----------------------------------|------------|----------------|---------------------|----------------|--------------------|---|--|--|
| (7) Monitoring | Monitoring Plan Development⁸ | | | | | | | | | |
| | Outfall and Receiving Water Quality Monitoring | | | | | | | | | |
| | BMP Effectiveness Monitoring | | | | | | | | | |
| | Regional Studies⁹ | | | | | | | | | |
| | Special Studies¹⁰ | | | | | | | | | |
| (8) Other¹¹ | | | | | | | | | | |
| TOTAL | | | | | | | | | | |

3.3 Additional Information: Please add any additional comments on stormwater expenditures below.

(Provide information within this space)

⁸ Includes costs to develop and/or revise monitoring plans (e.g., TMDL Monitoring Plan, IMP, CIMPs, non-stormwater screening and monitoring program). Specify which plans these are in Section 3.3.

⁹ Includes costs to comply with Part X (Regional Studies) of the Attachment E-MRP.

¹⁰ Includes costs to comply with Part XI (Special Studies) of the Attachment E-MRP.

¹¹ Enter costs in this table but specify what this “Other” category consists of in Section 3.3.

4. Non-Stormwater Discharge Prohibitions

Complete the following items in this section.

4.1 Provide an assessment of the effectiveness of the Permittee’s control measures in effectively prohibiting non-stormwater discharges into the MS4 to the receiving water [Order – III.A].

(Provide information within this space)

4.2 Describe sources of non-stormwater discharges determined to be a NPDES permitted discharge, a discharge subject to CERCLA, a conditionally exempt non-stormwater discharge, or entirely comprised of natural flows [Order - III.A.2].

(Provide information within this space)

4.3 Check all that apply [Order – III.A.4].

| | |
|--|--------------------------|
| There has been non-stormwater discharge(s) to an ASBS | <input type="checkbox"/> |
| The non-stormwater discharge(s) to the ASBS caused or contributed to an exceedance receiving water limitations, WQBELs, water quality objectives in Chapter II of the Ocean Plan, or an undesirable alteration in natural ocean water quality in an ASBS | <input type="checkbox"/> |
| Additional BMPs were implemented to address the exceedances above | <input type="checkbox"/> |

4.4 If you had non-stormwater discharge(s) to an ASBS that caused or contributed to an exceedance receiving water limitations, WQBELs, water quality objectives in Chapter II of the Ocean Plan, or an undesirable alteration in natural ocean water quality in an ASBS, describe what additional BMPs were implemented to address these exceedances. How effective were those BMPs in addressing the exceedances? [Order - III.A.4.b]

(Provide information within this space)

4.5 Did you develop and implement procedures to ensure that a discharger, if not a named Permittee in this Order, fulfilled the requirements of Part III.A.5.a.i-vi? If so, provide a link to where the procedures may be found or attach to this Annual Report [Order – III.A.5.a].

(Provide information within this space)

4.6 Did you organize and maintain records of all notifications, local permits, and non-stormwater discharges greater than 100,000 gallons in an electronic database? (Yes or No) [Order – III.A.5.b]

(Provide information within this space)

4.7 Did you determine that any of the conditionally exempt non-stormwater discharges, with the exception of essential non-stormwater discharges, identified per Part III.A.5.c of the Order is a source of pollutants that causes or contributes to an exceedance of applicable receiving water limitations and/or water quality-based effluent limitations? If so, how many of the conditionally exempt non-stormwater discharges in Part III.A.3.b of the Order did you determine to be sources of pollutants that caused or contributed to an exceedance of receiving water limitations or WQBELs? If you made that determination, which type(s) of non-stormwater discharges in Part III.A.3.b were sources of pollutants? [Order – III.A.6]

(Provide information within this space)

4.8 If you answered yes to the question 4.7 above, check all that apply [Order – III.A.6].

| | |
|---|--------------------------|
| Effectively prohibit the non-stormwater discharge into the MS4 | <input type="checkbox"/> |
| Impose conditions in addition to those in Table 5 of the Order, subject to approval by the Los Angeles Water Board Executive Officer, on the non-stormwater discharge such that it will not be a source of pollutants | <input type="checkbox"/> |
| Require diversion of the non-stormwater discharge to the sanitary sewer | <input type="checkbox"/> |
| Require treatment of the non-stormwater discharge prior to discharge to the receiving water | <input type="checkbox"/> |

5. Non-Stormwater Outfall Screening and Monitoring

Complete the following items in this section.

5.1 Complete the tables below regarding your Non-Stormwater Outfall-Based Screening and Monitoring Program [Attachment E – VII].

| Receiving Water | No. of Outfalls within your Jurisdiction | No. of Outfalls Screened during this Reporting Year | No. of Screening Events During This Reporting Year | Outfalls with Significant Non-Stormwater Discharges ¹² | | | |
|----------------------|--|---|--|---|--------------|---|-----------------------|
| | | | | Total Confirmed | Total Abated | Total Attributed to Allowable Sources ¹³ | Total Being Monitored |
| [RW 1] | | | | | | | |
| (add rows as needed) | | | | | | | |
| Total | | | | | | | |

| Method of Abatement | Total No. |
|---------------------------------|-----------|
| Low Flow Diversion (LFD) | |
| Illicit Discharges Eliminated | |
| NPDES Permitted | |
| Retention | |
| Discharge No Longer Observed | |
| Other (describe in Section 5.3) | |

5.2 Los Angeles County Permittees: Did you consider dry weather receiving water monitoring data downstream of the outfalls and other relevant information to determine if re-screening is necessary for any of the previously screened outfalls that did not have significant non-stormwater discharge? If so, explain how many outfalls require re-screening and when re-

¹² “Significant Non-Stormwater Discharges” as identified by the Permittee per Part VII.B of the Attachment E - MRP.

¹³ “Allowable Sources” refers to the discharges exempt from the Prohibition of Non-Stormwater Discharges listed in Part III.A.2 of the Order.

screening will be completed. If applicable, describe any changes made to the program [Attachment E – VII.D.2].

(Provide information within this space)

5.3 Additional Information. If desired, provide additional information regarding Non-Stormwater Outfall Screening and Monitoring.

(Provide information within this space)

6. Minimum Control Measures

Complete the following items in this section.

6.1 General Provisions [Order – VIII.A.3]

Did you train all your employees in targeted positions (whose interactions, jobs, and activities affect stormwater quality) on the requirements of the Minimum Control Measures in this Order, or did you ensure contractors performing privatized/contracted municipal services are appropriately trained to: (a) Promote a clear understanding of the potential for activities to pollute stormwater, (b) Identify opportunities to require, implement, and maintain appropriate BMPs in their line of work? (Yes or No)

(Provide information within this space)

6.2 Public Information and Participation Program [Order - VIII.D]

Complete the following item regarding the Public Information and Participation Program.

6.2a) Summarize opportunities created for public engagement in stormwater planning and program implementation to raise public awareness of stormwater program benefits and needs (e.g., *Don't Trash California* campaign). Note whether activities were performed by the jurisdiction or as part of a watershed, regional, or county-wide group [*VIII.D.3.a*].

(Provide information within this space)

6.2b) Summarize educational activities and public information activities to facilitate stormwater and non-stormwater pollution prevention and mitigation. What pollutants were targeted? What audiences were targeted? Note whether activities were performed by the jurisdiction or as part of a watershed, regional, or county-wide group [*VIII.D.3.b*].

(Provide information within this space)

6.2c) In selecting targeted pollutants for public information/education topics, did you consider the proper management and disposal of (1) vehicle wastes (e.g., used oil, used tires); (2) household waste materials (i.e., trash and household hazardous waste, including personal care products, pharmaceuticals, and household cleaners); (3) pesticides, herbicides, and fertilizers; (4) green waste; and (5) animal wastes? (Yes or No) If no, what other materials were considered? [*VIII.D.3.b.i*]

(Provide information within this space)

6.2d) Which of the following methods were selected to distribute public information/ educational materials? [VIII.D.3.b.ii]

| Category | Yes | No |
|--|--------------------------|--------------------------|
| Internet-based platforms (e.g., stormwater websites, social media websites and applications) | <input type="checkbox"/> | <input type="checkbox"/> |
| Commercial points-of-purchase (e.g., automotive parts stores, home improvement centers/ hardware stores/ paint stores, landscape / gardening centers, pet shops) | <input type="checkbox"/> | <input type="checkbox"/> |
| Schools (K- 12) | <input type="checkbox"/> | <input type="checkbox"/> |
| Radio/television | <input type="checkbox"/> | <input type="checkbox"/> |
| Community events | <input type="checkbox"/> | <input type="checkbox"/> |
| Other (specify) | <input type="checkbox"/> | <input type="checkbox"/> |

6.2e) Did you document and track information on the implemented Public Information and Participation activities including activity, date(s), method of dissemination, targeted behavior, targeted pollutant, targeted audience, culturally effective method(s), other information necessary for the metrics identified in Part VIII.D.4.a of the Order, and metric for measuring effectiveness? (Yes or No) [VIII.D.4.b]

(Provide information within this space)

6.2f) What metrics did you use to measure the effectiveness in achieving the objectives of the Public Information and Participation Program? Considering those metrics, is your Public Information and Participation program effective? Explain [VIII.D.4.a].

(Provide information within this space)

6.2g) Additional Information. If desired, provide additional information regarding implementation of the Public Information and Participation Program.

(Provide information within this space)

6.3 Industrial and Commercial Facilities Program [Order – VIII.E]

Complete the following items regarding the Industrial and Commercial Facilities Program.

6.3a) Watershed-Based Inventory:

| Question | Yes | No |
|---|--------------------------|--------------------------|
| Have you updated your watershed-based inventory or database of all industrial and commercial facilities within your jurisdiction that are critical sources ¹⁴ of stormwater pollution identified in Part VIII.E.2 of the Order (inventory shall be updated at least once every 2 years)? | <input type="checkbox"/> | <input type="checkbox"/> |

6.3b) If you answered yes to question 6.3a above, what is the total number of facilities in your inventory list?

(Provide information within this space)

6.3c) If you answered no to question 6.3a above, when will you update the inventory list?

(Provide information within this space)

6.3d) Commercial Facilities [VIII.E.3]:

| Question | Response |
|---|----------|
| In implementing the Outreach Program, how many commercial facilities did you reach out to during this reporting year? | |
| In implementing the Business Assistance Program, how many commercial facilities did you assist during this reporting year? | |
| How many commercial facilities did you inspect during this reporting year? | |
| Of the commercial facilities inspected during this reporting year, how many were the first, second, third, etc. round of inspections? For example, report x number of first-round inspections, y number of second-round inspections, z number of third-round inspections, etc. Each round of inspections corresponds to the requirement to conduct an inspection every two years. | |
| How many of the total commercial facility inspections had stormwater violation(s) during this reporting year? | |

¹⁴ Part VIII.E.2.a of the Regional MS4 Permit summarizes “critical sources” to be tracked.

6.3e) Industrial Facilities [VIII.E.4]:

| Question | Response |
|---|----------|
| How many facilities from question 6.3b are industrial facilities with SIC codes that require enrollment in the IGP? (in this reporting year)? | |
| How many industrial facilities did you report to the Los Angeles Water Board as non-filers during this reporting year? | |
| In implementing the Business Assistance Program, how many industrial facilities did you assist during this reporting year? | |
| How many Industrial facilities did you inspect during this reporting year? | |
| Of the commercial facilities inspected during this reporting year, how many were the first, second, third, etc. round of inspections? For example, report x number of first-round, y number of second-round, and z number of third-round, etc. Each round of inspections corresponds to the requirement to conduct an inspection every two years. | |
| How many of the total industrial facility inspections had stormwater violation(s) during this reporting year? | |

6.3f) Enforcement Actions: Describe the number and nature of any enforcement actions taken related to the industrial and commercial facilities program [VIII.E.6].

(Provide information within this space)

6.3g) Additional Information. If desired, provide additional information regarding implementation of the Industrial and Commercial Facilities Program.

(Provide information within this space)

6.4 Planning and Land Development Program [VIII.F]

Complete the following items regarding the Planning and Land Development Program.

6.4a) Priority Development Projects: Complete the table below for Priority Development Projects as of the end of this Reporting Year [VIII.F.1].

| Development Type | Number of Priority Development Projects Completed During This Reporting Year | Number of Priority Development Projects In-Progress |
|------------------|--|---|
| New Development | | |
| Redevelopment | | |

6.4b) Use of Alternative Compliance Measures for Priority Development Projects. Provide the number of Priority Development Projects completed during this Reporting Year that utilized alternative compliance measures per Part VIII.F.4.b of the Order.

| Category | Number of Projects |
|------------------------------------|--------------------|
| On-site Biofiltration | |
| On-site Flow-based BMPs | |
| Off-site Infiltration | |
| Groundwater Replenishment Projects | |
| Off-site Retrofit Projects | |
| Other | |

6.4c) Exemptions to Priority Development Project Performance Requirements. If the Permittee is implementing an approved Local Ordinance Equivalence or an approved Regional Stormwater Mitigation Program per Part VIII.F.1.c, describe the area covered by these exemptions; and the number and names of Priority Development Projects that were exempted from the Order’s Priority Development Project Structural BMP Performance Requirements.

(Provide information within this space)

6.4d) Priority Development Project Greater Than 50 Acres. If applicable, provide information on any Priority Development Projects with a project area greater than 50 acres that were completed during this Reporting Year or are currently in-progress. Information should include the name and location of the project(s) and whether the project(s) are new development or redevelopment.

(Provide information within this space)

6.4e) Hydromodification Management: If applicable, provide information on the name, location, and nature of any projects requiring hydromodification controls that were completed or in-progress within this Reporting Year [VI.F.2].

(Provide information within this space)

6.4f) Exemptions to Hydromodification Controls: Are there any areas where assessments of downstream channel conditions and proposed discharge hydrology indicate that adverse hydromodification effects to beneficial uses of Natural Drainage Systems are

unlikely, per Part VIII.F.2.b? If so, what are the numbers and names of the New Development and Redevelopment projects exempt from implementation of hydromodification controls?

(Provide information within this space)

6.4g) Tracking, Inspection and Enforcement of Post-Construction BMPs: Describe the number and nature of any enforcement actions taken related to the planning and land development program [VIII.F.3.c.v].

| Question | Yes | No |
|--|--------------------------|--------------------------|
| Does your program implement a GIS or other electronic system for tracking Priority Development Projects and Hydromodification Management Projects that at a minimum contains all the information required by Permit? | <input type="checkbox"/> | <input type="checkbox"/> |
| Does your program inspect all Priority Development Projects and Hydromodification Management Projects upon completion of construction and prior to issuance of occupancy certifications to ensure proper installation of post-construction BMPs? | <input type="checkbox"/> | <input type="checkbox"/> |

6.4h) Additional Information. If desired, provide additional information regarding implementation of the Planning and Land Development Program.

(Provide information within this space)

6.5 Construction Program [Order – VIII.G]

Complete the following items regarding the Construction Program.

6.5a) Complete the table below. Only report numbers for sites less than 1 acre.

| Question | Response |
|---|----------|
| How many new sites of less than one acre commenced their activities during this reporting year? | |
| How many sites of less than one acre did you inspect during this reporting year? | |
| How many (if any) of the sites from the previous question had a BMP violation [VIII.G.4.b]? | |

6.5b) Complete the table below. Only report numbers for sites 1 acre or greater and construction sites less than 1 acre that are part of a common plan of development totaling 1 acre or greater.

| Question | Response |
|--|----------|
| What is the date of the latest update made to the site inventory [VIII.G.5.b]? | |

| Question | Response |
|---|----------|
| How many new sites of 1 acre or greater commenced their activities during this reporting year? | |
| How many sites of 1 acre or greater did you report to the Los Angeles Water Board as non-filers [VIII.G.5.a]? | |
| How many post-construction plans were reviewed during this reporting year [VIII.G.5.a]? | |
| How many of the plans from the previous question were approved during this reporting year? | |
| How many (if any) sites of 1 acre or greater did you inspect during this reporting year [VIII.G.5.c]? | |
| How many (if any) of the inspected sites were in violation of construction BMPs? | |
| How many (if any) of the inspected sites were in violation of post-construction plans? | |
| How many of the sites from the previous two questions were reported to the Los Angeles Water Board along with an inspection report? | |

6.5c) Enforcement Actions: Describe the number and nature of any enforcement actions taken related to the development construction program [VIII.G.6].

(Provide information within this space)

6.5d) Additional Information. If desired, provide additional information regarding implementation of the Construction Program.

(Provide information within this space)

6.6 Public Agency Activities Program [VIII.H]

Complete the following items regarding the Public Agency Activities Program.

6.6a) Answer the following questions regarding the Public Agency Activities Program.

| Question | Response |
|--|---|
| Did you maintain an updated inventory or database of all your owned or operated (i.e., public) facilities and activities within your jurisdiction that are potential sources of stormwater pollution? [VIII.H.2] | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| For the above inventory, what is the date of the latest update [VIII.H.2.c]? | |

| Question | Response |
|---|---|
| How many treatment control BMPs including post-construction control treatment BMPs do you own? [VIII.H.2.b.vi] | |
| For the above, how many inspections were conducted during this reporting year? [VIII.H.3.e] | |
| How many storm drain inlets do you own? | |
| How many of the above are labeled with a legible “no dumping” message? [VIII.H.6.c.i] | |
| Did you inspect the legibility of all the stencils or labels nearest each inlet prior to the wet season during this reporting year? [VIII.H.6.c.ii] | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If yes for the above, how many illegible stencils and labels were recorded? | |
| For the illegible stencils and labels recorded above, how many were re-stenciled and re-labeled within 180 days of inspection? For those not re-stenciled and re-labeled, explain why not. [VIII.H.6.c.iii] | |
| Did you visually monitor owned open channels and other drainage structures for trash and debris at least annually? [VIII.H.6.d.i] | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| How many miles of open channels do you own? | |
| Did you remove trash and debris from your open channels a minimum of once per year before the wet season? [VIII.H.6.d.ii] | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| How many parking lots exposed to stormwater do you own that meet either criteria listed in Part VIII.H.9? | |
| Did you inspect Permittee-owned parking lots exposed to stormwater that meet either criteria listed in Part VIII.H.9 at least twice per month? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| For the above, how many inspections were conducted during this reporting year? [VIII.H.9] | |
| For the owned parking lots exposed to stormwater, how many cleanings were conducted in total for this reporting year? [VIII.H.9] | |

6.6b) Street Sweeping: Complete the table below [VIII.H.8].

| | Total Miles of Street ¹⁵ in Priority Category | Frequency of Street Sweeping (e.g., Twice a Month, Monthly, Annually) | Additional Notes |
|------------|--|---|------------------|
| Priority A | | | |
| Priority B | | | |
| Priority C | | | |

¹⁵ Permittees shall report the length of street swept in the “total miles of street” and/or “total curb miles of street”, depending on data availability.

6.7 Illicit Discharge Detection and Elimination (IDDE) Program [Order – VIII.I]

Complete the following items regarding the Illicit Discharge Detection and Elimination Program.

6.7a) IDDE Investigations: Complete the table below. Include illicit discharges detected through other inspection programs.

| | Number of Reported Illicit Discharges | Number of Investigations | Number Eliminated | Number Permitted or Exempt | If Not Eliminated or Permitted / Exempt, Explain. |
|---------------------------|---------------------------------------|--------------------------|-------------------|----------------------------|---|
| Illicit Discharges | | | | | |

6.7b) Enforcement Actions: Describe the number and nature of any enforcement actions taken related to illicit discharge detection and elimination program [Order – VIII.I.7].

(Provide information within this space)

6.7c) What means were provided to the public for public reporting of illicit discharges and other water quality impacts from stormwater and non-stormwater discharges into or from MS4s? [VIII.I.6]

| Category | Yes | No |
|-----------------------------------|--------------------------|--------------------------|
| Telephone hotline | <input type="checkbox"/> | <input type="checkbox"/> |
| Email address | <input type="checkbox"/> | <input type="checkbox"/> |
| Web-based form / reporting portal | <input type="checkbox"/> | <input type="checkbox"/> |
| Other (specify) | <input type="checkbox"/> | <input type="checkbox"/> |

6.7d) Did you document all public reports of illicit discharges and track all investigations? If no, explain why. [Order – VIII.I.8]

(Provide information within this space)

6.7e) Additional Information. If desired, provide additional information regarding implementation of the Illicit Discharge Detection and Elimination Program.

(Provide information within this space)

7. Trash Reporting

Complete the following items in this section.

7.1 Trash TMDL Compliance [Order – IV.B.3]

7.1a) If you are subject to Trash TMDLs, complete and attach the provided “Trash TMDL Reporting Forms” in Attachment I of the Order for each applicable Trash TMDL. Report your compliance with the applicable interim and/or final Effluent Limits for trash below. If compliance with the applicable interim and/or final Effluent Limits for trash has not been achieved, explain why.

(Provide information within this space)

7.1b) Mark the compliance approach you have implemented for any applicable Trash TMDLs.

- Full Capture Systems
- Mass Balance
- Scientifically Based Alternative
- Minimum Frequency of Assessment and Collection

7.1c) Complete the table below regarding the catch basins within your jurisdiction.

| | Retrofitted with Full Capture Systems | Retrofitted with Partial Capture Devices | Retrofitting Infeasible | Not Retrofitted | Total Number of Catch Basins within Jurisdiction |
|------------------|--|---|--------------------------------|------------------------|---|
| Owned | | | | | |
| Not Owned | | | | | |
| Total | | | | | |

(Provide additional information within this space)

7.1d) If relying on full capture systems, are the maintenance records of the full capture systems within your jurisdiction up-to-date and available for inspection by the Los Angeles Water Board? [Order – IV.B.3.b.i.(c)]

(Provide information within this space)

7.1e) If implementing a Plastic Pellet Monitoring and Reporting Plan (PMRP), report any known spills (including names and locations) from preproduction plastic (i.e., plastic pellet) generating, transfer, processing, and storage facilities within this reporting year, explain the actions taken for cleanup, and describe the measures taken to prevent future incidents.

(Provide information within this space)

- 7.1f) If implementing a PMRP, how many new preproduction plastic generating, transfer, processing, and storage facilities have been added in Permittee’s jurisdiction within this reporting year that have not been addressed in the PMRP?

(Provide information within this space)

7.2 Trash Discharge Prohibitions Compliance [Order – III.B]

7.2a) For areas not addressed by a Trash TMDL, and for Permittees that have regulatory authority over Priority Land Uses (PLUs) or Designated Land Uses, indicate the compliance method that was selected in response to the Los Angeles Water Board’s 13383 Order issued on August 18, 2017 as the method to comply with the prohibition of discharge in PLUs within Permittee’s jurisdiction.

- Track 1 (Complete items 7.2b – 7.2e)
- Track 2 (Complete items 7.2f – 7.2l)

7.2b) If using Track 1 compliance, complete the table below regarding the catch basins within PLUs, designated land uses, and equivalent alternate land uses in your jurisdiction.

| | Retrofitted with Full Capture Systems | Retrofitting Infeasible | Not Retrofitted | Total Number of Catch Basins within Jurisdiction |
|------------------|--|--------------------------------|------------------------|---|
| Owned | | | | |
| Not Owned | | | | |
| Total | | | | |

(Provide additional information within this space)

7.2c) If using Track 1 compliance, complete and attach the “Trash Discharge Prohibitions Reporting Form” provided in Attachment I of the Order for PLUs, designated land uses, and equivalent alternate land uses within your jurisdiction.

(Provide information within this space)

7.2d) If using Track 1 compliance, provide a map showing the location and drainage area in PLUs, designated land uses, and equivalent alternate land uses within your jurisdiction served by full capture systems.

(Provide information within this space)

7.2e) If using Track 1 compliance, did you properly operate and maintain all full capture systems in PLUs, designated land uses, and equivalent alternate land uses within your jurisdiction?

(Provide information within this space)

7.2f) If using Track 2 compliance, complete the table below regarding the catch basins within PLUs, designated land uses, and equivalent alternate land uses in your jurisdiction.

| | Retrofitted with Full Capture Systems | Retrofitted with Partial Capture Devices | Not Retrofitted | Total Number of Catch Basins within Jurisdiction |
|------------------|--|---|------------------------|---|
| Owned | | | | |
| Not Owned | | | | |
| Total | | | | |

(Provide additional information within this space)

7.2g) If using Track 2 compliance, provide a map of the location and drainage area in PLUs, designated land uses, and equivalent alternate land uses within your jurisdiction served by full capture systems, multi-benefit projects, other treatment controls, and/or institutional controls.

(Provide information within this space)

7.2h) If using Track 2 compliance, did you properly operate and maintain all full capture systems, multi-benefit projects, treatment controls, and/or institutional controls in PLUs, designated land uses, and equivalent alternate land uses within your jurisdiction?

(Provide information within this space)

7.2i) If using Track 2 compliance, explain what type of and how many treatment controls, institutional controls, and/or multi-benefit projects have been used and in what locations?

(Provide information within this space)

7.2j) If using Track 2 compliance, what is the effectiveness of the total combination of treatment controls, institutional controls, and multi-benefit projects employed? Explain the metric to measure the effectiveness.

(Provide information within this space)

7.2k) If using Track 2 compliance, explain whether the amount of trash discharged from the MS4 decreased from the previous year. If so, by how much? If not, explain why. To determine the amount of trash discharged from the MS4 and to report on progress towards achieving the interim/ final compliance, provide the results of the trash levels using the methodology identified in the Trash Implementation Plan (e.g., Visual Trash Assessment Approach or other equivalent trash assessment methodology).

(Provide information within this space)

7.2l) If using Track 2 compliance, explain whether 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.

(Provide information within this space)

8. Additional Information (Optional)

Provide any additional information in this section.

You may use this section to report any additional information not specified in Sections 2-7 such as information better presented outside of the report form structure, data limitations that prevented the required information from being obtained, and additional detailed summary table describing control measures.

(Provide information within this space and/or reference any attachment(s))

[WMP Name]

Reporting Period [MDY-MDY]

**Regional Phase I MS4 NPDES Permit
Order No. R4-2021-0105
NPDES No. CAS004004**

**Watershed Management Program Progress Report Form
Reporting Period [MDY-MDY]**

| | |
|--|--|
| Watershed Management Program Name | |
| Participating Permittee(s) | |
| Date of Watershed Management Program Progress Report | |
| Initial Approval Date of Watershed Management Program (according to Table 12 or Part IX.G.3 of the Order) | |

Note that Permittees will not be able to propose modifications to their WMP in the Watershed Management Program Progress Report Form. Any modification(s) shall be requested in writing explaining the nature of the proposed modification and justification for consideration by the Los Angeles Water Board [*Order – IX.C and IX.E.2*].

1.1 **Watershed Control Measure Milestone Progress.** Summarize the progress on all Watershed Control Measure requirements and dates for their achievement (milestones) identified in your WMP that were required to be achieved by the end of this Reporting Period. The milestones for specific projects may be reported as cumulative number of projects to be implemented (e.g., “Recipes for Compliance”; installation of prescribed volume of BMP capacity by a certain date; Percent Load Reduction of bacteria pollutant by a certain date), cumulative storm volume addressed¹ by control measures (e.g., LID, new/re-development projects, regional projects), or other metric. However, progress must be reported as percent completion of the selected milestone metric. If any milestones were not achieved, give a clear description of the action/milestone, explain the delay in control measure implementation, and provide the revised action/milestone. The summary must also include a list of (a) Permittees and non-Permittees collaborated with for achievement of milestones, (b) funding sought, (c) funding obtained, (d) technical assistance received (e.g., through the Safe Clean Water Program Watershed Area Steering Committee), (e) additional local community co-benefits such as clean streets (including, without limitation, street sweeping, litter abatement, etc.), more parks and green spaces, reduced heat island effect, reduced flooding, water supply augmentation, neighborhood beautification, and job creation, and (f) other co-benefits and resources accruing to disadvantaged communities as identified on CalEnviroScreen². The format for this item is a text box but you are encouraged to provide this information in an appropriate format as an attachment with spreadsheets, graphs, and/or other elements that would concisely convey the required information.

(Provide information within this space or as an attachment)

¹ Includes the volume of water captured, infiltrated, retained, treated, diverted or otherwise addressed by a watershed control measure.

² <https://oehha.ca.gov/calenviroscreen>

1.2 **Watershed Control Measures Completed.** Complete Table 1a, on an Excel spreadsheet. Include all watershed control measures (aside from minimum control measures specified in Part VIII of the Order) in the Watershed Management Program completed since the effective date of the Order for Ventura County Permittees, since March 28, 2014 for the City of Long Beach, and since December 28, 2012 for other Los Angeles County Permittees. This table is cumulative—i.e., the table should include all the control measures completed from the time of the aforementioned dates to the end of this reporting period. Structural control measures as well as non-structural control measures (e.g., enhanced MCMs such as incentive programs, outreach and conservation programs, etc.) should be included in this table. If information is not available for a particular field, the field should indicate “Not Applicable” (N/A) [Order – IX].

Table 1a: Watershed Control Measures Completed

| Project Name | Previous Project Name(s) if Changed | Permittee(s) | Subwatershed | Project Type ³ | Description | Latitude ⁴ | Longitude ⁵ | Required Completion Date in WMP | Actual Completion Date | Capital Costs [\$] | Cumulative O&M Costs [\$] | Funding Source(s) | Project Footprint ⁶ [Acres] | Drainage Area ⁷ [Acres] | Projected Storage Capacity in WMP [Acre-feet] | Actual Storage Capacity ⁸ [Acre-feet] | Cumulative Volume Addressed ⁹ [Acre-feet] |
|--------------|-------------------------------------|--------------|--------------|---------------------------|-------------|-----------------------|------------------------|---------------------------------|------------------------|--------------------|---------------------------|-------------------|--|------------------------------------|---|--|--|
| | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | |

³ Choose from Regional Infiltration Facility, Regional Treatment Facility, Green Street, Diversion to Sewer, Non-Structural, or Other (specify). For Regional Treatment Facility projects, include a description of the treatment process and design specifications in section 1.2a. For Green Street projects, include linear miles of the green street in section 1.2a.

⁴ Use decimal degrees (DD) format.

⁵ Use decimal degrees (DD) format.

⁶ The area footprint of the project.

⁷ The area tributary to the project.

⁸ The project’s physical storage capacity to hold water. For example, for a regional infiltration facility, this would be the storage volume of the storage units plus the void space of backfill materials.

⁹ Includes the cumulative volume of water captured, infiltrated, retained, treated, diverted, or otherwise addressed by the project.

1.2a) Additional Information. Provide additional information regarding the Watershed Control Measures completed (e.g., other compliance metrics and a list of (a) Permittees and non-Permittees collaborated with for achievement of milestones, (b) funding sought, (c) funding obtained, (d) technical assistance received (e.g., through the Safe Clean Water Program Watershed Area Steering Committee), (e) additional local community co-benefits such as clean streets (including, without limitation, street sweeping, litter abatement, etc.), more parks and green spaces, reduced heat island effect, reduced flooding, water supply augmentation, neighborhood beautification, and job creation, and (f) other co-benefits and resources accruing to disadvantaged communities as identified on CalEnviroScreen).

(Provide information within this space or as an attachment)

1.3 **Watershed Control Measures Planned and In Progress.** Complete Table 1b, on an Excel spreadsheet. Include all watershed control measures (aside from minimum control measures specified in Part VIII of the Order) in the Watershed Management Program that are planned and in progress. Structural control measures as well as non-structural control measures (e.g., enhanced MCMs such as incentive programs, outreach and conservation programs, etc.) should be included in this table. If information is not available for a particular field, the field should indicate “Not Applicable” (N/A) [Order – IX].

Table 1b: Watershed Control Measures Planned and In Progress

| Project Name | Permittee(s) | Subwatershed | Project Type ¹⁰ | Description | Latitude ¹¹ | Longitude ¹² | Required Completion Date in WMP | Estimated Completion Date | Estimated Capital Costs [\$] | Estimated Annual O&M Costs [\$] | Funding Source(s) | Project Footprint ¹³ [Acres] | Drainage Area ¹⁴ [Acres] | Projected Storage Capacity in WMP ¹⁵ [Acre-feet] | Status ¹⁶ |
|--------------|--------------|--------------|----------------------------|-------------|------------------------|-------------------------|---------------------------------|---------------------------|------------------------------|---------------------------------|-------------------|---|-------------------------------------|---|----------------------|
| | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | |

¹⁰ Choose from *Regional Infiltration Facility, Regional Treatment Facility, Green Street, Diversion to Sewer, Non-Structural, or Other*. For Regional Treatment Facility projects, include a description of the treatment process and design specifications in section 1.3a.

¹¹ Use decimal degrees (DD) format.

¹² Use decimal degrees (DD) format.

¹³ The area footprint of the project.

¹⁴ The area tributary to the project.

¹⁵ The project’s physical storage capacity to hold water. For example, for a regional infiltration facility, this would be the storage volume of the storage units plus the void space of backfill materials.

¹⁶ Description of the project’s status. This may include the project implementation phase (e.g., funding, design, construction).

[WMP Name]

Reporting Period [MDY-MDY]

1.3a) Additional Information. Provide additional information regarding the Watershed Control Measures planned and in progress (e.g., other compliance metrics and a list of (a) Permittees and non-Permittees collaborated with for achievement of milestones, (b) funding sought, (c) funding obtained, (d) technical assistance received (e.g., through the Safe Clean Water Program Watershed Area Steering Committee), (e) additional local community co-benefits such as clean streets (including, without limitation, street sweeping, litter abatement, etc.), more parks and green spaces, reduced heat island effect, reduced flooding, water supply augmentation, neighborhood beautification, and job creation, and (f) other co-benefits and resources accruing to disadvantaged communities as identified on CalEnviroScreen).

(Provide information within this space or as an attachment)

1.4 **Water Body Pollutant Combination (WBPC) Compliance.** Complete Table 1c on an Excel spreadsheet for all WBPCs identified in the Watershed Management Program. If information is not available for a particular field, the field should indicate “Not Applicable” (N/A) [Order – X].

Table 1c: WBPC Compliance

| WBPC Category (1, 2, or 3) | Pollutant | Receiving Water | Weather Condition (Wet, Dry, N/A) | Interim or Final | Deadline | Deadline Met? (Yes, No, N/A) | Method of Compliance ¹⁷ |
|----------------------------|-----------|-----------------|-----------------------------------|------------------|----------|------------------------------|------------------------------------|
| | | | | | | | |

1.5 **Additional Information.** Attach any additional information or reports pertinent to the WMP to this report. Provide a brief summary of these attachments below.

(Provide information within this space or as an attachment)

¹⁷ Choose between the following four options: (1) outfall monitoring, (2) receiving water monitoring, (3) no direct or indirect discharge from MS4 to the applicable receiving water, or (4) full compliance of an approved WMP. If selecting option (4), reference applicable projects in Table 1a and 1b.

**Regional Phase I MS4 NPDES Permit
Order No. R4-2021-0105
NPDES No. CAS004004**

**Annual Report Form
Reporting Year [XX-XX]**

Sections 2-8 of this form include items to be reported individually by each Permittee for this reporting year unless otherwise indicated.

| | |
|----------------------------------|--|
| Permittee Name | |
| Permittee Program Contact | |
| Title | |
| Address | |
| City | |
| Zip Code | |
| Phone | |
| Email | |

2. Legal Authority and Certification

Complete the items on this page.

2.1 Answer the following questions on Legal Authority [Order – VI.B.2].

| Question | Yes | No |
|--|--------------------------|--------------------------|
| Is there a current statement certified by the Permittee’s chief legal counsel that the Permittee has the legal authority within its jurisdiction to implement and enforce each of the requirements contained in 40 CFR § 122.26(d)(2)(i)(A-F) and the Order? | <input type="checkbox"/> | <input type="checkbox"/> |
| Has the above statement been developed or updated within this reporting year? If yes, attach the updated legal authority statement to this report. | <input type="checkbox"/> | <input type="checkbox"/> |

2.2 Complete the required certification below [Attachment D – V.B.5].

“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.”

Signature of either a principal executive officer, ranking elected official, or by a duly authorized representative of a principal executive officer or ranking elected official. A person is a duly authorized representative only if:

- a. The authorization is made in writing by a principal executive officer or ranking elected official.
- b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)
- c. The written authorization is submitted to the Regional Board.

If an authorization of a duly authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization will be submitted to the Regional Board prior to or together with any reports, information, or applications, to be signed by an authorized representative.

Signature

Title

Date

3. Program Expenditures

Complete the following items in this section.

3.1 Source(s) of funds used in this reporting year, and proposed for the next reporting year, to meet necessary expenditures on the Permittee's stormwater management program [*Order – VI.C.2*].

(Provide information within this space)

3.2 Complete the table below on program expenditures for this reporting year [Attachment D – VII.A.5]. Enter “0” for any fields that do not apply.

| Category | | Capital Expenditures ¹ | Land Costs | Personnel Cost | Consultant (s) Cost | Overhead Costs | Construction Costs | Permit(s), Operation, and Maintenance (O&M) Costs | Total Expenditures for this Reporting Year | Program Budget for Next Reporting Year |
|--|--|-----------------------------------|------------|----------------|---------------------|----------------|--------------------|---|--|--|
| (1) Program Management² | | | | | | | | | | |
| (2) NPDES MS4 Permit Fees | | | | | | | | | | |
| (3) Minimum Control Measures (MCMs) | PIPP | | | | | | | | | |
| | Industrial / Commercial Facilities Program | | | | | | | | | |
| | Planning & Land Development Program³ | | | | | | | | | |
| | Construction Program | | | | | | | | | |
| | Public Agency Activities Program | | | | | | | | | |
| | IDDE Program | | | | | | | | | |
| | Additional Institutional BMPs / “Enhanced” MCMs | | | | | | | | | |

¹ Exclude land costs.

² Including but not limited to program management plans, mail, legal support, travel, conferences, printing, producing manuals and handbooks, annual/semi-annual reporting, development and maintenance of any electronic databases required by this permit including GIS, and other non-labor costs.

³ Including but not limited to environmental review, development project approval and verification, and permitting and licensing costs specific to the provisions of the Order that are beyond the scope of a normal plan review, permitting, and inspection process.

| Category | | Capital Expenditures ¹ | Land Costs | Personnel Cost | Consultant (s) Cost | Overhead Costs | Construction Costs | Permit(s), Operation, and Maintenance (O&M) Costs | Total Expenditures for this Reporting Year | Program Budget for Next Reporting Year |
|--|---|-----------------------------------|------------|----------------|---------------------|----------------|--------------------|---|--|--|
| (4) TMDL Implementation Plan / Watershed Management Program Development⁴ | | | | | | | | | | |
| (5) Projects⁵ | Distributed Projects and Green Streets | | | | | | | | | |
| | Regional Projects | | | | | | | | | |
| | Other Structural BMPs | | | | | | | | | |
| (6) Trash Compliance | Trash TMDLs⁶ | | | | | | | | | |
| | Discharge Prohibitions - Trash⁷ | | | | | | | | | |

⁴ Include costs for development and/or revision of Implementation Plans (e.g., TMDL Implementation Plan, Watershed Management Programs including Reasonable Assurance Analysis). Specify which plans these are in Section 3.3.

⁵ If a Permittee is implementing a project collaboratively, the Permittee should only include the portion of the project cost that it is assuming.

⁶ Includes full capture, partial capture, and institutional controls used to comply with trash TMDLs.

⁷ Includes full capture, partial capture, and institutional controls used to comply with Statewide Trash Provisions.

| Category | | Capital Expenditures ¹ | Land Costs | Personnel Cost | Consultant (s) Cost | Overhead Costs | Construction Costs | Permit(s), Operation, and Maintenance (O&M) Costs | Total Expenditures for this Reporting Year | Program Budget for Next Reporting Year |
|-------------------------------|---|-----------------------------------|------------|----------------|---------------------|----------------|--------------------|---|--|--|
| (7) Monitoring | Monitoring Plan Development⁸ | | | | | | | | | |
| | Outfall and Receiving Water Quality Monitoring | | | | | | | | | |
| | BMP Effectiveness Monitoring | | | | | | | | | |
| | Regional Studies⁹ | | | | | | | | | |
| | Special Studies¹⁰ | | | | | | | | | |
| (8) Other¹¹ | | | | | | | | | | |
| TOTAL | | | | | | | | | | |

3.3 Additional Information: Please add any additional comments on stormwater expenditures below.

(Provide information within this space)

⁸ Includes costs to develop and/or revise monitoring plans (e.g., TMDL Monitoring Plan, IMP, CIMPs, non-stormwater screening and monitoring program). Specify which plans these are in Section 3.3.

⁹ Includes costs to comply with Part X (Regional Studies) of the Attachment E-MRP.

¹⁰ Includes costs to comply with Part XI (Special Studies) of the Attachment E-MRP.

¹¹ Enter costs in this table but specify what this “Other” category consists of in Section 3.3.

4. Non-Stormwater Discharge Prohibitions

Complete the following items in this section.

4.1 Provide an assessment of the effectiveness of the Permittee’s control measures in effectively prohibiting non-stormwater discharges into the MS4 to the receiving water [Order – III.A].

(Provide information within this space)

4.2 Describe sources of non-stormwater discharges determined to be a NPDES permitted discharge, a discharge subject to CERCLA, a conditionally exempt non-stormwater discharge, or entirely comprised of natural flows [Order - III.A.2].

(Provide information within this space)

4.3 Check all that apply [Order – III.A.4].

| | |
|--|--------------------------|
| There has been non-stormwater discharge(s) to an ASBS | <input type="checkbox"/> |
| The non-stormwater discharge(s) to the ASBS caused or contributed to an exceedance receiving water limitations, WQBELs, water quality objectives in Chapter II of the Ocean Plan, or an undesirable alteration in natural ocean water quality in an ASBS | <input type="checkbox"/> |
| Additional BMPs were implemented to address the exceedances above | <input type="checkbox"/> |

4.4 If you had non-stormwater discharge(s) to an ASBS that caused or contributed to an exceedance receiving water limitations, WQBELs, water quality objectives in Chapter II of the Ocean Plan, or an undesirable alteration in natural ocean water quality in an ASBS, describe what additional BMPs were implemented to address these exceedances. How effective were those BMPs in addressing the exceedances? [Order - III.A.4.b]

(Provide information within this space)

4.5 Did you develop and implement procedures to ensure that a discharger, if not a named Permittee in this Order, fulfilled the requirements of Part III.A.5.a.i-vi? If so, provide a link to where the procedures may be found or attach to this Annual Report [Order – III.A.5.a].

(Provide information within this space)

4.6 Did you organize and maintain records of all notifications, local permits, and non-stormwater discharges greater than 100,000 gallons in an electronic database? (Yes or No) [Order – III.A.5.b]

(Provide information within this space)

4.7 Did you determine that any of the conditionally exempt non-stormwater discharges, with the exception of essential non-stormwater discharges, identified per Part III.A.5.c of the Order is a source of pollutants that causes or contributes to an exceedance of applicable receiving water limitations and/or water quality-based effluent limitations? If so, how many of the conditionally exempt non-stormwater discharges in Part III.A.3.b of the Order did you determine to be sources of pollutants that caused or contributed to an exceedance of receiving water limitations or WQBELs? If you made that determination, which type(s) of non-stormwater discharges in Part III.A.3.b were sources of pollutants? [Order – III.A.6]

(Provide information within this space)

4.8 If you answered yes to the question 4.7 above, check all that apply [Order – III.A.6].

| | |
|---|--------------------------|
| Effectively prohibit the non-stormwater discharge into the MS4 | <input type="checkbox"/> |
| Impose conditions in addition to those in Table 5 of the Order, subject to approval by the Los Angeles Water Board Executive Officer, on the non-stormwater discharge such that it will not be a source of pollutants | <input type="checkbox"/> |
| Require diversion of the non-stormwater discharge to the sanitary sewer | <input type="checkbox"/> |
| Require treatment of the non-stormwater discharge prior to discharge to the receiving water | <input type="checkbox"/> |

5. Non-Stormwater Outfall Screening and Monitoring

Complete the following items in this section.

5.1 Complete the tables below regarding your Non-Stormwater Outfall-Based Screening and Monitoring Program [Attachment E – VII].

| Receiving Water | No. of Outfalls within your Jurisdiction | No. of Outfalls Screened during this Reporting Year | No. of Screening Events During This Reporting Year | Outfalls with Significant Non-Stormwater Discharges ¹² | | | |
|----------------------|--|---|--|---|--------------|---|-----------------------|
| | | | | Total Confirmed | Total Abated | Total Attributed to Allowable Sources ¹³ | Total Being Monitored |
| [RW 1] | | | | | | | |
| (add rows as needed) | | | | | | | |
| Total | | | | | | | |

| Method of Abatement | Total No. |
|---------------------------------|-----------|
| Low Flow Diversion (LFD) | |
| Illicit Discharges Eliminated | |
| NPDES Permitted | |
| Retention | |
| Discharge No Longer Observed | |
| Other (describe in Section 5.3) | |

5.2 Los Angeles County Permittees: Did you consider dry weather receiving water monitoring data downstream of the outfalls and other relevant information to determine if re-screening is necessary for any of the previously screened outfalls that did not have significant non-stormwater discharge? If so, explain how many outfalls require re-screening and when re-

¹² “Significant Non-Stormwater Discharges” as identified by the Permittee per Part VII.B of the Attachment E - MRP.

¹³ “Allowable Sources” refers to the discharges exempt from the Prohibition of Non-Stormwater Discharges listed in Part III.A.2 of the Order.

screening will be completed. If applicable, describe any changes made to the program [Attachment E – VII.D.2].

(Provide information within this space)

5.3 Additional Information. If desired, provide additional information regarding Non-Stormwater Outfall Screening and Monitoring.

(Provide information within this space)

6. Minimum Control Measures

Complete the following items in this section.

6.1 General Provisions [Order – VIII.A.3]

Did you train all your employees in targeted positions (whose interactions, jobs, and activities affect stormwater quality) on the requirements of the Minimum Control Measures in this Order, or did you ensure contractors performing privatized/contracted municipal services are appropriately trained to: (a) Promote a clear understanding of the potential for activities to pollute stormwater, (b) Identify opportunities to require, implement, and maintain appropriate BMPs in their line of work? (Yes or No)

(Provide information within this space)

6.2 Public Information and Participation Program [Order - VIII.D]

Complete the following item regarding the Public Information and Participation Program.

6.2a) Summarize opportunities created for public engagement in stormwater planning and program implementation to raise public awareness of stormwater program benefits and needs (e.g., *Don't Trash California* campaign). Note whether activities were performed by the jurisdiction or as part of a watershed, regional, or county-wide group [VIII.D.3.a].

(Provide information within this space)

6.2b) Summarize educational activities and public information activities to facilitate stormwater and non-stormwater pollution prevention and mitigation. What pollutants were targeted? What audiences were targeted? Note whether activities were performed by the jurisdiction or as part of a watershed, regional, or county-wide group [VIII.D.3.b].

(Provide information within this space)

6.2c) In selecting targeted pollutants for public information/education topics, did you consider the proper management and disposal of (1) vehicle wastes (e.g., used oil, used tires); (2) household waste materials (i.e., trash and household hazardous waste, including personal care products, pharmaceuticals, and household cleaners); (3) pesticides, herbicides, and fertilizers; (4) green waste; and (5) animal wastes? (Yes or No) If no, what other materials were considered? [VIII.D.3.b.i]

(Provide information within this space)

6.2d) Which of the following methods were selected to distribute public information/ educational materials? [VIII.D.3.b.ii]

| Category | Yes | No |
|--|--------------------------|--------------------------|
| Internet-based platforms (e.g., stormwater websites, social media websites and applications) | <input type="checkbox"/> | <input type="checkbox"/> |
| Commercial points-of-purchase (e.g., automotive parts stores, home improvement centers/ hardware stores/ paint stores, landscape / gardening centers, pet shops) | <input type="checkbox"/> | <input type="checkbox"/> |
| Schools (K- 12) | <input type="checkbox"/> | <input type="checkbox"/> |
| Radio/television | <input type="checkbox"/> | <input type="checkbox"/> |
| Community events | <input type="checkbox"/> | <input type="checkbox"/> |
| Other (specify) | <input type="checkbox"/> | <input type="checkbox"/> |

6.2e) Did you document and track information on the implemented Public Information and Participation activities including activity, date(s), method of dissemination, targeted behavior, targeted pollutant, targeted audience, culturally effective method(s), other information necessary for the metrics identified in Part VIII.D.4.a of the Order, and metric for measuring effectiveness? (Yes or No) [VIII.D.4.b]

(Provide information within this space)

6.2f) What metrics did you use to measure the effectiveness in achieving the objectives of the Public Information and Participation Program? Considering those metrics, is your Public Information and Participation program effective? Explain [VIII.D.4.a].

(Provide information within this space)

6.2g) Additional Information. If desired, provide additional information regarding implementation of the Public Information and Participation Program.

(Provide information within this space)

6.3 Industrial and Commercial Facilities Program [Order – VIII.E]

Complete the following items regarding the Industrial and Commercial Facilities Program.

6.3a) Watershed-Based Inventory:

| Question | Yes | No |
|---|--------------------------|--------------------------|
| Have you updated your watershed-based inventory or database of all industrial and commercial facilities within your jurisdiction that are critical sources ¹⁴ of stormwater pollution identified in Part VIII.E.2 of the Order (inventory shall be updated at least once every 2 years)? | <input type="checkbox"/> | <input type="checkbox"/> |

6.3b) If you answered yes to question 6.3a above, what is the total number of facilities in your inventory list?

(Provide information within this space)

6.3c) If you answered no to question 6.3a above, when will you update the inventory list?

(Provide information within this space)

6.3d) Commercial Facilities [VIII.E.3]:

| Question | Response |
|---|----------|
| In implementing the Outreach Program, how many commercial facilities did you reach out to during this reporting year? | |
| In implementing the Business Assistance Program, how many commercial facilities did you assist during this reporting year? | |
| How many commercial facilities did you inspect during this reporting year? | |
| Of the commercial facilities inspected during this reporting year, how many were the first, second, third, etc. round of inspections? For example, report x number of first-round inspections, y number of second-round inspections, z number of third-round inspections, etc. Each round of inspections corresponds to the requirement to conduct an inspection every two years. | |
| How many of the total commercial facility inspections had stormwater violation(s) during this reporting year? | |

¹⁴ Part VIII.E.2.a of the Regional MS4 Permit summarizes “critical sources” to be tracked.

6.3e) Industrial Facilities [VIII.E.4]:

| Question | Response |
|---|----------|
| How many facilities from question 6.3b are industrial facilities with SIC codes that require enrollment in the IGP? (in this reporting year)? | |
| How many industrial facilities did you report to the Los Angeles Water Board as non-filers during this reporting year? | |
| In implementing the Business Assistance Program, how many industrial facilities did you assist during this reporting year? | |
| How many Industrial facilities did you inspect during this reporting year? | |
| Of the commercial facilities inspected during this reporting year, how many were the first, second, third, etc. round of inspections? For example, report x number of first-round, y number of second-round, and z number of third-round, etc. Each round of inspections corresponds to the requirement to conduct an inspection every two years. | |
| How many of the total industrial facility inspections had stormwater violation(s) during this reporting year? | |

6.3f) Enforcement Actions: Describe the number and nature of any enforcement actions taken related to the industrial and commercial facilities program [VIII.E.6].

(Provide information within this space)

6.3g) Additional Information. If desired, provide additional information regarding implementation of the Industrial and Commercial Facilities Program.

(Provide information within this space)

6.4 Planning and Land Development Program [VIII.F]

Complete the following items regarding the Planning and Land Development Program.

6.4a) Priority Development Projects: Complete the table below for Priority Development Projects as of the end of this Reporting Year [VIII.F.1].

| Development Type | Number of Priority Development Projects Completed During This Reporting Year | Number of Priority Development Projects In-Progress |
|------------------|--|---|
| New Development | | |
| Redevelopment | | |

6.4b) Use of Alternative Compliance Measures for Priority Development Projects. Provide the number of Priority Development Projects completed during this Reporting Year that utilized alternative compliance measures per Part VIII.F.4.b of the Order.

| Category | Number of Projects |
|------------------------------------|--------------------|
| On-site Biofiltration | |
| On-site Flow-based BMPs | |
| Off-site Infiltration | |
| Groundwater Replenishment Projects | |
| Off-site Retrofit Projects | |
| Other | |

6.4c) Exemptions to Priority Development Project Performance Requirements. If the Permittee is implementing an approved Local Ordinance Equivalence or an approved Regional Stormwater Mitigation Program per Part VIII.F.1.c, describe the area covered by these exemptions; and the number and names of Priority Development Projects that were exempted from the Order’s Priority Development Project Structural BMP Performance Requirements.

(Provide information within this space)

6.4d) Priority Development Project Greater Than 50 Acres. If applicable, provide information on any Priority Development Projects with a project area greater than 50 acres that were completed during this Reporting Year or are currently in-progress. Information should include the name and location of the project(s) and whether the project(s) are new development or redevelopment.

(Provide information within this space)

6.4e) Hydromodification Management: If applicable, provide information on the name, location, and nature of any projects requiring hydromodification controls that were completed or in-progress within this Reporting Year [VI.F.2].

(Provide information within this space)

6.4f) Exemptions to Hydromodification Controls: Are there any areas where assessments of downstream channel conditions and proposed discharge hydrology indicate that adverse hydromodification effects to beneficial uses of Natural Drainage Systems are

unlikely, per Part VIII.F.2.b? If so, what are the numbers and names of the New Development and Redevelopment projects exempt from implementation of hydromodification controls?

(Provide information within this space)

6.4g) Tracking, Inspection and Enforcement of Post-Construction BMPs: Describe the number and nature of any enforcement actions taken related to the planning and land development program [VIII.F.3.c.v].

| Question | Yes | No |
|--|--------------------------|--------------------------|
| Does your program implement a GIS or other electronic system for tracking Priority Development Projects and Hydromodification Management Projects that at a minimum contains all the information required by Permit? | <input type="checkbox"/> | <input type="checkbox"/> |
| Does your program inspect all Priority Development Projects and Hydromodification Management Projects upon completion of construction and prior to issuance of occupancy certifications to ensure proper installation of post-construction BMPs? | <input type="checkbox"/> | <input type="checkbox"/> |

6.4h) Additional Information. If desired, provide additional information regarding implementation of the Planning and Land Development Program.

(Provide information within this space)

6.5 Construction Program [Order – VIII.G]

Complete the following items regarding the Construction Program.

6.5a) Complete the table below. Only report numbers for sites less than 1 acre.

| Question | Response |
|---|----------|
| How many new sites of less than one acre commenced their activities during this reporting year? | |
| How many sites of less than one acre did you inspect during this reporting year? | |
| How many (if any) of the sites from the previous question had a BMP violation [VIII.G.4.b]? | |

6.5b) Complete the table below. Only report numbers for sites 1 acre or greater and construction sites less than 1 acre that are part of a common plan of development totaling 1 acre or greater.

| Question | Response |
|--|----------|
| What is the date of the latest update made to the site inventory [VIII.G.5.b]? | |

| Question | Response |
|---|----------|
| How many new sites of 1 acre or greater commenced their activities during this reporting year? | |
| How many sites of 1 acre or greater did you report to the Los Angeles Water Board as non-filers [VIII.G.5.a]? | |
| How many post-construction plans were reviewed during this reporting year [VIII.G.5.a]? | |
| How many of the plans from the previous question were approved during this reporting year? | |
| How many (if any) sites of 1 acre or greater did you inspect during this reporting year [VIII.G.5.c]? | |
| How many (if any) of the inspected sites were in violation of construction BMPs? | |
| How many (if any) of the inspected sites were in violation of post-construction plans? | |
| How many of the sites from the previous two questions were reported to the Los Angeles Water Board along with an inspection report? | |

6.5c) Enforcement Actions: Describe the number and nature of any enforcement actions taken related to the development construction program [VIII.G.6].

(Provide information within this space)

6.5d) Additional Information. If desired, provide additional information regarding implementation of the Construction Program.

(Provide information within this space)

6.6 Public Agency Activities Program [VIII.H]

Complete the following items regarding the Public Agency Activities Program.

6.6a) Answer the following questions regarding the Public Agency Activities Program.

| Question | Response |
|--|---|
| Did you maintain an updated inventory or database of all your owned or operated (i.e., public) facilities and activities within your jurisdiction that are potential sources of stormwater pollution? [VIII.H.2] | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| For the above inventory, what is the date of the latest update [VIII.H.2.c]? | |

| Question | Response |
|---|---|
| How many treatment control BMPs including post-construction control treatment BMPs do you own? [VIII.H.2.b.vi] | |
| For the above, how many inspections were conducted during this reporting year? [VIII.H.3.e] | |
| How many storm drain inlets do you own? | |
| How many of the above are labeled with a legible “no dumping” message? [VIII.H.6.c.i] | |
| Did you inspect the legibility of all the stencils or labels nearest each inlet prior to the wet season during this reporting year? [VIII.H.6.c.ii] | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If yes for the above, how many illegible stencils and labels were recorded? | |
| For the illegible stencils and labels recorded above, how many were re-stenciled and re-labeled within 180 days of inspection? For those not re-stenciled and re-labeled, explain why not. [VIII.H.6.c.iii] | |
| Did you visually monitor owned open channels and other drainage structures for trash and debris at least annually? [VIII.H.6.d.i] | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| How many miles of open channels do you own? | |
| Did you remove trash and debris from your open channels a minimum of once per year before the wet season? [VIII.H.6.d.ii] | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| How many parking lots exposed to stormwater do you own that meet either criteria listed in Part VIII.H.9? | |
| Did you inspect Permittee-owned parking lots exposed to stormwater that meet either criteria listed in Part VIII.H.9 at least twice per month? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| For the above, how many inspections were conducted during this reporting year? [VIII.H.9] | |
| For the owned parking lots exposed to stormwater, how many cleanings were conducted in total for this reporting year? [VIII.H.9] | |

6.6b) Street Sweeping: Complete the table below [VIII.H.8].

| | Total Miles of Street ¹⁵ in Priority Category | Frequency of Street Sweeping (e.g., Twice a Month, Monthly, Annually) | Additional Notes |
|-------------------|--|---|------------------|
| Priority A | | | |
| Priority B | | | |
| Priority C | | | |

¹⁵ Permittees shall report the length of street swept in the “total miles of street” and/or “total curb miles of street”, depending on data availability.

6.7 Illicit Discharge Detection and Elimination (IDDE) Program [Order – VIII.1]

Complete the following items regarding the Illicit Discharge Detection and Elimination Program.

6.7a) IDDE Investigations: Complete the table below. Include illicit discharges detected through other inspection programs.

| | Number of Reported Illicit Discharges | Number of Investigations | Number Eliminated | Number Permitted or Exempt | If Not Eliminated or Permitted / Exempt, Explain. |
|---------------------------|---------------------------------------|--------------------------|-------------------|----------------------------|---|
| Illicit Discharges | | | | | |

6.7b) Enforcement Actions: Describe the number and nature of any enforcement actions taken related to illicit discharge detection and elimination program [Order – VIII.1.7].

(Provide information within this space)

6.7c) What means were provided to the public for public reporting of illicit discharges and other water quality impacts from stormwater and non-stormwater discharges into or from MS4s? [VIII.1.6]

| Category | Yes | No |
|-----------------------------------|--------------------------|--------------------------|
| Telephone hotline | <input type="checkbox"/> | <input type="checkbox"/> |
| Email address | <input type="checkbox"/> | <input type="checkbox"/> |
| Web-based form / reporting portal | <input type="checkbox"/> | <input type="checkbox"/> |
| Other (specify) | <input type="checkbox"/> | <input type="checkbox"/> |

6.7d) Did you document all public reports of illicit discharges and track all investigations? If no, explain why. [Order – VIII.1.8]

(Provide information within this space)

6.7e) Additional Information. If desired, provide additional information regarding implementation of the Illicit Discharge Detection and Elimination Program.

(Provide information within this space)

7. Trash Reporting

Complete the following items in this section.

7.1 Trash TMDL Compliance [Order – IV.B.3]

7.1a) If you are subject to Trash TMDLs, complete and attach the provided “Trash TMDL Reporting Forms” in Attachment I of the Order for each applicable Trash TMDL. Report your compliance with the applicable interim and/or final Effluent Limits for trash below. If compliance with the applicable interim and/or final Effluent Limits for trash has not been achieved, explain why.

(Provide information within this space)

7.1b) Mark the compliance approach you have implemented for any applicable Trash TMDLs.

- Full Capture Systems
- Mass Balance
- Scientifically Based Alternative
- Minimum Frequency of Assessment and Collection

7.1c) Complete the table below regarding the catch basins within your jurisdiction.

| | Retrofitted with Full Capture Systems | Retrofitted with Partial Capture Devices | Retrofitting Infeasible | Not Retrofitted | Total Number of Catch Basins within Jurisdiction |
|------------------|--|---|--------------------------------|------------------------|---|
| Owned | | | | | |
| Not Owned | | | | | |
| Total | | | | | |

(Provide additional information within this space)

7.1d) If relying on full capture systems, are the maintenance records of the full capture systems within your jurisdiction up-to-date and available for inspection by the Los Angeles Water Board? [Order – IV.B.3.b.i.(c)]

(Provide information within this space)

7.1e) If implementing a Plastic Pellet Monitoring and Reporting Plan (PMRP), report any known spills (including names and locations) from preproduction plastic (i.e., plastic pellet) generating, transfer, processing, and storage facilities within this reporting year, explain the actions taken for cleanup, and describe the measures taken to prevent future incidents.

(Provide information within this space)

7.1f) If implementing a PMRP, how many new preproduction plastic generating, transfer, processing, and storage facilities have been added in Permittee’s jurisdiction within this reporting year that have not been addressed in the PMRP?

(Provide information within this space)

7.2 Trash Discharge Prohibitions Compliance [Order – III.B]

7.2a) For areas not addressed by a Trash TMDL, and for Permittees that have regulatory authority over Priority Land Uses (PLUs) or Designated Land Uses, indicate the compliance method that was selected in response to the Los Angeles Water Board’s 13383 Order issued on August 18, 2017 as the method to comply with the prohibition of discharge in PLUs within Permittee’s jurisdiction.

- Track 1 (Complete items 7.2b – 7.2e)
- Track 2 (Complete items 7.2f – 7.2l)

7.2b) If using Track 1 compliance, complete the table below regarding the catch basins within PLUs, designated land uses, and equivalent alternate land uses in your jurisdiction.

| | Retrofitted with Full Capture Systems | Retrofitting Infeasible | Not Retrofitted | Total Number of Catch Basins within Jurisdiction |
|------------------|--|--------------------------------|------------------------|---|
| Owned | | | | |
| Not Owned | | | | |
| Total | | | | |

(Provide additional information within this space)

7.2c) If using Track 1 compliance, complete and attach the “Trash Discharge Prohibitions Reporting Form” provided in Attachment I of the Order for PLUs, designated land uses, and equivalent alternate land uses within your jurisdiction.

(Provide information within this space)

7.2d) If using Track 1 compliance, provide a map showing the location and drainage area in PLUs, designated land uses, and equivalent alternate land uses within your jurisdiction served by full capture systems.

(Provide information within this space)

7.2e) If using Track 1 compliance, did you properly operate and maintain all full capture systems in PLUs, designated land uses, and equivalent alternate land uses within your jurisdiction?

(Provide information within this space)

7.2f) If using Track 2 compliance, complete the table below regarding the catch basins within PLUs, designated land uses, and equivalent alternate land uses in your jurisdiction.

| | Retrofitted with Full Capture Systems | Retrofitted with Partial Capture Devices | Not Retrofitted | Total Number of Catch Basins within Jurisdiction |
|------------------|--|---|------------------------|---|
| Owned | | | | |
| Not Owned | | | | |
| Total | | | | |

(Provide additional information within this space)

7.2g) If using Track 2 compliance, provide a map of the location and drainage area in PLUs, designated land uses, and equivalent alternate land uses within your jurisdiction served by full capture systems, multi-benefit projects, other treatment controls, and/or institutional controls.

(Provide information within this space)

7.2h) If using Track 2 compliance, did you properly operate and maintain all full capture systems, multi-benefit projects, treatment controls, and/or institutional controls in PLUs, designated land uses, and equivalent alternate land uses within your jurisdiction?

(Provide information within this space)

7.2i) If using Track 2 compliance, explain what type of and how many treatment controls, institutional controls, and/or multi-benefit projects have been used and in what locations?

(Provide information within this space)

7.2j) If using Track 2 compliance, what is the effectiveness of the total combination of treatment controls, institutional controls, and multi-benefit projects employed? Explain the metric to measure the effectiveness.

(Provide information within this space)

7.2k) If using Track 2 compliance, explain whether the amount of trash discharged from the MS4 decreased from the previous year. If so, by how much? If not, explain why. To determine the amount of trash discharged from the MS4 and to report on progress towards achieving the interim/ final compliance, provide the results of the trash levels using the methodology identified in the Trash Implementation Plan (e.g., Visual Trash Assessment Approach or other equivalent trash assessment methodology).

(Provide information within this space)

7.2l) If using Track 2 compliance, explain whether 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.

(Provide information within this space)

8. Additional Information (Optional)

Provide any additional information in this section.

You may use this section to report any additional information not specified in Sections 2-7 such as information better presented outside of the report form structure, data limitations that prevented the required information from being obtained, and additional detailed summary table describing control measures.

(Provide information within this space and/or reference any attachment(s))

ATTACHMENT I – TRASH REPORTING FORMS

**Compliance Summary Report:
 Certified Full Capture Systems**

| Col. 1 | Col. 2 | Col. 3 | Col. 4 | Col. 5 | Col. 6 | Col. 7 | Col. 8 | Col. 9 | Col. 10 |
|-------------------|--|---------------------------|-----------------------------------|-------------|----------------------------|----------------------------------|------------------------------|------------|----------|
| Reporting Year | Total Area | Total Area Served by FCSs | Percentage of Area Served by FCSs | Total # CBs | Total # CBs Served by FCSs | Percentage of CBs Served by FCSs | Required Trash Abatement (%) | Compliance | Comments |
| 15-Dec-2022 | | | #DIV/0! | | | #DIV/0! | | | |
| 15-Dec-2023 | | | #DIV/0! | | | #DIV/0! | | | |
| 15-Dec-2024 | | | #DIV/0! | | | #DIV/0! | | | |
| 15-Dec-2025 | | | #DIV/0! | | | #DIV/0! | | | |
| 15-Dec-2026 | | | #DIV/0! | | | #DIV/0! | 50% | #DIV/0! | |
| 15-Dec-2027 | | | #DIV/0! | | | #DIV/0! | | | |
| 15-Dec-2028 | | | #DIV/0! | | | #DIV/0! | | | |
| 15-Dec-2029 | | | #DIV/0! | | | #DIV/0! | | | |
| 15-Dec-2030 | | | #DIV/0! | | | #DIV/0! | 100% | #DIV/0! | |
| | | | | | | | | | |
| | | | | | | | | | |
| Notations: | | | | | | | | | |
| Form | Either report compliance using Priority Land Use (PLU), designated land uses, and equivalent alternate land use areas served by FCSs (Columns 2 through 4) and/or number of catch basins in PLU, designated land uses, and equivalent alternate land use areas served by FCSs (Columns 5 through 7). Continue to add to this form for each annual reporting period. | | | | | | | | |
| Column 1: | Reporting Year: The reporting year per Attachment E- Part XIV.A | | | | | | | | |
| Column 2: | Total PLU, designated land uses, and equivalent alternate land use area of jurisdiction (square kilometers) | | | | | | | | |
| Column 3: | Total PLU, designated land uses, and equivalent alternate land use area of jurisdiction served by FCSs (square kilometers) | | | | | | | | |
| Column 4: | Percentage of PLU, designated land uses, and equivalent alternate land use area of jurisdiction served by FCSs (Col. 4/Col. 3) | | | | | | | | |
| Column 5: | Total number of catch basins (CBs) in PLUs, designated land uses, and equivalent alternate land use within jurisdiction | | | | | | | | |
| Column 6: | Total number of catch basins (CBs) in PLUs, designated land uses, and equivalent alternate land use served by FCSs within jurisdiction | | | | | | | | |
| Column 7: | Percentage of CBs in PLUs, designated land uses, and equivalent alternate land use served by FCSs within jurisdiction (Col. 6/Col. 5) | | | | | | | | |
| Column 8: | Required Trash Abatement: Part III.B.2.d of the Order | | | | | | | | |
| Column 9: | Compliance: Yes, if Col. 4 and/or Col. 7 is greater than Col. 8; No, if Col. 4 and/or Col. 7 is less than Col.8 | | | | | | | | |
| Column 10: | Provide comments, if necessary. | | | | | | | | |

Certified Full Capture Systems Database

| Col. 1 | Col. 2 | Col. 3 | Col. 4 | Col. 5 | Col. 6 | Col. 7 | Col. 8 | Col. 9 | Col. 10 | Col. 11 |
|----------------------------|---|----------------------|-----------|-------------------|-----------------------|-------------------------|---------|----------|------------------|---|
| Certified FCS(s) Installed | FCS Location | Nearest Cross Street | FCS Owner | FCS Maintained By | FCS Installation Date | CB ID No. Served by FCS | CB Type | CB Owner | CB Maintained By | Frequency of FCS Maintenance and other O&M Comments |
| | | | | | | | | | | |
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| Notations: | | | | | | | | | | |
| Form | Insert additional rows, as necessary. | | | | | | | | | |
| Column 1: | Indicate certified full capture system (FCS) installed in PLU, designated land uses, and equivalent alternate land use areas | | | | | | | | | |
| Column 2: | Name FCS street location and indicate whether: WS - west side; ES - east side; NS - north side; SS - south side | | | | | | | | | |
| Column 3: | Name the nearest cross street location of the FCS | | | | | | | | | |
| Column 4: | FCS Owned by: Co - County of L.A./ Ventura; Flood - L.A. County Flood Control District/ Ventura County Watershed Protection District; Ci - City; Ca - Caltrans; Pr - Private; Oth - Others | | | | | | | | | |
| Column 5: | FCS Maintained by: Co - County of L.A./ Ventura; Flood - L.A. County Flood Control District/ Ventura County Watershed Protection District; Ci - City; Ca - Caltrans; Pr - Private; Oth - Others | | | | | | | | | |
| Column 6: | Provide the date when FCS was installed | | | | | | | | | |
| Column 7: | Indicate County or City assigned catch basin (CB) identification (ID) numbers | | | | | | | | | |
| Column 8: | Type of CB based on Standard Plan for Public Works Construction from Greenbook Committee, Public Works Standards, Inc. (i.e., 300-2; 301-2; 302-2; 303-2; etc.) | | | | | | | | | |
| Column 9: | CB Owned by: Co - County of L.A./ Ventura; Flood - L.A. County Flood Control District/ Ventura County Watershed Protection District; Ci - City; Ca - Caltrans; Pr - Private; Oth - Others | | | | | | | | | |
| Column 10: | CB maintained by: Co - County of L.A./ Ventura; Flood - L.A. County Flood Control District/ Ventura County Watershed Protection District; Ci - City; Ca - Caltrans; Pr - Private; Oth - Others | | | | | | | | | |
| Column 11: | Indicate frequency of FCS maintenance (e.g. inspection & cleanout: 1x/3 mo., 1x/6 mo., 1x Nov., 1x Jan., etc.) | | | | | | | | | |

**Mass Balance:
 Compliance Summary Report**

| Mass Balance Compliance by Reporting Period | | | | | | | | | | | | | | | |
|---|--|-----------------------------------|----------------|-----------------------|-----------------------------------|-----------------------|--------------------------------------|--------------------------------|--|--|---------------------------------|-----------------------------------|------------------------------|------------|----------|
| Reductions from Structural Controls | | | | | | | | Mass Balance Compliance | | | | | | | |
| Col. 1 | Col. 2 | Col. 3 | Col. 4 | Col. 5 | Col. 6 | Col. 7 | Col. 8 | Col. 9 | Col. 10 | Col. 11 | Col. 12 | Col. 13 | Col. 14 | Col. 15 | Col. 16 |
| Reporting Year | Total Area (or # of CBs) | Area (or # of CBs) Served by PCDs | PCD Efficiency | % Reduction from PCDs | Area (or # of CBs) Served by FCSS | % Reduction from FCSS | % Reduction from Structural Controls | Baseline Waste Load Allocation | Storm Year Trash Discharge (lb. or gal.) | Corrected Storm Year Trash Discharge (lb. or gal.) | Total % Reduction from Baseline | Effluent Limitation (lb. or gal.) | Required Trash Abatement (%) | Compliance | Comments |
| 15-Dec-2022 | | | | #DIV/0! | | #DIV/0! | #DIV/0! | | | #DIV/0! | #DIV/0! | | | #DIV/0! | |
| 15-Dec-2023 | | | | #DIV/0! | | #DIV/0! | #DIV/0! | | | #DIV/0! | #DIV/0! | | | #DIV/0! | |
| 15-Dec-2024 | | | | #DIV/0! | | #DIV/0! | #DIV/0! | | | #DIV/0! | #DIV/0! | | | #DIV/0! | |
| 15-Dec-2025 | | | | #DIV/0! | | #DIV/0! | #DIV/0! | | | #DIV/0! | #DIV/0! | | | #DIV/0! | |
| 15-Dec-2026 | | | | #DIV/0! | | #DIV/0! | #DIV/0! | | | #DIV/0! | #DIV/0! | | | #DIV/0! | |
| 15-Dec-2027 | | | | #DIV/0! | | #DIV/0! | #DIV/0! | | | #DIV/0! | #DIV/0! | | | #DIV/0! | |
| 15-Dec-2028 | | | | #DIV/0! | | #DIV/0! | #DIV/0! | | | #DIV/0! | #DIV/0! | | | #DIV/0! | |
| 15-Dec-2029 | | | | #DIV/0! | | #DIV/0! | #DIV/0! | | | #DIV/0! | #DIV/0! | | | #DIV/0! | |
| Notations: | | | | | | | | | | | | | | | |
| Form | Report compliance by reporting the corrected storm year trash discharge in Col. 11, which accounts for areas addressed by full capture systems (Cols. 6-7) and partial capture devices (Cols. 3-5). Continue to add to this form for each reporting year. Where information on areas for Cols. 2, 3, and 6 are unavailable; the total number of catch basins and number of catch basins served by PCDs and FCSS may be used if catch basins serve as a reasonable approximation of area. | | | | | | | | | | | | | | |
| Column 1: | Reporting Year: The reporting year per Attachment E- Part XIV.A | | | | | | | | | | | | | | |
| Column 2: | Total Area (or # of CBs): The area within the jurisdiction (or number of CBs) for which the Trash TMDL is applicable. | | | | | | | | | | | | | | |
| Column 3: | Area (or # of CBs) Served by PCDs: The area (or # of CBs) served by partial capture devices with an associated removal efficiency input in Col. 4 | | | | | | | | | | | | | | |
| Column 4: | PCD Efficiency: The percentage of trash removed by the partial capture device serving the area in Col. 3. Automatic retractable screens (ARS) may use an efficiency of 0.86. | | | | | | | | | | | | | | |
| Column 5: | % Reduction from PCDs: (Col. 3/Col. 2) x (Col. 4) | | | | | | | | | | | | | | |
| Column 6: | Area (or # of CBs) Served by FCSS: The area (or number of CBs) served by Full Capture Systems | | | | | | | | | | | | | | |
| Column 7: | % Reduction from FCS: (Col. 6/Col. 2) | | | | | | | | | | | | | | |
| Column 8: | % Reduction from Structural Controls: Col. 5 + Col. 7 | | | | | | | | | | | | | | |

**Mass Balance:
 Compliance Summary Report**

| Mass Balance Compliance by Reporting Period | | | | | | | | | | | | | | | |
|---|--|-----------------------------------|----------------|-----------------------|-----------------------------------|-----------------------|--------------------------------------|--------------------------------|--|--|---------------------------------|-----------------------------------|------------------------------|------------|----------|
| Reductions from Structural Controls | | | | | | | | Mass Balance Compliance | | | | | | | |
| Col. 1 | Col. 2 | Col. 3 | Col. 4 | Col. 5 | Col. 6 | Col. 7 | Col. 8 | Col. 9 | Col. 10 | Col. 11 | Col. 12 | Col. 13 | Col. 14 | Col. 15 | Col. 16 |
| Reporting Year | Total Area (or # of CBs) | Area (or # of CBs) Served by PCDs | PCD Efficiency | % Reduction from PCDs | Area (or # of CBs) Served by FCSS | % Reduction from FCSS | % Reduction from Structural Controls | Baseline Waste Load Allocation | Storm Year Trash Discharge (lb. or gal.) | Corrected Storm Year Trash Discharge (lb. or gal.) | Total % Reduction from Baseline | Effluent Limitation (lb. or gal.) | Required Trash Abatement (%) | Compliance | Comments |
| Column 9: | Baseline Waste Load Allocation: The baseline trash discharge identified in the TMDL | | | | | | | | | | | | | | |
| Column 10: | Storm Year Trash Discharge: The total storm year trash discharge as calculated in the "Storm Year Trash Discharge" sheet | | | | | | | | | | | | | | |
| Column 11: | Corrected Storm Year Trash Discharge: (Col. 10) * (1 - Col. 8) | | | | | | | | | | | | | | |
| Column 12: | Total % Reduction from Baseline: 1 - (Col. 11/Col. 9) [rounded to the nearest percent] | | | | | | | | | | | | | | |
| Column 13: | Effluent Limitation: The applicable Effluent Limitation per the Order | | | | | | | | | | | | | | |
| Column 14: | Required Trash Abatement (%): As specified in Attachment K- S of the Order. In respect to the corresponding Trash TMDL(s) in Permittee's jurisdiction. If effluent limitation calls for 100% reduction, 99% may be input in this field. | | | | | | | | | | | | | | |
| Column 15: | Compliance: "YES" if Col. 12 is greater or equal to Col. 14 | | | | | | | | | | | | | | |
| Column 16: | Comments: Provide comments, if necessary | | | | | | | | | | | | | | |
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Attachment I -
 Trash TMDL Reporting Form
 Regional MS4 Permit
 Permittee: _____

**Mass Balance:
 Individual Storm Event and
 Total Storm Year Trash Discharge**

Reporting Year: _____
 Applicable Trash TMDL: _____

| Rain Gage Station ID _____ | | | | | | | |
|--|------------------------------|---------------------|---------------------|---------------------------------|---|-----------------------------|----------|
| Total Trash Discharged by Storm Event | | | | | | | |
| Col. 1 | Col. 2 | Col. 3 | Col. 4 | Col. 5 | Col. 6 | Col. 7 | Col. 8 |
| DGR | Date of Last Street Sweeping | Date of Storm Event | Precipitation Depth | Days since Last Street Sweeping | Amount of Trash Recovered from Catch Basins | Storm Event Trash Discharge | Comments |
| | | | | 0 | | 0.0 | |
| | | | | 0 | | 0.0 | |
| | | | | 0 | | 0.0 | |
| | | | | 0 | | 0.0 | |
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| | | | | 0 | | 0.0 | |
| Total Storm Year Trash Discharge | | | | | | 0.0 | |

Attachment I -
 Trash TMDL Reporting Form
 Regional MS4 Permit
 Permittee: _____

**Mass Balance:
 Individual Storm Event and
 Total Storm Year Trash Discharge**

Reporting Year: _____
 Applicable Trash TMDL: _____

| | | | | | | | |
|---|---|---------------------|---------------------|---------------------------------|---|-----------------------------|----------|
| Rain Gage Station ID _____ | | | | | | | |
| Total Trash Discharged by Storm Event | | | | | | | |
| Col. 1 | Col. 2 | Col. 3 | Col. 4 | Col. 5 | Col. 6 | Col. 7 | Col. 8 |
| DGR | Date of Last Street Sweeping | Date of Storm Event | Precipitation Depth | Days since Last Street Sweeping | Amount of Trash Recovered from Catch Basins | Storm Event Trash Discharge | Comments |
| Notations: | | | | | | | |
| Form | Add additional rows for storm events, if necessary. | | | | | | |
| Rain Gage Station ID: Name of rain gage station used, indicate only the station number. | | | | | | | |
| Total Storm Year Trash Discharge= Sum of individual storm event discharges for reporting period (July 1-June 30). | | | | | | | |
| Column 1: | DGR for Jurisdiction from DGR Sampling Data worksheet. | | | | | | |
| Column 2: | Date of last street sweeping (if entire jurisdiction is swept on one day). If there are multiple street sweeping days, use "Street Sweeping Days" sheet to calculate weighted average of days since last street sweeping for column 5. | | | | | | |
| Column 3: | Date of storm event with 0.25 inch or more of rainfall. | | | | | | |
| Column 4: | Depth of rainfall taken from nearest rain gage station (in.). | | | | | | |
| Column 5: | Number of days between date of last street sweeping and storm event. For each day of a storm event that generates precipitation greater than 0.25 inch, the Permittee shall calculate a storm event discharge. When more than one storm event occurs prior to the next street sweeping the discharge shall be calculated from the date of the last storm event discharge calculation. | | | | | | |
| Column 6: | Amount of trash recovered from catch basins, if any (lb. or gal.). | | | | | | |
| Column 7: | Storm Event Discharge = Col. 1 x Col. 5 - Col. 7 [trash discharged by the storm event], lbs. or gal. | | | | | | |
| Column 8: | Provide comments, if necessary. | | | | | | |
| | | | | | | | |
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**Mass Balance:
 Days Since Last Street Sweeping**

| Rain Gage Station ID _____ | | | | | | | | | | | |
|--|-----------------------------|--------------------------------------|-----------------------------|--------------------------------------|-----------------------------|--------------------------------------|-----------------------------|--------------------------------------|-----------------------------|--------------------------------------|------------------|
| Weighted Average of Days Since Last Street Sweeping | | | | | | | | | | | |
| Col. 1 | Col. 2 | Col. 3 | Col. 4 | Col. 5 | Col. 6 | Col. 7 | Col. 8 | Col. 9 | Col. 10 | Col. 11 | Col. 12 |
| Date of Storm Event | % of Jurisdiction in Area 1 | Last Street Sweeping Date for Area 1 | % of Jurisdiction in Area 2 | Last Street Sweeping Date for Area 2 | % of Jurisdiction in Area 3 | Last Street Sweeping Date for Area 3 | % of Jurisdiction in Area 4 | Last Street Sweeping Date for Area 4 | % of Jurisdiction in Area 5 | Last Street Sweeping Date for Area 5 | Weighted Average |
| | | | | | | | | | | | 0.00 |
| | | | | | | | | | | | 0.00 |
| | | | | | | | | | | | 0.00 |
| | | | | | | | | | | | 0.00 |
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**Mass Balance:
 Days Since Last Street Sweeping**

| Rain Gage Station ID _____ | | | | | | | | | | | |
|--|---|--------------------------------------|-----------------------------|--------------------------------------|-----------------------------|--------------------------------------|-----------------------------|--------------------------------------|-----------------------------|--------------------------------------|------------------|
| Weighted Average of Days Since Last Street Sweeping | | | | | | | | | | | |
| Col. 1 | Col. 2 | Col. 3 | Col. 4 | Col. 5 | Col. 6 | Col. 7 | Col. 8 | Col. 9 | Col. 10 | Col. 11 | Col. 12 |
| Date of Storm Event | % of Jurisdiction in Area 1 | Last Street Sweeping Date for Area 1 | % of Jurisdiction in Area 2 | Last Street Sweeping Date for Area 2 | % of Jurisdiction in Area 3 | Last Street Sweeping Date for Area 3 | % of Jurisdiction in Area 4 | Last Street Sweeping Date for Area 4 | % of Jurisdiction in Area 5 | Last Street Sweeping Date for Area 5 | Weighted Average |
| Notations: | | | | | | | | | | | |
| Form | This form is used to calculate a weighted average of days since last street sweeping event in situations where the Permittee conducts street sweeping at different frequencies for different areas within its jurisdiction. The weighted average calculated in Col. 12 should be used in Col. 5 of the "Storm Year Trash Discharge" sheet in lieu of the existing equation. | | | | | | | | | | |
| | Add additional rows for storm events and additional columns for more jurisdictional areas, if necessary. | | | | | | | | | | |
| Column 1: | Date of storm event with 0.25 inch or more of rainfall. | | | | | | | | | | |
| Column 2: | Percentage of Jurisdiction in Area 1 | | | | | | | | | | |
| Column 3: | Date of last street sweeping for Area 1 | | | | | | | | | | |
| Column 4: | Percentage of Jurisdiction in Area 2 | | | | | | | | | | |
| Column 5: | Date of last street sweeping for Area 2 | | | | | | | | | | |
| Column 6: | Percentage of Jurisdiction in Area 3 | | | | | | | | | | |
| Column 7: | Date of last street sweeping for Area 3 | | | | | | | | | | |
| Column 8: | Percentage of Jurisdiction in Area 4 | | | | | | | | | | |
| Column 9: | Date of last street sweeping for Area 4 | | | | | | | | | | |
| Column 10: | Percentage of Jurisdiction in Area 5 | | | | | | | | | | |
| Column 11: | Date of last street sweeping for Area 5 | | | | | | | | | | |
| Column 12: | Weighted average of days since last street sweeping based on information entered in Cols. 2-11 | | | | | | | | | | |

**Mass Balance:
 DGR Sampling Data**

| Note: Sampling must be conducted during any 30-day period, starting June 22nd through September 22nd of each year. | | | | | | | | | |
|---|--------------------------------|---|------------------------------|----------------------|-----------------------------|---|--|--|----------|
| Trash Collection for Calculation of Daily Generation Rate (DGR) | | | | | | | | | |
| Col. 1 | Col. 2 | Col. 3 | Col. 4 | Col. 5 | Col. 6 | Col. 7 | Col. 8 | Col. 9 | Col. 10 |
| Land Use Category | Total Area within Jurisdiction | Representative Area for DGR Calculation | Date of Last Street Sweeping | Date of DGR Sampling | Length of Collection Period | Trash Collection from Representative Area (lb. or gal.) | Trash Cleaned Out from Catch Basin(s) within the Representative Area (lb. or gal.) | Total Trash Generated within Representative Area | Comments |
| Commercial and Services | | | | | | | | | |
| | | | | | 0 | | | 0 | |
| | | | | | 0 | | | 0 | |
| | | | | | 0 | | | 0 | |
| | | | | | 0 | | | 0 | |
| <i>add rows for DGR collection periods, as needed, to equal a 30-day period</i> | | | | | 0 | | | 0 | |
| High Density Residential | | | | | | | | | |
| | | | | | 0 | | | 0 | |
| | | | | | 0 | | | 0 | |
| | | | | | 0 | | | 0 | |
| <i>add rows for DGR collection periods, as needed, to equal a 30-day period</i> | | | | | 0 | | | 0 | |
| Low Density Residential | | | | | | | | | |
| | | | | | 0 | | | 0 | |
| | | | | | 0 | | | 0 | |
| | | | | | 0 | | | 0 | |
| <i>add rows for DGR collection periods, as needed, to equal a 30-day period</i> | | | | | 0 | | | 0 | |
| Industrial | | | | | | | | | |
| | | | | | 0 | | | 0 | |
| | | | | | 0 | | | 0 | |
| | | | | | 0 | | | 0 | |
| <i>add rows for DGR collection periods, as needed, to equal a 30-day period</i> | | | | | 0 | | | 0 | |
| Open Space & Rec | | | | | | | | | |
| | | | | | 0 | | | 0 | |
| | | | | | 0 | | | 0 | |
| | | | | | 0 | | | 0 | |
| <i>add rows for DGR collection periods, as needed, to equal a 30-day period</i> | | | | | 0 | | | 0 | |
| Total Area | 0 | 0 | | | | | | Total Trash | 0 |
| | | | | | | | | DGR | |
| | | | | | | | | (lb. or gal./day) | #DIV/0! |
| <i>DGR for Jurisdiction = (Total Trash Generated from Representative Area / 30 days) * (Total Area / Representative Area)</i> | | | | | | | | | |

**Mass Balance:
 DGR Sampling Data**

| Note: Sampling must be conducted during any 30-day period, starting June 22nd through September 22nd of each year. | | | | | | | | | |
|--|--|---|------------------------------|---|-----------------------------|---|--|--|----------|
| Col. 1 | Col. 2 | Col. 3 | Col. 4 | Trash Collection for Calculation of Daily Generation Rate (DGR) | | | | | Col. 10 |
| Land Use Category | Total Area within Jurisdiction | Representative Area for DGR Calculation | Date of Last Street Sweeping | Date of DGR Sampling | Length of Collection Period | Trash Collection from Representative Area (lb. or gal.) | Trash Cleaned Out from Catch Basin(s) within the Representative Area (lb. or gal.) | Total Trash Generated within Representative Area | Comments |
| Notations: * Total collection period must equal 30 days for each representative land use area. | | | | | | | | | |
| Form | | | | | | | | | |
| Column 1: | Land Use Category - Categories based on Baseline Monitoring Program conducted by LACDPW baseline monitoring group. Alternatively, describe land use type as designated by the Permittee. | | | | | | | | |
| Column 2: | Total area of said land use within jurisdiction (fill in once in gray-highlighted row for each land use category). Total area may be accounted for using other approved measurement units, e.g. curb miles. | | | | | | | | |
| Column 3: | Representative area for DGR calculation (fill in once in gray-highlighted row for each land use category). Representative area may be accounted for using other approved measurement units, e.g. curb miles. Collectively, the areas used for DGR calculation should be representative, proportionally, of the land uses within the jurisdiction and must be approved by the EO prior to the 30-day collection period. | | | | | | | | |
| Column 4: | Date of last street sweeping. | | | | | | | | |
| Column 5: | Date of DGR sampling (direct measurement of deposited trash) - The DGR collection period(s) must fall between June 22nd and September 22nd. | | | | | | | | |
| Column 6: | Length of Collection Period in days - The DGR collection period must be 30 days, total, for each representative land use area. | | | | | | | | |
| Column 7: | Trash collection from representative area through street sweeping or other method, lb. or gal. | | | | | | | | |
| Column 8: | Trash cleaned out from catch basins within the representative area (lb. or gal.). Trash accumulated in the CBs during the DGR collection period must be included in the total trash generated. Where CBs are closed off such that no trash can enter them for the purpose of DGR sampling, this value will be zero (0). | | | | | | | | |
| Column 9: | Total amount of trash generated in representative area (sum of Col. 7 and Col. 8), lb. or gal. | | | | | | | | |
| Column 10: | Provide comments, if necessary. | | | | | | | | |

**Certified Full Capture Systems:
 Compliance Summary Report**

| Col. 1 | Col. 2 | Col. 3 | Col. 4 | Col. 5 | Col. 6 | Col. 7 | Col. 8 | Col. 9 | Col. 10 |
|-------------------|---|---------------------------|--------------------------|-------------|----------------------------|-------------------------|------------------------------|------------|----------|
| Reporting Year | Total Area | Total Area served by FCSs | % of Area served by FCSs | Total # CBs | Total # CBs served by FCSs | % of CBs served by FCSs | Required Trash Abatement (%) | Compliance | Comments |
| 15-Dec-2022 | | | #DIV/0! | | | #DIV/0! | | #DIV/0! | |
| 15-Dec-2023 | | | #DIV/0! | | | #DIV/0! | | #DIV/0! | |
| 15-Dec-2024 | | | #DIV/0! | | | #DIV/0! | | #DIV/0! | |
| 15-Dec-2025 | | | #DIV/0! | | | #DIV/0! | | #DIV/0! | |
| 15-Dec-2026 | | | #DIV/0! | | | #DIV/0! | | #DIV/0! | |
| 15-Dec-2027 | | | #DIV/0! | | | #DIV/0! | | #DIV/0! | |
| 15-Dec-2028 | | | #DIV/0! | | | #DIV/0! | | #DIV/0! | |
| 15-Dec-2029 | | | #DIV/0! | | | #DIV/0! | | #DIV/0! | |
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| Notations: | | | | | | | | | |
| Form | Either report compliance using land area served by FCSs (Columns 2 through 4) and/or number of catch basins served by FCSs (Columns 5 through 7). | | | | | | | | |
| | Continue to add to this form for each reporting year. | | | | | | | | |
| Column 1: | Reporting Year: The reporting year per Attachment E- Part XIV.A | | | | | | | | |
| Column 2: | Total land area of jurisdiction (square kilometers). | | | | | | | | |
| Column 3: | Total land area of jurisdiction served by certified full capture systems (square kilometers). | | | | | | | | |
| Column 4: | Percentage of total land area of jurisdiction served by FCSs (Col. 4/Col. 3). | | | | | | | | |
| Column 5: | Total number of catch basins (CBs) within jurisdiction. | | | | | | | | |
| Column 6: | Total number of catch basins (CBs) served by FCSs within jurisdiction. | | | | | | | | |
| Column 7: | Percentage of CBs served by FCSs within jurisdiction (Col. 6/Col. 5) | | | | | | | | |
| Column 8: | Required Trash Abatement: Attachments K-S of the Order, with respect to the corresponding Trash TMDL(s) in Permittee's jurisdiction. | | | | | | | | |
| Column 9: | Compliance: Yes, if Col. 4 or Col. 7 is greater than Col. 8; No, if Col. 4 or Col. 7 is less than Col. 8. | | | | | | | | |
| Column 10: | Provide comments, if necessary. | | | | | | | | |
| | | | | | | | | | |

Attachment I -
 Trash TMDL Reporting Form
 Regional MS4 Permit
 Permittee: _____

**Certified Full Capture Systems:
 Database**

Reporting Year: _____

Applicable Trash TMDL: _____

| Col. 1 | Col. 2 | Col. 3 | Col. 4 | Col. 5 | Col. 6 | Col. 7 | Col. 8 | Col. 9 | Col. 10 | Col. 11 |
|----------------------------|---|----------------------|-----------|-------------------|-----------------------|-------------------------|---------|----------|------------------|---|
| Certified FCS(s) Installed | FCS Location | Nearest Cross Street | FCS Owner | FCS Maintained By | FCS Installation Date | CB ID No. Served by FCS | CB Type | CB Owner | CB Maintained By | Frequency of FCS Maintenance and other O&M comments |
| | | | | | | | | | | |
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| Notations: | | | | | | | | | | |
| Form | Insert additional rows, as necessary. | | | | | | | | | |
| Column 1: | Indicate certified full capture system (FCS) installed | | | | | | | | | |
| Column 2: | Name FCS street location and indicate whether: WS - west side; ES - east side; NS - north side; SS - south side | | | | | | | | | |
| Column 3: | Name the nearest cross street location of the FCS | | | | | | | | | |
| Column 4: | FCS Owned by: Co - County of L.A./ Ventura; Flood - L.A. County Flood Control District/ Ventura County Watershed Protection District; Ci - City; Ca - Caltrans; Pr - Private; Oth - Others | | | | | | | | | |
| Column 5: | FCS Maintained by: Co - County of L.A./ Ventura; Flood - L.A. County Flood Control District/ Ventura County Watershed Protection District; Ci - City; Ca - Caltrans; Pr - Private; Oth - Others | | | | | | | | | |
| Column 6: | Provide the date when FCS was installed | | | | | | | | | |
| Column 7: | Indicate County or City assigned catch basin (CB) identification (ID) numbers | | | | | | | | | |
| Column 8: | Type of CB based on Standard Plan for Public Works Construction from Greenbook Committee, Public Works Standards, Inc. (i.e., 300-2; 301-2; 302-2; 303-2; etc.) | | | | | | | | | |
| Column 9: | CB Owned by: Co - County of L.A./ Ventura; Flood - L.A. County Flood Control District/ Ventura County Watershed Protection District; Ci - City; Ca - Caltrans; Pr - Private; Oth - Others | | | | | | | | | |
| Column 10: | CB maintained by: Co - County of L.A./ Ventura; Flood - L.A. County Flood Control District/ Ventura County Watershed Protection District; Ci - City; Ca - Caltrans; Pr - Private; Oth - Others | | | | | | | | | |
| Column 11: | Indicate frequency of FCS maintenance (e.g. inspection & cleanout: 1x/3 mo., 1x/6 mo., 1x Nov., 1x Jan., 1x Aug., etc.) | | | | | | | | | |

**Compliance Summary Report:
 Certified Full Capture Systems**

| Col. 1 | Col. 2 | Col. 3 | Col. 4 | Col. 5 | Col. 6 | Col. 7 | Col. 8 | Col. 9 | Col. 10 |
|-------------------|--|---------------------------|-----------------------------------|-------------|----------------------------|----------------------------------|------------------------------|------------|----------|
| Reporting Year | Total Area | Total Area Served by FCSs | Percentage of Area Served by FCSs | Total # CBs | Total # CBs Served by FCSs | Percentage of CBs Served by FCSs | Required Trash Abatement (%) | Compliance | Comments |
| 15-Dec-2022 | | | #DIV/0! | | | #DIV/0! | | | |
| 15-Dec-2023 | | | #DIV/0! | | | #DIV/0! | | | |
| 15-Dec-2024 | | | #DIV/0! | | | #DIV/0! | | | |
| 15-Dec-2025 | | | #DIV/0! | | | #DIV/0! | | | |
| 15-Dec-2026 | | | #DIV/0! | | | #DIV/0! | 50% | #DIV/0! | |
| 15-Dec-2027 | | | #DIV/0! | | | #DIV/0! | | | |
| 15-Dec-2028 | | | #DIV/0! | | | #DIV/0! | | | |
| 15-Dec-2029 | | | #DIV/0! | | | #DIV/0! | | | |
| 15-Dec-2030 | | | #DIV/0! | | | #DIV/0! | 100% | #DIV/0! | |
| Notations: | | | | | | | | | |
| Form | Either report compliance using Priority Land Use (PLU), designated land uses, and equivalent alternate land use areas served by FCSs (Columns 2 through 4) and/or number of catch basins in PLU, designated land uses, and equivalent alternate land use areas served by FCSs (Columns 5 through 7). | | | | | | | | |
| | Continue to add to this form for each annual reporting period. | | | | | | | | |
| Column 1: | Reporting Year: The reporting year per Attachment E- Part XIV.A | | | | | | | | |
| Column 2: | Total PLU, designated land uses, and equivalent alternate land use area of jurisdiction (square kilometers) | | | | | | | | |
| Column 3: | Total PLU, designated land uses, and equivalent alternate land use area of jurisdiction served by FCSs (square kilometers) | | | | | | | | |
| Column 4: | Percentage of PLU, designated land uses, and equivalent alternate land use area of jurisdiction served by FCSs (Col. 4/Col. 3) | | | | | | | | |
| Column 5: | Total number of catch basins (CBs) in PLUs, designated land uses, and equivalent alternate land use within jurisdiction | | | | | | | | |
| Column 6: | Total number of catch basins (CBs) in PLUs, designated land uses, and equivalent alternate land use served by FCSs within jurisdiction | | | | | | | | |
| Column 7: | Percentage of CBs in PLUs, designated land uses, and equivalent alternate land use served by FCSs within jurisdiction (Col. 6/Col. 5) | | | | | | | | |
| Column 8: | Required Trash Abatement: Part III.B.2.d of the Order | | | | | | | | |
| Column 9: | Compliance: Yes, if Col. 4 and/or Col. 7 is greater than Col. 8; No, if Col. 4 and/or Col. 7 is less than Col. 8 | | | | | | | | |
| Column 10: | Provide comments, if necessary. | | | | | | | | |

**Mass Balance:
 Compliance Summary Report**

| Mass Balance Compliance by Reporting Period | | | | | | | | | | | | | | | |
|---|--|-----------------------------------|----------------|-----------------------|-----------------------------------|-----------------------|--------------------------------------|--------------------------------|--|--|---------------------------------|-----------------------------------|------------------------------|------------|----------|
| Reductions from Structural Controls | | | | | | | | | | | | | | | |
| Mass Balance Compliance | | | | | | | | | | | | | | | |
| Col. 1 | Col. 2 | Col. 3 | Col. 4 | Col. 5 | Col. 6 | Col. 7 | Col. 8 | Col. 9 | Col. 10 | Col. 11 | Col. 12 | Col. 13 | Col. 14 | Col. 15 | Col. 16 |
| Reporting Year | Total Area (or # of CBs) | Area (or # of CBs) Served by PCDs | PCD Efficiency | % Reduction from PCDs | Area (or # of CBs) Served by FCSs | % Reduction from FCSs | % Reduction from Structural Controls | Baseline Waste Load Allocation | Storm Year Trash Discharge (lb. or gal.) | Corrected Storm Year Trash Discharge (lb. or gal.) | Total % Reduction from Baseline | Effluent Limitation (lb. or gal.) | Required Trash Abatement (%) | Compliance | Comments |
| 15-Dec-2022 | | | | #DIV/0! | | #DIV/0! | #DIV/0! | | | #DIV/0! | #DIV/0! | | | #DIV/0! | |
| 15-Dec-2023 | | | | #DIV/0! | | #DIV/0! | #DIV/0! | | | #DIV/0! | #DIV/0! | | | #DIV/0! | |
| 15-Dec-2024 | | | | #DIV/0! | | #DIV/0! | #DIV/0! | | | #DIV/0! | #DIV/0! | | | #DIV/0! | |
| 15-Dec-2025 | | | | #DIV/0! | | #DIV/0! | #DIV/0! | | | #DIV/0! | #DIV/0! | | | #DIV/0! | |
| 15-Dec-2026 | | | | #DIV/0! | | #DIV/0! | #DIV/0! | | | #DIV/0! | #DIV/0! | | | #DIV/0! | |
| 15-Dec-2027 | | | | #DIV/0! | | #DIV/0! | #DIV/0! | | | #DIV/0! | #DIV/0! | | | #DIV/0! | |
| 15-Dec-2028 | | | | #DIV/0! | | #DIV/0! | #DIV/0! | | | #DIV/0! | #DIV/0! | | | #DIV/0! | |
| 15-Dec-2029 | | | | #DIV/0! | | #DIV/0! | #DIV/0! | | | #DIV/0! | #DIV/0! | | | #DIV/0! | |
| Notations: | | | | | | | | | | | | | | | |
| Form | Report compliance by reporting the corrected storm year trash discharge in Col. 11, which accounts for areas addressed by full capture systems (Cols. 6-7) and partial capture devices (Cols. 3-5). Continue to add to this form for each reporting year. Where information on areas for Cols. 2, 3, and 6 are unavailable; the total number of catch basins and number of catch basins served by PCDs and FCSs may be used if catch basins serve as a reasonable approximation of area. | | | | | | | | | | | | | | |
| Column 1: | Reporting Year: The reporting year per Attachment E- Part XIV.A | | | | | | | | | | | | | | |
| Column 2: | Total Area (or # of CBs): The area within the jurisdiction (or number of CBs) for which the Trash TMDL is applicable. | | | | | | | | | | | | | | |
| Column 3: | Area (or # of CBs) Served by PCDs: The area (or # of CBs) served by partial capture devices with an associated removal efficiency input in Col. 4 | | | | | | | | | | | | | | |
| Column 4: | PCD Efficiency: The percentage of trash removed by the partial capture device serving the area in Col. 3. Automatic retractable screens (ARS) may use an efficiency of 0.86. | | | | | | | | | | | | | | |
| Column 5: | % Reduction from PCDs: (Col. 3/Col. 2) x (Col. 4) | | | | | | | | | | | | | | |
| Column 6: | Area (or # of CBs) Served by FCSs: The area (or number of CBs) served by Full Capture Systems | | | | | | | | | | | | | | |
| Column 7: | % Reduction from FCS: (Col. 6/Col. 2) | | | | | | | | | | | | | | |
| Column 8: | % Reduction from Structural Controls: Col. 5 + Col. 7 | | | | | | | | | | | | | | |

**Mass Balance:
 Compliance Summary Report**

| Mass Balance Compliance by Reporting Period | | | | | | | | | | | | | | | |
|---|--|-------------------------------------|----------------|-----------------------|-----------------------------------|-----------------------|--------------------------------------|--------------------------------|--|--|---------------------------------|-----------------------------------|------------------------------|------------|----------|
| | | Reductions from Structural Controls | | | | | | Mass Balance Compliance | | | | | | | |
| Col. 1 | Col. 2 | Col. 3 | Col. 4 | Col. 5 | Col. 6 | Col. 7 | Col. 8 | Col. 9 | Col. 10 | Col. 11 | Col. 12 | Col. 13 | Col. 14 | Col. 15 | Col. 16 |
| Reporting Year | Total Area (or # of CBs) | Area (or # of CBs) Served by PCDs | PCD Efficiency | % Reduction from PCDs | Area (or # of CBs) Served by FCSS | % Reduction from FCSS | % Reduction from Structural Controls | Baseline Waste Load Allocation | Storm Year Trash Discharge (lb. or gal.) | Corrected Storm Year Trash Discharge (lb. or gal.) | Total % Reduction from Baseline | Effluent Limitation (lb. or gal.) | Required Trash Abatement (%) | Compliance | Comments |
| | | | | | | | | | | | | | | | |
| Column 9: | Baseline Waste Load Allocation: The baseline trash discharge identified in the TMDL | | | | | | | | | | | | | | |
| Column 10: | Storm Year Trash Discharge: The total storm year trash discharge as calculated in the "Storm Year Trash Discharge" sheet | | | | | | | | | | | | | | |
| Column 11: | Corrected Storm Year Trash Discharge: (Col. 10) * (1 - Col. 8) | | | | | | | | | | | | | | |
| Column 12: | Total % Reduction from Baseline: 1 - (Col. 11/Col. 9) [rounded to the nearest percent] | | | | | | | | | | | | | | |
| Column 13: | Effluent Limitation: The applicable Effluent Limitation per the Order | | | | | | | | | | | | | | |
| Column 14: | Required Trash Abatement (%): As specified in Attachment K- S of the Order. In respect to the corresponding Trash TMDL(s) in Permittee's jurisdiction. If effluent limitation calls for 100% reduction, 99% may be input in this field. | | | | | | | | | | | | | | |
| Column 15: | Compliance: "YES" if Col. 12 is greater or equal to Col. 14 | | | | | | | | | | | | | | |
| Column 16: | Comments: Provide comments, if necessary | | | | | | | | | | | | | | |
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ATTACHMENT J – PERMITTEES AND TMDLS MATRIX

Note: For all tables in this Attachment, Permittees listed in *italics* have MS4 discharges to multiple watersheds.

Table J-1. Ventura River Watershed Management Area TMDLs

| RESPONSIBLE PERMITTEES | Ventura River and its Tributaries Algae TMDL | Ventura River Estuary Trash TMDL |
|---|---|---|
| Ojai | X | |
| <i>Ventura (City of)</i> | X | X |
| <i>Ventura (County of)</i> | X | X |
| <i>Ventura County Watershed Protection District</i> | X | X |

Table J-2. Miscellaneous Ventura County Coastal Watershed Management Area TMDLs

| RESPONSIBLE PERMITTEES | Harbor Beaches of Ventura County (Kiddie Beach and Hobie Beach) Bacteria TMDL |
|---|--|
| Port Hueneme | X |
| <i>Oxnard</i> | X |
| <i>Ventura (County of)</i> | X |
| <i>Ventura County Watershed Protection District</i> | X |

Table J-3. Santa Clara River Watershed Management Area TMDLs

| RESPONSIBLE PERMITTEES | Santa Clara River Nitrogen Compounds TMDL | Santa Clara River Reach 3 Chloride TMDL | Upper Santa Clara River Chloride TMDL | Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL | Lake Elizabeth, Munz Lake, and Lake Hughes Trash TMDL (Lake Elizabeth only) | Santa Clara River Lakes Nutrients TMDL (Lake Elizabeth only) |
|--|--|--|--|---|--|---|
| Fillmore | X | X | | X | | |
| <i>Los Angeles (County of)</i> | X | | X | X | X | X |
| <i>Los Angeles County Flood Control District</i> | X | | X | X | X | X |
| <i>Oxnard</i> | | | | X | | |

| RESPONSIBLE PERMITTEES | Santa Clara River Nitrogen Compounds TMDL | Santa Clara River Reach 3 Chloride TMDL | Upper Santa Clara River Chloride TMDL | Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL | Lake Elizabeth, Munz Lake, and Lake Hughes Trash TMDL (Lake Elizabeth only) | Santa Clara River Lakes Nutrients TMDL (Lake Elizabeth only) |
|---|--|--|--|---|--|---|
| <i>Santa Clarita</i> | X | | X | X | | |
| <i>Santa Paula</i> | X | X | | X | | |
| <i>Ventura (City of)</i> | | | | X | | |
| <i>Ventura (County of)</i> | X | X | | X | | |
| <i>Ventura County Watershed Protection District</i> | X | X | | X | | |

Table J-4. Santa Clara River Watershed Management Area Permittee – Waterbody Combinations

| RESPONSIBLE PERMITTEES | Santa Clara River Estuary, Reach 1, and Reach 2 | Santa Clara River Reach 3 | Santa Clara River Reach 4A | Santa Clara River Reach 4B | Santa Clara River Reach 5 | Santa Clara River Reach 6 and above |
|---|--|----------------------------------|-----------------------------------|-----------------------------------|----------------------------------|--|
| <i>Fillmore</i> | | X | X | | | |
| <i>Los Angeles (County of)</i> | | | | | X | X |
| <i>Los Angeles County Flood Control District</i> | | | | | X | X |
| <i>Oxnard</i> | X | | | | | |
| <i>Santa Clarita</i> | | | | | X | X |
| <i>Santa Paula</i> | | X | | | | |
| <i>Ventura (City of)</i> | X | | | | | |
| <i>Ventura (County of)</i> | X | X | X | | | |
| <i>Ventura County Watershed Protection District</i> | | X | | | | |

Table J-5. Calleguas Creek Watershed Management Area TMDLs

| RESPONSIBLE PERMITTEES | Calleguas Creek, its Tributaries, and Mugu Lagoon OC Pesticides & PCBs TMDL | Calleguas Creek, its Tributaries, and Mugu Lagoon Toxicity TMDL | Calleguas Creek, its Tributaries, and Mugu Lagoon Metals TMDL | Calleguas Creek Watershed Salts TMDL | Revolon Slough and Beardsley Wash Trash TMDL | Oxnard Drain TMDL for Pesticides, PCBs, and Sediment Toxicity |
|---|--|--|--|---|---|--|
| Camarillo | X | X | X | X | X | |
| Moorpark | X | X | X | X | | |
| <i>Oxnard</i> | X | X | X | X | X | X |
| <i>Simi Valley</i> | X | X | X | X | | |
| <i>Thousand Oaks</i> | X | X | X | X | | |
| <i>Ventura (County of)</i> | X | X | X | X | X | X |
| <i>Ventura County Watershed Protection District</i> | X | X | X | X | X | |

Table J-6. Santa Monica Bay Watershed Management Area TMDLs including Malibu Creek Subwatershed

| RESPONSIBLE PERMITTEES | Santa Monica Bay Watershed | | | Malibu Creek Subwatershed | | | |
|-------------------------------|---|---|--|--|--|-----------------------------------|---|
| | Santa Monica Bay Beaches Bacteria TMDL | Santa Monica Bay Nearshore and Offshore Debris TMDL^{1, 2} | Santa Monica Bay TMDL for DDTs and PCBs | Malibu Creek and Lagoon Bacteria TMDL | Malibu Creek Watershed Trash TMDL | Malibu Creek Nutrient TMDL | Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients |
| Agoura Hills | X | X | X | X | X | X | X |
| Beverly Hills | | X | X | | | | |
| <i>Calabasas</i> | X | X | X | X | X | X | X |
| Culver City | | X | X | | | | |

¹ Upon the effective date of the revised Santa Monica Bay Nearshore and Offshore Debris TMDL (SMB Debris TMDL), the County of Ventura, the Ventura County Watershed Protection District and the Cities of Agoura Hills, Calabasas, Hidden Hills, Thousand Oaks, and Westlake Village shall comply with the trash effluent limitations assigned in the Malibu Creek Trash TMDL, in lieu of complying with the SMB Debris TMDL.

² Upon the effective date of the revised SMB Debris TMDL, the Cities of Beverly Hills, Inglewood and West Hollywood shall comply with the trash effluent limitations assigned in the Ballona Creek Trash TMDL, in lieu of complying with the SMB Debris TMDL.

| RESPONSIBLE PERMITTEES | Santa Monica Bay Watershed | | | Malibu Creek Subwatershed | | | |
|---|--|--|---|---------------------------------------|-----------------------------------|----------------------------|--|
| | Santa Monica Bay Beaches Bacteria TMDL | Santa Monica Bay Nearshore and Offshore Debris TMDL ^{1,2} | Santa Monica Bay TMDL for DDTs and PCBs | Malibu Creek and Lagoon Bacteria TMDL | Malibu Creek Watershed Trash TMDL | Malibu Creek Nutrient TMDL | Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients |
| <i>El Segundo</i> | X | X | X | | | | |
| Hermosa Beach | X | X | X | | | | |
| <i>Hidden Hills</i> | X | X | X | X | X | X | X |
| <i>Inglewood</i> | | X | X | | | | |
| <i>Los Angeles (City of)</i> | X | X | X | | | | |
| <i>Los Angeles (County of)</i> | X | X | X | X | X | X | X |
| <i>Los Angeles County Flood Control District</i> | X | X | X | X | X | X | X |
| Malibu | X | X | X | X | X | X | X |
| <i>Manhattan Beach</i> | X | X | X | | | | |
| <i>Palos Verdes Estates</i> | X | X | X | | | | |
| <i>Rancho Palos Verdes</i> | X | X | X | | | | |
| <i>Redondo Beach</i> | X | X | X | | | | |
| <i>Rolling Hills</i> | X | X | X | | | | |
| <i>Rolling Hills Estates</i> | X | X | X | | | | |
| Santa Monica | X | X | X | | | | |
| <i>Thousand Oaks</i> | X | X | | X | X | X | |
| <i>Torrance</i> | X | X | X | | | | |
| <i>Ventura (County of)</i> | X | X | | X | X | X | |
| <i>Ventura County Watershed Protection District</i> | X | X | | X | X | X | |
| West Hollywood | | X | X | | | | |
| Westlake Village | X | X | X | X | X | X | |

Table J-7. Santa Monica Bay Beaches Bacteria TMDL by Jurisdictional Group (JG)

| RESPONSIBLE PERMITTEES | JG1 | JG2 | JG3 | JG4 | JG5 | JG6 | JG7 | JG9 |
|--|------------|------------|------------|------------|----------------|------------|------------|------------|
| <i>Agoura Hills</i> | | | | | | | | X |
| <i>Calabasas</i> | X | | | | | | | X |
| <i>El Segundo</i> | | X | | | X | | | |
| <i>Hermosa Beach</i> | | | | | X | X | | |
| <i>Hidden Hills</i> | | | | | | | | X |
| <i>Los Angeles (City of)</i> | X | X | X | | | | X | |
| <i>Los Angeles (County of)³</i> | X | X | X | X | X | X | X | X |
| <i>Los Angeles County Flood Control District</i> | X | X | X | X | X | X | X | X |
| <i>Malibu</i> | X | | | X | | | | X |
| <i>Manhattan Beach</i> | | | | | X | X | | |
| <i>Palos Verdes Estates</i> | | | | | | | X | |
| <i>Rancho Palos Verdes</i> | | | | | | | X | |
| <i>Redondo Beach</i> | | | | | X ⁴ | X | | |
| <i>Rolling Hills</i> | | | | | | | X | |
| <i>Rolling Hills Estates</i> | | | | | | | X | |
| <i>Santa Monica</i> | | X | X | | | | | |
| <i>Thousand Oaks</i> | | | | | | | | X |

³ In contrast to the Order where the County of Los Angeles and the Los Angeles County Flood Control District (LACFCD) are treated as two different Permittees, the Santa Monica Bay Beaches Bacteria TMDL (SMB Bacteria TMDL) does not differentiate between the County of Los Angeles and the LACFCD. Therefore, the County of Los Angeles shall comply with the SMB Bacteria TMDL for areas in which it has jurisdiction and legal authority to implement the requirements of the SMB Bacteria TMDL. The LACFCD owns and/or operates MS4s within all jurisdictional groups (JG1 through JG7 and JG9) and shall comply with the requirements of the SMB Bacteria TMDL where it has jurisdiction and legal authority to implement the requirements of the SMB Bacteria TMDL.

⁴ The City of Redondo Beach shall comply with the SMB Bacteria TMDL in JG5 for areas in which it has jurisdiction and legal authority to implement the requirements of the SMB Bacteria TMDL.

| RESPONSIBLE PERMITTEES | JG1 | JG2 | JG3 | JG4 | JG5 | JG6 | JG7 | JG9 |
|---|------------|------------|------------|------------|------------|------------|------------|------------|
| <i>Torrance</i> | | | | | | X | | |
| <i>Ventura (County of)</i> ⁵ | | | | | | | | X |
| <i>Ventura County Watershed Protection District</i> | | | | | | | | X |
| <i>Westlake Village</i> | | | | | | | | X |

Table J-8. Santa Monica Bay Watershed Management Area TMDLs for Ballona Creek and Marina del Rey Subwatersheds

| RESPONSIBLE PERMITTEES | Ballona Creek Subwatershed | | | | | Marina del Rey Subwatershed | |
|--|-----------------------------------|--|---|----------------------------------|--|---|--|
| | Ballona Creek Trash TMDL | Ballona Creek Estuary Toxic Pollutants TMDL | Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL | Ballona Creek Metals TMDL | Ballona Creek Wetlands TMDL for Sediment and Invasive Exotic Vegetation | Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL | Marina del Rey Harbor Toxic Pollutants TMDL |
| <i>Beverly Hills</i> | X | X | X | X | X | | |
| <i>Culver City</i> | X | X | X | X | X | X | X |
| <i>Inglewood</i> | X | X | X | X | X | | |
| <i>Los Angeles (City of)</i> | X | X | X | X | X | X | X |
| <i>Los Angeles (County of)</i> | X | X | X | X | X | X | X |
| <i>Los Angeles County Flood Control District</i> | X | X | X | X | X | X | X |

⁵ In contrast to the Order where the County of Ventura and the Ventura County Watershed Protection District (VCWPD) are treated as two different Permittees, the SMB Bacteria TMDL does not differentiate between the County of Ventura and the VCWPD. Therefore, the County of Ventura shall comply with the SMB Bacteria TMDL for areas in which it has jurisdiction and legal authority to implement the requirements of the SMB Bacteria TMDL. The VCWPD owns and/or operates MS4s within Jurisdictional Group 9 and shall comply with the requirements of the SMB Bacteria TMDL where it has jurisdiction and legal authority to implement the requirements of the SMB Bacteria TMDL.

| RESPONSIBLE PERMITTEES | Ballona Creek Subwatershed | | | | | Marina del Rey Subwatershed | |
|------------------------|----------------------------|---|--|---------------------------|---|--|---|
| | Ballona Creek Trash TMDL | Ballona Creek Estuary Toxic Pollutants TMDL | Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL | Ballona Creek Metals TMDL | Ballona Creek Wetlands TMDL for Sediment and Invasive Exotic Vegetation | Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL | Marina del Rey Harbor Toxic Pollutants TMDL |
| Santa Monica | X | X | X | X | X | | |
| West Hollywood | X | X | X | X | X | | |

Table J-9. Dominguez Channel Watershed Management Area TMDLs

| RESPONSIBLE PERMITTEES | Dominguez Channel Watershed | | Machado Lake Subwatershed | | |
|--|----------------------------------|--|---------------------------|----------------------------|---------------------------------------|
| | Los Angeles Harbor Bacteria TMDL | Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL | Machado Lake Trash TMDL | Machado Lake Nutrient TMDL | Machado Lake Pesticides and PCBs TMDL |
| <i>Carson</i> | | X | X | X | X |
| <i>Compton</i> | | X | | | |
| <i>El Segundo</i> | | X | | | |
| <i>Gardena</i> | | X | | | |
| <i>Hawthorne</i> | | X | | | |
| <i>Inglewood</i> | | X | | | |
| <i>Lawndale</i> | | X | | | |
| <i>Lomita</i> | | | X | X | X |
| <i>Long Beach</i> | | X | | | |
| <i>Los Angeles (City of)</i> | X | X | X | X | X |
| <i>Los Angeles (County of)</i> | X | X | X | X | X |
| <i>Los Angeles County Flood Control District</i> | X | X | X | X | X |
| <i>Manhattan Beach</i> | | X | | | |

| RESPONSIBLE PERMITTEES | Dominguez Channel Watershed | | Machado Lake Subwatershed | | |
|------------------------------|----------------------------------|--|---------------------------|----------------------------|---------------------------------------|
| | Los Angeles Harbor Bacteria TMDL | Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL | Machado Lake Trash TMDL | Machado Lake Nutrient TMDL | Machado Lake Pesticides and PCBs TMDL |
| <i>Palos Verdes Estates</i> | | | X | X | X |
| <i>Rancho Palos Verdes</i> | | X | X | X | X |
| <i>Redondo Beach</i> | | X | X | X | X |
| <i>Rolling Hills</i> | | X | X | X | X |
| <i>Rolling Hills Estates</i> | | X | X | X | X |
| <i>Torrance</i> | | X | X | X | X |

Table J-10. Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL by Waterbody

| RESPONSIBLE PERMITTEES | Dominguez Channel (DC), Torrance Lateral, DC Estuary | Dominguez Channel Estuary Subgroup for Bed Sediment and Fish | Greater Los Angeles and Long Beach Harbor Waters | Los Angeles River Estuary Subgroup for Bed Sediment and Fish | Consolidated Slip | Los Angeles River and San Gabriel River |
|--|--|--|--|--|-------------------|---|
| <i>Bellflower</i> | | | X | | | |
| <i>Carson</i> | X | X | | | | |
| <i>Compton</i> | X | X | | | | |
| <i>El Segundo</i> | X | | | | | |
| <i>Gardena</i> | X | X | | | | |
| <i>Hawthorne</i> | X | | | | | |
| <i>Inglewood</i> | X | | | | | |
| <i>Lakewood</i> | | | X | | | |
| <i>Lawndale</i> | X | | | | | |
| <i>Long Beach</i> | X | X | X | X | | |
| <i>Los Angeles (City of)</i> | X | X | X | X | X | |
| <i>Los Angeles (County of)</i> | X | X | X | X | X | |
| <i>Los Angeles County Flood Control District</i> | X | X | X | X | X | |

| RESPONSIBLE PERMITTEES | Dominguez Channel (DC), Torrance Lateral, DC Estuary | Dominguez Channel Estuary Subgroup for Bed Sediment and Fish | Greater Los Angeles and Long Beach Harbor Waters | Los Angeles River Estuary Subgroup for Bed Sediment and Fish | Consolidated Slip | Los Angeles River and San Gabriel River |
|---|---|---|---|---|--------------------------|--|
| <i>Manhattan Beach</i> | X | | | | | |
| <i>Paramount</i> | | | X | | | |
| <i>Rancho Palos Verdes</i> | | | X | | | |
| <i>Redondo Beach</i> | X | | | | | |
| <i>Rolling Hills</i> | | | X | | | |
| <i>Rolling Hills Estates</i> | | | X | | | |
| <i>Signal Hill</i> | | | X | X | | |
| <i>Torrance</i> | X | X | | | | |
| Los Angeles River Metals TMDL and San Gabriel River Metals TMDL Responsible Permittees ⁶ | | | | | | X |

Table J-11. Los Angeles River Watershed Management Area TMDLs

| RESPONSIBLE PERMITTEES | Los Angeles River Watershed Trash TMDL | Los Angeles River Nitrogen Compounds and Related Effects TMDL | Los Angeles River and Tributaries Metals TMDL | Los Angeles River Watershed Bacteria TMDL | Legg Lake Trash TMDL | Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDL | Los Angeles Area Lake TMDLs for Lake Calabasas, Echo Park Lake, Legg Lake and Peck Road Park Lake | Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL |
|-------------------------------|---|--|--|--|-----------------------------|--|--|---|
| <i>Alhambra</i> | X | X | X | X | | | | |
| <i>Arcadia</i> | X | X | X | X | | | X | |

⁶ Permittees subject to the Los Angeles River Metals TMDL and the San Gabriel River Metals TMDL are required to monitor per the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL.

| RESPONSIBLE PERMITTEES | Los Angeles River Watershed Trash TMDL | Los Angeles River Nitrogen Compounds and Related Effects TMDL | Los Angeles River and Tributaries Metals TMDL | Los Angeles River Watershed Bacteria TMDL | Legg Lake Trash TMDL | Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDL | Los Angeles Area Lake TMDLs for Lake Calabasitas, Echo Park Lake, Legg Lake and Peck Road Park Lake | Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL |
|-------------------------------|---|--|--|--|-----------------------------|--|--|---|
| Bell | X | X | X | X | | | | |
| Bell Gardens | X | X | X | X | | | | |
| <i>Bradbury</i> | X | X | X | X | | | X | |
| Burbank | X | X | X | X | | | | |
| <i>Calabasitas</i> | X | X | X | X | | | X | |
| <i>Carson</i> | X | X | X | X | | | | X |
| Commerce | X | X | X | X | | | | |
| <i>Compton</i> | X | X | X | X | | | | X |
| Cudahy | X | X | X | X | | | | |
| <i>Downey</i> | X | X | X | X | | | | |
| <i>Duarte</i> | X | X | X | X | | | X | |
| <i>El Monte</i> | X | X | X | X | X | | X | |
| <i>Glendale</i> | X | X | X | X | | | | |
| <i>Hidden Hills</i> | X | X | X | X | | | | |
| <i>Huntington Park</i> | X | X | X | X | | | | |
| <i>Irwindale</i> | X | X | X | X | | | X | |
| La Cañada Flintridge | X | X | X | X | | | | |
| <i>Lakewood</i> | X | X | | X | | | | X |
| <i>Long Beach</i> | X | X | X | X | | X | | X |
| <i>Los Angeles (City of)</i> | X | X | X | X | | | X | X |

| RESPONSIBLE PERMITTEES | Los Angeles River Watershed Trash TMDL | Los Angeles River Nitrogen Compounds and Related Effects TMDL | Los Angeles River and Tributaries Metals TMDL | Los Angeles River Watershed Bacteria TMDL | Legg Lake Trash TMDL | Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDL | Los Angeles Area Lake TMDLs for Lake Calabasitas, Echo Park Lake, Legg Lake and Peck Road Park Lake | Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL |
|--|---|--|--|--|-----------------------------|--|--|---|
| <i>Los Angeles (County of)</i> | X | X | X | X | X | | X | X |
| <i>Los Angeles County Flood Control District</i> | X | X | X | X | X | X | X | X |
| Lynwood | X | X | X | X | | | | |
| Maywood | X | X | X | X | | | | |
| Monrovia | X | X | X | X | | | X | |
| Montebello | X | X | X | X | | | | |
| Monterey Park | X | X | X | X | | | | |
| Paramount | X | X | X | X | | | | X |
| Pasadena | X | X | X | X | | | | |
| Pico Rivera | X | X | X | X | | | | |
| Rosemead | X | X | X | X | | | | |
| San Fernando | X | X | X | X | | | | |
| San Gabriel | X | X | X | X | | | | |
| San Marino | X | X | X | X | | | | |
| <i>Santa Clarita</i> | | | | X ⁷ | | | | |
| Sierra Madre | X | X | X | X | | | X | |

⁷ As of the effective date of the Order, the City of Santa Clarita does not have any MS4 discharges to the Los Angeles River Watershed. However, the City of Santa Clarita is named as a responsible Permittee in the Los Angeles River Watershed Bacteria TMDL because a portion of the City's jurisdictional area is within the Los Angeles River Watershed.

| RESPONSIBLE PERMITTEES | Los Angeles River Watershed Trash TMDL | Los Angeles River Nitrogen Compounds and Related Effects TMDL | Los Angeles River and Tributaries Metals TMDL | Los Angeles River Watershed Bacteria TMDL | Legg Lake Trash TMDL | Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDL | Los Angeles Area Lake TMDLs for Lake Calabasas, Echo Park Lake, Legg Lake and Peck Road Park Lake | Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL |
|-------------------------------|---|--|--|--|-----------------------------|--|--|---|
| <i>Signal Hill</i> | X | X | X | X | | X | | X |
| <i>Simi Valley</i> | X ⁸ | | | | | | | |
| <i>South El Monte</i> | X | X | X | X | X | | X | |
| South Gate | X | X | X | X | | | | |
| South Pasadena | X | X | X | X | | | | |
| Temple City | X | X | X | X | | | | |
| Vernon | X | X | X | X | | | | |

Table J-12. Los Angeles River and Tributaries Metals TMDL by Waterbody

| RESPONSIBLE PERMITTEES | Los Angeles River Reach 1 and Compton Creek | Los Angeles River Reach 2, Rio Hondo, Arroyo Seco, and all contributing subwatersheds | Los Angeles River Reach 3, Verdugo Wash, and Burbank Western Channel | Los Angeles River Reaches 4 and 5, Tujunga Wash, and all contributing subwatersheds | Los Angeles River Reach 6, Bell Creek, and all contributing subwatersheds |
|-------------------------------|--|--|---|--|--|
| Alhambra | | X | | | |
| <i>Arcadia</i> | | X | | | |
| Bell | | X | | | |
| Bell Gardens | | X | | | |
| <i>Bradbury</i> | | X | | | |

⁸ As of the effective date of the Order, the City of Simi Valley does not have any MS4 discharges to the Los Angeles River Watershed. However, the City of Simi Valley is named as a responsible Permittee in the Los Angeles River Watershed Trash TMDL because a portion of the City’s jurisdictional area is within the Los Angeles River Watershed.

| RESPONSIBLE PERMITTEES | Los Angeles River Reach 1 and Compton Creek | Los Angeles River Reach 2, Rio Hondo, Arroyo Seco, and all contributing subwatersheds | Los Angeles River Reach 3, Verdugo Wash, and Burbank Western Channel | Los Angeles River Reaches 4 and 5, Tujunga Wash, and all contributing subwatersheds | Los Angeles River Reach 6, Bell Creek, and all contributing subwatersheds |
|--|--|--|---|--|--|
| Burbank | | | X | X | |
| <i>Calabasas</i> | | | | | X |
| <i>Carson</i> | X | | | | |
| Commerce | | X | | | |
| <i>Compton</i> | X | X | | | |
| Cudahy | | X | | | |
| <i>Downey</i> | | X | | | |
| <i>Duarte</i> | | X | | | |
| <i>El Monte</i> | | X | | | |
| <i>Glendale</i> | | X | X | X | |
| <i>Hidden Hills</i> | | | | | X |
| <i>Huntington Park</i> | X | X | | | |
| <i>Irwindale</i> | | X | | | |
| La Cañada Flintridge | | X | X | | |
| <i>Long Beach</i> | X | X | | | |
| <i>Los Angeles (City of)</i> | X | X | X | X | X |
| <i>Los Angeles (County of)</i> | X | X | X | X | X |
| <i>Los Angeles County Flood Control District</i> | X | X | X | X | X |
| Lynwood | X | X | | | |
| Maywood | | X | | | |
| <i>Monrovia</i> | | X | | | |
| Montebello | | X | | | |
| Monterey Park | | X | | | |
| <i>Paramount</i> | | X | | | |

| RESPONSIBLE PERMITTEES | Los Angeles River Reach 1 and Compton Creek | Los Angeles River Reach 2, Rio Hondo, Arroyo Seco, and all contributing subwatersheds | Los Angeles River Reach 3, Verdugo Wash, and Burbank Western Channel | Los Angeles River Reaches 4 and 5, Tujunga Wash, and all contributing subwatersheds | Los Angeles River Reach 6, Bell Creek, and all contributing subwatersheds |
|-------------------------------|--|--|---|--|--|
| Pasadena | | X | X | | |
| <i>Pico Rivera</i> | | X | | | |
| Rosemead | | X | | | |
| San Fernando | | | | X | |
| San Gabriel | | X | | | |
| San Marino | | X | | | |
| Sierra Madre | | X | | | |
| <i>Signal Hill</i> | X | | | | |
| <i>South El Monte</i> | | X | | | |
| South Gate | X | X | | | |
| South Pasadena | | X | | | |
| Temple City | | X | | | |
| Vernon | | X | | | |

Table J-13. Los Angeles River Watershed Bacteria TMDL by Los Angeles River Segment

| RESPONSIBLE PERMITTEES | Segment A | Segment B | Segment C | Segment D | Segment E |
|-------------------------------|------------------|------------------|------------------|------------------|------------------|
| Alhambra | | X | | | |
| Bell | | X | | | |
| Bell Gardens | | X | | | |
| Burbank | | | X | | |
| Commerce | | X | | | |
| <i>Compton</i> | X | X | | | |
| Cudahy | | X | | | |

| RESPONSIBLE PERMITTEES | Segment A | Segment B | Segment C | Segment D | Segment E |
|--|------------------|------------------|------------------|------------------|------------------|
| <i>Downey</i> | | X | | | |
| <i>Glendale</i> | | X | X | | |
| <i>Huntington Park</i> | | X | | | |
| <i>La Cañada Flintridge</i> | | | X | | |
| <i>Lakewood</i> | X | | | | |
| <i>Long Beach</i> | X | | | | |
| <i>Los Angeles (City of)</i> | | X | X | X | X |
| <i>Los Angeles (County of)</i> | X | X | X | | X |
| <i>Los Angeles County Flood Control District</i> | X | X | X | X | X |
| <i>Lynwood</i> | X | X | | | |
| <i>Maywood</i> | | X | | | |
| <i>Montebello</i> | | X | | | |
| <i>Monterey Park</i> | | X | | | |
| <i>Paramount</i> | X | X | | | |
| <i>Pasadena</i> | | X | X | | |
| <i>Signal Hill</i> | X | | | | |
| <i>South Gate</i> | | X | | | |
| <i>South Pasadena</i> | | X | | | |
| <i>Vernon</i> | | X | | | |

Table J-14. Los Angeles River Watershed Bacteria TMDL by Los Angeles River Tributary

| RESPONSIBLE PERMITTEES | Aliso Canyon Wash | Arroyo Seco | Bell Creek | Bull Creek | Burbank Western Channel | Compton Creek | Dry Canyon Creek | McCoy Canyon Creek | Rio Hondo | Tujunga Wash | Verdugo Wash |
|-------------------------------|--------------------------|--------------------|-------------------|-------------------|--------------------------------|----------------------|-------------------------|---------------------------|------------------|---------------------|---------------------|
| <i>Alhambra</i> | | | | | | | | | X | | |
| <i>Arcadia</i> | | | | | | | | | X | | |
| <i>Bell Gardens</i> | | | | | | | | | X | | |

| RESPONSIBLE PERMITTEES | Aliso Canyon Wash | Arroyo Seco | Bell Creek | Bull Creek | Burbank Western Channel | Compton Creek | Dry Canyon Creek | McCoy Canyon Creek | Rio Hondo | Tujunga Wash | Verdugo Wash |
|--|--------------------------|--------------------|-------------------|-------------------|--------------------------------|----------------------|-------------------------|---------------------------|------------------|---------------------|---------------------|
| <i>Bradbury</i> | | | | | | | | | X | | |
| <i>Burbank</i> | | | | | X | | | | | | |
| <i>Calabasas</i> | | | | | | | X | X | | | |
| <i>Carson</i> | | | | | | X | | | | | |
| <i>Commerce</i> | | | | | | | | | X | | |
| <i>Compton</i> | | | | | | X | | | | | |
| <i>Downey</i> | | | | | | | | | X | | |
| <i>Duarte</i> | | | | | | | | | X | | |
| <i>El Monte</i> | | | | | | | | | X | | |
| <i>Glendale</i> | | X | | | X | | | | | X | X |
| <i>Hidden Hills</i> | | | X | | | | | X | | | |
| <i>Huntington Park</i> | | | | | | X | | | | | |
| <i>Irwindale</i> | | | | | | | | | X | | |
| <i>La Cañada Flintridge</i> | | X | | | | | | | | | X |
| <i>Long Beach</i> | | | | | | X | | | | | |
| <i>Los Angeles (City of)</i> | X | X | X | X | X | X | X | X | | X | X |
| <i>Los Angeles (County of)</i> | X | X | X | X | | X | X | X | X | X | X |
| <i>Los Angeles County Flood Control District</i> | X | X | X | X | X | X | X | X | X | X | X |
| <i>Lynwood</i> | | | | | | X | | | | | |
| <i>Monrovia</i> | | | | | | | | | X | | |
| <i>Montebello</i> | | | | | | | | | X | | |
| <i>Monterey Park</i> | | | | | | | | | X | | |
| <i>Pasadena</i> | | X | | | | | | | X | | X |

| RESPONSIBLE PERMITTEES | Aliso Canyon Wash | Arroyo Seco | Bell Creek | Bull Creek | Burbank Western Channel | Compton Creek | Dry Canyon Creek | McCoy Canyon Creek | Rio Hondo | Tujunga Wash | Verdugo Wash |
|------------------------|-------------------|-------------|------------|----------------|-------------------------|---------------|------------------|--------------------|-----------|--------------|--------------|
| <i>Pico Rivera</i> | | | | | | | | | X | | |
| Rosemead | | | | | | | | | X | | |
| San Fernando | | | | | | | | | | X | |
| San Gabriel | | | | | | | | | X | | |
| San Marino | | | | | | | | | X | | |
| <i>Santa Clarita</i> | | | | X ⁹ | | | | | | | |
| Sierra Madre | | | | | | | | | X | | |
| <i>South El Monte</i> | | | | | | | | | X | | |
| South Gate | | | | | | X | | | X | | |
| South Pasadena | | X | | | | | | | X | | |
| Temple City | | | | | | | | | X | | |

Table J-15. San Gabriel River Watershed Management Area TMDLs

| RESPONSIBLE PERMITTEES | San Gabriel River and Impaired Tributaries Metals and Selenium TMDL | San Gabriel River, Estuary and Tributaries Indicator Bacteria TMDL | Los Angeles Area Lakes TMDLs for Puddingstone Reservoir | Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL |
|------------------------|---|--|---|--|
| <i>Arcadia</i> | X | X | | |
| Artesia | X | X | | |
| Azusa | X | X | | |
| Baldwin Park | X | X | | |
| <i>Bellflower</i> | X | X | | X |
| <i>Bradbury</i> | X | X | | |

⁹ As of the effective date of the Order, the City of Santa Clarita does not have any MS4 discharges to the Los Angeles River Watershed. However, the City of Santa Clarita is named as a responsible Permittee in the Los Angeles River Watershed Bacteria TMDL because a portion of the City's jurisdictional area is within the Los Angeles River Watershed.

| RESPONSIBLE PERMITTEES | San Gabriel River and Impaired Tributaries Metals and Selenium TMDL | San Gabriel River, Estuary and Tributaries Indicator Bacteria TMDL | Los Angeles Area Lakes TMDLs for Puddingstone Reservoir | Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL |
|--|--|---|--|---|
| <i>Cerritos</i> | X | X | | |
| Claremont | X | X | X | |
| Covina | X | X | | |
| Diamond Bar | X | X | | |
| <i>Downey</i> | X | X | | |
| <i>Duarte</i> | X | X | | |
| <i>El Monte</i> | X | X | | |
| Glendora | X | X | | |
| Hawaiian Gardens | X | X | | |
| Industry | X | X | | |
| <i>Irwindale</i> | X | X | | |
| La Habra Heights | X | X | | |
| La Mirada | X | X | | |
| La Puente | X | X | | |
| La Verne | X | X | X | |
| <i>Lakewood</i> | X | X | | X |
| <i>Long Beach</i> | X | X | | X |
| <i>Los Angeles (County of)</i> | X | X | X | X |
| <i>Los Angeles County Flood Control District</i> | X | X | X | X |
| <i>Monrovia</i> | X | X | | |
| Norwalk | X | X | | |
| <i>Pico Rivera</i> | X | X | | |
| Pomona | X | X | X | |
| San Dimas | X | X | X | |
| Santa Fe Springs | X | X | | |

| RESPONSIBLE PERMITTEES | San Gabriel River and Impaired Tributaries Metals and Selenium TMDL | San Gabriel River, Estuary and Tributaries Indicator Bacteria TMDL | Los Angeles Area Lakes TMDLs for Puddingstone Reservoir | Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL |
|-------------------------------|--|---|--|---|
| <i>South El Monte</i> | X | X | | |
| Walnut | X | X | | |
| West Covina | X | X | | |
| Whittier | X | X | | |

Table J-16. San Gabriel River and Impaired Tributaries Metals and Selenium TMDLs by Watershed Subbasins

| RESPONSIBLE PERMITTEES | Coyote Creek | San Gabriel River Reach 1 | San Gabriel River Reach 2 | San Gabriel River Reach 3 | San Gabriel River Reach 4 | San Gabriel River Reach 5 | San Jose Creek | Walnut Creek |
|-------------------------------|---------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|-----------------------|---------------------|
| <i>Arcadia</i> | | | | | X | | | |
| Artesia | X | X | | | | | | |
| Azusa | | | | | | X | | X |
| Baldwin Park | | | | X | X | | | X |
| <i>Bellflower</i> | | X | | | | | | |
| <i>Bradbury</i> | | | | | | X | | |
| <i>Cerritos</i> | X | X | | | | | | |
| Claremont | | | | | | | X | X |
| Covina | | | | | | | | X |
| Diamond Bar | X | | | | | | X | |
| <i>Downey</i> | | X | X | | | | | |
| <i>Duarte</i> | | | | | | X | | |
| <i>El Monte</i> | | | | X | X | | | |
| Glendora | | | | | | X | | X |
| Hawaiian Gardens | X | | | | | | | |
| Industry | | | X | X | | | X | X |

| RESPONSIBLE PERMITTEES | Coyote Creek | San Gabriel River Reach 1 | San Gabriel River Reach 2 | San Gabriel River Reach 3 | San Gabriel River Reach 4 | San Gabriel River Reach 5 | San Jose Creek | Walnut Creek |
|--|--------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|----------------|--------------|
| <i>Irwindale</i> | | | | X | X | X | | X |
| La Habra Heights | X | | | | | | X | |
| La Mirada | X | | | | | | | |
| La Puente | | | | X | | | X | X |
| La Verne | | | | | | | X | X |
| <i>Lakewood</i> | X | X | | | | | | |
| <i>Long Beach</i> | X | X | | | | | | |
| <i>Los Angeles (County of)</i> | X | | X | X | | X | X | X |
| <i>Los Angeles County Flood Control District</i> | X | X | X | X | X | X | X | X |
| <i>Monrovia</i> | | | | | | X | | |
| Norwalk | X | X | | | | | | |
| <i>Pico Rivera</i> | | | X | X | | | | |
| Pomona | | | | | | | X | X |
| San Dimas | | | | | | | X | X |
| Santa Fe Springs | X | X | X | | | | | |
| <i>South El Monte</i> | | | | X | | | | |
| Walnut | | | | | | | X | X |
| West Covina | | | | | | | X | X |
| Whittier | X | | X | X | | | X | |

Table J-17. Los Cerritos Channel and Alamitos Bay Watershed Management Area TMDLs

| RESPONSIBLE PERMITTEES | Los Cerritos Channel Metals TMDL | Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals TMDL | Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL |
|------------------------|----------------------------------|---|--|
| <i>Bellflower</i> | X | | X |
| <i>Cerritos</i> | X | | |

| RESPONSIBLE PERMITTEES | Los Cerritos Channel Metals TMDL | Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals TMDL | Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL |
|--|---|--|---|
| <i>Downey</i> | X | | |
| <i>Lakewood</i> | X | | X |
| <i>Long Beach</i> | X | X | X |
| <i>Los Angeles (County of)</i> | X | | X |
| <i>Los Angeles County Flood Control District</i> | X | X | X |
| <i>Paramount</i> | X | | X |
| <i>Signal Hill</i> | X | | X |

ATTACHMENT K – TMDLS IN THE VENTURA RIVER WATERSHED MANAGEMENT AREA

I. TMDL FOR ALGAE, EUTROPHIC CONDITIONS, AND NUTRIENTS IN THE VENTURA RIVER AND ITS TRIBUTARIES

- A. Permittees subject to the provisions below are identified in Attachment J, Table J-1.
- B. Permittees shall comply with the following area-weighted water quality-based effluent limitations for discharges of nitrogen and phosphorus to the Ventura River and its tributaries during dry weather¹ as of the effective date of the Order:

| Final Dry-Weather Effluent Limitations | |
|---|----------------------------------|
| Total Nitrogen² | Total Phosphorus (TP) |
| 0.0025 lb/day/acre | 4.7x10 ⁻⁵ lb/day/acre |

- C. Compliance with subpart B above shall be determined based on a minimum of quarterly sampling per year during dry weather of total nitrogen and total phosphorus concentrations and flow at the time of sampling from the outfall. Compliance will only be assessed on the day of sampling. Additionally, each Permittee shall report their drainage area to the sampling location in conjunction with reporting monitoring data.
- D. Permittees shall comply with the following water quality-based effluent limitations for discharges to the following waterbodies during wet weather as of the effective date of the Order:

| Wet-Weather Effluent Limitations Event Mean Concentration | | |
|--|-------------------------------------|--|
| Reach | Nitrate-N + Nitrite-N (mg/L) | Total Nitrogen³ (mg/L) |
| Estuary | --- | 7.4 |
| Reach 1 | --- | 7.4 |
| Reach 2 | 10 | --- |
| Cañada Larga | 10 | --- |
| Reach 3 | 5 | --- |
| San Antonio Creek | 5 | --- |
| Reach 4 | 5 | --- |
| Reach 5 | 5 | --- |

II. VENTURA RIVER ESTUARY TRASH TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Table J-1.
- B. Permittees shall comply with water quality-based effluent limitations for trash per the provisions in Part IV.B.3 of the Order.
- C. Permittees shall comply with the water quality-based effluent limitation of zero trash discharged to the Ventura River Estuary, shoreline, and channel as of the effective date of the Order, and every water year thereafter.

¹ Dry weather is defined as a day with no rain measured at Ventura River County Water District Gage 020. Dry weather sampling may occur 72 hours after a storm event.
² Total Nitrogen is the sum of TKN plus Nitrate-N plus Nitrite-N.
³ Ibid.

ATTACHMENT L – TMDLS IN THE MISCELLANEOUS VENTURA COUNTY COASTAL WATERSHEDS

I. HARBOR BEACHES OF VENTURA COUNTY (KIDDIE BEACH AND HOBIE BEACH) BACTERIA TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Table J-2.
- B. Permittees shall comply with the following water quality-based effluent limitations for discharges to the Channel Islands Harbor Beaches (Kiddie Beach and Hobie Beach) during wet and dry weather¹ as of the effective date of the Order:

| Constituent | Effluent Limitations (MPN or cfu) | |
|----------------|-----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform | 10,000/100 mL ² | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| Enterococcus | 104/100 mL | 35/100 mL |

C. Receiving Water Limitations:

- 1. Permittees shall comply with the following grouped³ receiving water limitations for each monitoring location at Kiddie Beach and Hobie Beach as of the effective date of the Order:

| Annual Allowable Exceedance Days of the Single Sample Objectives ⁴ | | | | | |
|---|-----------------|---|-----------------|---|-----------------|
| Winter Dry-Weather (November 1 to March 31) | | Summer Dry-Weather (April 1 to October 31) | | Wet-Weather (November 1 to October 31) | |
| Daily sampling | Weekly sampling | Daily sampling | Weekly sampling | Daily sampling | Weekly sampling |
| 3 | 1 | 0 | 0 | 17 | 3 |

- 2. Permittees shall comply with the following receiving water limitations for the Channel Islands Harbor Beaches (Kiddie Beach and Hobie Beach) as of the effective date of the Order:

| Constituent | Rolling 30-day Geometric Mean (MPN or cfu) ⁵ |
|----------------|---|
| Total coliform | 1,000/100 mL |
| Fecal coliform | 200/100 mL |
| Enterococcus | 35/100 mL |

¹ Wet weather is defined as a day with 0.1 inch of rain or greater and the three days following the rain event. Dry weather is defined as a non-wet day.
² Total coliform density shall not exceed the daily maximum of 1,000/100 ml if the ratio of fecal-to-total coliform exceeds 0.1.
³ The receiving water limitations are group-based and shared among responsible MS4 Permittees in the Order and Caltrans.
⁴ The Single Sample Objectives are equivalent to the daily maximum values listed in subpart B above.
⁵ Geometric mean values shall be calculated on each sample day based on a statistically sufficient number of samples (generally not less than 5 samples equally spaced over a 30-day period) consistent with the REC-1 bacteria objectives.

ATTACHMENT M – TMDLS IN THE SANTA CLARA RIVER WATERSHED MANAGEMENT AREA

I. SANTA CLARA RIVER NITROGEN COMPOUNDS TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Tables J-3 and J-4.
- B. Permittees shall comply with the following water quality-based effluent limitations for discharges to Santa Clara River Reach 5 and Reach 3¹ as of the effective date of the Order:

| Constituent | Effluent Limitations (mg/L) | | | |
|--|-----------------------------|----------------|----------------|----------------|
| | Reach 5 | | Reach 3 | |
| | 30-day average | 1-hour average | 30-day average | 1-hour average |
| Total Ammonia as Nitrogen (NH ₃ -N) | 1.75 | 5.2 | 2.0 | 4.2 |
| Nitrate plus Nitrite as Nitrogen (NO ₂ -N + NO ₃ -N) | 6.8 | - | 8.1 | - |

II. TMDL FOR CHLORIDE IN THE SANTA CLARA RIVER, REACH 3

- A. Permittees subject to the provisions below are identified in Attachment J, Tables J-3 and J-4.
- B. Permittees shall comply with the following water quality-based effluent limitation for discharges to Santa Clara River Reach 3 and its tributaries as of the effective date of the Order:

| Constituent | Effluent Limitation Daily Maximum (mg/L) |
|-------------|--|
| Chloride | 100 |

III. UPPER SANTA CLARA RIVER CHLORIDE TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Tables J-3 and J-4.
- B. Permittees shall comply with the following water quality-based effluent limitation for discharges to Santa Clara River Reaches 4B, 5, and 6 as of the effective date of the Order:

| Constituent | Effluent Limitation Daily Maximum (mg/L) |
|-------------|--|
| Chloride | 100 |

IV. SANTA CLARA RIVER ESTUARY AND REACHES 3, 5, 6, AND 7 INDICATOR BACTERIA TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Tables J-3 and J-4.
- B. The daily maximum single sample objectives for Santa Clara River Estuary, and Santa Clara River Reaches 1, 2, 3, and above are listed below:

¹ The Basin Plan Chapter 7-9 Santa Clara River Nitrogen Compounds TMDL uses the U.S. EPA Santa Clara River reach designations. Reach designations here are per the corresponding reach designations in the Los Angeles Region’s Basin Plan Chapter 2. The U.S. EPA’s Santa Clara River Reach 7 corresponds to Santa Clara River Reach 5 (Blue Cut Gauging Station to West Pier Highway 99) in the Los Angeles Region’s Basin Plan Chapter 2. Likewise, U.S. EPA’s Santa Clara River Reach 3 corresponds to part of Santa Clara River Reach 3 (between Freeman Diversion Dam near Saticoy to Timber Canyon above Santa Paula Creek) in the Los Angeles Region’s Basin Plan Chapter 2.

| Constituent | Daily Maximum Single Sample Objectives (MPN or cfu) | |
|----------------|---|---------------------------------------|
| | Santa Clara River Estuary and Santa Clara River Reaches 1 and 2 | Santa Clara River Reaches 3 and above |
| E. coli | -- | 235/100 mL |
| Total coliform | 10,000/100 mL ² | -- |
| Fecal coliform | 400/100 mL | -- |
| Enterococcus | 104/100 mL | -- |

C. Permittees shall comply with the following interim receiving water limitations and water quality-based effluent limitations³ for discharges to the Santa Clara River Estuary and Santa Clara River Reaches 1, 2, 3, and above as of the effective date of the Order⁴:

| Location | Time Period | Interim Annual Allowable Exceedance Days of the Single Sample Objectives ⁵ | | |
|---|---|---|-----------------|--------------------------------|
| | | Daily Sampling | Weekly Sampling | 3 Wet and 2 Dry weather events |
| Santa Clara River Estuary and Santa Clara River Reaches 1 and 2 | Winter Dry Weather (November 1 to March 31) | 49 | 7 | 1 |
| | Summer Dry Weather (April 1 to October 31) | 150 | 22 | 1 |
| | Wet Weather (November 1 to October 31) | 62 | 9 | 1 |
| Santa Clara River Reaches 3 and above | Dry Weather (November 1 to October 31) | 17 | 3 | 1 |
| | Wet Weather (November 1 to October 31) | 61 | 9 | 1 |

D. Permittees shall comply with the following final receiving water limitations and water quality-based effluent limitations⁶ for discharges to the Santa Clara River Estuary and Santa Clara River Reaches 1, 2, 3, and above during dry weather no later than March 21, 2023, and during wet weather no later than March 21, 2029:

| Location | Time Period | Final Annual Allowable Exceedance Days of the Single Sample Objectives ⁷ | |
|---|---|---|-----------------|
| | | Daily Sampling | Weekly Sampling |
| Santa Clara River Estuary and Santa Clara River Reaches 1 and 2 | Winter Dry Weather (November 1 to March 31) | 12 | 2 |
| | Summer Dry Weather (April 1 to October 31) | 10 | 2 |
| | Wet Weather | 25 | 4 |

² Total coliform density shall not exceed the daily maximum of 1,000/100 mL, if the ratio of fecal-to-total coliform exceeds 0.1.
³ The receiving water limitations are group-based and shared among all MS4 Permittees in the Order located within the sub-drainage area to each reach.
⁴ Wet weather is defined as a day with 0.1 inch of rain or greater and the three days following the rain event. Dry weather is defined as a non-wet day.
⁵ The Single Sample Objectives are equivalent to the daily maximum values listed in subpart B above.
⁶ The receiving water limitations are group-based and shared among all MS4 Permittees in the Order located within the sub-drainage area to each reach.
⁷ The Single Sample Objectives are equivalent to the daily maximum values listed in subpart B above.

| Location | Time Period | Final Annual Allowable Exceedance Days of the Single Sample Objectives ⁷ | |
|---------------------------------------|--|---|-----------------|
| | | Daily Sampling | Weekly Sampling |
| | (November 1 to October 31) | | |
| Santa Clara River Reaches 3 and above | Dry Weather (November 1 to October 31) | 5 | 1 |
| | Wet Weather (November 1 to October 31) | 16 | 3 |

E. Permittees shall comply with the following receiving water limitations and water quality-based effluent limitations for discharges to the Santa Clara River Estuary and Santa Clara River Reaches 1, 2, 3, and above no later than March 21, 2029:

| Constituent | Rolling 30-day Geometric Mean (MPN or cfu) ⁸ | |
|----------------|---|---------------------------------------|
| | Santa Clara River Estuary and Santa Clara River Reaches 1 and 2 | Santa Clara River Reaches 3 and above |
| E. coli | --- | 126/100 mL |
| Total coliform | 1,000/100mL | --- |
| Fecal coliform | 200/100mL | --- |
| Enterococcus | 35/100mL | --- |

F. Permittees may propose wet-weather load-based compliance at MS4 outfalls. The plan shall include the following:

1. An estimate of existing load and the allowable load from MS4 outfalls to attain the allowable number of exceedance days in-stream; and
2. Technically defensible quantitative linkage to the allowable number of exceedance days; and
3. Quantitative estimates of the water quality benefits provided by the proposed implementation approach.

V. LAKE ELIZABETH, MUNZ LAKE, AND LAKE HUGHES TRASH TMDL (LAKE ELIZABETH ONLY)

- A. Permittees subject to the provisions below are identified in Attachment J, Tables J-3 and J-4.
- B. Permittees shall comply with water quality-based effluent limitations for trash per the provisions in Part IV.B.3 of the Order.
- C. Permittees shall comply with the water quality-based effluent limitation of zero trash discharged to Lake Elizabeth and its shoreline as of the effective date of the Order and every water year thereafter.

VI. SANTA CLARA RIVER LAKES NUTRIENTS TMDL (LAKE ELIZABETH ONLY)

- A. Permittees subject to the provisions below are identified in Attachment J, Tables J-3 and J-4.

⁸ Geometric mean values shall be calculated on each sample day based on a statistically sufficient number of samples (generally not less than 5 samples equally spaced over a 30-day period) consistent with the REC-1 bacteria objectives.

- B.** Permittees⁹ shall comply with the following mass-based water quality-based effluent limitations¹⁰ for discharges of total nitrogen and total phosphorus to Lake Elizabeth no later than June 27, 2032:

| Effluent Limitations | |
|---------------------------------|--|
| Total Phosphorus (lb/yr) | Total Nitrogen¹¹ (lb/yr) |
| 436.7 | 2536.8 |

- C.** Compliance with subpart B above shall be determined based on monitoring at all outfalls directly discharging to Lake Elizabeth at a minimum of quarterly per year. Permittees shall report flow of discharge from the outfall in conjunction with reporting monitoring data.

⁹ Responsible Permittees include County of Los Angeles and LACFCD.

¹⁰ The water quality-based effluent limitations are group-based and shared among all MS4 Permittees in the Order located within the sub-drainage area to Lake Elizabeth.

¹¹ Total Nitrogen is the sum of TKN plus Nitrate-N plus Nitrite-N.

ATTACHMENT N – TMDLS IN THE CALLEGUAS CREEK WATERSHED MANAGEMENT AREA

I. ORGANOCHLORINE (OC) PESTICIDES, POLYCHLORINATED BIPHENYLS (PCBS) AND SILTATION IN CALLEGUAS CREEK, ITS TRIBUTARIES, AND MUGU LAGOON TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Table J-5.
- B. Compliance with the following sediment-based receiving water limitations shall be measured as an in-stream annual average at the base of each subwatershed¹ within the Calleguas Creek Watershed.
 - 1. Permittees shall comply with the following interim sediment-based receiving water limitations for pollutant concentrations in bed sediment for the following subwatersheds as of the effective date of the Order:

| Interim Receiving Water Limitations by Subwatershed (ng/g sediment) | | | | | | |
|--|--------------------------------|------------------------|-----------------------|-------------------------|--------------------|---------------------|
| Constituent | Mugu Lagoon² | Calleguas Creek | Revolon Slough | Arroyo Las Posas | Arroyo Simi | Conejo Creek |
| Total Chlordane | 25 | 17 | 48 | 3.3 | 3.3 | 3.4 |
| 4,4-DDD | 69 | 66 | 400 | 290 | 14 | 5.3 |
| 4,4-DDE | 300 | 470 | 1,600 | 950 | 170 | 20 |
| 4,4-DDT | 39 | 110 | 690 | 670 | 25 | 2 |
| Dieldrin | 19 | 3 | 5.7 | 1.1 | 1.1 | 3 |
| Total PCBs | 180 | 3,800 | 7,600 | 25,700 | 25,700 | 3,800 |
| Toxaphene | 22,900 | 260 | 790 | 230 | 230 | 260 |

- 2. Permittees shall comply with the following final sediment-based receiving water limitations for pollutant concentrations in bed sediment for the following subwatersheds no later than March 24, 2026:

| Final Receiving Water Limitations by Subwatershed (ng/g sediment) | | | | | | |
|--|--------------------------------|------------------------|-----------------------|-------------------------|--------------------|---------------------|
| Constituent | Mugu Lagoon³ | Calleguas Creek | Revolon Slough | Arroyo Las Posas | Arroyo Simi | Conejo Creek |
| Total Chlordane | 3.3 | 3.3 | 0.9 | 3.3 | 3.3 | 3.3 |
| 4,4-DDD | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 |
| 4,4-DDE | 2.2 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 |
| 4,4-DDT | 0.3 | 0.3 | 0.3 | 0.3 | 0.3 | 0.3 |
| Dieldrin | 4.3 | 0.2 | 0.1 | 0.2 | 0.2 | 0.2 |
| Total PCBs | 180 | 120 | 130 | 120 | 120 | 120 |
| Toxaphene | 360 | 0.6 | 1.0 | 0.6 | 0.6 | 0.6 |

II. TOXICITY, CHLORPYRIFOS, AND DIAZINON IN THE CALLEGUAS CREEK, ITS TRIBUTARIES AND MUGU LAGOON TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Table J-5.

¹ All references to subwatersheds for this TMDL are defined per drainage areas in Figure 1 of the Calleguas Creek Watershed OC Pesticides and PCBs TMDL Technical Report, April 25, 2005.

² The Mugu Lagoon subwatershed includes Duck Pond/Agricultural Drain/Mugu/Oxnard Drain #2.

³ Ibid.

- B. Permittees shall comply with the following receiving water limitations for Calleguas Creek and its tributaries measured in-stream at the base of each subwatershed⁴ as of the effective date of the Order:

| Receiving Water Limitations Daily Maximum (µg/L) | | |
|--|-------------|-------------|
| Constituent | Wet Weather | Dry weather |
| Chlorpyrifos | 0.025 | 0.014 |
| Diazinon | 0.10 | 0.10 |

- C. Permittees shall comply with the receiving water limitation of 1 TUc measured in-stream at the base of each subwatershed as of the effective date of the Order. The receiving water limitation shall be implemented as a trigger for initiation of the TRE/TIE process as outlined in U.S. EPA's "Understanding and Accounting for Method Variability in Whole Effluent Toxicity Applications Under the National Pollutant Discharge Elimination System Program" (2000).

III. METALS AND SELENIUM IN THE CALLEGUAS CREEK, ITS TRIBUTARIES AND MUGU LAGOON TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Table J-5.
- B. Permittees shall comply with the following interim receiving water limitations⁵ for the following waterbodies as of the effective date of the Order, expressed as total recoverable metals:

| Interim Receiving Water Limitations in Water Column (µg/L of total recoverable metals) | | | | | | |
|--|----------------------------|-----------------------------|---------------------------|---------------------------|-----------------------------|---------------------------|
| Constituents | Calleguas and Conejo Creek | | | Revolon Slough | | |
| | Dry Weather Daily Maximum | Dry Weather Monthly Average | Wet Weather Daily Maximum | Dry Weather Daily Maximum | Dry Weather Monthly Average | Wet Weather Daily Maximum |
| Copper | 23 | 19 | 204 | 23 | 19 | 204 |
| Nickel | 15 | 13 | --- | 15 | 13 | --- |
| Selenium | --- | --- | --- | 14 ⁶ | 13 ⁷ | --- |

- C. Permittees shall comply with the following dry weather grouped⁸ mass-based final receiving water limitations for the following waterbodies measured in-stream at the base of Revolon Slough and Calleguas Creek, and in Mugu Lagoon no later than March 27, 2022, expressed as total recoverable metals:

⁴ All references to subwatersheds in this TMDL include Mugu Lagoon, Revolon Slough, Calleguas, Conejo, Las Posas, and Arroyo Simi per drainage areas in Figure 1 of the Calleguas Creek Watershed Toxicity, Chlorpyrifos, and Diazinon TMDL Technical Report, April 25, 2005.

⁵ The dry weather limitations apply to days when flows in the stream are less than the 86th percentile flow rate for each reach. The wet weather limitations apply to days when flows in the stream exceed the 86th percentile flow rate for each reach.

⁶ Attainment of interim limits will be evaluated in consideration of background loading data, if available consistent with EPA's Recommended Aquatic Life Ambient Water Quality Criterion for Selenium in Freshwater.

⁷ Ibid.

⁸ Includes MS4 Permittees, Caltrans, general industrial and construction stormwater permit dischargers, and Naval Air Weapons Station Point Mugu.

| Final Receiving Water Limitations in Water Column (lbs/day of total recoverable metals) | | | | | | |
|---|----------------------------|-------------------------------|---------------------------------|--------------------------|--------------------------------|---------------------------------|
| Constituent | Calleguas and Conejo Creek | | | Revolon Slough | | |
| | Low Flow (0-5 cfs) | Average Flow (6-21 cfs) | Elevated Flow (22-30 cfs) | Low Flow (0-10 cfs) | Average Flow (11-17 cfs) | Elevated Flow (18-22 cfs) |
| Copper ⁹ | $0.04 \times WER - 0.02$ | $0.12 \times WER - 0.02$ | $0.18 \times WER - 0.03$ | $0.03 \times WER - 0.01$ | $0.06 \times WER - 0.03$ | $0.13 \times WER - 0.02$ |
| Nickel | 0.10 | 0.12 | 0.44 | 0.05 | 0.069 | 0.116 |
| Selenium | --- | --- | --- | 0.004 | 0.003 | 0.004 |

D. Permittees shall comply with the following wet weather grouped¹⁰ mass-based final receiving water limitations for the following waterbodies measured in-stream at the base of Revolon Slough and Calleguas Creek, and in Mugu Lagoon no later than March 27, 2022, expressed as total recoverable metals:

| Final Receiving Water Limitations in Water Column (lbs/day of total recoverable metals) ¹¹ | | |
|---|---|--|
| Constituent | Calleguas and Conejo Creek | Revolon Slough |
| Copper ¹² | $(0.00054 \times Q^2 \times 0.032 \times Q - 0.17) \times WER - 0.06$ | $(0.0002 \times Q^2 + 0.0005 \times Q) \times WER$ |
| Nickel ¹³ | $0.014 \times Q^2 + 0.82 \times Q$ | $0.027 \times Q^2 + 0.47 \times Q$ |
| Selenium ¹⁴ | --- | $0.027 \times Q^2 + 0.47 \times Q$ |

E. Permittees shall comply with the following grouped¹⁵ mass-based interim receiving water limitations for the following waterbodies measured in-stream at the base of Revolon Slough and Calleguas Creek, and in Mugu Lagoon as of the effective date of the Order. Permittees shall comply with the following grouped mass-based final receiving water limitations for the following

⁹ For copper, the approved site-specific WER of 1.51 for Mugu Lagoon shall be used to calculate the assigned receiving water limitations for Calleguas and Conejo Creek to ensure the downstream standard is achieved. Permittees may apply a WER of up to 3.69 for upstream reaches, except for Reaches 4 and 5, to calculate the assigned receiving water limitations. To apply a WER of greater than 1.51, Permittees shall provide a detailed quantitative analysis to the Los Angeles Water Board Executive Officer for approval to demonstrate that the receiving water limitations as modified by the WER are protective of downstream reaches. No site specific WER for Revolon Slough was approved so the default WER value of 1 shall apply. If a site-specific copper WER is approved for Revolon Slough, then it may be used to calculate the receiving water limitation. Regardless of the final WERs, total copper loading shall not exceed current loading.

¹⁰ Includes MS4 Permittees, Caltrans, general industrial and construction stormwater permit dischargers, and Naval Air Weapons Station Point Mugu.

¹¹ Q = Daily storm volume (cfs). If volume used is cfd, the result should be divided by 86,400 to get cfs.

¹² The approved site-specific WER of 1.51 for Mugu Lagoon shall be used to calculate the assigned receiving water limitations for Calleguas and Conejo Creek to ensure the downstream standard is achieved. Permittees may apply a WER of up to 3.69 for upstream reaches, except for Reaches 4 and 5, to calculate the assigned receiving water limitations. To apply a WER of greater than 1.51, Permittees shall provide a detailed quantitative analysis to the Los Angeles Water Board Executive Officer for approval to demonstrate that the receiving water limitations as modified by the WER are protective of downstream reaches. No site specific WER for Revolon Slough was approved so the default WER value of 1 shall apply. If a site-specific copper WER is approved for Revolon Slough, then it may be used to calculate the receiving water limitation. Regardless of the final WERs, total copper loading shall not exceed current loading.

¹³ Current loads do not exceed loading capacity during wet weather. Sum of all loads cannot exceed loads presented in the table.

¹⁴ Ibid.

¹⁵ Includes MS4 Permittees, Caltrans, general industrial and construction stormwater permit dischargers, and Naval Air Weapons Station Point Mugu.

waterbodies measured in-stream at the base of Revolon Slough and Calleguas Creek, and in Mugu Lagoon no later than March 27, 2022:

| Interim and Final Receiving Water Limitations for Mercury in Suspended Sediment (lbs/yr) | | | | |
|---|------------------------|--------------|-----------------------|--------------|
| Flow Range (MGY) | Calleguas Creek | | Revolon Slough | |
| | Interim | Final | Interim | Final |
| 0 – 14,999 | 3.3 | 0.4 | 1.7 | 0.1 |
| 15,000 – 25,000 | 10.5 | 1.6 | 4 | 0.7 |
| Above 25,000 | 64.6 | 9.3 | 10.2 | 1.8 |

- F. Compliance with subparts C, D, and E shall be determined based on the percentage of the watershed and land uses within the Permittee’s jurisdiction. Permittees shall report this with their submittal of monitoring data.

IV. CALLEGUAS CREEK WATERSHED SALTS TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Table J-5.
- B. Permittees shall comply with the following interim dry weather¹⁶ receiving water limitations for Calleguas Creek and its tributaries¹⁷ measured in-stream at the base of each subwatershed¹⁸ as of the effective date of the Order:

| Interim Dry-Weather Receiving Water Limitations (mg/L) | |
|---|------------------------|
| Constituent | Monthly Average |
| Boron | 1.3 |
| Chloride | 230 |
| Sulfate | 1289 |
| Total Dissolved Solids (TDS) | 1720 |

- C. Permittees shall comply with the following final dry weather receiving water limitations measured in-stream at the base of subwatersheds listed below no later than December 2, 2023:

| Final Dry-Weather Receiving Water Limitations | | | | |
|--|---------------------------|----------------------|--------------------------|------------------------|
| Subwatershed | Chloride (lbs/day) | TDS (lbs/day) | Sulfate (lbs/day) | Boron (lbs/day) |
| Simi | 1,738 | 9,849 | 2,897 | 12 |
| Las Posas | 157 | 887 | 261 | --- |
| Conejo | 1,576 | 8,931 | 2,627 | --- |
| Camarillo | 72 | 406 | 119 | --- |
| Pleasant Valley (Calleguas Creek) ¹⁹ | 150 | 850 | 250 | --- |

¹⁶ Dry weather limitations apply when instream flow rates are below the 86th percentile flow and there has been no measurable precipitation in the previous 24 hours.

¹⁷ The segment of Calleguas Creek Reach 4 below Laguna Road is tidally influenced and therefore not impaired for chloride, boron, sulfate, and TDS. Therefore, receiving water limitations applicable to Reach 4 do not apply below Laguna Road. Additionally, the receiving water limitations apply upstream of Potrero Road. Downstream of Potrero Road, the creek is tidally influenced and the salt receiving water limitations do not apply.

¹⁸ All references to subwatersheds for this TMDL are defined per drainage areas in Figure 10 of the Calleguas Creek Watershed Boron, Chloride, TDS, and Sulfate TMDL Public Review Technical Report, April 2007.

¹⁹ The receiving water limitations apply upstream of Potrero Road. Downstream of Potrero Road, the creek is tidally influenced and the salt receiving water limitations do not apply.

| Final Dry-Weather Receiving Water Limitations | | | | |
|--|-------------------------------|--------------------------|------------------------------|----------------------------|
| Subwatershed | Chloride (lbs/day) | TDS (lbs/day) | Sulfate (lbs/day) | Boron (lbs/day) |
| Pleasant Valley (Revolon) ²⁰ | 314 | 1,778 | 523 | 2 |

V. REVOLON SLOUGH AND BEARDSLEY WASH TRASH TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Table J-5.
- B. Permittees shall comply with water quality-based effluent limitations for trash per the provisions in Part IV.B.3 of the Order.
- C. Permittees shall comply with the water quality-based effluent limitation of zero trash discharged from priority land use areas, as defined in Attachment A of the Order, to Revolon Slough and Beardsley Wash as of the effective date of the Order and every water year thereafter.

VI. PESTICIDES, PCBs, AND SEDIMENT TOXICITY IN OXNARD DRAIN 3²¹ TMDL (U.S. EPA ESTABLISHED)

- A. Permittees subject to the provisions below are identified in Attachment J, Table J-5.
- B. Permittees shall comply with the following receiving water limitations and water quality-based effluent limitations per the provisions in Part IV.B.2.c of the Order (U.S. EPA Established TMDLs).
- C. Permittees shall comply with the following receiving water limitations for water and sediment in Oxnard Drain 3 and water quality-based effluent limitations for discharges to Oxnard Drain 3 subwatershed:

| Receiving Water and Effluent Limitations Daily Maximum for Water and Sediment²² | | | |
|---|---------------------|--|--|
| Constituent | Water (µg/L) | Sediment²³ (µg/dry kg) | Alternate Sediment²⁴ (µg/dry kg) |
| Bifenthrin | 0.0006 | --- | --- |
| Total Chlordane | 0.00059 | 0.5 | 3.3 |
| Chlorpyrifos | 0.0056 | --- | --- |
| 4,4'-DDT | 0.00059 | 1.0 | 0.3 |
| 4,4'-DDE | 0.00059 | 2.2 | 2.2 |
| 4,4'-DDD | 0.00084 | 2.0 | 2.0 |
| Dieldrin | 0.00014 | 0.02 | 4.3 |
| Total PCBs | 0.00017 | 22.7 | 180 |
| Sediment toxicity ²⁵ | --- | No significant chronic sediment toxicity | --- |

²⁰ For Calleguas Creek Reach 4 which is in the Pleasant Valley (Revolon) subwatershed, the receiving water limitations apply upstream of Laguna Road. Downstream of Laguna Road, the creek is tidally influenced and the salt receiving water limitations do not apply.

²¹ Oxnard Drain 3 has also been called Rio de Santa Clara, Arnold Road Drain, or L Street Drain; it is occasionally confused with Oxnard Drain 1.

²² Sediment concentrations associated with suspended sediment and Oxnard Drain 3 bed sediment.

²³ Sediment limitations apply if there are fish tissue targets or sediment toxicity exceedances. Fish tissue targets are defined per subpart D below.

²⁴ The alternate sediment limitations apply when the fish tissue targets and the sediment toxicity limitations are achieved in Oxnard Drain 3. Otherwise, the sediment limitations apply.

²⁵ Sediment is toxic if a sediment sample is significantly more toxic than the laboratory control, where the following two criteria are met: (1) a separate-variance t-test determines that there is a significant difference (p<0.05) in

| Receiving Water and Effluent Limitations Daily Maximum for Water and Sediment²² | | | |
|---|---------------------|--|--|
| Constituent | Water (µg/L) | Sediment²³ (µg/dry kg) | Alternate Sediment²⁴ (µg/dry kg) |
| Toxaphene | 0.0002 | 0.1 | 360 |

- D. The following fish tissue targets for Oxnard Drain 3 shall be met using a composite sample of skin-off fillets from at least five common carp each measuring at least 350 mm in length:

| Constituent | Fish Tissue Target (µg/wet kg) |
|--------------------|---|
| Total Chlordane | 8.3 |
| Chlorpyrifos | 1200 |
| 4,4'-DDT | 32 |
| 4,4'-DDE | 32 |
| 4,4'-DDD | 45 |
| Dieldrin | 0.65 |
| Total PCBs | 5.3 |
| Toxaphene | 9.8 |

mean toxicity test organism response (e.g., percent survival, percent normal development) between the sediment sample and the laboratory control, and (2) the mean organism response in that toxicity test is lower than a certain percentage of the control value, as determined by the 90th percentile Minimum Significant Difference (MSD). Exceedance of the toxicity target will be a trigger mechanism for initiation of the TRE/TIE process as described in U.S. EPA's Region 8, 9, and 10 Toxicity Training Tool (2010) at the base of each subwatershed.

ATTACHMENT O – TMDLS IN THE SANTA MONICA BAY WATERSHED MANAGEMENT AREA

I. SANTA MONICA BAY BEACHES BACTERIA TMDL

A. Permittees subject to the provisions below are identified in Attachment J, Tables J-6 and J-7.

B. Water Quality-Based Effluent Limitations

1. Permittees shall comply with the following water quality-based effluent limitations for discharges to Santa Monica Bay. Permittees shall comply with daily maximum limitations and geometric mean limitations as of the effective date of the Order.

| Constituent | Effluent Limitations (MPN or cfu) | |
|-----------------------------|-----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform ¹ | 10,000/100 mL | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| <i>Enterococcus</i> | 104/100 mL | 35/100 mL |

2. Subpart 1 above shall not be applicable upon the effective date of the revised Santa Monica Bay Beaches Bacteria TMDL (Attachment A to Resolution No. R21-001).
3. Upon the effective date of the revised Santa Monica Bay Beaches Bacteria TMDL (SMB Bacteria TMDL), Permittees shall comply with the following water quality-based effluent limitations for discharges to Santa Monica Bay. Permittees shall comply with daily maximum limitations during dry weather as of the effective date of the revised SMB Bacteria TMDL. Permittees shall comply with daily maximum limitations during wet weather and geometric mean limitations no later than the date listed in Table O - 3 for outfalls that discharge to the sub-drainage area for each corresponding beach monitoring location.

| Constituent | Effluent Limitations (MPN or cfu) | |
|-----------------------------|-----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform ² | 10,000/100 mL | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| <i>Enterococcus</i> | 104/100 mL | 35/100 mL |

C. Receiving Water Limitations

1. Permittees in each defined jurisdictional group shall achieve a 50% reduction from the total wet weather exceedance-day reduction required for the group of beach monitoring locations where there is a freshwater outlet (i.e., MS4 outfall or creek), as identified in Table O - 1, as of the effective date of the Order.

¹ Total coliform density shall not exceed a daily maximum of 1,000/100 mL, if the ratio of fecal-to-total coliform exceeds 0.1.
² Total coliform density shall not exceed a daily maximum of 1,000/100 mL, if the ratio of fecal-to-total coliform exceeds 0.1.

2. Permittees shall comply with the grouped³ single sample bacteria receiving water limitations for all shoreline monitoring locations along Santa Monica Bay beaches where there is a freshwater outlet (i.e., MS4 outfall or creek), as identified in Table O - 2, as of the effective date of the Order.
3. Permittees shall comply with the following geometric mean receiving water limitations for all shoreline monitoring locations along Santa Monica Bay beaches where there is a freshwater outlet (i.e., MS4 outfall or creek), as listed in Table O - 2, calculated weekly as a rolling geometric mean using five or more samples, for six-week periods starting all calculation weeks on Sunday, as of the effective date of the Order:

| Constituent | Geometric Mean (MPN or cfu) |
|---------------------|------------------------------------|
| Total coliform | 1,000/100 mL |
| Fecal coliform | 200/100 mL |
| <i>Enterococcus</i> | 35/100 mL |

4. Subparts 2 and 3 above shall not be applicable upon the effective date of the revised Santa Monica Bay Beaches Bacteria TMDL (Attachment A to Resolution No. R21-001).
5. Upon the effective date of the revised SMB Bacteria TMDL, Permittees shall comply with the grouped⁴ single sample bacteria receiving water limitations, as identified in Table O - 3, for all shoreline monitoring locations along Santa Monica Bay beaches where there is a freshwater outlet (i.e., MS4 outfall or creek), during dry weather as of the effective date of the revised SMB Bacteria TMDL and during wet weather no later than the date listed in Table O - 3 for each monitoring location.
6. Upon the effective date of the revised SMB Bacteria TMDL, Permittees shall comply with the following geometric mean receiving water limitations for all shoreline monitoring locations along Santa Monica Bay beaches where there is a freshwater outlet (i.e., MS4 outfall or creek), as listed in Table O - 3, calculated weekly as a rolling geometric mean using five or more samples, for six-week periods starting all calculation weeks on Sunday, no later than the date listed in Table O - 3 for each monitoring location:

| Constituent | Geometric Mean (MPN or cfu) |
|---------------------|------------------------------------|
| Total coliform | 1,000/100 mL |
| Fecal coliform | 200/100 mL |
| <i>Enterococcus</i> | 35/100 mL |

³ The receiving water limitations are group-based and shared among all MS4 Permittees, which includes Caltrans, located within the sub-drainage area to each beach monitoring location.

⁴ The receiving water limitations are group-based and shared among all MS4 Permittees, which includes Caltrans, located within the sub-drainage area to each beach monitoring location.

Table O - 1. Interim Wet Weather Single Sample Bacteria Receiving Water Limitations by Jurisdictional Group

| Jurisdictional Group | Primary Jurisdiction | Additional Responsible Jurisdictions & Agencies ⁵ | Subwatershed(s) | Monitoring Location(s) ⁶ | Interim Single Sample Bacteria Receiving Water Limitations as Maximum Allowable Exceedance Days During Wet Weather ⁷ (50% Reduction Milestone) |
|----------------------|-----------------------|--|-------------------|-------------------------------------|---|
| 1 | County of Los Angeles | Malibu City of Los Angeles (Topanga only) Calabasas (Topanga only) | Arroyo Sequit | SMB 1-1 | 103 |
| | | | Carbon Canyon | SMB 1-13 | |
| | | | Corral Canyon | SMB 1-11, SMB 1-12, SMB O-2 | |
| | | | Escondido Canyon | SMB 1-8 | |
| | | | Las Flores Canyon | SMB 1-14 | |
| | | | Latigo Canyon | SMB 1-9 | |
| | | | Pena Canyon | SMB 1-16 | |
| | | | Ramirez Canyon | SMB 1-6, SMB 1-7 | |
| | | | Solstice Canyon | SMB 1-10 | |
| | | | Topanga Canyon | SMB 1-18 | |
| | | | Trancas Canyon | SMB 1-4 | |
| | | | Tuna Canyon | SMB 1-17 | |
| Zuma Canyon | SMB 1-5 | | | | |

⁵ The California Department of Transportation (Caltrans) is a responsible agency in each Jurisdiction Group and is jointly responsible for complying with the allowable number of exceedance days. Caltrans is separately regulated under the Statewide Storm Water Permit for State of California Department of Transportation (NPDES No. CAS000003)

⁶ The beach monitoring locations SMB O-2, SMB 1-16, SMB 1-17, SMB 4-1, SMB 5-3, and SMB 6-5 are subject to the antidegradation provision. Therefore, there shall be no increase in exceedance days during the implementation period above that estimated for the beach monitoring location in the critical year as identified in Table O - 2 or Table O - 3, as applicable.

⁷ For monitoring locations sampled weekly instead of daily, the allowable interim wet weather exceedance days were scaled accordingly.

| Jurisdictional Group | Primary Jurisdiction | Additional Responsible Jurisdictions & Agencies ⁵ | Subwatershed(s) | Monitoring Location(s) ⁶ | Interim Single Sample Bacteria Receiving Water Limitations as Maximum Allowable Exceedance Days During Wet Weather ⁷ (50% Reduction Milestone) |
|----------------------|----------------------|---|--|---|---|
| 2 | City of Los Angeles | County of Los Angeles El Segundo (Dockweiler only) Santa Monica | Castlerock Dockweiler Pulga Canyon Santa Monica Canyon Santa Ynez Canyon | SMB 2-1 SMB 2-10, SMB 2-11, SMB 2-13, SMB 2-15 SMB 2-4, SMB 2-5 SMB 2-7 SMB 2-2, SMB 2-6 | 91 |
| 3 | Santa Monica | City of Los Angeles County of Los Angeles | Santa Monica | SMB 3-1, SMB 3-2, SMB 3-3, SMB 3-4, SMB 3-5, SMB 3-6, SMB 3-7, SMB 3-8 | 124 |
| 4 | Malibu | County of Los Angeles | Nicholas Canyon | SMB 4-1 | 4 |
| 5 | Manhattan Beach | El Segundo Hermosa Beach County of Los Angeles Redondo Beach | Hermosa | SMB 5-2, SMB 5-3 | 32 |

| Jurisdictional Group | Primary Jurisdiction | Additional Responsible Jurisdictions & Agencies⁵ | Subwatershed(s) | Monitoring Location(s)⁶ | Interim Single Sample Bacteria Receiving Water Limitations as Maximum Allowable Exceedance Days During Wet Weather⁷ (50% Reduction Milestone) |
|-----------------------------|-----------------------------|---|------------------------|---|---|
| 6 | Redondo Beach | Hermosa Beach Manhattan Beach Torrance County of Los Angeles | Redondo | SMB 6-1, SMB 6-3, SMB 6-5 | 41 |
| 9 | County of Los Angeles | County of Ventura Thousand Oaks Agoura Hills Calabasas Westlake Village Malibu Hidden Hills | Malibu | SMB MC-2 | N/A |

Table O - 2. Allowable Number of Days that may Exceed Single Sample Bacteria Receiving Water Limitations

| Station ID ⁸ | Beach Monitoring Location | Annual Allowable Exceedance Days of the Single Sample Objectives ⁹ | | | | | |
|-------------------------|-------------------------------|--|--------------------|--|--------------------|--|--------------------|
| | | Winter Dry Weather (November 1 – March 31) | | Summer Dry Weather (April 1 – October 31) | | Wet Weather ¹⁰ (November 1 – October 31) | |
| | | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling |
| SMB 1-1 | Leo Carrillo State Beach | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 1-4 | Trancas Creek | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 1-5 | Zuma Creek | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 1-6 | Walnut Creek | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 1-7 | Ramirez Creek | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 1-8 | Escondido Creek | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 1-9 | Latigo Canyon Creek | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 1-10 | Solstice Canyon Creek | 5 | 1 | 0 | 0 | 17 | 3 |
| SMB 1-11 | Corral Canyon Creek | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB O-2 | Puerco Canyon Storm Drain | 0 | 0 | 0 | 0 | 6 | 1 |
| SMB 1-12 | Marie Canyon Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB MC-2 | Breach Point of Malibu Lagoon | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 1-13 | Sweetwater Creek | 9 | 2 | 0 | 0 | 17 | 3 |

⁸ The beach monitoring locations SMB 1-10, SMB O-2, SMB 1-14, SMB 1-16, SMB 1-17, SMB 2-11, SMB 2-13, SMB 3-6, SMB 4-1, SMB 5-3, SMB 6-3, and SMB 6-5 are subject to the antidegradation provision. Therefore, there shall be no increase in exceedance days during the implementation period above that estimated for the beach monitoring location in the critical year as identified in this Table.

⁹ The single sample objectives are equivalent to the daily maximum values listed in subpart B.1 above.

¹⁰ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

| Station ID ⁸ | Beach Monitoring Location | Annual Allowable Exceedance Days of the Single Sample Objectives ⁹ | | | | | |
|-------------------------|--------------------------------------|--|-----------------|--|-----------------|--|-----------------|
| | | Winter Dry Weather (November 1 – March 31) | | Summer Dry Weather (April 1 – October 31) | | Wet Weather ¹⁰ (November 1 – October 31) | |
| | | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling |
| SMB 1-14 | Las Flores Creek | 6 | 1 | 0 | 0 | 17 | 3 |
| SMB 1-16 | Pena Creek | 3 | 1 | 0 | 0 | 14 | 2 |
| SMB 1-17 | Tuna Canyon Creek | 7 | 1 | 0 | 0 | 12 | 2 |
| SMB 1-18 | Topanga Canyon Creek | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 2-1 | Castlerock (Parker Mesa) Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 2-2 | Santa Ynez Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 2-4 | Pulga Canyon Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 2-5 | Bay Club Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 2-6 | Temescal Canyon Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 2-7 | Santa Monica Canyon | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 2-10 | Culver Boulevard Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 2-11 | North Westchester Storm Drain | 0 | 0 | 0 | 0 | 17 | 3 |
| SMB 2-13 | Imperial Highway Storm Drain | 4 | 1 | 0 | 0 | 17 | 3 |
| SMB 2-15 | Grand Avenue Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 3-1 | Montana Avenue Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 3-2 | Wilshire Boulevard Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 3-3 | Santa Monica Pier Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 |

| Station ID ⁸ | Beach Monitoring Location | Annual Allowable Exceedance Days of the Single Sample Objectives ⁹ | | | | | |
|-------------------------|---|--|-----------------|--|-----------------|--|-----------------|
| | | Winter Dry Weather (November 1 – March 31) | | Summer Dry Weather (April 1 – October 31) | | Wet Weather ¹⁰ (November 1 – October 31) | |
| | | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling |
| SMB 3-4 | Pico-Kenter Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 3-5 | Ashland Avenue Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 3-6 | Rose Avenue Storm Drain | 6 | 1 | 0 | 0 | 17 | 3 |
| SMB 3-7 | Brooks Avenue Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 3-8 | Windward Avenue Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 4-1 | San Nicholas Canyon Creek | 4 | 1 | 0 | 0 | 14 | 2 |
| SMB 5-2 | 28 th Street Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 5-3 | Manhattan Beach Pier southern Storm Drain | 3 | 1 | 0 | 0 | 6 | 1 |
| SMB 6-1 | Herondo Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 |
| SMB 6-3 | Sapphire Street Storm Drain | 5 | 1 | 0 | 0 | 17 | 3 |
| SMB 6-5 | Avenue I Storm Drain | 4 | 1 | 0 | 0 | 11 | 2 |

Table O - 3. Allowable Number of Days that may Exceed Single Sample Bacteria Receiving Water Limitations

| Station ID ¹¹ | Beach Monitoring Location | Annual Allowable Exceedance Days of the Single Sample Objectives ¹² | | | | | | |
|--------------------------|-------------------------------|--|-----------------|---|-----------------|---|-----------------|-----------|
| | | Winter Dry Weather (November 1 – March 31) | | Summer Dry Weather (April 1 – October 31) | | Wet Weather ¹³ (November 1 – October 31) | | |
| | | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling | Deadline |
| SMB 1-1 | Leo Carrillo State Beach | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2024 |
| SMB 1-4 | Trancas Creek | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2024 |
| SMB 1-5 | Zuma Creek | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2024 |
| SMB 1-6 | Walnut Creek | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2024 |
| SMB 1-7 | Ramirez Creek | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2024 |
| SMB 1-8 | Escondido Creek | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2024 |
| SMB 1-9 | Latigo Canyon Creek | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2024 |
| SMB 1-10 | Solstice Canyon Creek | 5 | 1 | 0 | 0 | 17 | 3 | 7/15/2024 |
| SMB 1-11 | Corral Canyon Creek | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2024 |
| SMB O-2 | Puerco Canyon Storm Drain | 0 | 0 | 0 | 0 | 6 | 1 | 7/15/2021 |
| SMB 1-12 | Marie Canyon Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2024 |
| SMB MC-2 | Breach Point of Malibu Lagoon | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2024 |
| SMB 1-13 | Sweetwater Creek | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2024 |

¹¹ The beach monitoring locations SMB 1-10, SMB O-2, SMB 1-14, SMB 1-16, SMB 1-17, SMB 2-11, SMB 2-13, SMB 3-6, SMB 4-1, SMB 5-3, SMB 6-3, and SMB 6-5 are subject to the antidegradation provision. Therefore, there shall be no increase in exceedance days during the implementation period above that estimated for the beach monitoring location in the critical year as identified in this Table.

¹² The single sample objectives are equivalent to the daily maximum values listed in subpart B.3 above.

¹³ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

| Station ID ¹¹ | Beach Monitoring Location | Annual Allowable Exceedance Days of the Single Sample Objectives ¹² | | | | | | |
|--------------------------|--------------------------------------|--|-----------------|---|-----------------|---|-----------------|-----------|
| | | Winter Dry Weather (November 1 – March 31) | | Summer Dry Weather (April 1 – October 31) | | Wet Weather ¹³ (November 1 – October 31) | | |
| | | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling | Deadline |
| SMB 1-14 | Las Flores Creek | 6 | 1 | 0 | 0 | 17 | 3 | 7/15/2024 |
| SMB 1-16 | Pena Creek | 3 | 1 | 0 | 0 | 14 | 2 | 7/15/2021 |
| SMB 1-17 | Tuna Canyon Creek | 7 | 1 | 0 | 0 | 12 | 2 | 7/15/2021 |
| SMB 1-18 | Topanga Canyon Creek | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2024 |
| SMB 2-1 | Castlerock (Parker Mesa) Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2026 |
| SMB 2-2 | Santa Ynez Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2026 |
| SMB 2-4 | Pulga Canyon Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2026 |
| SMB 2-5 | Bay Club Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2026 |
| SMB 2-6 | Temescal Canyon Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2026 |
| SMB 2-7 | Santa Monica Canyon | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2026 |
| SMB 2-10 | Culver Boulevard Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2026 |
| SMB 2-11 | North Westchester Storm Drain | 0 | 0 | 0 | 0 | 17 | 3 | 7/15/2026 |
| SMB 2-13 | Imperial Highway Storm Drain | 4 | 1 | 0 | 0 | 17 | 3 | 7/15/2026 |
| SMB 2-15 | Grand Avenue Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2026 |
| SMB 3-1 | Montana Avenue Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2026 |

| Station ID ¹¹ | Beach Monitoring Location | Annual Allowable Exceedance Days of the Single Sample Objectives ¹² | | | | | | |
|--------------------------|---|--|-----------------|---|-----------------|---|-----------------|-----------|
| | | Winter Dry Weather (November 1 – March 31) | | Summer Dry Weather (April 1 – October 31) | | Wet Weather ¹³ (November 1 – October 31) | | |
| | | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling | Deadline |
| SMB 3-2 | Wilshire Boulevard Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2026 |
| SMB 3-3 | Santa Monica Pier Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2026 |
| SMB 3-4 | Pico-Kenter Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2026 |
| SMB 3-5 | Ashland Avenue Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2026 |
| SMB 3-6 | Rose Avenue Storm Drain | 6 | 1 | 0 | 0 | 17 | 3 | 7/15/2026 |
| SMB 3-7 | Brooks Avenue Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2026 |
| SMB 3-8 | Windward Avenue Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2026 |
| SMB 4-1 | San Nicholas Canyon Creek | 4 | 1 | 0 | 0 | 14 | 2 | 7/15/2021 |
| SMB 5-2 | 28 th Street Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2024 |
| SMB 5-3 | Manhattan Beach Pier southern Storm Drain | 3 | 1 | 0 | 0 | 6 | 1 | 7/15/2021 |
| SMB 6-1 | Herondo Storm Drain | 9 | 2 | 0 | 0 | 17 | 3 | 7/15/2024 |
| SMB 6-3 | Sapphire Street Storm Drain | 5 | 1 | 0 | 0 | 17 | 3 | 7/15/2024 |
| SMB 6-5 | Avenue I Storm Drain | 4 | 1 | 0 | 0 | 11 | 2 | 7/15/2021 |

II. SANTA MONICA BAY NEARSHORE AND OFFSHORE DEBRIS TMDL

- A.** Permittees subject to the provisions below are identified in Attachment J, Table J-6.
- B.** Permittees, except for the City of Manhattan Beach, shall comply with the water quality-based effluent limitation of zero trash discharged to waterbodies within the Santa Monica Bay Watershed Management Area (WMA), into Santa Monica Bay and on the shoreline of Santa Monica Bay as of the effective date of the Order and every water year thereafter.
- C.** The City of Manhattan Beach shall comply with the final water quality-based effluent limitation of zero trash discharged to waterbodies within the Santa Monica Bay WMA, into Santa Monica Bay and on the shoreline of Santa Monica Bay no later than March 20, 2023, and every water year thereafter.
- D.** The City of Manhattan Beach shall comply with interim and final water quality-based effluent limitations for trash discharged to waterbodies within the Santa Monica Bay WMA, into Santa Monica Bay or on the shoreline of Santa Monica Bay, per the schedule below:

| Permittee | Annual Trash Discharge (gals/yr) | |
|-----------------|----------------------------------|------------------------------|
| | Effective Date of the Order | March 20, 2023 ¹⁴ |
| Manhattan Beach | 500 | 0 |

- E.** Subparts B, C and D above shall not be applicable upon the effective date of the revised Santa Monica Bay Nearshore and Offshore Debris TMDL (Attachment A to Resolution No. R19-004).
- F.** Upon the effective date of the revised Santa Monica Bay Nearshore and Offshore Debris TMDL (SMB Debris TMDL), Permittees, except for the Cities of Hermosa Beach, Malibu and Manhattan Beach, shall comply with the water quality-based effluent limitation of zero trash discharged to waterbodies within the Santa Monica Bay Watershed Management Area (WMA), into Santa Monica Bay and on the shoreline of Santa Monica Bay as of the effective date of the revised SMB Debris TMDL and every water year thereafter.
- G.** Upon the effective date of the revised SMB Debris TMDL, the Cities of Hermosa Beach, Malibu and Manhattan Beach shall comply with the final water quality-based effluent limitation of zero trash discharged to waterbodies within the Santa Monica Bay WMA, into Santa Monica Bay and on the shoreline of Santa Monica Bay no later than March 20, 2023, and every water year thereafter.
- H.** Upon the effective date of the revised SMB Debris TMDL, the Cities of Hermosa Beach, Malibu and Manhattan Beach shall comply with interim and final water quality-based effluent limitations for trash discharged to waterbodies within the Santa Monica Bay WMA, into Santa Monica Bay and on the shoreline of Santa Monica Bay, per the schedule below:

¹⁴ The City of Manhattan Beach shall achieve the final effluent limitation of zero trash discharged for the 2022-2023 water year and every year thereafter.

| Permittees | Annual Trash Discharge (gals/yr) | |
|-----------------|---|------------------------------|
| | Effective Date of the Revised SMB Debris TMDL | March 20, 2023 ¹⁵ |
| Hermosa Beach | 223 | 0 |
| Malibu | 1,162 | 0 |
| Manhattan Beach | 500 | 0 |

I. Permittees shall comply with the interim and final water quality-based effluent limitations for trash per the provisions in Part IV.B.3 of the Order.

III. SANTA MONICA BAY TMDLS FOR DDTs AND PCBs

- A. Permittees subject to the provisions below are identified in Attachment J, Table J-6.
- B. Permittees shall comply with the following grouped¹⁶ water quality-based effluent limitations expressed as an annual loading of sediment-bound pollutants discharged to Santa Monica Bay as of the effective date of the Order:

| Constituent | Annual Effluent Limitations (g/yr) |
|-------------|------------------------------------|
| Total DDTs | 27.08 |
| Total PCBs | 140.25 |

- C. Compliance with subpart B above shall be determined based on a three-year averaging period.
- D. Los Angeles County MS4 Permittees shall design a monitoring program to provide credible annual estimates of the total mass loading of total DDTs and total PCBs to Santa Monica Bay.

IV. TMDLS IN THE MALIBU CREEK SUBWATERSHED

A. Malibu Creek and Lagoon Bacteria TMDL

- 1. Permittees subject to the provisions below are identified in Attachment J, Table J-6.
- 2. Water Quality-Based Effluent Limitations
 - a. Permittees shall comply with the following water quality-based effluent limitations for discharges to Malibu Lagoon. Permittees shall comply with daily maximum limitations and geometric mean limitations as of the effective date of the Order.

¹⁵ The cities of Hermosa Beach, Malibu and Manhattan Beach shall achieve the final effluent limitation of zero trash discharged for the 2022-2023 water year and every year thereafter.

¹⁶ The effluent limitations are group-based and shared among all Los Angeles County MS4 Permittees within the Santa Monica Bay Watershed.

| Constituent | Effluent Limitations (MPN or cfu) | |
|------------------------------|-----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform ¹⁷ | 10,000/100 mL | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| <i>Enterococcus</i> | 104/100 mL | 35/100 mL |

- b. Permittees shall comply with the following water quality-based effluent limitations for discharges to Malibu Creek and its tributaries. Permittees shall comply with daily maximum limitations and geometric mean limitations as of the effective date of the Order.

| Constituent | Effluent Limitation (MPN or cfu) | |
|----------------|----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| <i>E. coli</i> | 235/100 mL | 126/100 mL |

- c. Subparts a and b above shall not be applicable upon the effective date of the revised Malibu Creek and Lagoon Bacteria TMDL (Attachment C to Resolution No. R21-001).
- d. Upon the effective date of the revised Malibu Creek and Lagoon Bacteria TMDL (Malibu Creek Bacteria TMDL), Permittees shall comply with the following water quality-based effluent limitations for discharges to Malibu Lagoon. Permittees shall comply with daily maximum limitations during dry weather as of the effective date of the revised Malibu Creek Bacteria TMDL and during wet weather no later than July 15, 2026. Permittees shall comply with geometric mean limitations no later than July 15, 2026.

| Constituent | Effluent Limitations (MPN or cfu) | |
|------------------------------|-----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform ¹⁸ | 10,000/100 mL | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| <i>Enterococcus</i> | 104/100 mL | 35/100 mL |

- e. Upon the effective date of the revised Malibu Creek Bacteria TMDL, Permittees shall comply with the following water quality-based effluent limitations for discharges to Malibu Creek and its tributaries. Permittees shall comply with daily maximum limitations during dry weather as of the effective date of the revised Malibu Creek Bacteria TMDL and during wet weather no later than July 15, 2026. Permittees shall comply with geometric mean limitations no later than July 15, 2026.

¹⁷ Total coliform density shall not exceed a daily maximum of 1,000/100 mL, if the ratio of fecal-to-total coliform exceeds 0.1.

¹⁸ Total coliform density shall not exceed a daily maximum of 1,000/100 mL, if the ratio of fecal-to-total coliform exceeds 0.1.

| Constituent | Effluent Limitation (MPN or cfu) | |
|----------------|----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| <i>E. coli</i> | 235/100 mL | 126/100 mL |

3. Receiving Water Limitations

- a. Permittees shall comply with the following grouped¹⁹ single sample bacteria receiving water limitations at each monitoring location in Malibu Lagoon south of Pacific Coast Highway as of the effective date of the Order:

| Time Period | Annual Allowable Exceedance Days of the Single Sample Objectives ²⁰ | |
|---|--|-----------------|
| | Daily Sampling | Weekly Sampling |
| Winter Dry-Weather (November 1 to March 31) | 9 | 2 |
| Summer Dry-Weather (April 1 to October 31) | 0 | 0 |
| Wet Weather ²¹ (November 1 to October 31) | 17 | 3 |

- b. Permittees shall comply with the following grouped²² single sample bacteria receiving water limitations at each monitoring location in Malibu Lagoon north of Pacific Coast Highway, Malibu Creek and its tributaries as of the effective date of the Order:

| Time Period | Annual Allowable Exceedance Days of the Single Sample Objective ²³ | |
|---|---|-----------------|
| | Daily Sampling | Weekly Sampling |
| Dry-Weather (November 1 to October 31) | 5 | 1 |
| Wet Weather ²⁴ (November 1 to October 31) | 15 | 2 |

- c. Permittees shall comply with the following geometric mean receiving water limitations for monitoring locations in Malibu Lagoon, calculated weekly as a rolling geometric mean using five or more samples, for six-week periods starting all calculation weeks on Sunday, as of the effective date of the Order:

¹⁹ The receiving water limitations are group-based and shared among all MS4 Permittees, which includes Caltrans, located within the sub-drainage area to each receiving water monitoring location.
²⁰ The single sample objectives are equivalent to the daily maximum values listed in subpart A.2.a above.
²¹ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.
²² The receiving water limitations are group-based and shared among all MS4 Permittees, which includes Caltrans, located within the sub-drainage area to each receiving water monitoring location.
²³ The single sample objectives are equivalent to the daily maximum values listed in subpart A.2.a above for Malibu Lagoon and subpart A.2.b above for Malibu Creek and its tributaries.
²⁴ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

| Constituent | Geometric Mean (MPN or cfu) |
|---------------------|-----------------------------|
| Total coliform | 1,000/100 mL |
| Fecal coliform | 200/100 mL |
| <i>Enterococcus</i> | 35/100 mL |

- d. Permittees shall comply with the following geometric mean receiving water limitations for monitoring locations in Malibu Creek and its tributaries, calculated weekly as a rolling geometric mean using five or more samples, for six-week periods starting all calculation weeks on Sunday, as of the effective date of the Order:

| Constituent | Geometric Mean (MPN or cfu) |
|----------------|-----------------------------|
| <i>E. coli</i> | 126/100 mL |

- e. Subparts a through d above shall not be applicable upon the effective date of the revised Malibu Creek and Lagoon Bacteria TMDL (Attachment C to Resolution No. R21-001).
- f. Upon the effective date of the revised Malibu Creek Bacteria TMDL, Permittees shall comply with the following grouped²⁵ single sample bacteria receiving water limitations at each monitoring location in Malibu Lagoon south of Pacific Coast Highway during dry weather as of the effective date of the revised Malibu Creek Bacteria TMDL and during wet weather no later than July 15, 2026:

| Time Period | Annual Allowable Exceedance Days of the Single Sample Objectives ²⁶ | |
|---|--|-----------------|
| | Daily Sampling | Weekly Sampling |
| Winter Dry-Weather (November 1 to March 31) | 9 | 2 |
| Summer Dry-Weather (April 1 to October 31) | 0 | 0 |
| Wet Weather ²⁷ (November 1 to October 31) | 17 | 3 |

- g. Upon the effective date of the revised Malibu Creek Bacteria TMDL, Permittees shall comply with the following grouped²⁸ single sample bacteria receiving water limitations at each monitoring location in Malibu Lagoon north of Pacific Coast Highway, Malibu Creek and its tributaries during dry weather as of the effective date of the revised Malibu Creek Bacteria TMDL and during wet weather no later than July 15, 2026:

²⁵ The receiving water limitations are group-based and shared among all MS4 Permittees, which includes Caltrans, located within the sub-drainage area to each receiving water monitoring location.

²⁶ The single sample objectives are equivalent to the daily maximum values listed in subpart A.2.d above.

²⁷ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

²⁸ The receiving water limitations are group-based and shared among all MS4 Permittees, which includes Caltrans, located within the sub-drainage area to each receiving water monitoring location.

| Time Period | Annual Allowable Exceedance Days of the Single Sample Objective ²⁹ | |
|---|---|-----------------|
| | Daily Sampling | Weekly Sampling |
| Dry-Weather (November 1 to October 31) | 5 | 1 |
| Wet Weather ³⁰ (November 1 to October 31) | 15 | 2 |

- h. Upon the effective date of the revised Malibu Creek Bacteria TMDL, Permittees shall comply with the following geometric mean receiving water limitations for monitoring locations in Malibu Lagoon, calculated weekly as a rolling geometric mean using five or more samples, for six-week periods starting all calculation weeks on Sunday, no later than July 15, 2026:

| Constituent | Geometric Mean (MPN or cfu) |
|---------------------|-----------------------------|
| Total coliform | 1,000/100 mL |
| Fecal coliform | 200/100 mL |
| <i>Enterococcus</i> | 35/100 mL |

- i. Upon the effective date of the revised Malibu Creek Bacteria TMDL, Permittees shall comply with the following geometric mean receiving water limitations for monitoring locations in Malibu Creek and its tributaries, calculated weekly as a rolling geometric mean using five or more samples, for six-week periods starting all calculation weeks on Sunday, no later than July 15, 2026:

| Constituent | Geometric Mean (MPN or cfu) |
|----------------|-----------------------------|
| <i>E. coli</i> | 126/100 mL |

B. Malibu Creek Watershed Trash TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-6.
2. Permittees shall comply with the water quality-based effluent limitations for trash per the provisions in Part IV.B.3 of the Order.
3. Permittees shall comply with the water quality-based effluent limitation of zero trash discharged from priority land use areas, as defined in Attachment A of the Order, to Malibu Creek, Malibu Lagoon, Malibou Lake, Medea Creek, Lindero Creek, Lake Lindero, and Las Virgenes Creek in the Malibu Creek Watershed as of the effective date of the Order and every water year thereafter.

C. Malibu Creek Watershed Nutrients TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-6.
2. Water Quality-Based Effluent Limitations for Los Angeles County

²⁹ The single sample objectives are equivalent to the daily maximum values listed in subpart A.2.d above for Malibu Lagoon and subpart A.2.e above for Malibu Creek and its tributaries.

³⁰ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

- a. Los Angeles County Permittees shall comply with the following grouped³¹ interim water quality-based effluent limitations for discharges to waterbodies in the Malibu Creek Watershed, as of the effective date of the Order:

| Constituent | Effluent Limitations | |
|---|-------------------------------------|-------------------------------------|
| | Summer (April 15 to November 15) | Winter (November 16 to April 14) |
| | Daily Load | Seasonal Average |
| Nitrate as Nitrogen plus Nitrite as Nitrogen | 8.0 lbs/day | 8.0 mg/L |
| Total Phosphorus | 0.8 lbs/day | N/A |

- b. Los Angeles County Permittees above Malibou Lake shall comply with the following grouped³² final water quality-based effluent limitations for discharges to waterbodies in the subwatersheds of Cheeseboro Creek; Hidden Valley Creek; Lindero Creek; Medea Creek; Palo Comado Creek; Potrero Canyon Creek; Triunfo Creek; and Westlake no later than December 28, 2021.

| Constituent | Effluent Limitations | |
|---|-------------------------------------|-------------------------------------|
| | Summer (April 15 to November 15) | Winter (November 16 to April 14) |
| | Daily Load | Season Average |
| Nitrate as Nitrogen plus Nitrite as Nitrogen | 1.6 lbs/day | 8.0 mg/L |
| Total Phosphorus | 0.16 lbs/day | N/A |

- c. Subpart b above shall not be applicable upon the effective date of the revised Implementation Plan for the U.S. EPA-Established Malibu Creek Nutrients TMDL and the U.S. EPA-Established Malibu Creek and Lagoon Sedimentation and Nutrients TMDL to Address Benthic Community Impairments (Implementation Plan for Malibu Creek Nutrients and Sedimentation TMDLs) (Attachment H to Resolution No. R21-001).
- d. Upon the effective date of the revised Implementation Plan for Malibu Creek Nutrients and Sedimentation TMDLs, Los Angeles County Permittees above Malibou Lake shall comply with the following grouped³³ final water quality-based effluent limitations for discharges to waterbodies in the subwatersheds of Cheeseboro Creek; Hidden Valley Creek; Lindero Creek; Medea Creek; Palo Comado Creek; Potrero Canyon Creek; Triunfo Creek; and Westlake no later than July 15, 2026.

³¹ The effluent limitations are group-based and shared among all Los Angeles County MS4 Permittees located within the Malibu Creek Watershed.

³² The effluent limitations are group-based and shared among all Los Angeles County MS4 Permittees located within the subwatersheds of Cheeseboro Creek; Hidden Valley Creek; Lindero Creek; Medea Creek; Palo Comado Creek; Potrero Canyon Creek; Triunfo Creek; and Westlake.

³³ The effluent limitations are group-based and shared among all Los Angeles County MS4 Permittees located within the subwatersheds of Cheeseboro Creek; Hidden Valley Creek; Lindero Creek; Medea Creek; Palo Comado Creek; Potrero Canyon Creek; Triunfo Creek; and Westlake.

| Constituent | Effluent Limitations | |
|---|-------------------------------------|-------------------------------------|
| | Summer (April 15 to November 15) | Winter (November 16 to April 14) |
| | Daily Load | Season Average |
| Nitrate as Nitrogen plus Nitrite as Nitrogen | 1.6 lbs/day | 8.0 mg/L |
| Total Phosphorus | 0.16 lbs/day | N/A |

3. Water Quality-Based Effluent Limitations for Ventura County

- a. Ventura County Permittees shall comply with the following grouped³⁴ interim water quality-based effluent limitations for discharges to waterbodies of the Malibu Creek Watershed, as of the effective date of the Order:

| Constituent | Effluent Limitations | | |
|---|---------------------------------|-------------------------------------|-------------------------------------|
| | Weather Condition ³⁵ | Summer (April 15 to November 15) | Winter (November 16 to April 14) |
| | | Daily Load | Seasonal Average |
| Nitrate as Nitrogen plus Nitrite as Nitrogen | Wet Weather | 26 lbs/day | 8.0 mg/L |
| | Dry Weather | 52 lbs/day | 8.0 mg/L |
| Total Phosphorus | Wet Weather | 2.6 lbs/day | N/A |
| | Dry Weather | 4.6 lbs/day | N/A |

- b. Ventura County Permittees shall comply with the following grouped³⁶ final water quality-based effluent limitations for discharges to waterbodies of the Malibu Creek Watershed, no later than five years from the effective date of the Order.

| Constituent | Effluent Limitations | |
|---|-------------------------------------|-------------------------------------|
| | Summer (April 15 to November 15) | Winter (November 16 to April 14) |
| | Daily Load | Seasonal Average |
| Nitrate as Nitrogen plus Nitrite as Nitrogen | 3.1 lbs/day | 8.0 mg/L |
| Total Phosphorus | 0.31 lbs/day | N/A |

4. In order to calculate pollutant loading, Permittees are required to measure and report flow at outfalls when sampling during the summer period. In addition, Permittees shall conduct

³⁴ The effluent limitations are group-based and shared among all Ventura County MS4 Permittees located within the Malibu Creek Watershed.

³⁵ The U.S. EPA source category “runoff from developed areas” is identified as wet weather MS4 discharges, and “dry weather urban runoff” is identified as dry weather MS4 discharges.

³⁶ The effluent limitations are group-based and shared among all Ventura County MS4 Permittees located within the Malibu Creek Watershed.

modeling and/or an estimation of pollutant loading from drainage areas not represented by outfall monitoring.

D. Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients to Address Benthic Community Impairments

1. Permittees subject to the provisions below are identified in Attachment J, Table J-6.
2. Los Angeles County Permittees below Malibou Lake shall comply with the following final water quality-based effluent limitations for discharges to waterbodies in the subwatersheds of Cold Creek; Las Virgenes Creek; Malibu Creek; Malibu Lagoon; and Stokes Creek, no later than December 28, 2023.

| Constituent | Effluent Limitations | |
|------------------------------------|-------------------------------------|-------------------------------------|
| | Summer (April 15 to November 15) | Winter (November 16 to April 14) |
| | Seasonal Average (mg/L) | Seasonal Average (mg/L) |
| Total Nitrogen³⁷ | 1.0 | 4.0 |
| Total Phosphorus | 0.1 | 0.2 |

3. Subpart 2 above shall not be applicable upon the effective date of the revised Implementation Plan for the U.S. EPA-Established Malibu Creek Nutrients TMDL and the U.S. EPA-Established Malibu Creek and Lagoon Sedimentation and Nutrients TMDL to Address Benthic Community Impairments (Attachment H to Resolution No. R21-001).
4. Upon the effective date of the revised Implementation Plan for Malibu Creek Nutrients and Sedimentation TMDLs, Los Angeles County Permittees below Malibou Lake shall comply with the following final water quality-based effluent limitations for discharges to waterbodies in the subwatersheds of Cold Creek; Las Virgenes Creek; Malibu Creek; Malibu Lagoon; and Stokes Creek, no later than July 15, 2026.

| Constituent | Effluent Limitations | |
|------------------------------------|-------------------------------------|-------------------------------------|
| | Summer (April 15 to November 15) | Winter (November 16 to April 14) |
| | Seasonal Average (mg/L) | Seasonal Average (mg/L) |
| Total Nitrogen³⁸ | 1.0 | 4.0 |
| Total Phosphorus | 0.1 | 0.2 |

5. Los Angeles County Permittees below Malibou Lake and above gage station F-130 shall comply with the receiving water limitation of a maximum of 1,012 tons per year of sediment load at gage station F-130, no later than December 28, 2025.
6. Compliance with subpart 5 above shall be determined by multiplying the Los Angeles County Permittees allocation fraction of 17.4% by the annual sediment load at gage station

³⁷ Total Nitrogen is the sum of TKN plus Nitrate-N plus Nitrite-N.

³⁸ Total Nitrogen is the sum of TKN plus Nitrate-N plus Nitrite-N.

F-130. Due to the variability of sediment transport, the sediment load shall be averaged over a three-year period.

V. TMDLS IN THE BALLONA CREEK SUBWATERSHED

A. Ballona Creek Trash TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-8.
2. Permittees shall comply with the water quality-based effluent limitation of zero trash discharged to waterbodies of the Ballona Creek Watershed as of the effective date of the Order and every water year thereafter.
3. Permittees shall comply with the water quality-based effluent limitations for trash per the provisions in Part IV.B.3 of the Order.

B. Ballona Creek Estuary Toxic Pollutants TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-8.
2. Permittees shall comply with the following grouped³⁹ mass-based water quality-based effluent limitations, expressed as an annual loading of sediment-bound pollutants discharged to the Ballona Creek Estuary according to the schedules below in subparts 3 and 4 or subparts 6 and 7, as applicable:

| Constituent | Annual Effluent Limitations |
|--------------------|------------------------------------|
| Cadmium | 8.0 kg/yr |
| Copper | 227.3 kg/yr |
| Lead | 312.3 kg/yr |
| Silver | 6.69 kg/yr |
| Zinc | 1003 kg/yr |
| Total Chlordane | 8.69 g/yr |
| Total DDTs | 12.70 g/yr |
| Total PCBs | 21.40 g/yr |

3. Permittees shall comply with final water quality-based effluent limitations for sediment-bound cadmium, copper, lead, silver, zinc, total chlordane, and total DDTs discharged to Ballona Creek Estuary, as of the effective date of the Order.
4. Permittees shall comply with interim and final water quality-based effluent limitations for sediment-bound total PCBs discharged to Ballona Creek Estuary, per the schedule below:

³⁹ The effluent limitations are group-based and shared among all MS4 Permittees within the Ballona Creek subwatershed.

| Deadline | Percentage of Total Drainage Area Served by the MS4 required to meet the Effluent Limitations |
|-----------------------------|--|
| Effective Date of the Order | 50% |
| January 11, 2025 | 100% |

5. Subparts 3 and 4 above shall not be applicable upon the effective date of the revised Ballona Creek Estuary Toxic Pollutants TMDL (Attachment D to Resolution No. R21-001).
6. Upon the effective date of the revised Ballona Creek Estuary Toxic Pollutants TMDL (Ballona Creek Estuary Toxics TMDL), Permittees shall comply with interim and final water quality-based effluent limitations for sediment-bound cadmium, copper, lead, silver, zinc, total chlordane, and total DDTs discharged to Ballona Creek Estuary, per the schedule below:

| Deadline | Percentage of Total Drainage Area Served by the MS4 required to meet the Effluent Limitations |
|---|--|
| Effective Date of Revised Ballona Creek Estuary Toxics TMDL | 75% |
| July 15, 2026 | 100% |

7. Upon the effective date of the revised Ballona Creek Estuary Toxics TMDL, Permittees shall comply with interim and final water quality-based effluent limitations for sediment-bound total PCBs discharged to Ballona Creek Estuary, per the schedule below:

| Deadline | Percentage of Total Drainage Area Served by the MS4 required to meet the Effluent Limitations |
|---|--|
| Effective Date of Revised Ballona Creek Estuary Toxics TMDL | 50% |
| July 15, 2026 | 100% |

8. Interim Compliance Determination
 - a. Permittees shall be in compliance with the interim water quality-based effluent limitations for sediment-bound total PCBs by demonstrating any one of the following methods:
 - i. The total PCBs fish tissue numeric target of 3.6 µg/kg wet is met in species resident to Ballona Creek Estuary; or
 - ii. The sediment quality condition protective of fish tissue is achieved per the Statewide Enclosed Bays and Estuaries Plan, as amended to address contaminants in resident finfish and wildlife; or
 - iii. The total PCBs sediment numeric target of 3.2 µg/kg dry is met in bed sediments; or
 - iv. For sediment-bound total PCBs, Permittees demonstrate that 50% of the total drainage area served by the MS4 is complying with the water quality-based effluent limitation of 21.40 grams per year (g/yr). Alternatively, Permittees shall

attain a 50% reduction in the difference between the total PCBs baseline loading and the water quality-based effluent limitation, as measured at the relevant existing MS4 permit monitoring location and/or at relevant MS4 monitoring stations identified in an approved monitoring plan. Baseline loading is defined as loading estimated when the Ballona Creek Estuary Toxics TMDL was developed in 2005.

- b. Subpart 8.a above shall not be applicable upon the effective date of the revised Ballona Creek Estuary Toxic Pollutants TMDL (Attachment D to Resolution No. R21-001).
- c. Upon the effective date of the revised Ballona Creek Estuary Toxics TMDL, Permittees shall be in compliance with the interim water quality-based effluent limitations for sediment-bound cadmium, copper, lead, silver, and zinc by demonstrating any one of the following methods:
 - i. The sediment quality condition of Unimpacted or Likely Unimpacted via the interpretation and integration of multiple lines of evidence as defined in the State’s Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1 Sediment Quality (Sediment Quality Provisions) is met; or
 - ii. The sediment numeric targets, listed below, are met in bed sediments; or

| Constituent | Sediment Numeric Target |
|--------------------|--------------------------------|
| Cadmium | 1.2 mg/kg |
| Copper | 34 mg/kg |
| Lead | 46.7 mg/kg |
| Silver | 1.0 mg/kg |
| Zinc | 150 mg/kg |

- iii. Permittees demonstrate that 75% of the total drainage area served by the MS4 is complying with the water quality-based effluent limitations for sediment-bound metals listed in subpart B.2 above. Alternatively, Permittees shall attain a 75% reduction in the difference between the baseline loadings and the water quality-based effluent limitations, as measured at the relevant existing MS4 permit monitoring location and/or at relevant MS4 monitoring stations identified in an approved monitoring plan. Baseline loading is defined as loading estimated when the Ballona Creek Estuary Toxics TMDL was developed in 2005.
- d. Upon the effective date of the revised Ballona Creek Estuary Toxics TMDL, Permittees shall be in compliance with the interim water quality-based effluent limitations for sediment-bound total chlordane, total DDTs, and total PCBs by demonstrating any one of the following methods:
 - i. The fish tissue numeric targets, listed below, are met in species resident to Ballona Creek Estuary; or

| Constituent | Fish Tissue Numeric Target |
|--------------------|-----------------------------------|
| Total Chlordane | 5.6 µg/kg wet |
| Total DDTs | 21 µg/kg wet |
| Total PCBs | 3.6 µg/kg wet |

- ii. The sediment quality condition protective of fish tissue is achieved per the Statewide Enclosed Bays and Estuaries Plan, as amended to address contaminants in resident finfish and wildlife; or
- iii. The sediment numeric targets, listed below, are met in bed sediments; or

| Constituent | Sediment Numeric Target |
|--------------------|--------------------------------|
| Total Chlordane | 1.3 µg/kg dry |
| Total DDTs | 1.9 µg/kg dry |
| Total PCBs | 3.2 µg/kg dry |

- iv. For sediment-bound total chlordane and total DDTs, Permittees demonstrate that 75% of the total drainage area served by the MS4 is complying with the water-quality-based effluent limitations listed in subpart B.2 above. Alternatively, for total chlordane and total DDTs Permittees shall attain a 75% reduction in the difference between the baseline loadings and the water quality-based effluent limitations, as measured at the relevant existing MS4 permit monitoring location and/or at relevant MS4 monitoring stations identified in an approved monitoring plan. Baseline loading is defined as loading estimated when the Ballona Creek Estuary Toxics TMDL was developed in 2005.
- v. For sediment-bound total PCBs, Permittees demonstrate that 50% of the total drainage area served by the MS4 is complying with the water quality-based effluent limitation of 21.40 g/yr. Alternatively, Permittees shall attain a 50% reduction in the difference between the total PCBs baseline loading and the water quality-based effluent limitation, as measured at the relevant existing MS4 permit monitoring location and/or at relevant MS4 monitoring stations identified in an approved monitoring plan. Baseline loading is defined as loading estimated when the Ballona Creek Estuary Toxics TMDL was developed in 2005.

9. Final Compliance Determination

- a. Permittees shall be in compliance with the final water quality-based effluent limitations for sediment-bound cadmium, copper, lead, silver and zinc by demonstrating any one of the following methods:
 - i. The sediment quality condition of Unimpacted or Likely Unimpacted via the interpretation and integration of multiple lines of evidence as defined in the Sediment Quality Provisions is met; or
 - ii. The sediment numeric targets, as listed in subpart B.8.c.ii above, are met in bed sediments; or

- iii. Permittees demonstrate that 100% of the total drainage area served by the MS4 is complying with the water quality-based effluent limitations for sediment-bound metals listed in subpart B.2 above. Alternatively, Permittees shall attain a 100% reduction in the difference between the baseline loadings and the water quality-based effluent limitations, as measured at the relevant existing MS4 permit monitoring location and/or at relevant MS4 monitoring stations identified in an approved monitoring plan. Baseline loading is defined as loading estimated when the Ballona Creek Estuary Toxics TMDL was developed in 2005.
- b. Permittees shall be in compliance with the final water quality-based effluent limitations for sediment-bound total chlordane, total DDTs and total PCBs by demonstrating any one of the following methods:
 - i. The fish tissue numeric targets, listed in subpart B.8.d.i above, are met in species resident to Ballona Creek Estuary; or
 - ii. The sediment quality condition protective of fish tissue is achieved per the Statewide Enclosed Bays and Estuaries Plan, as amended to address contaminants in resident finfish and wildlife; or
 - iii. The sediment numeric targets, listed in subpart B.8.d.iii above, are met in bed sediments; or
 - iv. Permittees demonstrate that 100% of the total drainage area served by the MS4 is complying with the water quality-based effluent limitations for sediment-bound total chlordane, total DDTs and total PCBs listed in subpart B.2 above. Alternatively, Permittees shall attain a 100% reduction in the difference between the baseline loadings and the water quality-based effluent limitations, as measured at the relevant existing MS4 permit monitoring location and/or at relevant MS4 monitoring stations identified in an approved monitoring plan. Baseline loading is defined as loading estimated when the Ballona Creek Estuary Toxics TMDL was developed in 2005.
- 10. Permittees shall determine their preferred compliance method(s) to demonstrate compliance with the interim and final water quality-based effluent limitations and shall monitor accordingly.

C. Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL

- 1. Permittees subject to the provisions below are identified in Attachment J, Table J-8.
- 2. Water Quality-Based Effluent Limitations
 - a. Permittees shall comply with the following water quality-based effluent limitations for discharges to Ballona Creek Estuary. Permittees shall comply with daily maximum limitations and geometric mean limitations as of the effective date of the Order.

| Constituent | Effluent Limitations (MPN or cfu) | |
|------------------------------|-----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform ⁴⁰ | 10,000/100 mL | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| <i>Enterococcus</i> | 104/100 mL | 35/100 mL |

- b. Permittees shall comply with the following water quality-based effluent limitations for discharges to Sepulveda Channel. Permittees shall comply with daily maximum limitations and geometric mean limitations as of the effective date of the Order.

| Constituent | Effluent Limitation (MPN or cfu) | |
|----------------|----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| <i>E. coli</i> | 235/100 mL | 126/100 mL |

- c. Permittees shall comply with the following water quality-based effluent limitations for discharges to Ballona Creek Reach 2. Permittees shall comply with daily maximum limitations and geometric mean limitations as of the effective date of the Order.

| Constituent | Effluent Limitation (MPN or cfu) | |
|----------------|----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| <i>E. coli</i> | 576/100 mL | 126/100 mL |

- d. Permittees shall comply with the following water quality-based effluent limitations for discharges to Ballona Creek Reach 1. Permittees shall comply with daily maximum limitations and geometric mean limitations as of the effective date of the Order.

| Constituent | Effluent Limitation (MPN or cfu) | |
|----------------|----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Fecal coliform | 4000/100 mL | 2000/100 mL |

- e. Subparts a through d above shall not be applicable upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL (Attachment F to Resolution No. R21-001).
- f. Upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL (Ballona Creek Bacteria TMDL), Permittees shall comply with the following water quality-based effluent limitations for discharges to Ballona Creek Estuary. Permittees shall comply with daily maximum limitations during dry weather as of the effective date of the revised Ballona Creek Bacteria TMDL and during wet weather no later than July 15, 2026. Permittees shall comply with geometric mean limitations no later than July 15, 2026.

⁴⁰ Total coliform density shall not exceed a daily maximum of 1,000/100 mL, if the ratio of fecal-to-total coliform exceeds 0.1.

| Constituent | Effluent Limitations (MPN or cfu) | |
|------------------------------|-----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform ⁴¹ | 10,000/100 mL | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| <i>Enterococcus</i> | 104/100 mL | 35/100 mL |

- g. Upon the effective date of the revised Ballona Creek Bacteria TMDL, Permittees shall comply with the following water quality-based effluent limitations for discharges to Sepulveda Channel. Permittees shall comply with daily maximum limitations during dry weather as of the effective date of the revised Ballona Creek Bacteria TMDL and during wet weather no later than July 15, 2026. Permittees shall comply with geometric mean limitations no later than July 15, 2026.

| Constituent | Effluent Limitation (MPN or cfu) | |
|----------------|----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| <i>E. coli</i> | 235/100 mL | 126/100 mL |

- h. Upon the effective date of the revised Ballona Creek Bacteria TMDL, Permittees shall comply with the following water quality-based effluent limitations for discharges to Ballona Creek Reach 2. Permittees shall comply with daily maximum limitations during dry weather as of the effective date of the revised Ballona Creek Bacteria TMDL and during wet weather no later than July 15, 2026. Permittees shall comply with geometric mean limitations no later than July 15, 2026.

| Constituent | Effluent Limitation (MPN or cfu) | |
|----------------|----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| <i>E. coli</i> | 576/100 mL | 126/100 mL |

- i. Upon the effective date of the revised Ballona Creek Bacteria TMDL, Permittees shall comply with the following water quality-based effluent limitations for discharges to Ballona Creek Reach 1. Permittees shall comply with daily maximum limitations during dry weather as of the effective date of the revised Ballona Creek Bacteria TMDL and during wet weather no later than July 15, 2026. Permittees shall comply with geometric mean limitations no later than July 15, 2026.

| Constituent | Effluent Limitation (MPN or cfu) | |
|----------------|----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Fecal coliform | 4000/100 mL | 2000/100 mL |

3. Receiving Water Limitations

- a. Permittees shall comply with the following grouped⁴² single sample bacteria receiving water limitations at each monitoring location in Ballona Creek Estuary and its

⁴¹ Total coliform density shall not exceed a daily maximum of 1,000/100 mL, if the ratio of fecal-to-total coliform exceeds 0.1.

⁴² The receiving water limitations are group-based and shared among all MS4 Permittees, which includes Caltrans, located within the sub-drainage area to each receiving water monitoring location.

tributaries, as of the effective date of the Order. Tributaries to Ballona Creek Estuary are Ballona Creek Reach 2 and Centinela Creek, the point of compliance for each tributary is at its confluence with Ballona Creek Estuary.

| Time Period | Annual Allowable Exceedance Days of the REC-1 Marine Water Single Sample Objectives ⁴³ | |
|---|---|-----------------|
| | Daily Sampling | Weekly Sampling |
| Winter Dry-Weather (November 1 to March 31) | 9 | 2 |
| Summer Dry-Weather (April 1 to October 31) | 0 | 0 |
| Wet Weather ⁴⁴ (November 1 to October 31) | 17 | 3 |

- b. Permittees shall comply with the following grouped⁴⁵ single sample bacteria receiving water limitations at each monitoring location in Sepulveda Channel, as of the effective date of the Order:

| Time Period | Annual Allowable Exceedance Days of the REC-1 Freshwater Single Sample Objective ⁴⁶ | |
|---|--|-----------------|
| | Daily Sampling | Weekly Sampling |
| Dry-Weather (November 1 to October 31) | 5 | 1 |
| Wet Weather ⁴⁷ (November 1 to October 31) | 15 | 2 |

- c. Permittees shall comply with the following grouped⁴⁸ single sample bacteria receiving water limitations at each monitoring location in Ballona Creek Reach 2⁴⁹ and its tributaries, as of the effective date of the Order. Tributaries to Ballona Creek Reach 2 are Ballona Creek Reach 1 and Benedict Canyon Channel, the point of compliance for each tributary is at its confluence with Ballona Creek Reach 2.

⁴³ The single sample objectives are equivalent to the daily maximum values listed in subpart C.2.a above.

⁴⁴ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

⁴⁵ The receiving water limitations are group-based and shared among all MS4 Permittees, which includes Caltrans, located within the sub-drainage area to each receiving water monitoring location.

⁴⁶ The single sample objective is equivalent to the daily maximum value listed in subpart C.2.b above.

⁴⁷ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

⁴⁸ The receiving water limitations are group-based and shared among all MS4 Permittees, which includes Caltrans, located within the sub-drainage area to each receiving water monitoring location.

⁴⁹ In Ballona Creek Reach 2, the greater of the allowable exceedance days under the reference system approach or high flow suspension shall apply.

| Time Period | Annual Allowable Exceedance Days of the LREC-1 Freshwater Single Sample Objective ⁵⁰ | |
|---|---|-----------------|
| | Daily Sampling | Weekly Sampling |
| Dry-Weather (November 1 to October 31) | 5 | 1 |
| Wet Weather ⁵¹ (November 1 to October 31) | 15 | 2 |

- d. Permittees shall not exceed the single sample objective of 4000/100 ml in more than 10% of the samples collected from Ballona Creek Reach 1 during any 30-day period as of the effective date of the Order.
- e. Permittees shall comply with the following geometric mean receiving water limitations at each monitoring location in Ballona Creek Estuary; at the confluence of Ballona Creek Reach 2 with Ballona Creek Estuary; and at the confluence of Centinela Creek with Ballona Creek Estuary, calculated weekly as a rolling geometric mean using five or more samples, for six-week periods starting all calculation weeks on Sunday, as of the effective date of the Order:

| Constituent | Geometric Mean (MPN or cfu) |
|---------------------|-----------------------------|
| Total coliform | 1,000/100 mL |
| Fecal coliform | 200/100 mL |
| <i>Enterococcus</i> | 35/100 mL |

- f. Permittees shall comply with the following geometric mean receiving water limitation at each monitoring location in Sepulveda Channel; at each monitoring location in Ballona Creek Reach 2; at the confluence of Ballona Creek Reach 1 with Ballona Creek Reach 2; and at the confluence of Benedict Canyon Channel with Ballona Creek Reach 2, calculated weekly as a rolling geometric mean using five or more samples, for six-week periods starting all calculation weeks on Sunday, as of the effective date of the Order:

| Constituent | Geometric Mean (MPN or cfu) |
|----------------|-----------------------------|
| <i>E. coli</i> | 126/100 mL |

- g. Permittees shall comply with the following geometric mean receiving water limitation at each monitoring location in Ballona Creek Reach 1, calculated weekly as a rolling geometric mean using five or more samples, for six-week periods starting all calculation weeks on Sunday, as of the effective date of the Order:

⁵⁰ The single sample objective is equivalent to the daily maximum value listed in subpart C.2.c above.

⁵¹ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

| Constituent | Geometric Mean (MPN or cfu) |
|----------------|-----------------------------|
| Fecal coliform | 2000/100 mL |

- h. Subparts a through g above shall not be applicable upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL (Attachment F to Resolution No. R21-001).
- i. Upon the effective date of the revised Ballona Creek Bacteria TMDL, Permittees shall comply with the following grouped⁵² single sample bacteria receiving water limitations at each monitoring location in Ballona Creek Estuary and its tributaries, during dry weather as of the effective date of the revised Ballona Creek Bacteria TMDL and during wet weather no later than July 15, 2026. Tributaries to Ballona Creek Estuary are Ballona Creek Reach 2 and Centinela Creek, the point of compliance for each tributary is at its confluence with Ballona Creek Estuary.

| Time Period | Annual Allowable Exceedance Days of the REC-1 Marine Water Single Sample Objectives ⁵³ | |
|---|---|-----------------|
| | Daily Sampling | Weekly Sampling |
| Winter Dry-Weather (November 1 to March 31) | 9 | 2 |
| Summer Dry-Weather (April 1 to October 31) | 0 | 0 |
| Wet Weather ⁵⁴ (November 1 to October 31) | 17 | 3 |

- j. Upon the effective date of the revised Ballona Creek Bacteria TMDL, Permittees shall comply with the following grouped⁵⁵ single sample bacteria receiving water limitations at each monitoring location in Sepulveda Channel, during dry weather as of the effective date of the revised Ballona Creek Bacteria TMDL and during wet weather no later than July 15, 2026:

| Time Period | Annual Allowable Exceedance Days of the REC-1 Freshwater Single Sample Objective ⁵⁶ | |
|---|--|-----------------|
| | Daily Sampling | Weekly Sampling |
| Dry-Weather (November 1 to October 31) | 5 | 1 |
| Wet Weather ⁵⁷ (November 1 to October 31) | 15 | 2 |

⁵² The receiving water limitations are group-based and shared among all MS4 Permittees, which includes Caltrans, located within the sub-drainage area to each receiving water monitoring location.

⁵³ The single sample objectives are equivalent to the daily maximum values listed in subpart C.2.f above.

⁵⁴ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

⁵⁵ The receiving water limitations are group-based and shared among all MS4 Permittees, which includes Caltrans, located within the sub-drainage area to each receiving water monitoring location.

⁵⁶ The single sample objective is equivalent to the daily maximum value listed in subpart C.2.g above.

⁵⁷ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

- k. Upon the effective date of the revised Ballona Creek Bacteria TMDL, Permittees shall comply with the following grouped⁵⁸ single sample bacteria receiving water limitations at each monitoring location in Ballona Creek Reach 2⁵⁹ and its tributaries, during dry weather as of the effective date of the revised Ballona Creek Bacteria TMDL and during wet weather no later than July 15, 2026. Tributaries to Ballona Creek Reach 2 are Ballona Creek Reach 1 and Benedict Canyon Channel, the point of compliance for each tributary is at its confluence with Ballona Creek Reach 2.

| Time Period | Annual Allowable Exceedance Days of the LREC-1 Freshwater Single Sample Objective ⁶⁰ | |
|---|---|-----------------|
| | Daily Sampling | Weekly Sampling |
| Dry-Weather (November 1 to October 31) | 5 | 1 |
| Wet Weather ⁶¹ (November 1 to October 31) | 15 | 2 |

- i. Upon the effective date of the revised Ballona Creek Bacteria TMDL, Permittees shall not exceed the single sample objective of 4000/100 ml in more than 10% of the samples collected from Ballona Creek Reach 1 during any 30-day period. Permittees shall achieve compliance with this receiving water limitation during dry weather as of the effective date of the revised Ballona Creek Bacteria TMDL and during wet weather⁶² no later than July 15, 2026.
- m. Upon the effective date of the revised Ballona Creek Bacteria TMDL, Permittees shall comply with the following geometric mean receiving water limitations at each monitoring location in Ballona Creek Estuary; at the confluence of Ballona Creek Reach 2 with Ballona Creek Estuary; and at the confluence of Centinela Creek with Ballona Creek Estuary, calculated weekly as a rolling geometric mean using five or more samples, for six-week periods starting all calculation weeks on Sunday, no later than July 15, 2026:

| Constituent | Geometric Mean (MPN or cfu) |
|---------------------|-----------------------------|
| Total coliform | 1,000/100 mL |
| Fecal coliform | 200/100 mL |
| <i>Enterococcus</i> | 35/100 mL |

- n. Upon the effective date of the revised Ballona Creek Bacteria TMDL, Permittees shall comply with the following geometric mean receiving water limitation at each monitoring location in Sepulveda Channel; at each monitoring location in Ballona Creek Reach 2; at the confluence of Ballona Creek Reach 1 with Ballona Creek Reach 2; and at the confluence of Benedict Canyon Channel with Ballona Creek Reach 2, calculated weekly as a rolling geometric mean using five or more samples,

⁵⁸ The receiving water limitations are group-based and shared among all MS4 Permittees, which includes Caltrans, located within the sub-drainage area to each receiving water monitoring location.

⁵⁹ In Ballona Creek Reach 2, the greater of the allowable exceedance days under the reference system approach or high flow suspension shall apply.

⁶⁰ The single sample objective is equivalent to the daily maximum value listed in subpart C.2.h above.

⁶¹ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

⁶² Ibid.

for six-week periods starting all calculation weeks on Sunday, no later than July 15, 2026:

| Constituent | Geometric Mean (MPN or cfu) |
|----------------|-----------------------------|
| <i>E. coli</i> | 126/100 mL |

- o. Upon the effective date of the revised Ballona Creek Bacteria TMDL, Permittees shall comply with the following geometric mean receiving water limitation at each monitoring location in Ballona Creek Reach 1, calculated weekly as a rolling geometric mean using five or more samples, for six-week periods starting all calculation weeks on Sunday, no later than July 15, 2026:

| Constituent | Geometric Mean (MPN or cfu) |
|----------------|-----------------------------|
| Fecal coliform | 2000/100 mL |

D. Ballona Creek Metals TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-8.
2. Final Water Quality-Based Effluent Limitations
 - a. Permittees shall comply with the following grouped⁶³ dry weather⁶⁴ mass-based water quality-based effluent limitations for discharges to Ballona Creek and Sepulveda Channel as of the effective date of the Order, expressed as total recoverable metals:

| Constituent | Effluent Limitations Daily Maximum (g/day) | |
|-------------|---|-------------------|
| | Ballona Creek | Sepulveda Channel |
| Copper | 1,457.6 | 540.6 |
| Lead | 805.0 | 298.7 |
| Zinc | 18,302.1 | 6,790.8 |

- b. In lieu of calculating loads, Permittees may demonstrate compliance with the following dry-weather⁶⁵ concentration-based water quality-based effluent limitations for discharges to Ballona Creek and Sepulveda Channel as of the effective date of the Order, expressed as total recoverable metals:

⁶³ The dry weather effluent limitations are grouped-based and shared among all the MS4 Permittees located within the drainage area.

⁶⁴ Dry weather is defined as any day when the maximum daily flow in Ballona Creek is less than 64 cubic feet per second (cfs) measured at Sawtelle Boulevard.

⁶⁵ Ibid.

| Constituent | Effluent Limitations Daily Maximum (µg/L total recoverable metals) |
|-------------|---|
| Copper | 35.56 |
| Lead | 19.65 |
| Zinc | 446.55 |

- c. Permittees shall comply with the following grouped⁶⁶ wet weather⁶⁷ mass-based water quality-based effluent limitations for discharges to Ballona Creek and its tributaries as of the effective date of the Order, expressed as total recoverable metals:

| Constituent | Effluent Limitations Daily Maximum (g/day) |
|-------------|---|
| Copper | $1.297 \times 10^{-5} \times \text{Daily Storm Volume (L)}$ |
| Lead | $7.265 \times 10^{-5} \times \text{Daily Storm Volume (L)}$ |
| Zinc | $9.917 \times 10^{-5} \times \text{Daily Storm Volume (L)}$ |

- d. In lieu of calculating loads, Permittees may demonstrate compliance with the following wet weather⁶⁸ concentration-based water quality-based effluent limitations for discharges to Ballona Creek and its tributaries as of the effective date of the Order, expressed as total recoverable metals:

| Constituent | Effluent Limitations Daily Maximum (µg/L total recoverable metals) |
|-------------|--|
| Copper | 12.97 |
| Lead | 72.65 |
| Zinc | 99.17 |

- e. Subparts c and d above shall not be applicable upon the effective date of the revised Ballona Creek Metals TMDL (Attachment G to Resolution No. R21-001).
- f. Upon the effective date of the revised Ballona Creek Metals TMDL, Permittees shall comply with the following grouped⁶⁹ wet weather⁷⁰ mass-based water quality-based effluent limitations for discharges to Ballona Creek and its tributaries no later than July 15, 2026, expressed as total recoverable metals:

⁶⁶ The wet weather effluent limitations are grouped-based and shared among all the MS4 Permittees located within the drainage area.

⁶⁷ Wet weather is defined as any day when the maximum daily flow in Ballona Creek is equal to or greater than 64 cfs measured at Sawtelle Boulevard.

⁶⁸ Ibid.

⁶⁹ The wet weather effluent limitations are grouped-based and shared among all the MS4 Permittees located within the drainage area.

⁷⁰ Wet weather is defined as any day when the maximum daily flow in Ballona Creek is equal to or greater than 64 cfs measured at Sawtelle Boulevard.

| Constituent | Effluent Limitations Daily Maximum (g/day) |
|-------------|---|
| Copper | $1.297 \times 10^{-5} \times \text{Daily Storm Volume (L)}$ |
| Lead | $7.265 \times 10^{-5} \times \text{Daily Storm Volume (L)}$ |
| Zinc | $9.917 \times 10^{-5} \times \text{Daily Storm Volume (L)}$ |

- g. Upon the effective date of the revised Ballona Creek Metals TMDL, in lieu of calculating loads, Permittees may demonstrate compliance with the following wet weather⁷¹ concentration-based water quality-based effluent limitations for discharges to Ballona Creek and its tributaries no later than July 15, 2026, expressed as total recoverable metals:

| Constituent | Effluent Limitations Daily Maximum (µg/L total recoverable metals) |
|-------------|--|
| Copper | 12.97 |
| Lead | 72.65 |
| Zinc | 99.17 |

- Permittees shall demonstrate that 100 percent of the total drainage area served by the MS4 complies with the final water quality-based effluent limitations for discharges of metals to Ballona Creek and its tributaries, as of the effective date of the Order.
- Alternatively, as of the effective date of the Order, Permittees shall attain a 100 percent reduction in the difference between the baseline loadings and the dry and wet weather water quality-based effluent limitations, as measured at the relevant existing MS4 permit monitoring location and/or at relevant MS4 monitoring stations identified in an approved monitoring plan. Baseline loading is defined as loading estimated when the Ballona Creek Metals TMDL was developed in 2005.
- Subparts 3 and 4 above shall not be applicable upon the effective date of the revised Ballona Creek Metals TMDL (Attachment G to Resolution No. R21-001).
- Upon the effective date of the revised Ballona Creek Metals TMDL, Permittees shall demonstrate that the following percentage of the total drainage area served by the MS4 complies with the final water quality-based effluent limitations for discharges of metals to Ballona Creek and its tributaries, per the schedule below:

| Deadline | Percentage of Total Drainage Area Served by the MS4 required to meet the Effluent Limitations | |
|---|---|-------------|
| | Dry weather | Wet weather |
| Effective Date of Revised Ballona Creek Metals TMDL | 100% | 50% |
| July 15, 2026 | 100% | 100% |

- Upon the effective date of the revised Ballona Creek Metals TMDL, alternatively, Permittees shall attain the following percent reduction in the difference between the

⁷¹ Ibid.

baseline loadings and the dry and wet weather water quality-based effluent limitations, as measured at the relevant existing MS4 permit monitoring location and/or at relevant MS4 monitoring stations identified in an approved monitoring plan:

| Deadline | Percent Reduction in the difference between the baseline loadings ⁷² and the Effluent Limitations | |
|---|--|-------------|
| | Dry weather | Wet weather |
| Effective Date of Revised Ballona Creek Metals TMDL | 100% | 50% |
| July 15, 2026 | 100% | 100% |

8. Alternatively, Permittees shall be in compliance with the water quality-based effluent limitations by meeting the dissolved numeric targets during dry-weather and wet-weather in the applicable receiving water.

E. Ballona Creek Wetlands TMDL for Sediment and Invasive Exotic Vegetation

1. Permittees subject to the provisions below are identified in Attachment J, Table J-8.
2. Permittees shall comply with the following grouped⁷³ annual average mass-based water quality-based effluent limitation for sediment discharged from the Ballona Creek Watershed into Ballona Creek Wetlands, as of the effective date of the Order:

| Constituent | Annual Average Effluent Limitation (m ³ /yr) |
|--|---|
| Total Sediment (suspended sediment plus sediment bed load) | 44,615 |

3. To determine compliance with the sediment water quality-based effluent limitations, Permittees shall monitor discharges from the Ballona Creek Watershed for suspended sediment concentration (SSC) and flow.

VI. TMDLS IN MARINA DEL REY SUBWATERSHED

A. Marina del Rey Harbor Mothers’ Beach and Back Basins Bacteria TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-8.
2. Water Quality-Based Effluent Limitations
 - a. Permittees shall comply with the following water quality-based effluent limitations for discharges to Marina del Rey Harbor Back Basins D, E, and F. Permittees shall comply with daily maximum limitations and geometric mean limitations as of the effective date of the Order.

⁷² Baseline loading is defined as loading estimated when the Ballona Creek Metals TMDL was developed in 2005.
⁷³ The sediment effluent limitation is group-based and shared among all MS4 Permittees, which includes Caltrans, located within the Ballona Creek Watershed.

| Constituent | Effluent Limitations (MPN or cfu) | |
|------------------------------|-----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform ⁷⁴ | 10,000/100 mL | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| <i>Enterococcus</i> | 104/100 mL | 35/100 mL |

- b. Subpart a above shall not be applicable upon the effective date of the revised Marina del Rey Harbor Mothers’ Beach and Back Basins Bacteria TMDL (Attachment B to Resolution No. R21-001).
- c. Upon the effective date of the revised Marina del Rey Harbor Mothers’ Beach and Back Basins Bacteria TMDL (MdrRH Bacteria TMDL), Permittees shall comply with the following water quality-based effluent limitations for discharges to Marina del Rey Harbor Back Basins D, E, and F. Permittees shall comply with daily maximum limitations during dry weather as of the effective date of the revised MdrRH Bacteria TMDL and during wet weather no later than July 15, 2024. Permittees shall comply with geometric mean limitations no later than July 15, 2024.

| Constituent | Effluent Limitations (MPN or cfu) | |
|------------------------------|-----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform ⁷⁵ | 10,000/100 mL | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| <i>Enterococcus</i> | 104/100 mL | 35/100 mL |

3. Receiving Water Limitations

- a. Permittees shall comply with the following grouped⁷⁶ single sample bacteria receiving water limitations for all monitoring locations in Basins D, E, and F where there are MS4 discharges, as identified below, as of the effective date of the Order.

⁷⁴ Total coliform density shall not exceed a daily maximum of 1,000/100 mL, if the ratio of fecal-to-total coliform exceeds 0.1.

⁷⁵ Total coliform density shall not exceed a daily maximum of 1,000/100 mL, if the ratio of fecal-to-total coliform exceeds 0.1.

⁷⁶ The receiving water limitations are group-based and shared among all MS4 Permittees, which includes Caltrans, located within the sub-drainage area to each receiving water monitoring location.

| Station ID | Monitoring Location | Annual Allowable Exceedance Days of the Single Sample Objectives ⁷⁷ | | | | | |
|----------------------|---------------------|--|-----------------|---|-----------------|---|-----------------|
| | | Winter Dry Weather (November 1 – March 31) | | Summer Dry Weather (April 1 – October 31) | | Wet Weather ⁷⁸ (November 1 – October 31) | |
| | | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling |
| MdRH-4 | Basin D | 9 | 2 | 0 | 0 | 17 | 3 |
| MdRH-5 | Basin E | 9 | 2 | 0 | 0 | 17 | 3 |
| MdRH-6 | Basin E | 9 | 2 | 0 | 0 | 17 | 3 |
| MdRH-7 | Basin E | 9 | 2 | 0 | 0 | 17 | 3 |
| MdRH-8 | Main Channel | 9 | 2 | 0 | 0 | 17 | 3 |
| MdRH-9 ⁷⁹ | Basin F | 9 | 2 | 0 | 0 | 8 | 1 |

- b. Permittees shall comply with the following geometric mean receiving water limitations for monitoring locations in Basins D, E, and F, calculated weekly as a rolling geometric mean using five or more samples, for six-week periods starting all calculation weeks on Sunday, as of the effective date of the Order:

| Constituent | Geometric Mean (MPN or cfu) |
|---------------------|-----------------------------|
| Total coliform | 1,000/100 mL |
| Fecal coliform | 200/100 mL |
| <i>Enterococcus</i> | 35/100 mL |

- c. Subparts a and b above shall not be applicable upon the effective date of the revised Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL (Attachment B to Resolution No. R21-001).
- d. Upon the effective date of the revised MdRH Bacteria TMDL, Permittees shall comply with the following grouped⁸⁰ single sample bacteria receiving water limitations for all monitoring locations in Basins D, E, and F where there are MS4 discharges, as identified below, during dry weather as of the effective date of the revised MdRH Bacteria TMDL and during wet weather no later than July 15, 2024.

⁷⁷ The single sample objectives are equivalent to the daily maximum values listed in subpart A.2.a above.

⁷⁸ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

⁷⁹ The monitoring location MdRH-9 is subject to the antidegradation implementation provision in the TMDL; therefore, there shall be no increase in exceedance days during the implementation period above that estimated for the monitoring location in the critical year as identified in this Table.

⁸⁰ The receiving water limitations are group-based and shared among all MS4 Permittees, which includes Caltrans, located within the sub-drainage area to each receiving water monitoring location.

| Station ID | Monitoring Location | Annual Allowable Exceedance Days of the Single Sample Objectives ⁸¹ | | | | | |
|----------------------|---------------------|--|-----------------|---|-----------------|---|-----------------|
| | | Winter Dry Weather (November 1 – March 31) | | Summer Dry Weather (April 1 – October 31) | | Wet Weather ⁸² (November 1 – October 31) | |
| | | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling |
| MdRH-4 | Basin D | 9 | 2 | 0 | 0 | 17 | 3 |
| MdRH-5 | Basin E | 9 | 2 | 0 | 0 | 17 | 3 |
| MdRH-6 | Basin E | 9 | 2 | 0 | 0 | 17 | 3 |
| MdRH-7 | Basin E | 9 | 2 | 0 | 0 | 17 | 3 |
| MdRH-8 | Main Channel | 9 | 2 | 0 | 0 | 17 | 3 |
| MdRH-9 ⁸³ | Basin F | 9 | 2 | 0 | 0 | 8 | 1 |

- e. Upon the effective date of the revised MdRH Bacteria TMDL, Permittees shall comply with the following geometric mean receiving water limitations for monitoring locations in Basins D, E, and F, calculated weekly as a rolling geometric mean using five or more samples, for six-week periods starting all calculation weeks on Sunday, no later than July 15, 2024:

| Constituent | Geometric Mean (MPN or cfu) |
|---------------------|-----------------------------|
| Total coliform | 1,000/100 mL |
| Fecal coliform | 200/100 mL |
| <i>Enterococcus</i> | 35/100 mL |

B. Marina del Rey Harbor Toxic Pollutants TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-8.
2. Permittees shall comply with the following grouped⁸⁴ mass-based water quality-based effluent limitations, expressed as an annual loading of sediment-bound pollutants discharged to Marina del Rey Harbor according to the schedule below in subpart 3 or subpart 5, as applicable:

⁸¹ The single sample objectives are equivalent to the daily maximum values listed in subpart A.2.c above.

⁸² Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

⁸³ The monitoring location MdRH-9 is subject to the antidegradation implementation provision in the TMDL; therefore, there shall be no increase in exceedance days during the implementation period above that estimated for the monitoring location in the critical year as identified in this Table.

⁸⁴ Effluent limitations are group-based and shared among all MS4 Permittees within the Marina del Rey subwatershed.

| Constituent | Annual Effluent Limitations |
|--------------------|------------------------------------|
| Copper | 2.26 kg/yr |
| Lead | 3.10 kg/yr |
| Zinc | 9.96 kg/yr |
| Total Chlordane | 0.0332 g/yr |
| Total PCBs | 1.51 g/yr |
| Total DDTs | 0.10 g/yr |
| p,p'-DDE | 0.15 g/yr |

3. Permittees shall comply with the final water quality-based effluent limitations for sediment-bound pollutants discharged to Marina del Rey Harbor, as of the effective date of the Order.
4. Subpart 3 above shall not be applicable upon the effective date of the revised Marina del Rey Harbor Toxic Pollutants TMDL (Attachment E to Resolution No. R21-001).
5. Upon the effective date of the revised Marina del Rey Harbor Toxic Pollutants TMDL (MdrH Toxics TMDL), Permittees shall comply with interim and final water quality-based effluent limitations for sediment-bound pollutants discharged to Marina del Rey Harbor, per the schedule below:

| Deadline | Percentage of Total Drainage Area Served by the MS4 required to meet the Effluent Limitations |
|--|--|
| Effective Date of Revised MdrH Toxics TMDL | 50% |
| July 15, 2024 | 100% |

6. Interim Compliance Determination
 - a. Upon the effective date of the revised MdrH Toxics TMDL, Permittees shall be in compliance with the interim water quality-based effluent limitations for sediment-bound copper, lead, zinc, total chlordane, p,p'-DDE, and total DDTs by demonstrating any one of the following methods:
 - i. The sediment quality condition of Unimpacted or Likely Unimpacted via the interpretation and integration of multiple lines of evidence as defined in the State's Sediment Quality Provisions is met; or
 - ii. The sediment numeric targets, listed below, are met in bed sediments; or

| Constituent | Sediment Numeric Target |
|--------------------|--------------------------------|
| Copper | 34 mg/kg |
| Lead | 46.7 mg/kg |
| Zinc | 150 mg/kg |
| Total Chlordane | 0.5 µg/kg |
| Total DDTs | 1.58 µg/kg |
| p,p'-DDE | 2.2 µg/kg |

- iii. Permittees demonstrate that 50% of the total drainage area served by the MS4 is complying with the water quality-based effluent limitations for sediment-bound pollutants listed in subpart B.2 above. Alternatively, Permittees shall attain a 50% reduction in the difference between the baseline loadings and the water quality-based effluent limitations, as measured at the relevant existing MS4 permit monitoring location and/or at relevant MS4 monitoring stations identified in an approved monitoring plan. Baseline loading is defined as loading estimated when the MdrH Toxics TMDL was developed in 2005.
 - b. Upon the effective date of the revised MdrH Toxics TMDL, Permittees shall be in compliance with the interim water quality-based effluent limitations for sediment-bound total PCBs by demonstrating any one of the following methods:
 - i. The fish tissue numeric target for total PCBs of 3.6 µg/kg is met in species resident to Marina del Rey Harbor; or
 - ii. The sediment quality condition protective of fish tissue is achieved per the Statewide Enclosed Bays and Estuaries Plan, as amended to address contaminants in resident finfish and wildlife; or
 - iii. The sediment numeric target for total PCBs of 3.2 µg/kg is met in bed sediments; or
 - iv. Permittees demonstrate that 50% of the total drainage area served by the MS4 is complying with the water quality-based effluent limitation for sediment-bound total PCBs listed in subpart B.2 above. Alternatively, Permittees shall attain a 50% reduction in the difference between the baseline loading and the water quality-based effluent limitation, as measured at the relevant existing MS4 permit monitoring location and/or at relevant MS4 monitoring stations identified in an approved monitoring plan. Baseline loading is defined as loading estimated when the MdrH Toxics TMDL was developed in 2005.
7. Final Compliance Determination
- a. Permittees shall be in compliance with the final water quality-based effluent limitations for sediment-bound copper, lead, zinc, total chlordane, p,p'-DDE and total DDTs by demonstrating any one of the following methods:
 - i. The sediment quality condition of Unimpacted or Likely Unimpacted via the interpretation and integration of multiple lines of evidence as defined in the Sediment Quality Provisions is met; or

- ii. The sediment numeric targets, listed in subpart B.6.a.ii above, are met in bed sediments; or
 - iii. Permittees demonstrate that 100% of the total drainage area served by the MS4 is complying with the water quality-based effluent limitations for sediment-bound pollutants listed in subpart B.2 above.
 - b. Permittees shall be in compliance with the final water quality-based effluent limitations for sediment-bound total PCBs by demonstrating any one of the following methods:
 - i. The fish tissue numeric target for total PCBs of 3.6 µg/kg is met in species resident to Marina del Rey Harbor; or
 - ii. The sediment quality condition protective of fish tissue is achieved per the Statewide Enclosed Bays and Estuaries Plan, as amended to address contaminants in resident finfish and wildlife; or
 - iii. The sediment numeric target for total PCBs of 3.2 µg/kg is met in bed sediments; or
 - iv. Permittees demonstrate that 100% of the total drainage area served by the MS4 is complying with the water quality-based effluent limitation for sediment-bound total PCBs listed in subpart B.2 above.
- 8. Permittees shall determine their preferred compliance method(s) to demonstrate compliance with the interim and final water quality-based effluent limitations and shall monitor accordingly.

ATTACHMENT P – TMDLS IN THE DOMINGUEZ CHANNEL AND GREATER HARBOR WATERS WATERSHED MANAGEMENT AREA

I. LOS ANGELES HARBOR BACTERIA TMDL (INNER CABRILLO BEACH AND MAIN SHIP CHANNEL)

- A. Permittees subject to the provisions below are identified in Attachment J, Table J-9.
- B. Permittees shall comply with the following water quality-based effluent limitations for discharges to the Los Angeles Harbor Main Ship Channel, Los Angeles Inner Harbor, and Inner Cabrillo Beach as of the effective date of the Order:

| Constituent | Effluent Limitations (MPN or cfu) | |
|-----------------------------|-----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform ¹ | 10,000/100 mL | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| <i>Enterococcus</i> | 104/100 mL | 35/100 mL |

C. Receiving Water Limitations

- 1. Permittees shall comply with the following single sample bacteria receiving water limitations for monitoring locations in the Los Angeles Harbor Main Ship Channel, Los Angeles Inner Harbor², and Inner Cabrillo Beach³ as of the effective date of the Order:

| Time Period | Receiving Water | Compliance Monitoring Location | Annual Allowable Exceedance Days of the Single Sample Objective ⁴ | |
|--|----------------------|--------------------------------|--|-----------------|
| | | | Daily sampling | Weekly sampling |
| Winter Dry-Weather (November 1 to March 31) | Inner Cabrillo Beach | CB01 | 0 | 0 |
| | Main Ship Channel | HW07 | 8 | 1 |
| Summer Dry-Weather (April 1 to October 31) | Inner Cabrillo Beach | CB01 | 0 | 0 |
| | Main Ship Channel | HW07 | 0 | 0 |
| Wet Weather ⁵ (November 1 to October 31) | Inner Cabrillo Beach | CB01 | 0 | 0 |
| | Main Ship Channel | HW07 | 15 | 3 |

¹ Total coliform density shall not exceed a daily maximum of 1,000/100 mL, if the ratio of fecal-to-total coliform exceeds 0.1.
² For the main ship channel and Los Angeles Inner Harbor the City of Los Angeles, the County of Los Angeles, and the Los Angeles County Flood Control District are responsible agencies.
³ For Inner Cabrillo Beach the City of Los Angeles is the responsible agency.
⁴ The single sample objectives are equivalent to the daily maximum values listed in subpart B above.
⁵ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

2. Permittees shall comply with the following geometric mean receiving water limitations for monitoring locations in the Los Angeles Harbor Main Ship Channel, Los Angeles Inner Harbor, and Inner Cabrillo Beach, calculated weekly as a rolling geometric mean using five or more samples, for six-week periods starting all calculation weeks on Sunday, as of the effective date of the Order:

| Constituent | Geometric Mean |
|---------------------|------------------|
| Total coliform | 1,000 MPN/100 mL |
| Fecal coliform | 200 MPN/100 mL |
| <i>Enterococcus</i> | 35 MPN/100 mL |

II. DOMINGUEZ CHANNEL AND GREATER LOS ANGELES AND LONG BEACH HARBOR WATERS TOXIC POLLUTANTS TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Tables J-9 and J-10.
- B. Permittees shall comply with the interim water quality-based effluent limitations listed below, as of the effective date of the Order:
 1. Permittees shall comply with the following freshwater interim water quality-based effluent limitations for discharges to Dominguez Channel during wet weather:
 - a. The freshwater toxicity interim water quality-based effluent limitation is 2 TUc. The freshwater interim effluent limitation shall be implemented as a trigger requiring initiation and implementation of the TRE/TIE process as outlined in US EPA's "Understanding and Accounting for Method Variability in Whole Effluent Toxicity Applications Under the National Pollutant Discharge Elimination System Program" (2000).
 - b. Permittees shall comply with the following freshwater interim metals water quality-based effluent limitations for discharges to the Dominguez Channel and Torrance Lateral during wet weather:

| Metals | Interim Effluent Limitation Daily Maximum (µg/L) |
|--------------|---|
| Total Copper | 207.51 |
| Total Lead | 122.88 |
| Total Zinc | 898.87 |

2. Permittees shall comply with the following interim concentration-based water quality-based effluent limitations for sediment-bound pollutants discharged to the Dominguez Channel Estuary and Greater Los Angeles and Long Beach Harbor Waters:

| Water Body | Interim Effluent Limitations Three-year Average (mg/kg sediment) | | | | | |
|--|---|-------|-------|------------|------------|------------|
| | Copper | Lead | Zinc | Total DDTs | Total PAHs | Total PCBs |
| Dominguez Channel Estuary (below Vermont Avenue) | 220.0 | 510.0 | 789.0 | 1.727 | 31.60 | 1.490 |
| Long Beach Inner Harbor | 142.3 | 50.4 | 240.6 | 0.070 | 4.58 | 0.060 |
| Los Angeles Inner Harbor | 154.1 | 145.5 | 362.0 | 0.341 | 90.30 | 2.107 |

| Water Body | Interim Effluent Limitations Three-year Average (mg/kg sediment) | | | | | |
|--|---|--------|--------|------------|------------|------------|
| | Copper | Lead | Zinc | Total DDTs | Total PAHs | Total PCBs |
| Long Beach Outer Harbor (inside breakwater) | 67.3 | 46.7 | 150 | 0.075 | 4.022 | 0.248 |
| Los Angeles Outer Harbor (inside breakwater) | 104.1 | 46.7 | 150 | 0.097 | 4.022 | 0.310 |
| Los Angeles River Estuary | 53.0 | 46.7 | 183.5 | 0.254 | 4.36 | 0.683 |
| San Pedro Bay Near/Off Shore Zones | 76.9 | 66.6 | 263.1 | 0.057 | 4.022 | 0.193 |
| Los Angeles Harbor - Cabrillo Marina | 367.6 | 72.6 | 281.8 | 0.186 | 36.12 | 0.199 |
| Los Angeles Harbor - Consolidated Slip | 1470.0 | 1100.0 | 1705.0 | 1.724 | 386.00 | 1.920 |
| Los Angeles Harbor - Inner Cabrillo Beach Area | 129.7 | 46.7 | 163.1 | 0.145 | 4.022 | 0.033 |
| Fish Harbor | 558.6 | 116.5 | 430.5 | 40.5 | 2102.7 | 36.6 |

3. Permittees shall be in compliance with the interim concentration-based water quality-based effluent limitations for sediment-bound pollutants as listed in subpart B.2 above by demonstrating any one of the following methods:
 - a. Demonstrate that the sediment quality condition of Unimpacted or Likely Unimpacted via the interpretation and integration of multiple lines of evidence as defined in the Sediment Quality Objectives (SQO) Part 1, is met; or
 - b. Meet the interim water quality-based effluent limitations in bed sediment over a three-year averaging period; or
 - c. Meet the interim water quality-based effluent limitations in the storm-borne sediment discharge over a three-year averaging period.
- C. Permittees shall comply with the final water quality-based effluent limitations as listed below no later than March 23, 2032, and every year thereafter:
 1. **Dominguez Channel Freshwater QBELs during Wet Weather**
 - a. Freshwater Toxicity Effluent Limitation shall not exceed the monthly median of 1 TUc.
 - b. Permittees shall comply with the following final grouped⁶ mass-based water quality-based effluent limitations for discharges to Dominguez Channel and all upstream reaches and tributaries of Dominguez Channel above Vermont Avenue:

⁶ The effluent limitations are group-based and shared among all MS4 Permittees within the Dominguez Channel drainage area above Vermont Avenue.

| Metals | Water Column Mass-Based Final Effluent Limitation Daily Maximum⁷ (g/day) |
|---------------|--|
| Total Copper | 1,300.3 |
| Total Lead | 5,733.7 |
| Total Zinc | 9,355.5 |

2. Torrance Lateral Freshwater and Sediment WQBELs during Wet Weather

- a. Permittees shall comply with the following final concentration-based water quality-based effluent limitations for discharges to the Torrance Lateral:

| Metals | Water Column Effluent Limitations Daily Maximum⁸ (unfiltered, µg/L) |
|---------------|---|
| Total Copper | 9.7 |
| Total Lead | 42.7 |
| Total Zinc | 69.7 |

- b. Permittees shall comply with the following final concentration-based water quality-based effluent limitations for sediment-bound pollutants discharged to the Torrance Lateral:

| Metals | Effluent Limitations Daily Maximum (mg/kg dry sediment) |
|---------------|--|
| Total Copper | 31.6 |
| Total Lead | 35.8 |
| Total Zinc | 121 |

3. Permittees shall be in compliance with the final freshwater metals water quality-based effluent limitations for discharges to Dominguez Channel and the Torrance Lateral as listed in subparts C.1.b and C.2.a above by demonstrating any one of the following methods:

- a. Final metals water quality-based effluent limitations are met; or
- b. CTR total metals criteria are met instream; or
- c. CTR total metals criteria are met in the discharge.

⁷ Effluent limitations are based on total recoverable metals targets, a hardness of 50 mg/L, and 90th percentile of annual flow rates (62.7 cfs) in Dominguez Channel. Recalculated mass-based effluent limitations using ambient hardness and flow rate at the time of sampling are consistent with the assumptions and requirements of the TMDL. In addition to the effluent limitations above, samples collected during flow conditions less than the 90th percentile of annual flow rates must demonstrate that the acute and chronic hardness dependent water quality criteria provided in the California Toxics Rule (CTR) are achieved.

⁸ Effluent limitations are based on a hardness of 50 mg/L. Recalculated concentration-based effluent limitations using ambient hardness at the time of sampling are consistent with the assumptions and requirements of the TMDL. In addition to the effluent limitations above, samples collected during flow conditions less than the 90th percentile of annual flow rates must demonstrate that the acute and chronic hardness dependent water quality criteria provided in the CTR are achieved.

4. Dominguez Channel Estuary and Greater Los Angeles and Long Beach Harbor Waters WQBELs

- a. Permittees shall comply with the following final grouped⁹ mass-based water quality-based effluent limitations, expressed as an annual loading of sediment-bound pollutants discharged to Dominguez Channel Estuary, Los Angeles River Estuary, and the Greater Los Angeles and Long Beach Harbor Waters:

| Permittee | Water Body | Annual Effluent Limitations (kg/yr) | | | |
|--|---------------------------|-------------------------------------|----------|----------|------------|
| | | Total Cu | Total Pb | Total Zn | Total PAHs |
| Los Angeles County MS4 Permittees | Dominguez Channel Estuary | 22.4 | 54.2 | 271.8 | 0.134 |
| City of Long Beach | Dominguez Channel Estuary | 0.6 | 1.52 | 7.6 | 0.0038 |
| Los Angeles County MS4 Permittees | Consolidated Slip | 2.73 | 3.63 | 28.7 | 0.0058 |
| Los Angeles County MS4 Permittees | Inner Harbor | 1.7 | 34.0 | 115.9 | 0.088 |
| City of Long Beach | Inner Harbor | 0.463 | 9.31 | 31.71 | 0.024 |
| Los Angeles County MS4 Permittees | Outer Harbor | 0.91 | 26.1 | 81.5 | 0.105 |
| City of Long Beach | Outer Harbor | 0.63 | 18.1 | 56.4 | 0.073 |
| Los Angeles County MS4 Permittees (Port of LA) | Fish Harbor | 0.00017 | 0.54 | 1.62 | 0.007 |
| Los Angeles County MS4 Permittees (Port of LA) | Cabrillo Marina | 0.0196 | 0.289 | 0.74 | 0.00016 |
| Los Angeles County MS4 Permittees | San Pedro Bay | 20.3 | 54.7 | 213.1 | 1.76 |
| City of Long Beach | San Pedro Bay | 137.9 | 372.2 | 1449.7 | 12.0 |
| Los Angeles County MS4 Permittees | LA River Estuary | 35.3 | 65.7 | 242.0 | 2.31 |
| City of Long Beach | LA River Estuary | 375.8 | 698.9 | 2572.7 | 24.56 |

- b. Permittees shall comply with the following final concentration-based water quality-based effluent limitations for sediment-bound pollutants discharged to the Dominguez Channel Estuary, Consolidated Slip, and Fish Harbor:

⁹ The final grouped mass-based effluent limitations assigned to the Los Angeles County MS4 Permittees are shared among all the MS4 Permittees within the Dominguez Channel drainage area, except for the City of Long Beach. Individual mass-based effluent limitations are assigned to the City of Long Beach.

| Water Body | Effluent Limitations Daily Maximum (mg/kg dry sediment) | | |
|---------------------------|---|----------|---------|
| | Cadmium | Chromium | Mercury |
| Dominguez Channel Estuary | 1.2 | -- | -- |
| Consolidated Slip | 1.2 | 81 | 0.15 |
| Fish Harbor | -- | -- | 0.15 |

5. Permittees shall be in compliance with the final water quality-based effluent limitations for sediment-bound pollutants as listed in subpart C.4 above by demonstrating any one of the following methods:
- Final water quality-based effluent limitations for sediment-bound pollutants are met; or
 - The qualitative sediment condition of Unimpacted or Likely Unimpacted via the interpretation and integration of multiple lines of evidence as defined in the SQO Part 1, is met, with the exception of chromium, which is not included in the SQO Part 1; or
 - Sediment numeric targets, listed below, are met in bed sediments over a three-year averaging period.

| Constituent | Sediment Numeric Target |
|-------------|-------------------------|
| Cadmium | 1.2 mg/kg |
| Copper | 34 mg/kg |
| Lead | 46.7 mg/kg |
| Mercury | 0.15 mg/kg |
| Zinc | 150 mg/kg |
| Chromium | 81 mg/kg |
| Total PAHs | 4,022 µg/kg |

6. Permittees shall comply with the following final grouped¹⁰ mass-based water quality-based effluent limitations, expressed as an annual loading of sediment-bound total DDT and total PCBs discharged to Dominguez Channel Estuary, Los Angeles River Estuary, and the Greater Los Angeles and Long Beach Harbor Waters:

| Permittee | Water Body | Annual Effluent Limitations (g/yr) | |
|-----------------------------------|---------------------------|------------------------------------|------------|
| | | Total DDTs | Total PCBs |
| Los Angeles County MS4 Permittees | Dominguez Channel Estuary | 0.250 | 0.207 |
| City of Long Beach | Dominguez Channel Estuary | 0.007 | 0.006 |
| Los Angeles County MS4 Permittees | Consolidated Slip | 0.009 | 0.004 |

¹⁰ Ibid.

| Permittee | Water Body | Annual Effluent Limitations (g/yr) | |
|-----------------------------------|----------------------|------------------------------------|------------|
| | | Total DDTs | Total PCBs |
| Los Angeles County MS4 Permittees | Inner Harbor | 0.051 | 0.059 |
| City of Long Beach | Inner Harbor | 0.014 | 0.016 |
| Los Angeles County MS4 Permittees | Outer Harbor | 0.005 | 0.020 |
| City of Long Beach | Outer Harbor | 0.004 | 0.014 |
| Los Angeles County MS4 Permittees | Fish Harbor | 0.0003 | 0.0019 |
| Los Angeles County MS4 Permittees | Cabrillo Marina | 0.000028 | 0.000025 |
| Los Angeles County MS4 Permittees | Inner Cabrillo Beach | 0.0001 | 0.0003 |
| Los Angeles County MS4 Permittees | San Pedro Bay | 0.049 | 0.44 |
| City of Long Beach | San Pedro Bay | 0.333 | 3.01 |
| Los Angeles County MS4 Permittees | LA River Estuary | 0.100 | 0.324 |
| City of Long Beach | LA River Estuary | 1.067 | 3.441 |

7. Permittees shall be in compliance with the final water quality-based effluent limitations for sediment-bound total DDTs and total PCBs as listed in subpart C.6 above by demonstrating any one of the following methods:

a. Fish tissue numeric targets, listed below, are met in species resident to the specified water bodies¹¹; or

| Constituent | Fish Tissue Numeric Target (µg/kg wet) |
|-------------|---|
| Total DDTs | 21 |
| Total PCBs | 3.6 |

b. Final water quality-based effluent limitations for sediment-bound pollutants are met; or

c. Sediment numeric targets to protect fish tissue, listed below, are met in bed sediments over a three-year averaging period; or

| Constituent | Sediment Numeric Target (µg/kg dry) |
|-------------|--|
| Total DDTs | 1.9 |
| Total PCBs | 3.2 |

¹¹ A site-specific study to determine resident species shall be submitted to the Los Angeles Water Board Executive Officer for approval.

- d. Demonstrate that the sediment quality condition protective of fish tissue is achieved per the State Water Board’s Statewide Enclosed Bays and Estuaries Plan, as amended to address contaminants in resident finfish and wildlife.
- D. Permittees shall determine their preferred compliance method(s) to demonstrate compliance with the interim and final water quality-based effluent limitations and shall monitor accordingly.
- E. Los Angeles County Permittees responsible for the Los Angeles River Metals TMDLs are responsible for conducting and reporting water and sediment monitoring above the Los Angeles River Estuary to determine the Los Angeles River’s contribution to the impairments in the Greater Los Angeles and Long Beach Harbor waters.
- F. Los Angeles County Permittees responsible for the San Gabriel River Metals TMDLs are responsible for conducting and reporting water and sediment monitoring at the mouth of the San Gabriel River to determine the San Gabriel River’s contribution to the impairments in the Greater Los Angeles and Long Beach Harbor waters.

III. MACHADO LAKE TRASH TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Table J-9.
- B. Permittees shall comply with the water quality-based effluent limitation of zero trash discharged to Machado Lake as of the effective date of the Order and every water year thereafter.
- C. Permittees shall comply with the water quality-based effluent limitations for trash per the provisions in Part IV.B.3 of the Order.

IV. MACHADO LAKE EUTROPHIC, ALGAE, AMMONIA, AND ODORS (NUTRIENT) TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Table J-9.
- B. Permittees shall comply with the following water quality-based effluent limitations for discharges to Machado Lake as of the effective date of the Order:

| Constituent | Effluent Limitations Monthly Average (mg/L) |
|------------------------------------|--|
| Total Nitrogen¹² | 1.0 |
| Total Phosphorus | 0.10 |

- C. Compliance Determination
 - 1. Permittees may comply with the water quality-based effluent limitations by actively participating in a Lake Water Quality Management Plan (LWQMP) and attaining the receiving water limitations for Machado Lake. The City of Los Angeles has entered into a Memorandum of Agreement with the Los Angeles Water Board to implement the LWQMP and reduce external nutrient loading to attain the following receiving water limitations as of the effective date of the Order.

| Constituent | Receiving Water Limitations Monthly Average (mg/L) |
|------------------------------------|---|
| Total Nitrogen¹³ | 1.0 |
| Total Phosphorus | 0.10 |

¹² Total Nitrogen is the sum of TKN plus Nitrate-N plus Nitrite-N.

¹³ Ibid.

2. Permittees may comply with water quality-based effluent limitations by demonstrating reduction of total nitrogen and total phosphorous on an annual mass basis measured at the storm drain outfall of the Permittee’s drainage area. The annual mass-based allocation shall be equivalent to a monthly average concentration of 1.0 mg/L total nitrogen and 0.1 mg/L total phosphorus based on approved flow condition¹⁴ of 8.45 hm³ (cubic hectometers). Permittees must demonstrate total nitrogen and total phosphorous load reductions to be achieved in accordance with a special study workplan approved by the Los Angeles Water Board Executive Officer.
- a. The County of Los Angeles submitted a special study work plan, which was approved by the Los Angeles Water Board Executive Officer. The County of Los Angeles shall attain the following annual mass-based water quality-based effluent limitations as of the effective date of the Order.

| Constituent | Effluent Limitations Annual Load (kg/yr) |
|------------------------------|---|
| Total Nitrogen ¹⁵ | 710 |
| Total Phosphorus | 71 |

- b. The City of Torrance submitted a special study work plan, which was approved by the Los Angeles Water Board Executive Officer. The City of Torrance shall attain the following annual mass-based water quality-based effluent limitations as of the effective date of the Order.

| Constituent | Effluent Limitations Annual Load (kg/yr) |
|------------------------------|---|
| Total Nitrogen ¹⁶ | 3008 |
| Total Phosphorus | 301 |

- c. The County of Los Angeles and the City of Torrance shall report the flow measured at the storm drain outfalls of the Permittees’ respective drainage areas.

V. MACHADO LAKE PESTICIDES AND PCBS TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Table J-9.
- B. Permittees shall comply with the following water quality-based effluent limitations for storm-borne sediments discharged to Machado Lake, as of the effective date of the Order:

| Pollutant | Effluent Limitations Three-Year Average (µg/kg dry weight) |
|---------------------|---|
| Total PCBs | 59.8 |
| DDT (all congeners) | 4.16 |
| DDE (all congeners) | 3.16 |
| DDD (all congeners) | 4.88 |

¹⁴ The approved flow condition is the average annual runoff from the Machado Lake sub-watershed as presented in the Technical Memo for Machado Lake Eutrophic, Algae, Ammonia, and Odors (Nutrient) TMDL, dated May 1, 2008.

¹⁵ Total Nitrogen is the sum of TKN plus Nitrate-N plus Nitrite-N.

¹⁶ Ibid.

| Pollutant | Effluent Limitations Three-Year Average ($\mu\text{g}/\text{kg}$ dry weight) |
|------------------|--|
| Total DDTs | 5.28 |
| Total Chlordane | 3.24 |
| Dieldrin | 1.9 |

- C. To determine compliance with the water quality-based effluent limitations, Permittees shall monitor pollutant concentrations of the storm-borne sediment discharged from Project 77 storm drain, Project 510 storm drain and Wilmington Drain storm drain outfalls to Machado Lake.

ATTACHMENT Q – TMDLS IN THE LOS ANGELES RIVER WATERSHED MANAGEMENT AREA

I. LOS ANGELES RIVER WATERSHED TRASH TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Table J-11.
- B. Permittees shall comply with the water quality-based effluent limitation of zero trash discharged to the Los Angeles River and its tributaries as of the effective date of the Order and every water year thereafter.
- C. Permittees shall comply with the water quality-based effluent limitations for trash per the provisions in Part IV.B.3 of the Order.

II. LOS ANGELES RIVER NITROGEN COMPOUNDS AND RELATED EFFECTS TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Table J-11.
- B. Permittees shall comply with the following water quality-based effluent limitations for discharges to the Los Angeles River and its tributaries as of the effective date of the Order:

| Los Angeles River Segment | Effluent Limitation Ammonia (NH ₃ -N) | | | |
|---|--|-----------------------|---------------------------------|------------------------------------|
| | 1-hour Average (mg/L) | 30-day Average (mg/L) | | |
| | Year Round | Year Round | ELS Absent October 1 – March 31 | ELS Present April 1 – September 30 |
| Reach 6 above Balboa Blvd. | 4.7 | 1.6 | --- | --- |
| Reach 5 Balboa Blvd. to Sepulveda Dam | 4.7 | --- | 2.1 | 1.8 |
| Reach 4 Sepulveda Dam to Riverside Drive | 4.7 | --- | 2.1 | 2.1 ¹ |
| Reach 3 Riverside Drive to above Los Angeles-Glendale Water Reclamation Plant (LAG WRP) | 4.7 | --- | 4.1 | 2.4 |
| Reach 3 Below LAG WRP to Figueroa Street | 8.7 | --- | 4.1 | 2.4 |
| Reach 2 Figueroa Street to Carson Street | 8.7 | 2.4 | --- | --- |
| Reach 1 Carson Street to Estuary | 8.7 | 2.4 | --- | --- |
| Los Angeles River Tributaries Excluding Rio Hondo Reach 3 (above Whittier Narrows Dam) | 10.1 | 2.3 | --- | --- |
| Rio Hondo Reach 3 (above Whittier Narrows Dam) | 10.1 | --- | 4.3 | 2.8 |

- C. Permittees shall comply with the following water quality-based effluent limitations for discharges to the Los Angeles River and its tributaries as of the effective date of the Order:

| Constituent | Effluent Limitation 30-day Average (mg/L) |
|--|---|
| Nitrate as Nitrogen (NO ₃ -N) | 8.0 |
| Nitrite as Nitrogen (NO ₂ -N) | 1.0 |
| Nitrate as Nitrogen plus Nitrite as Nitrogen | 8.0 |

¹ The Los Angeles River Reach 4 ammonia effluent limitation of 2.1 mg/L for ELS Absent is year-round.

III. LOS ANGELES RIVER AND TRIBUTARIES METALS TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Tables J-11 and J-12.
- B. Water Quality-Based Effluent Limitations
 - 1. Permittees shall comply with the following grouped² dry weather³ mass-based water quality-based effluent limitations no later than January 11, 2024, expressed as total recoverable metals:

| Waterbody | Effluent Limitations Daily Maximum (kg/day) | | |
|-------------------------|---|--------|------|
| | Copper | Lead | Zinc |
| LA River Reach 6 | 0.53 | 3.0 | --- |
| LA River Reach 5 | 0.05 | 0.31 | --- |
| LA River Reach 4 | 1.27 | 1.04 | --- |
| LA River Reach 3 | 0.24 | 1.18 | --- |
| LA River Reach 2 | 0.52 | 0.89 | --- |
| LA River Reach 1 | 0.56 | 0.64 | --- |
| Bell Creek | 0.06 | 0.33 | --- |
| Tujunga Wash | 0.008 | 0.0053 | --- |
| Burbank Western Channel | 0.71 | 0.61 | --- |
| Verdugo Wash | 0.39 | 0.82 | --- |
| Arroyo Seco | 0.01 | 0.06 | --- |
| Rio Hondo Reach 1 | 0.097 | 0.045 | 0.16 |
| Compton Creek | 0.13 | 0.16 | --- |

- 2. In lieu of calculating loads, Permittees may demonstrate compliance with the following concentration-based water quality-based effluent limitations during dry weather⁴ no later than January 11, 2024, expressed as total recoverable metals:

| Waterbody | Effluent Limitations Daily Maximum (µg/L total recoverable metals) | | |
|--|--|------|------|
| | Copper | Lead | Zinc |
| LA River Reach 5, 6 and Bell Creek | 30 | 170 | --- |
| LA River Reach 4 | 103 | 83 | --- |
| Tujunga Wash | 166 | 83 | --- |
| LA River Reach 3 above LA-Glendale WRP | 91 | 102 | --- |
| Verdugo Wash | 50 | 102 | --- |

² The dry weather effluent limitations are grouped-based and shared among all the MS4 Permittees, including Caltrans, that are located within the drainage area.
³ Dry weather is defined as any day when the maximum daily flow in the Los Angeles River is less than 500 cfs measured at the Wardlow gage station.
⁴ Dry weather is defined as any day when the maximum daily flow in the Los Angeles River is less than 500 cfs measured at the Wardlow gage station.

| Waterbody | Effluent Limitations Daily Maximum (µg/L total recoverable metals) | | |
|---|---|------|------|
| | Copper | Lead | Zinc |
| LA River Reach 3 below LA-Glendale WRP | 103 | 100 | --- |
| Burbank Western Channel (above WRP) | 124 | 126 | --- |
| Burbank Western Channel (below WRP) | 90 | 751 | --- |
| LA River Reach 2 | 87 | 94 | --- |
| Arroyo Seco | 29 | 94 | |
| LA River Reach 1 | 91 | 102 | --- |
| Compton Creek | 64 | 73 | --- |
| Rio Hondo Reach 1 | 126 | 37 | 131 |

3. Permittees shall comply with the following grouped⁵ wet weather⁶ mass-based water quality-based effluent limitations no later than January 11, 2028, expressed as total recoverable metals discharged to all reaches of the Los Angeles River and its tributaries:

| Constituent | Effluent Limitations Daily Maximum (kg/day) |
|-------------|---|
| Cadmium | $2.8 \times 10^{-9} \times \text{Daily Storm Volume (L)} - 1.8$ |
| Copper | $6.0 \times 10^{-8} \times \text{Daily Storm Volume (L)} - 9.5$ |
| Lead | $8.5 \times 10^{-8} \times \text{Daily Storm Volume (L)} - 32$ |
| Zinc | $1.4 \times 10^{-7} \times \text{Daily Storm Volume (L)} - 83$ |

4. In lieu of calculating loads, Permittees may demonstrate compliance with the following concentration-based water quality-based effluent limitations during wet weather no later than January 11, 2028, expressed as total recoverable metals discharged to all reaches of the Los Angeles River and its tributaries:

| Constituent | Effluent Limitations Daily Maximum (µg/L total recoverable metals) |
|-------------|---|
| Cadmium | $2.8 - \frac{1.8 \times 10^9}{\text{Daily Storm Volume (L)}}$ |
| Copper | $60 - \frac{9.5 \times 10^9}{\text{Daily Storm Volume (L)}}$ |
| Lead | $85 - \frac{3.2 \times 10^{10}}{\text{Daily Storm Volume (L)}}$ |
| Zinc | $140 - \frac{8.3 \times 10^{10}}{\text{Daily Storm Volume (L)}}$ |

⁵ The wet weather effluent limitations are grouped-based and shared among all the MS4 Permittees located within the drainage area.

⁶ Wet weather is defined as any day when the maximum daily flow in the Los Angeles River is equal to or greater than 500 cfs measured at the Wardlow gage station.

- C. Permittees shall comply with the dry and wet weather water quality-based effluent limitations for metals discharged to the Los Angeles River and its tributaries, per the schedule below:

| Deadline | Percentage of Total Drainage Area Served by the MS4 required to meet the Effluent Limitations | |
|-----------------------------|---|-------------|
| | Dry weather | Wet weather |
| Effective Date of the Order | 75% | 25% |
| January 11, 2024 | 100% | 50% |
| January 11, 2028 | 100% | 100% |

IV. LOS ANGELES RIVER WATERSHED BACTERIA TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Tables J-11, J-13, and J-14.
- B. Permittees shall comply with the following final water quality-based effluent limitations for discharges to the Los Angeles River and its tributaries. Permittees shall comply with the single sample limitations during dry weather according to the schedule in Table Q - 1, and during wet weather no later than March 23, 2037. Permittees shall comply with the geometric mean limitations no later than March 23, 2037.

| Constituent | Effluent Limitation (MPN or cfu) | |
|----------------|----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| <i>E. coli</i> | 235/100 mL | 126/100 mL |

- C. Permittees shall comply with the following grouped⁷ interim dry weather single sample bacteria water quality-based effluent limitations for specific river segments and tributaries as listed in the table below, according to the schedule in Table Q - 1:

| River Segment or Tributary | Daily Maximum <i>E. coli</i> Load (10 ⁹ MPN/Day) |
|---|---|
| Los Angeles River Segment A (Rosecrans Avenue to Willow Street) | 301 |
| Los Angeles River Segment B (Figueroa Street to Rosecrans Avenue) | 518 |
| Los Angeles River Segment C (Tujunga Avenue to Figueroa Street) | 463 |
| Los Angeles River Segment D (Balboa Boulevard to Tujunga Avenue) | 454 |
| Los Angeles River Segment E (Headwaters to Balboa Boulevard) | 32 |
| Aliso Canyon Wash | 23 |

⁷ The interim dry weather effluent limitations are group-based and shared among all MS4 Permittees, which includes Caltrans, located within the drainage area to the outfall(s) within the designated segment or tributary. The interim dry weather effluent limitations may be distributed based on proportional drainage area, upon approval of the Los Angeles Water Board Executive Officer.

| River Segment or Tributary | Daily Maximum <i>E. coli</i> Load (10 ⁹ MPN/Day) |
|----------------------------|---|
| Arroyo Seco | 24 |
| Bell Creek | 14 |
| Bull Creek | 9 |
| Burbank Western Channel | 86 |
| Compton Creek | 7 |
| Dry Canyon | 7 |
| McCoy Canyon | 7 |
| Rio Hondo | 2 |
| Tujunga Wash | 10 |
| Verdugo Wash | 51 |

1. Unexpectedly high-loading outfalls may be excluded from interim compliance calculations under the following circumstances: If an outfall which was 1) loading *E. coli* at a rate less than the 25th percentile of outfalls during the monitoring events used to develop the “MS4 Load Reduction Strategy” (LRS), but, at the time of compliance monitoring, is 2) loading *E. coli* at a rate greater than the 90th percentile of outfalls, and 3) actions are taken prior to the end of the first phase (i.e. 10 years after the beginning of the segment or tributary specific phase) such that the outfall is returned to a loading less than the 50th percentile of the outfalls at compliance monitoring, then the 90th percentile data from the outfall may be excluded from the compliance loading calculations.
2. If an outfall which was 1) the subject of a dry weather diversion is found, at the time of compliance monitoring, to be 2) contributing greater than the 90th percentile loading rate, and 3) actions are taken such that the outfall is returned to a loading less than the 50th percentile of the outfalls at compliance monitoring, and a maintenance schedule for the diversion is submitted with the compliance report, then the 90th percentile data from the outfall may be excluded from the compliance loading calculations.

D. Receiving Water Limitations

1. Permittees shall comply with the following grouped⁸ final single sample bacteria receiving water limitations at each monitoring station in the Los Angeles River and its tributaries during dry weather according to the schedule in Table Q - 1, and during wet weather⁹ no later than March 23, 2037:

⁸ The final receiving water limitations are group-based and shared among all MS4 Permittees, which includes Caltrans, located within the drainage area to a segment or tributary. The final receiving water limitations may be distributed based on proportional drainage area, upon approval of the Los Angeles Water Board Executive Officer.

⁹ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

| Time Period | Annual Allowable Exceedance Days of the Single Sample Objective ¹⁰ | |
|--|---|----------------------------|
| | Daily Sampling | Weekly Sampling |
| Dry Weather (November 1 to October 31) | 5 | 1 |
| Wet Weather (Non-HFS ¹¹ Waterbodies) (November 1 to October 31) | 15 | 2 |
| Wet Weather (HFS Waterbodies) (November 1 to October 31) | 10 (not including HFS days) | 2 (not including HFS days) |

2. Permittees shall comply with the following geometric mean receiving water limitation for monitoring stations in the Los Angeles River and its tributaries no later than March 23, 2037:

| Constituent | Geometric Mean (MPN or cfu) |
|----------------|-----------------------------|
| <i>E. coli</i> | 126/100 mL |

Table Q - 1. Los Angeles River Bacteria Implementation Schedule for Dry Weather Only¹²

| Implementation Action | Responsible Parties | Deadline |
|--|--|-----------------------|
| SEGMENT B (upper and middle Reach 2 – Figueroa Street to Rosecrans Avenue) | | |
| First phase – Segment B | | |
| Achieve interim (or final) water quality-based effluent limitations and submit report to the Los Angeles Water Board | MS4 Permittees discharging to Segment B, if using a Load Reduction Strategy (LRS) | March 23, 2022 |
| <i>Achieve final water quality-based effluent limitations or demonstrate that non-compliance is due to upstream contributions and submit report to the Los Angeles Water Board</i> | <i>MS4 Permittees discharging to Segment B, if using alternative compliance plan</i> | <i>March 23, 2022</i> |
| Second phase, if necessary – Segment B for LRS approach only | | |
| Submit a new LRS | MS4 Permittees discharging to Segment B | March 23, 2023 |
| Complete implementation of LRS | MS4 Permittees discharging to Segment B, if using LRS | September 23, 2026 |

¹⁰ The Single Sample Objectives are equivalent to the daily maximum values listed in subpart B above.

¹¹ Certain reaches and tributaries of the Los Angeles River are subject to a High Flow Suspension (HFS) of the recreational beneficial uses as identified in the Basin Plan, Chapter 2, Table 2-1a. The HFS applies during specific conditions as defined in Attachment A of the Order.

¹² Italics in this Table refer to Permittees using an alternative compliance plan instead of a Load Reduction Strategy.

| Implementation Action | Responsible Parties | Deadline |
|---|--|---------------------------|
| Achieve final water quality-based effluent limitations in Segment B or demonstrate that non-compliance is only due to upstream contributions and submit report to the Los Angeles Water Board | MS4 Permittees discharging to Segment B, if using LRS | September 23, 2028 |
| SEGMENT B TRIBUTARIES (Rio Hondo and Arroyo Seco) | | |
| First phase – Segment B Tributaries (Rio Hondo and Arroyo Seco) | | |
| Achieve interim (or final) water quality-based effluent limitations and submit report to the Los Angeles Water Board | MS4 Permittees discharging to Segment B tributaries, if using LRS | September 23, 2023 |
| <i>Achieve final water quality-based effluent limitations or demonstrate that non-compliance is only due to upstream contributions and submit report to the Los Angeles Water Board</i> | <i>MS4 Permittees discharging to Segment B tributaries, if using alternative compliance plan</i> | <i>September 23, 2023</i> |
| Second phase, if necessary – Segment B Tributaries (Rio Hondo and Arroyo Seco) for LRS approach only | | |
| Submit a new LRS | MS4 Permittees discharging to Segment B tributaries | September 23, 2024 |
| Complete implementation of LRS | MS4 Permittees discharging to Segment B tributaries, if using LRS | March 23, 2028 |
| Achieve final water quality-based effluent limitations Segment B tributaries or demonstrate that non-compliance is due to upstream contributions and submit report to the Los Angeles Water Board | MS4 Permittees discharging to Segment B tributaries, if using LRS | March 23, 2030 |
| SEGMENT A (lower Reach 2 and Reach 1 – Rosecrans Avenue to Willow Street) | | |
| First phase – Segment A | | |
| Achieve interim (or final) water quality-based effluent limitations and submit report to the Los Angeles Water Board | MS4 Permittees discharging to Segment A, if using LRS | March 23, 2024 |

| Implementation Action | Responsible Parties | Deadline |
|--|--|---------------------------|
| <i>Achieve final water quality-based effluent limitations or demonstrate that non-compliance is due to upstream contributions and submit report to the Los Angeles Water Board</i> | <i>MS4 Permittees discharging to Segment A, if using alternative compliance plan</i> | <i>March 23, 2024</i> |
| Second phase, if necessary – Segment A for LRS approach only | | |
| Submit a new LRS | MS4 Permittees discharging to Segment A | March 23, 2025 |
| Complete implementation of LRS | MS4 Permittees discharging to Segment A, if using LRS | September 23, 2029 |
| Achieve final water quality-based effluent limitations in Segment A or demonstrate that non-compliance is due to upstream contributions and submit report to the Los Angeles Water Board | MS4 Permittees discharging to Segment A, if using LRS | September 23, 2031 |
| SEGMENT A TRIBUTARY (Compton Creek) | | |
| First phase – Segment A Tributary | | |
| Complete implementation of LRS | MS4 Permittees discharging to Segment A tributary if using LRS | September 23, 2022 |
| Achieve interim (or final) water quality-based effluent limitations and submit report to the Los Angeles Water Board | MS4 Permittees discharging to Segment A tributary if using LRS | September 23, 2025 |
| <i>Achieve final water quality-based effluent limitations or demonstrate that non-compliance is due to upstream contributions and submit report to the Los Angeles Water Board</i> | <i>MS4 Permittees discharging to Segment A tributary, if using alternative compliance plan</i> | <i>September 23, 2025</i> |
| Second phase, if necessary – Segment A Tributary for LRS approach only | | |
| Submit a new LRS | MS4 Permittees discharging to Segment A tributary | September 23, 2026 |
| Complete implementation of LRS | MS4 Permittees discharging to Segment A tributary, if using LRS | March 23, 2030 |

| Implementation Action | Responsible Parties | Deadline |
|--|--|-----------------------|
| Achieve final water quality-based effluent limitations in Segment A tributary or demonstrate that non-compliance is due to upstream contributions and submit report to the Los Angeles Water Board | MS4 Permittees discharging to Segment A tributary, if using LRS | March 23, 2032 |
| SEGMENT E (Reach 6 – LA River headwaters [confluence with Bell Creek and Calabasas Creek] to Balboa Boulevard) | | |
| First phase – Segment E | | |
| Complete implementation of LRS | MS4 Permittees discharging to Segment E, if using LRS | March 23, 2022 |
| Achieve interim (or final) water quality-based effluent limitations and submit report to the Los Angeles Water Board | MS4 Permittees discharging to Segment E, if using LRS | March 23, 2025 |
| <i>Achieve final water quality-based effluent limitations or demonstrate that non-compliance is due to upstream contributions and submit report to the Los Angeles Water Board</i> | <i>MS4 Permittees discharging to Segment E, if using alternative compliance plan</i> | <i>March 23, 2025</i> |
| Second phase, if necessary –Segment E for LRS approach only | | |
| Submit a new LRS | MS4 Permittees discharging to Segment E | March 23, 2026 |
| Complete implementation of LRS | MS4 Permittees discharging to Segment E, if using LRS | September 23, 2029 |
| Achieve final water quality-based effluent limitations in Segment E or demonstrate that non-compliance is due to upstream contributions and submit report to the Los Angeles Water Board | MS4 Permittees discharging to Segment E, if using LRS | September 23, 2031 |
| SEGMENT E TRIBUTARIES (Dry Canyon Creek, McCoy Creek, Bell Creek, and Aliso Canyon Wash) | | |
| First phase – Segment E Tributaries | | |
| Submit a Load Reduction Strategy (LRS) for Segment E tributaries (<i>or submit an alternative compliance plan</i>) | MS4 Permittees discharging to Segment E tributaries | September 23, 2021 |

| Implementation Action | Responsible Parties | Deadline |
|--|--|-----------------------|
| Complete implementation of LRS | MS4 Permittees discharging to Segment E tributaries if using LRS | March 23, 2026 |
| Achieve interim (or final) water quality-based effluent limitations and submit report to the Los Angeles Water Board | MS4 Permittees discharging to Segment E tributaries, if using LRS | March 23, 2029 |
| <i>Achieve final water quality-based effluent limitations or demonstrate that non-compliance is due to upstream contributions and submit report to the Los Angeles Water Board</i> | <i>MS4 Permittees discharging to Segment E tributaries, if using alternative compliance plan</i> | <i>March 23, 2029</i> |
| Second phase, if necessary – Segment E Tributaries for LRS approach only | | |
| Submit a new LRS | MS4 Permittees discharging to Segment E tributaries | March 23, 2030 |
| Complete implementation of LRS | MS4 Permittees discharging to Segment E tributaries, if using LRS | September 23, 2033 |
| Achieve final water quality-based effluent limitations in Segment E tributaries or demonstrate that non-compliance is due to upstream contributions and submit report to the Los Angeles Water Board | MS4 Permittees discharging to Segment E tributaries, if using LRS | September 23, 2035 |
| SEGMENT C (lower Reach 4 and Reach 3 – Tujunga Avenue to Figueroa Street) SEGMENT C TRIBUTARIES (Tujunga Wash, Burbank Western Channel, and Verdugo Wash) SEGMENT D (Reach 5 and upper Reach 4 – Balboa Boulevard to Tujunga Avenue) SEGMENT D TRIBUTARIES (Bull Creek) | | |
| First phase – Segment C, Segment C Tributaries, Segment D, Segment D Tributaries | | |
| Submit a Load Reduction Strategies (LRS) for Segment C, Segment C tributaries, Segment D, Segment D tributaries <i>(or submit an alternative compliance plan)</i> | MS4 Permittees discharging to Segment C, Segment C tributaries, Segment D, Segment D tributaries | March 23, 2023 |
| Complete implementation of LRS | MS4 Permittees discharging to Segment C, Segment C tributaries, Segment D, Segment D tributaries, if using LRS | September 23, 2027 |

| Implementation Action | Responsible Parties | Deadline |
|---|---|---------------------------|
| Achieve interim (or final) water quality-based effluent limitations and submit report to the Los Angeles Water Board | MS4 Permittees discharging to Segment C, Segment C tributaries, Segment D, Segment D tributaries, if using LRS | September 23, 2030 |
| <i>Achieve final water quality-based effluent limitations or demonstrate that non-compliance is due to upstream contributions and submit report to the Los Angeles Water Board</i> | <i>MS4 Permittees discharging to Segment C, Segment C tributaries, Segment D, Segment D tributaries, if using alternative compliance plan</i> | <i>September 23, 2030</i> |
| Second phase, if necessary - Segment C, Segment C Tributaries, Segment D, Segment D Tributaries for LRS approach only | | |
| Submit a new LRS | MS4 Permittees discharging to Segment C, Segment C tributaries, Segment D, Segment D tributaries | September 23, 2031 |
| Complete implementation of LRS | MS4 Permittees discharging to Segment C, Segment C tributaries, Segment D, Segment D tributaries if using LRS | March 23, 2035 |
| Achieve final water quality-based effluent limitations in Segment C, Segment C tributaries, Segment D, Segment D tributaries or demonstrate that non-compliance is due to upstream contributions and submit report to the Los Angeles Water Board | MS4 Permittees discharging to Segment C, Segment C tributaries, Segment D, Segment D tributaries if using LRS | March 23, 2037 |

E. Compliance Determination

1. Permittees may demonstrate compliance with the final dry weather receiving water limitations by demonstrating that the receiving water limitations are met in-stream or by demonstrating one of the following conditions at outfalls to the receiving waters:
 - a. Flow-weighted concentration of *E. coli* in MS4 discharges during dry weather is less than or equal to 235 MPN/100mL, based on a weighted-average using flow rates from all measured outfalls; or
 - b. Zero discharge during dry weather; or
 - c. Demonstration that the MS4 loading of *E. coli* to the segment or tributary during dry weather is less than or equal to a calculated loading rate that would not cause or contribute to exceedances based on the loading capacity representative of conditions in the River at the time of compliance.
2. In addition, individual Permittees or subgroups of Permittees may differentiate their dry weather discharges from other dischargers or upstream contributions by demonstrating

one of the following conditions at outfalls to the receiving water or at a segment, tributary or jurisdictional boundary:

- a. The flow-weighted concentration of *E. coli* in a Permittee’s individual discharge or in a group of Permittees’ collective discharge during dry weather is less than or equal to 235 MPN/100mL, based on a weighted-average using flow rates from all measured outfalls; or
- b. Zero discharge from a Permittee’s individual outfall(s) or from a group of Permittees’ outfalls during dry weather; or
- c. Demonstration that the MS4 loading of *E. coli* to the segment or tributary during dry weather is less than or equal to a calculated loading rate that would not cause or contribute to exceedances based on the loading capacity representative of conditions in the River at the time of compliance.

V. LONG BEACH CITY BEACHES AND LOS ANGELES RIVER ESTUARY INDICATOR BACTERIA TMDL (U.S. EPA ESTABLISHED)

- A. Permittees subject to the provisions below are identified in Attachment J, Table J-11.
- B. Permittees shall comply with the following water quality-based effluent limitations and receiving water limitations per the provisions in Part IV.B.2.c of the Order (U.S. EPA Established TMDLs).
- C. Permittees shall comply with the following water quality-based effluent limitations for dry weather, wet weather, and geometric mean for discharges to the Long Beach City Beaches and the Los Angeles River Estuary aligning with the compliance schedules in Part IV.B.2.c of the Order:

| Constituent | Effluent Limitations (MPN or cfu) | |
|----------------|-----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform | 10,000/100 mL ¹³ | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| Enterococcus | 104/100 mL | 35/100 mL |

D. Receiving Water Limitations

- 1. Permittees shall comply with the following grouped¹⁴ receiving water limitations during dry and wet weather¹⁵ for each receiving water monitoring location at the Long Beach City Beaches with direct MS4 discharges¹⁶:

¹³ Total coliform density shall not exceed a daily maximum of 1,000/100mL, if the ratio of fecal-to-total coliform exceeds 0.1.
¹⁴ The receiving water limitations are group-based and shared among all MS4 Permittees in the Order and Caltrans.
¹⁵ Wet weather is defined as a day with 0.1 inch of rain or greater and the three days following the rain event. Dry weather is defined as a non-wet day.
¹⁶ Monitoring locations less than or equal to 400 yards away from a storm drain and more than 200 meters apart from each other.

| Site ID | Monitoring Location | Annual Allowable Exceedance Days of the Single Sample Objectives ¹⁷ | | | | | |
|---------|--|--|-----------------|--|-----------------|--|-----------------|
| | | Winter Dry-Weather (November 1 to March 31) | | Summer Dry-Weather (April 1 to October 31) | | Wet-Weather (November 1 to October 31) | |
| | | Daily sampling | Weekly sampling | Daily sampling | Weekly sampling | Daily sampling | Weekly sampling |
| B63 | Long Beach City Beach, 3rd Place | 9 | 2 | 0 | 0 | 17 | 3 |
| B56 | Long Beach City Beach, projection of 10th Place | 9 | 2 | 0 | 0 | 17 | 3 |
| B6 | Long Beach City Beach, projection of 16th Place | 9 | 2 | 0 | 0 | 17 | 3 |
| B60 | Long Beach City Beach, projection of Molino Av. | 9 | 2 | 0 | 0 | 17 | 3 |
| B7 | Long Beach City Beach, projection of Coronado Ave. | 9 | 2 | 0 | 0 | 17 | 3 |
| B62 | Long Beach City Beach, projection of 36th Place | 9 | 2 | 0 | 0 | 17 | 3 |
| B8 | Long Beach City Beach - West side of Belmont Pier | 9 | 2 | 0 | 0 | 17 | 3 |

2. Permittees shall comply with the following grouped¹⁸ receiving water limitations during dry and wet weather for each receiving water monitoring location in the Los Angeles River Estuary:

| Annual Allowable Exceedance Days of the Single Sample Objectives ¹⁹ | | | | | |
|--|-----------------|--|-----------------|--|-----------------|
| Winter Dry-Weather (November 1 to March 31) | | Summer Dry-Weather (April 1 to October 31) | | Wet-Weather (November 1 to October 31) | |
| Daily sampling | Weekly sampling | Daily sampling | Weekly sampling | Daily sampling | Weekly sampling |
| 9 | 2 | 0 | 0 | 17 | 3 |

¹⁷ The Single Sample Objectives are equivalent to the daily maximum values listed in subpart C above.

¹⁸ The receiving water limitations are group-based and shared among all MS4 Permittees in the Order and Caltrans.

¹⁹ The Single Sample Objectives are equivalent to the daily maximum values listed in subpart C above.

3. Permittees shall monitor at a minimum of three monitoring locations within the Los Angeles River Estuary where each receiving water monitoring location shall be located more than 200 meters apart from each other.
4. Permittees shall comply with the following geometric mean receiving water limitations for each receiving water monitoring location at the Long Beach City Beaches and the Los Angeles River Estuary:

| Constituent | Rolling 30-day Geometric Mean (MPN or cfu)²⁰ |
|--------------------|--|
| Total coliform | 1,000/100 mL |
| Fecal coliform | 200/100 mL |
| Enterococcus | 35/100 mL |

5. Permittees may demonstrate compliance with dry weather receiving water limitations for Los Angeles River Estuary as follows:
 - a. By demonstrating that the receiving water limitations expressed as allowable exceedance days are met in the Los Angeles River Estuary or by demonstrating one of the following conditions at outfalls discharging to the Los Angeles River Estuary:
 - i. Flow-weighted concentration of bacterial indicators in MS4 discharges during dry weather is less than or equal to the daily maximum water quality objectives in subpart C above, based on a weighted-average using flow rates from all measured outfalls; or
 - ii. Zero discharge during dry weather.
 - b. In addition, individual Permittees or subgroups of Permittees may differentiate their dry weather discharges from other dischargers or upstream contributions by demonstrating one of the following conditions at outfalls to the Los Angeles River Estuary or jurisdictional boundaries:
 - i. The flow-weighted concentration of bacterial indicators in a Permittee’s individual discharge or in a group of Permittees’ collective discharge during dry weather is less than or equal to the daily maximum water quality objectives in subpart C above, based on a weighted-average using flow rates from all measured outfalls; or
 - ii. Zero discharge from a Permittee’s individual outfall(s) or from a group of Permittees’ outfall(s) during dry weather.

VI. LEGG LAKE TRASH TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Table J-11.
- B. Permittees shall comply with the water quality-based effluent limitation of zero trash discharged to Legg Lake as of the effective date of the Order and every water year thereafter.
- C. Permittees shall comply with the water quality-based effluent limitations for trash per the provisions in Part IV.B.3 of the Order.

²⁰ Geometric mean values shall be calculated on each sample day based on a statistically sufficient number of samples (generally not less than 5 samples equally spaced over a 30-day period) consistent with the REC-1 bacteria objectives.

VII. LOS ANGELES AREA LAKES TMDLS (U.S. EPA ESTABLISHED) – LEGG LAKE, LAKE CALABASAS, ECHO PARK LAKE, AND PECK ROAD PARK LAKE

A. Legg Lake System²¹ Nutrient TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-11.
2. Permittees shall comply with the following water quality-based effluent limitations and receiving water limitations per the provisions in Part IV.B.2.c of the Order (U.S. EPA Established TMDLs).
3. Permittees shall comply with the following mass-based water quality-based effluent limitations for discharges to the Legg Lake system:

| Subwatershed | Permittee | Effluent Limitations ²² | |
|--------------|------------------------|------------------------------------|--------------------------------------|
| | | Total Phosphorus (lb/yr) | Total Nitrogen ²³ (lb/yr) |
| Northwestern | Los Angeles, County of | 53.6 | 148.7 |
| Northwestern | South El Monte | 526.3 | 1,500.6 |
| Northeastern | El Monte | 226.6 | 590.3 |
| Northeastern | Los Angeles, County of | 12.8 | 39.2 |
| Northeastern | South El Monte | 498.7 | 1,394.8 |

4. In lieu of demonstrating compliance per subpart 3 above, Permittees may elect to demonstrate compliance with concentration-based in-lake receiving water limitations and alternative water quality-based effluent limitations within the Legg Lake system as follows:
 - a. Permittees shall submit a request to both the Los Angeles Water Board and U.S. EPA that includes a Lake Management Plan describing actions that will be implemented to ensure that concentration-based in-lake receiving water limitations and alternative water quality-based effluent limitations in subpart c below are met.
 - b. The Los Angeles Water Board Executive Officer approves a request by a Permittee to comply with the concentration-based in-lake receiving water limitations and alternative water quality-based effluent limitations, and the U.S. EPA does not object to the Executive Officer’s decision within 60 days of receiving notice.
 - c. Upon Los Angeles Water Board Executive Officer approval, Permittees shall comply with the following concentration-based in-lake receiving water limitations and alternative water quality-based effluent limitations:

| Constituent | Receiving Water Limitations |
|----------------------------|---|
| Ammonia (NH ₃) | Applicable 30-day average (for Early Life Stage Present Condition) receiving water limitation per Table 3-2 of the Basin Plan |
| Dissolved Oxygen | Greater than or equal to 7 mg/L annual average and greater than or equal to 6 mg/L instantaneous maximum except when natural conditions cause lesser concentrations |

²¹ The Legg Lake system refers to North Lake, Center Lake, and Legg Lake. Subwatersheds referenced in this section are defined in Section 9 of the Los Angeles Area Lakes TMDL.

²² Measured at the point of discharge. The mass-based effluent limitations are equivalent to existing concentrations of 0.065 mg/L total phosphorus as a summer average (May-September) and annual average, and 0.65 mg/L total nitrogen as a summer average (May-September) and annual average based on approved flow conditions.

²³ Total Nitrogen shall be calculated as TKN plus Nitrate-N plus Nitrite-N.

| Constituent | Receiving Water Limitations |
|----------------------|--|
| pH | 6.5 – 8.5 instantaneous value; Ambient pH levels shall not be changed more than 0.5 units from natural conditions as a result of MS4 discharges. |
| Chlorophyll <i>a</i> | 20 µg/L summer average (May – September) and annual average |

| Constituent | Alternative Effluent Limitations |
|------------------------------|--|
| Total Phosphorus | 0.1 mg/L summer average (May – September) and annual average |
| Total Nitrogen ²⁴ | 1.0 mg/L summer average (May – September) and annual average |

- d. Permittees shall be in compliance with total phosphorus and total nitrogen alternative water quality-based effluent limitations in subpart c above, if receiving water limitations for ammonia, dissolved oxygen, and pH, and the chlorophyll *a* target are met.

B. Lake Calabasas Nutrient TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-11.
2. Permittees shall comply with the following water quality-based effluent limitations and receiving water limitations per the provisions in Part IV.B.2.c of the Order (U.S. EPA Established TMDLs).
3. Permittees shall comply with the following mass-based water quality-based effluent limitations for discharges to Lake Calabasas:

| Permittee | Effluent Limitations ²⁵ | |
|-----------|------------------------------------|--------------------------------------|
| | Total Phosphorus (lb/yr) | Total Nitrogen ²⁶ (lb/yr) |
| Calabasas | 48.5 | 220 |

4. In lieu of demonstrating compliance per subpart 3 above, Permittees may elect to demonstrate compliance with concentration-based in-lake receiving water limitations and alternative water quality-based effluent limitations for Lake Calabasas as follows:
 - a. Permittees shall submit a request to both the Los Angeles Water Board and U.S. EPA that includes a Lake Management Plan describing actions that will be implemented to ensure that concentration-based in-lake receiving water limitations and alternative water quality-based effluent limitations in subpart c below are met.
 - b. The Los Angeles Water Board Executive Officer approves a request by a Permittee to comply with the concentration-based in-lake receiving water limitations and alternative water quality-based effluent limitations, and the U.S. EPA does not object to the Executive Officer’s decision within 60 days of receiving notice.
 - c. Upon Los Angeles Water Board Executive Officer approval, Permittees shall comply with the following concentration-based in-lake receiving water limitations and alternative water quality-based effluent limitations:

²⁴ Total Nitrogen shall be calculated as TKN plus Nitrate-N plus Nitrite-N.

²⁵ Measured at the point of discharge. The mass-based effluent limitations are equivalent to existing concentrations of 0.066 mg/L total phosphorus as a summer average (May-September) and annual average, and 0.66 mg/L total nitrogen as a summer average (May-September) and annual average based on approved flow conditions.

²⁶ Total Nitrogen shall be calculated as TKN plus Nitrate-N plus Nitrite-N.

| Constituent | Receiving Water Limitations |
|----------------------------|---|
| Ammonia (NH ₃) | Applicable 30-day average (for Early Life Stage Absent Condition) receiving water limitation per Table 3-3 of the Basin Plan |
| Dissolved Oxygen | Greater than or equal to 7 mg/L annual average and greater than or equal to 5 mg/L instantaneous maximum except when natural conditions cause lesser concentrations |
| pH | 6.5 – 8.5 instantaneous value; Ambient pH levels shall not be changed more than 0.5 units from natural conditions as a result of MS4 discharges. |
| Chlorophyll a | 20 µg/L summer average (May – September) and annual average |

| Constituent | Alternative Effluent Limitations |
|------------------------------|--|
| Total Phosphorus | 0.1 mg/L summer average (May – September) and annual average |
| Total Nitrogen ²⁷ | 1.0 mg/L summer average (May – September) and annual average |

- d. Permittees shall be in compliance with total phosphorus and total nitrogen alternative water quality-based effluent limitations in subpart c above, if receiving water limitations for ammonia, dissolved oxygen, and pH, and the chlorophyll a target are met.

C. Echo Park Lake²⁸ Nutrient TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-11.
2. Permittees shall comply with the following mass-based water quality-based effluent limitations for discharges to Echo Park Lake as of the effective date of the Order:

| Subwatershed | Permittee | Effluent Limitations ²⁹ | |
|--------------|---------------------|------------------------------------|--------------------------------------|
| | | Total Phosphorus (lb/yr) | Total Nitrogen ³⁰ (lb/yr) |
| Northern | City of Los Angeles | 24.7 | 156 |
| Southern | City of Los Angeles | 7.129 | 49.69 |

3. In assessing compliance, Permittees assigned both northern and southern subwatershed water quality-based effluent limitations may combine their water quality-based effluent limitations.
4. In lieu of demonstrating compliance per subpart 2 above, Permittees may elect to demonstrate compliance with the following concentration-based in-lake receiving water limitations for Echo Park Lake as of the effective date of the Order:

| Constituent | Receiving Water Limitations |
|----------------------------|---|
| Ammonia (NH ₃) | Applicable 30-day average (for Early Life Stage Absent Condition) receiving water limitation per Table 3-3 of the Basin Plan |
| Dissolved Oxygen | Greater than or equal to 7 mg/L annual average and greater than or equal to 5 mg/L instantaneous maximum except when natural conditions cause lesser concentrations |

²⁷ Total Nitrogen shall be calculated as TKN plus Nitrate-N plus Nitrite-N.

²⁸ Subwatersheds referenced in this section are defined in Section 6 of the Los Angeles Area Lakes TMDL.

²⁹ Measured at the point of discharge using a three-year average. The mass-based effluent limitations are equivalent to existing concentrations of 0.12 mg/L total phosphorus as a summer average (May-September) and annual average, and 1.2 mg/L total nitrogen as a summer average (May-September) and annual average based on approved flow conditions.

³⁰ Total Nitrogen shall be calculated as TKN plus Nitrate-N plus Nitrite-N.

| Constituent | Receiving Water Limitations |
|----------------------|--|
| pH | 6.5 – 8.5 instantaneous value; Ambient pH levels shall not be changed more than 0.5 units from natural conditions as a result of MS4 discharges. |
| Chlorophyll <i>a</i> | 20 µg/L summer average (May – September) and annual average |

5. Permittees shall be in compliance with total phosphorus and total nitrogen water quality-based effluent limitations in subpart 2 above, if receiving water limitations for ammonia, dissolved oxygen, pH, and chlorophyll *a* are met.

D. Echo Park Lake³¹ PCBs TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-11.
2. Permittees shall comply with the following water quality-based effluent limitations per the provisions in Part IV.B.2.c of the Order (U.S. EPA Established TMDLs).
3. Permittees shall comply with the following water quality-based effluent limitations for discharges to Echo Park Lake:

| Subwatershed | Permittee | Daily Maximum Effluent Limitations ³² | |
|--------------|---------------------|---|---------------------------------------|
| | | Total PCBs in Suspended Sediment (µg/kg dry weight) | Total PCBs in the Water Column (ng/L) |
| Northern | City of Los Angeles | 1.77 | 0.17 |
| Southern | City of Los Angeles | 1.77 | 0.17 |

4. In lieu of demonstrating compliance per subpart 3 above, Permittees may elect to demonstrate compliance with alternative water quality-based effluent limitations for discharges to Echo Park Lake as follows:
 - a. Permittees shall submit documentation to the Los Angeles Water Board and U.S. EPA demonstrating that the fish tissue target of 3.6 ppb wet weight has been met for the preceding three or more years. A demonstration that the fish tissue target has been met in any given year must at a minimum include a composite sample of skin off fillets from at least five common carp each measuring at least 350 mm in length.
 - b. The Los Angeles Water Board Executive Officer approves a request by a Permittee to comply with alternative water quality-based effluent limitations, and the U.S. EPA does not object to the Executive Officer’s decision within 60 days of receiving notice.
 - c. Upon Los Angeles Water Board Executive Officer approval, Permittees shall comply with the following alternative water quality-based effluent limitations:

| Subwatershed | Permittee | Alternative Daily Maximum Effluent Limitations ³³ | |
|--------------|---------------------|--|---------------------------------------|
| | | Total PCBs in Suspended Sediment (µg/kg dry weight) | Total PCBs in the Water Column (ng/L) |
| Northern | City of Los Angeles | 59.8 | 0.17 |
| Southern | City of Los Angeles | 59.8 | 0.17 |

³¹ Subwatersheds referenced in this section are defined in Section 6 of the Los Angeles Area Lakes TMDL.

³² Measured at the point of discharge.

³³ Ibid.

E. Echo Park Lake³⁴ Chlordane TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-11.
2. Permittees shall comply with the following water quality-based effluent limitations per the provisions in Part IV.B.2.c of the Order (U.S. EPA Established TMDLs).
3. Permittees shall comply with the following water quality-based effluent limitations for discharges to Echo Park Lake:

| Subwatershed | Permittee | Daily Maximum Effluent Limitations ³⁵ | |
|--------------|---------------------|--|--|
| | | Total Chlordane in Suspended Sediment (µg/kg dry weight) | Total Chlordane in the Water Column (ng/L) |
| Northern | City of Los Angeles | 2.10 | 0.59 |
| Southern | City of Los Angeles | 2.10 | 0.59 |

4. In lieu of demonstrating compliance per subpart 3 above, Permittees may elect to demonstrate compliance with alternative water quality-based effluent limitations for discharges to Echo Park Lake as follows:
 - a. Permittees shall submit documentation to the Los Angeles Water Board and U.S. EPA demonstrating that the fish tissue target of 5.6 ppb wet weight has been met for the preceding three or more years. A demonstration that the fish tissue target has been met in any given year must at a minimum include a composite sample of skin off fillets from at least five common carp each measuring at least 350 mm in length.
 - b. The Los Angeles Water Board Executive Officer approves a request by a Permittee to comply with alternative water quality-based effluent limitations, and the U.S. EPA does not object to the Executive Officer’s decision within 60 days of receiving notice.
 - c. Upon Los Angeles Water Board Executive Officer approval, Permittees shall comply with the following alternative water quality-based effluent limitations:

| Subwatershed | Permittee | Alternative Daily Maximum Effluent Limitations ³⁶ | |
|--------------|---------------------|--|--|
| | | Total Chlordane in Suspended Sediment (µg/kg dry weight) | Total Chlordane in the Water Column (ng/L) |
| Northern | City of Los Angeles | 3.24 | 0.59 |
| Southern | City of Los Angeles | 3.24 | 0.59 |

F. Echo Park Lake³⁷ Dieldrin TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-11.
2. Permittees shall comply with the following water quality-based effluent limitations per the provisions in Part IV.B.2.c of the Order (U.S. EPA Established TMDLs).
3. Permittees shall comply with the following water quality-based effluent limitations for discharges to Echo Park Lake:

³⁴ Subwatersheds referenced in this section are defined in Section 6 of the Los Angeles Area Lakes TMDL.

³⁵ Measured at the point of discharge.

³⁶ Ibid.

³⁷ Subwatersheds referenced in this section are defined in Section 6 of the Los Angeles Area Lakes TMDL.

| Subwatershed | Permittee | Daily Maximum Effluent Limitations ³⁸ | |
|--------------|---------------------|---|-------------------------------------|
| | | Dieldrin in Suspended Sediment (µg/kg dry weight) | Dieldrin in the Water Column (ng/L) |
| Northern | City of Los Angeles | 0.80 | 0.14 |
| Southern | City of Los Angeles | 0.80 | 0.14 |

4. In lieu of demonstrating compliance per subpart 3 above, Permittees may elect to demonstrate compliance with alternative water quality-based effluent limitations for discharges to Echo Park Lake as follows:
 - a. Permittees shall submit documentation to the Los Angeles Water Board and U.S. EPA demonstrating that the fish tissue target of 0.46 ppb wet weight has been met for the preceding three or more years. A demonstration that the fish tissue target has been met in any given year must at a minimum include a composite sample of skin off fillets from at least five common carp each measuring at least 350 mm in length.
 - b. The Los Angeles Water Board Executive Officer approves a request by a Permittee to comply with alternative water quality-based effluent limitations, and the U.S. EPA does not object to the Executive Officer’s decision within 60 days of receiving notice.
 - c. Upon Los Angeles Water Board Executive Officer approval, Permittees shall comply with the following alternative water quality-based effluent limitations:

| Subwatershed | Permittee | Alternative Daily Maximum Effluent Limitations ³⁹ | |
|--------------|---------------------|--|-------------------------------------|
| | | Dieldrin in Suspended Sediment (µg/kg dry weight) | Dieldrin in the Water Column (ng/L) |
| Northern | City of Los Angeles | 1.90 | 0.14 |
| Southern | City of Los Angeles | 1.90 | 0.14 |

G. Echo Park Lake Trash TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-11.
2. Permittees shall comply with the water quality-based effluent limitation of zero trash discharged to Echo Park Lake and its shoreline as of the effective date of the Order, and every water year thereafter as follows:

| Permittee | Trash (Gallons/year) |
|---------------------|----------------------|
| City of Los Angeles | 0 |

3. Permittees shall comply with water quality-based effluent limitations for trash per the provisions in Part IV.B.3 of the Order.

H. Peck Road Park Lake⁴⁰ Nutrient TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-11.

³⁸ Measured at the point of discharge.

³⁹ Ibid.

⁴⁰ Subwatersheds referenced in this section are defined in Section 4 of the Los Angeles Area Lakes TMDL.

2. Permittees shall comply with the following mass-based water quality-based effluent limitations for discharges to Peck Road Park Lake as of the effective date of the Order:

| Subwatershed | Permittee | Effluent Limitations ⁴¹ | |
|--------------|------------------------|------------------------------------|--------------------------------------|
| | | Total Phosphorus (lb/yr) | Total Nitrogen ⁴² (lb/yr) |
| Eastern | Arcadia | 383 | 2,320 |
| Eastern | Bradbury | 497 | 3,223 |
| Eastern | Duarte | 1,540 | 9,616 |
| Eastern | Irwindale | 496 | 3,487 |
| Eastern | Los Angeles, County of | 924 | 5,532 |
| Eastern | Monrovia | 6,243 | 38,736 |
| Near Lake | Arcadia | 158 | 1,115 |
| Near Lake | El Monte | 96.2 | 602 |
| Near Lake | Irwindale | 28.2 | 207 |
| Near Lake | Los Angeles, County of | 129 | 773 |
| Near Lake | Monrovia | 60.4 | 415 |
| Western | Arcadia | 2,840 | 16,334 |
| Western | Los Angeles, County of | 467 | 2,818 |
| Western | Monrovia | 425 | 2,678 |
| Western | Sierra Madre | 695 | 4,254 |

3. In lieu of demonstrating compliance per subpart 2 above, Permittees may elect to demonstrate compliance with the following concentration-based in-lake receiving water limitations for Peck Road Park Lake as of the effective date of the Order:

| Constituent | Receiving Water Limitations |
|----------------------------|---|
| Ammonia (NH ₃) | Applicable 30-day average (for Early Life Stage Absent Condition) receiving water limitation per Table 3-3 of the Basin Plan |
| Dissolved Oxygen | Greater than or equal to 7 mg/L annual average and greater than or equal to 5 mg/L instantaneous maximum except when natural conditions cause lesser concentrations |
| pH | 6.5 – 8.5 instantaneous value; Ambient pH levels shall not be changed more than 0.5 units from natural conditions as a result of MS4 discharges. |
| Chlorophyll a | 20 µg/L summer average (May – September) and annual average |

4. Permittees shall be in compliance with total phosphorus and total nitrogen water quality-based effluent limitations in subpart 2 above, if receiving water limitations for ammonia, dissolved oxygen, pH, and chlorophyll a are met.

I. Peck Road Park Lake⁴³ PCBs TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-11.

⁴¹ Measured at the point of discharge using a three-year average. The mass-based effluent limitations are equivalent to existing concentrations of 0.076 mg/L total phosphorus as a summer average (May-September) and annual average, and 0.76 mg/L total nitrogen as a summer average (May-September) and annual average based on approved flow conditions.

⁴² Total Nitrogen shall be calculated as TKN plus Nitrate-N plus Nitrite-N.

⁴³ Subwatersheds referenced in this section are defined in Section 4 of the Los Angeles Area Lakes TMDL.

2. Permittees shall comply with the following water quality-based effluent limitations per the provisions in Part IV.B.2.c of the Order (U.S. EPA Established TMDLs).
3. Permittees shall comply with the following water quality-based effluent limitations for discharges to Peck Road Park Lake:

| Subwatershed | Permittee | Daily Maximum Effluent Limitations ⁴⁴ | |
|--------------|------------------------|---|---------------------------------------|
| | | Total PCBs in Suspended Sediment (µg/kg dry weight) | Total PCBs in the Water Column (ng/L) |
| Eastern | Arcadia | 1.29 | 0.17 |
| Eastern | Bradbury | 1.29 | 0.17 |
| Eastern | Duarte | 1.29 | 0.17 |
| Eastern | Irwindale | 1.29 | 0.17 |
| Eastern | Los Angeles, County of | 1.29 | 0.17 |
| Eastern | Monrovia | 1.29 | 0.17 |
| Near Lake | Arcadia | 1.29 | 0.17 |
| Near Lake | El Monte | 1.29 | 0.17 |
| Near Lake | Irwindale | 1.29 | 0.17 |
| Near Lake | Los Angeles, County of | 1.29 | 0.17 |
| Near Lake | Monrovia | 1.29 | 0.17 |
| Western | Arcadia | 1.29 | 0.17 |
| Western | Los Angeles, County of | 1.29 | 0.17 |
| Western | Monrovia | 1.29 | 0.17 |
| Western | Sierra Madre | 1.29 | 0.17 |

4. In lieu of demonstrating compliance per subpart 3 above, Permittees may elect to demonstrate compliance with alternative water quality-based effluent limitations for discharges to Peck Road Park Lake as follows:
 - a. Permittees shall submit documentation to the Los Angeles Water Board and U.S. EPA demonstrating that the fish tissue target of 3.6 ppb wet weight has been met for the preceding three or more years. A demonstration that the fish tissue target has been met in any given year must at a minimum include a composite sample of skin off fillets from at least five largemouth bass each measuring at least 350 mm in length.
 - b. The Los Angeles Water Board Executive Officer approves a request by a Permittee to comply with alternative water quality-based effluent limitations, and the U.S. EPA does not object to the Executive Officer’s decision within 60 days of receiving notice.
 - c. Upon Los Angeles Water Board Executive Officer approval, Permittees shall comply with the following alternative water quality-based effluent limitations:

| Subwatershed | Permittee | Alternative Daily Maximum Effluent Limitations ⁴⁵ | |
|--------------|-----------|--|---------------------------------------|
| | | Total PCBs in Suspended Sediment (µg/kg dry weight) | Total PCBs in the Water Column (ng/L) |
| Eastern | Arcadia | 59.8 | 0.17 |
| Eastern | Bradbury | 59.8 | 0.17 |
| Eastern | Duarte | 59.8 | 0.17 |

⁴⁴ Measured at the point of discharge.

⁴⁵ Ibid.

| Subwatershed | Permittee | Alternative Daily Maximum Effluent Limitations ⁴⁵ | |
|--------------|------------------------|--|---------------------------------------|
| | | Total PCBs in Suspended Sediment (µg/kg dry weight) | Total PCBs in the Water Column (ng/L) |
| Eastern | Irwindale | 59.8 | 0.17 |
| Eastern | Los Angeles, County of | 59.8 | 0.17 |
| Eastern | Monrovia | 59.8 | 0.17 |
| Near Lake | Arcadia | 59.8 | 0.17 |
| Near Lake | El Monte | 59.8 | 0.17 |
| Near Lake | Irwindale | 59.8 | 0.17 |
| Near Lake | Los Angeles, County of | 59.8 | 0.17 |
| Near Lake | Monrovia | 59.8 | 0.17 |
| Western | Arcadia | 59.8 | 0.17 |
| Western | Los Angeles, County of | 59.8 | 0.17 |
| Western | Monrovia | 59.8 | 0.17 |
| Western | Sierra Madre | 59.8 | 0.17 |

J. Peck Road Park Lake⁴⁶ Chlordane TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-11.
2. Permittees shall comply with the following water quality-based effluent limitations per the provisions in Part IV.B.2.c of the Order (U.S. EPA Established TMDLs).
3. Permittees shall comply with the following water quality-based effluent limitations for discharges to Peck Road Park Lake:

| Subwatershed | Permittee | Daily Maximum Effluent Limitation ⁴⁷ | |
|--------------|------------------------|--|--|
| | | Total Chlordane in Suspended Sediment (µg/kg dry weight) | Total Chlordane in the Water Column (ng/L) |
| Eastern | Arcadia | 1.73 | 0.59 |
| Eastern | Bradbury | 1.73 | 0.59 |
| Eastern | Duarte | 1.73 | 0.59 |
| Eastern | Irwindale | 1.73 | 0.59 |
| Eastern | Los Angeles, County of | 1.73 | 0.59 |
| Eastern | Monrovia | 1.73 | 0.59 |
| Near Lake | Arcadia | 1.73 | 0.59 |
| Near Lake | El Monte | 1.73 | 0.59 |
| Near Lake | Irwindale | 1.73 | 0.59 |
| Near Lake | Los Angeles, County of | 1.73 | 0.59 |
| Near Lake | Monrovia | 1.73 | 0.59 |
| Western | Arcadia | 1.73 | 0.59 |
| Western | Los Angeles, County of | 1.73 | 0.59 |
| Western | Monrovia | 1.73 | 0.59 |
| Western | Sierra Madre | 1.73 | 0.59 |

⁴⁶ Subwatersheds referenced in this section are defined in Section 4 of the Los Angeles Area Lakes TMDL.

⁴⁷ Measured at the point of discharge.

4. In lieu of demonstrating compliance per subpart 3 above, Permittees may elect to demonstrate compliance with alternative water quality-based effluent limitations for discharges to Peck Road Park Lake as follows:
 - a. Permittees shall submit documentation to the Los Angeles Water Board and U.S. EPA demonstrating that the fish tissue target of 5.6 ppb wet weight has been met for the preceding three or more years. A demonstration that the fish tissue target has been met in any given year must at a minimum include a composite sample of skin off fillets from at least five largemouth bass each measuring at least 350 mm in length.
 - b. The Los Angeles Water Board Executive Officer approves a request by a Permittee to comply with alternative water quality-based effluent limitations, and the U.S. EPA does not object to the Executive Officer’s decision within 60 days of receiving notice.
 - c. Upon Los Angeles Water Board Executive Officer approval, Permittees shall comply with the following alternative water quality-based effluent limitations:

| Subwatershed | Permittee | Alternative Daily Maximum Effluent Limitations ⁴⁸ | |
|--------------|------------------------|--|--|
| | | Total Chlordane in Suspended Sediment (µg/kg dry weight) | Total Chlordane in the Water Column (ng/L) |
| Eastern | Arcadia | 3.24 | 0.59 |
| Eastern | Bradbury | 3.24 | 0.59 |
| Eastern | Duarte | 3.24 | 0.59 |
| Eastern | Irwindale | 3.24 | 0.59 |
| Eastern | Los Angeles, County of | 3.24 | 0.59 |
| Eastern | Monrovia | 3.24 | 0.59 |
| Near Lake | Arcadia | 3.24 | 0.59 |
| Near Lake | El Monte | 3.24 | 0.59 |
| Near Lake | Irwindale | 3.24 | 0.59 |
| Near Lake | Los Angeles, County of | 3.24 | 0.59 |
| Near Lake | Monrovia | 3.24 | 0.59 |
| Western | Arcadia | 3.24 | 0.59 |
| Western | Los Angeles, County of | 3.24 | 0.59 |
| Western | Monrovia | 3.24 | 0.59 |
| Western | Sierra Madre | 3.24 | 0.59 |

K. Peck Road Park Lake⁴⁹ DDTs TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-11.
2. Permittees shall comply with the following water quality-based effluent limitations per the provisions in Part IV.B.2.c of the Order (U.S. EPA Established TMDL).
3. Permittees shall comply with the following water quality-based effluent limitations for discharges to Peck Road Park Lake:

⁴⁸ Ibid.

⁴⁹ Subwatersheds referenced in this section are defined in Section 4 of the Los Angeles Area Lakes TMDL.

| Subwatershed | Permittee | Daily Maximum Effluent Limitations ⁵⁰ | |
|--------------|------------------------|---|---|
| | | Total DDTs in Suspended Sediment (µg/kg dry weight) | Total DDTs in the Water Column (ng/L) ⁵¹ |
| Eastern | Arcadia | 5.28 | 0.59 |
| Eastern | Bradbury | 5.28 | 0.59 |
| Eastern | Duarte | 5.28 | 0.59 |
| Eastern | Irwindale | 5.28 | 0.59 |
| Eastern | Los Angeles, County of | 5.28 | 0.59 |
| Eastern | Monrovia | 5.28 | 0.59 |
| Near Lake | Arcadia | 5.28 | 0.59 |
| Near Lake | El Monte | 5.28 | 0.59 |
| Near Lake | Irwindale | 5.28 | 0.59 |
| Near Lake | Los Angeles, County of | 5.28 | 0.59 |
| Near Lake | Monrovia | 5.28 | 0.59 |
| Western | Arcadia | 5.28 | 0.59 |
| Western | Los Angeles, County of | 5.28 | 0.59 |
| Western | Monrovia | 5.28 | 0.59 |
| Western | Sierra Madre | 5.28 | 0.59 |

L. Peck Road Park Lake⁵² Dieldrin TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-11.
2. Permittees shall comply with the following water quality-based effluent limitations per the provisions in Part IV.B.2.c of the Order (U.S. EPA Established TMDLs).
3. Permittees shall comply with the following water quality-based effluent limitations for discharges to Peck Road Park Lake:

| Subwatershed | Permittee | Daily Maximum Effluent Limitations ⁵³ | |
|--------------|------------------------|---|-------------------------------------|
| | | Dieldrin in Suspended Sediment (µg/kg dry weight) | Dieldrin in the Water Column (ng/L) |
| Eastern | Arcadia | 0.43 | 0.14 |
| Eastern | Bradbury | 0.43 | 0.14 |
| Eastern | Duarte | 0.43 | 0.14 |
| Eastern | Irwindale | 0.43 | 0.14 |
| Eastern | Los Angeles, County of | 0.43 | 0.14 |
| Eastern | Monrovia | 0.43 | 0.14 |
| Near Lake | Arcadia | 0.43 | 0.14 |
| Near Lake | El Monte | 0.43 | 0.14 |
| Near Lake | Irwindale | 0.43 | 0.14 |
| Near Lake | Los Angeles, County of | 0.43 | 0.14 |
| Near Lake | Monrovia | 0.43 | 0.14 |

⁵⁰ Measured at the point of discharge.

⁵¹ If analytical results for individual DDT compounds are available, then the CTR criteria should be applied as follows in lieu of the total DDT daily maximum effluent limitation: 4-4' DDT and 4-4' DDE are each assigned a daily maximum effluent limitation of 0.59 ng/L; 4-4' DDD is assigned a daily maximum effluent limitation of 0.83 ng/L.

⁵² Subwatersheds referenced in this section are defined in Section 4 of the Los Angeles Area Lakes TMDL.

⁵³ Measured at the point of discharge.

| Subwatershed | Permittee | Daily Maximum Effluent Limitations ⁵³ | |
|--------------|------------------------|---|-------------------------------------|
| | | Dieldrin in Suspended Sediment (µg/kg dry weight) | Dieldrin in the Water Column (ng/L) |
| Western | Arcadia | 0.43 | 0.14 |
| Western | Los Angeles, County of | 0.43 | 0.14 |
| Western | Monrovia | 0.43 | 0.14 |
| Western | Sierra Madre | 0.43 | 0.14 |

4. In lieu of demonstrating compliance per subpart 3 above, Permittees may elect to demonstrate compliance with alternative water quality-based effluent limitations for discharges to Peck Road Park Lake as follows:
- a. Permittees shall submit documentation to the Los Angeles Water Board and U.S. EPA demonstrating that the fish tissue target of 0.46 ppb wet weight has been met for the preceding three or more years. A demonstration that the fish tissue target has been met in any given year must at a minimum include a composite sample of skin off fillets from at least five largemouth bass each measuring at least 350 mm in length.
 - b. The Los Angeles Water Board Executive Officer approves a request by a Permittee to comply with alternative water quality-based effluent limitations, and the U.S. EPA does not object to the Executive Officer’s decision within 60 days of receiving notice.
 - c. Upon Los Angeles Water Board Executive Officer approval, Permittees shall comply with the following alternative water quality-based effluent limitations:

| Subwatershed | Permittee | Alternative Daily Maximum Effluent Limitations ⁵⁴ | |
|--------------|------------------------|--|-------------------------------------|
| | | Dieldrin in Suspended Sediment (µg/kg dry weight) | Dieldrin in the Water Column (ng/L) |
| Eastern | Arcadia | 1.90 | 0.14 |
| Eastern | Bradbury | 1.90 | 0.14 |
| Eastern | Duarte | 1.90 | 0.14 |
| Eastern | Irwindale | 1.90 | 0.14 |
| Eastern | Los Angeles, County of | 1.90 | 0.14 |
| Eastern | Monrovia | 1.90 | 0.14 |
| Near Lake | Arcadia | 1.90 | 0.14 |
| Near Lake | El Monte | 1.90 | 0.14 |
| Near Lake | Irwindale | 1.90 | 0.14 |
| Near Lake | Los Angeles, County of | 1.90 | 0.14 |
| Near Lake | Monrovia | 1.90 | 0.14 |
| Western | Arcadia | 1.90 | 0.14 |
| Western | Los Angeles, County of | 1.90 | 0.14 |
| Western | Monrovia | 1.90 | 0.14 |
| Western | Sierra Madre | 1.90 | 0.14 |

⁵⁴ Ibid.

M. Peck Road Park Lake Trash TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-11.
2. Permittees shall comply with the water quality-based effluent limitation of zero trash discharged to Peck Road Park Lake and its shoreline as of the effective date of the Order, and every water year thereafter as follows:

| Permittee | Trash (gallons/year) |
|------------------------|---------------------------------|
| Arcadia | 0 |
| Bradbury | 0 |
| Duarte | 0 |
| El Monte | 0 |
| Irwindale | 0 |
| Los Angeles, County of | 0 |
| Monrovia | 0 |
| Sierra Madre | 0 |

3. Permittees shall comply with water quality-based effluent limitations for trash per the provisions in Part IV.B.3 of the Order.

ATTACHMENT R – TMDLS IN THE SAN GABRIEL RIVER WATERSHED MANAGEMENT AREA

I. SAN GABRIEL RIVER AND IMPAIRED TRIBUTARIES METALS AND SELENIUM TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Tables J-15 and J-16.
- B. Permittees shall comply with the following grouped¹ wet weather² mass-based water quality-based effluent limitations for discharges to all upstream reaches and tributaries of San Gabriel River Reach 2 and Coyote Creek no later than September 30, 2026, expressed as total recoverable metals:

| Water Body | Effluent Limitations Daily Maximum (kg/day) | | |
|---------------------|--|--|---|
| | Copper | Lead | Zinc |
| San Gabriel Reach 2 | --- | $81.34 \times \text{Daily Storm Volume (L)}$ | --- |
| Coyote Creek | $24.71 \times \text{Daily Storm Volume (L)}$ | $96.99 \times \text{Daily Storm Volume (L)}$ | $144.57 \times \text{Daily Storm Volume (L)}$ |

- C. In lieu of calculating loads, Permittees may demonstrate compliance with the following wet weather³ concentration-based water quality-based effluent limitations for discharges to all upstream reaches and tributaries of San Gabriel River Reach 2 and Coyote Creek no later than September 30, 2026, expressed as total recoverable metals:

| Water Body | Effluent Limitations Daily Maximum (µg/L total recoverable metals) | | |
|---------------------|--|-------|--------|
| | Copper | Lead | Zinc |
| San Gabriel Reach 2 | --- | 81.34 | --- |
| Coyote Creek | 24.71 | 96.99 | 144.57 |

- D. Permittees shall comply with the following grouped⁴ dry weather⁵ water quality-based effluent limitations for discharges to San Gabriel River Reach 1, Coyote Creek, San Gabriel River Estuary, and San Jose Creek Reach 1 and Reach 2 no later than September 30, 2023, expressed as total recoverable metals:

| Water Body | Effluent Limitations Daily Maximum | |
|---------------------|------------------------------------|----------|
| | Copper | Selenium |
| San Gabriel Reach 1 | 18 µg/L | --- |

¹ The wet weather effluent limitations are group-based and shared among all MS4 Permittees, which includes Los Angeles County MS4 Permittees, Orange County MS4 Permittees and Caltrans located within the drainage area.

² In San Gabriel River Reach 2, wet weather is defined as any day when the maximum daily flow of the river is equal to or greater than 260 cfs measured at USGS station 11085000, located at the bottom of Reach 3 just above the Whittier Narrows Dam. In Coyote Creek, wet weather is defined as any day when the maximum daily flow in the creek is equal to or greater than 156 cfs measured at LACDPW flow gauge station F354-R, located at the bottom of the creek just above the Long Beach WRP.

³ Ibid.

⁴ The dry weather effluent limitation for copper discharged to Coyote Creek is group-based and shared among all MS4 Permittees, which includes Los Angeles County MS4 Permittees, Orange County MS4 Permittees and Caltrans located within the drainage area to Coyote Creek.

⁵ In San Gabriel River Reach 2, dry weather is defined as any day when the maximum daily flow of the river is less than 260 cfs measured at USGS station 11085000. In Coyote Creek, dry weather is defined as any day when the maximum daily flow in the creek is less than 156 cfs measured at LACDPW flow gauge station F354-R.

| Water Body | Effluent Limitations Daily Maximum | |
|------------------------------|------------------------------------|----------|
| | Copper | Selenium |
| Coyote Creek | 0.941 kg/day ⁶ | --- |
| San Gabriel River Estuary | 3.7 µg/L | --- |
| San Jose Creek Reach 1 and 2 | --- | 5 µg/L |

- E. In lieu of calculating the loading of copper discharged to Coyote Creek, Permittees may demonstrate compliance with the dry-weather⁷ concentration-based water quality-based effluent limitation of 20 µg/L no later than September 30, 2023, expressed as total recoverable metals.
- F. Permittees shall comply with the dry and wet weather water quality-based effluent limitations for discharges of metals to the San Gabriel River and its tributaries, per the schedule below:

| Deadline | Percentage of Total Drainage Area Served by the MS4 required to meet the Effluent Limitations | |
|-----------------------------|---|-------------|
| | Dry weather | Wet weather |
| Effective Date of the Order | 70% | 35% |
| September 30, 2023 | 100% | 65% |
| September 30, 2026 | 100% | 100% |

- G. Alternatively, Permittees shall attain the following percent reductions in the difference between the current loadings and the dry and wet weather water quality-based effluent limitations at storm drain outfalls, as measured at the relevant existing MS4 permit monitoring location and/or at relevant MS4 monitoring stations identified in an approved monitoring plan:

| Deadline | Percent Reduction in the difference between the current loadings and the Effluent Limitations | |
|-----------------------------|---|-------------|
| | Dry weather | Wet weather |
| Effective Date of the Order | 70% | 35% |
| September 30, 2023 | 100% | 65% |
| September 30, 2026 | 100% | 100% |

II. SAN GABRIEL RIVER, ESTUARY AND TRIBUTARIES INDICATOR BACTERIA TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Table J-15.
- B. Water Quality-Based Effluent Limitations
 - 1. Permittees shall comply with the following water quality-based effluent limitations for MS4 discharges to the San Gabriel River Estuary. Permittees shall comply with daily maximum limitations during dry weather no later than June 14, 2026 and during wet weather no later than June 14, 2036. Permittees shall comply with geometric mean limitations no later than June 14, 2036.

⁶ Calculated based upon the median flow at LACDPW Station F354-R of 19 cfs multiplied by the numeric target of 20 µg/L, minus direct air deposition of 0.002 kg/d.
⁷ In San Gabriel River Reach 2, dry weather is defined as any day when the maximum daily flow of the river is less than 260 cfs measured at USGS station 11085000. In Coyote Creek, dry weather is defined as any day when the maximum daily flow in the creek is less than 156 cfs measured at LACDPW flow gauge station F354-R.

| Constituent | Effluent Limitations (MPN or cfu) | |
|-----------------------------|-----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform ⁸ | 10,000/100 mL | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| <i>Enterococcus</i> | 104/100 mL | 35/100 mL |

2. Permittees shall comply with the following water quality-based effluent limitations for MS4 discharges to the San Gabriel River and its tributaries. Permittees shall comply with daily maximum limitations during dry weather no later than June 14, 2026 and during wet weather no later than June 14, 2036. Permittees shall comply with geometric mean limitations no later than June 14, 2036.

| Constituent | Effluent Limitation (MPN or cfu) | |
|----------------|----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| <i>E. coli</i> | 235/100 mL | 126/100 mL |

C. Receiving Water Limitations

1. Permittees shall comply with the following grouped⁹ single sample bacteria receiving water limitations at each monitoring station in the San Gabriel River Estuary during dry weather no later than June 14, 2026 and during wet weather no later than June 14, 2036:

| Time Period | Annual Allowable Exceedance Days of the Single Sample Objective ¹⁰ | |
|---|---|-----------------|
| | Daily Sampling | Weekly Sampling |
| Winter Dry-Weather (November 1 to March 31) | 9 | 2 |
| Summer Dry-Weather (April 1 to October 31) | 0 | 0 |
| Wet Weather ¹¹ (November 1 to October 31) | 20 | 3 |

2. Permittees shall comply with the following grouped¹² single sample bacteria receiving water limitations at each monitoring station in the San Gabriel River and its tributaries during dry weather no later than June 14, 2026 and during wet weather¹³ no later than June 14, 2036:

⁸ Total coliform density shall not exceed a daily maximum of 1,000/100 mL, if the ratio of fecal-to-total coliform exceeds 0.1.
⁹ The receiving water limitations are group-based and shared among all Phase I and Phase II MS4 Permittees, which includes Caltrans, located within the sub-drainage area to each Estuary receiving water monitoring station.
¹⁰ The Single Sample Objectives are equivalent to the daily maximum values listed in subpart B.1 above.
¹¹ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.
¹² The receiving water limitations are group-based and shared among all Phase I and Phase II MS4 Permittees, which includes Caltrans and California State Polytechnic University at Pomona, located within the sub-drainage area to each receiving water monitoring station.
¹³ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

| Time Period | Annual Allowable Exceedance Days of the Single Sample Objective ¹⁴ | |
|--|---|----------------------------|
| | Daily Sampling | Weekly Sampling |
| Dry Weather (November 1 to October 31) | 5 | 1 |
| Wet Weather (Non-HFS ¹⁵ Waterbodies) (November 1 to October 31) | 17 | 3 |
| Wet Weather (HFS Waterbodies) (November 1 to October 31) | 11 (not including HFS days) | 2 (not including HFS days) |

- Permittees shall comply with the following geometric mean receiving water limitations for monitoring stations within the San Gabriel River Estuary, calculated weekly as a rolling geometric mean using five or more samples, for six-week periods starting all calculation weeks on Sunday, no later than June 14, 2036:

| Constituent | Geometric Mean (MPN or cfu) |
|---------------------|-----------------------------|
| Total coliform | 1,000/100 mL |
| Fecal coliform | 200/100 mL |
| <i>Enterococcus</i> | 35/100 mL |

- Permittees shall comply with the following geometric mean receiving water limitations for monitoring stations within the San Gabriel River and its tributaries, calculated weekly as a rolling geometric mean using five or more samples, for six-week periods starting all calculation weeks on Sunday, no later than June 14, 2036:

| Constituent | Geometric Mean (MPN or cfu) |
|----------------|-----------------------------|
| <i>E. coli</i> | 126/100 mL |

III. LOS ANGELES AREA LAKES TMDLS (U.S. EPA ESTABLISHED) – PUDDINGSTONE RESERVOIR¹⁶

A. Puddingstone Reservoir Nutrient TMDL

- Permittees subject to the provisions below are identified in Attachment J, Table J-15.
- Permittees shall comply with the following water quality-based effluent limitations and receiving water limitations per the provisions in Part IV.B.2.c of the Order (U.S. EPA Established TMDLs).
- Permittees shall comply with the following mass-based water quality-based effluent limitations for discharges to Puddingstone Reservoir:

¹⁴ The Single Sample Objectives are equivalent to the daily maximum values listed in subpart B.2 above.

¹⁵ Certain reaches and tributaries of the San Gabriel River are subject to a high flow suspension (HFS) of the recreational beneficial uses as identified in the Basin Plan, Chapter 2, Table 2-1a. The HFS applies during specific conditions as defined in Attachment A of the Order.

¹⁶ Subwatersheds referenced in this section are defined in Section 10 of the Los Angeles Area Lakes TMDL.

| Subwatershed | Permittee | Effluent Limitations ¹⁷ | |
|--------------|------------------------|------------------------------------|--------------------------------------|
| | | Total Phosphorus (lb/yr) | Total Nitrogen ¹⁸ (lb/yr) |
| Northern | Claremont | 169 | 829 |
| Northern | Los Angeles, County of | 741 | 3,390 |
| Northern | La Verne | 2,772 | 11,766 |
| Northern | Pomona | 6.30 | 28.3 |
| Northern | San Dimas | 31.1 | 137 |

4. In lieu of demonstrating compliance per subpart 3 above, Permittees may elect to demonstrate compliance with concentration-based in-lake receiving water limitations and alternative water quality-based effluent limitations within Puddingstone Reservoir as follows:
- a. Permittees shall submit a request to both the Los Angeles Water Board and U.S. EPA that includes a Lake Management Plan describing actions that will be implemented to ensure that concentration-based in-lake receiving water limitations and alternative water quality-based effluent limitations in subparts c-d below are met.
 - b. The Los Angeles Water Board Executive Officer approves a request by a Permittee to comply with concentration-based in-lake receiving water limitations and alternative water quality-based effluent limitations, and the U.S. EPA does not object to the Executive Officer’s decision within 60 days of receiving notice.
 - c. Upon Los Angeles Water Board Executive Officer approval, Permittees shall comply with the following concentration-based in-lake receiving water limitations:

| Constituent | Receiving Water Limitations |
|----------------------------|---|
| Ammonia (NH ₃) | Applicable 30-day average (for Early Life Stage Present Condition) receiving water limitation per Table 3-2 of the Basin Plan |
| Dissolved Oxygen | Greater than or equal to 7 mg/L annual average and greater than or equal to 6 mg/L instantaneous maximum except when natural conditions cause lesser concentrations |
| pH | 6.5 – 8.5 instantaneous value. Ambient pH levels shall not be changed more than 0.5 units from natural conditions as a result of MS4 discharges. |
| Chlorophyll a | 20 µg/L summer average (May – September) and annual average |

- d. In addition to complying with subpart c above, Permittees shall comply with the following concentration-based in-lake total phosphorus and total nitrogen alternative water quality-based effluent limitations:

| Constituent | Alternative Effluent Limitations |
|------------------------------|--|
| Total Phosphorus | 0.1 mg/L summer average (May – September) and annual average |
| Total Nitrogen ¹⁹ | 1.0 mg/L summer average (May – September) and annual average |

¹⁷ Measured at the point of discharge. The mass-based effluent limitations are equivalent to existing concentrations of 0.071 mg/L total phosphorus as a summer average (May-September) and annual average, and 0.71 mg/L total nitrogen as a summer average (May-September) and annual average based on approved flow conditions.

¹⁸ Total Nitrogen shall be calculated as TKN plus Nitrate-N plus Nitrite-N.

¹⁹ Ibid.

B. Puddingstone Reservoir Mercury TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-15.
2. Permittees shall comply with the following water quality-based effluent limitations and receiving water limitations per the provisions in Part IV.B.2.c of the Order (U.S. EPA Established TMDLs).
3. Permittees shall comply with the following mass-based water quality-based effluent limitations for discharges to Puddingstone Reservoir:

| Subwatershed | Permittee | Total Mercury Effluent Limitations ²⁰ (g/yr) |
|--------------|------------------------|---|
| Northern | Claremont | 0.674 |
| Northern | Los Angeles, County of | 2.79 |
| Northern | La Verne | 10.6 |
| Northern | Pomona | 0.026 |
| Northern | San Dimas | 0.109 |

4. Permittees shall comply with the following in-lake dissolved methylmercury receiving water limitation for Puddingstone Reservoir:

| Daily Maximum Dissolved Methylmercury Receiving Water Limitation (ng/L) |
|---|
| 0.081 |

C. Puddingstone Reservoir PCBs TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-15.
2. Permittees shall comply with the following water quality-based effluent limitations per the provisions in Part IV.B.2.c of the Order (U.S. EPA Established TMDLs).
3. Permittees shall comply with the following water quality-based effluent limitations for discharges to the Northern subwatershed within the Puddingstone Reservoir watershed:

| Daily Maximum Effluent Limitations ²¹ | |
|---|---------------------------------------|
| Total PCBs in Suspended Sediment (µg/kg dry weight) | Total PCBs in the Water Column (ng/L) |
| 0.59 | 0.17 |

4. In lieu of demonstrating compliance per subpart 3 above, Permittees may elect to demonstrate compliance with alternative water quality-based effluent limitations for discharges to the Northern subwatershed within the Puddingstone Reservoir watershed as follows:
 - a. Permittees shall submit documentation to the Los Angeles Water Board and U.S. EPA demonstrating that the fish tissue target of 3.6 ppb wet weight has been met for the preceding three or more years. A demonstration that the fish tissue target has been met in any given year must at a minimum include a composite sample of skin off fillets from at least five common carp each measuring at least 350 mm in length.

²⁰ Measured at the point of discharge.

²¹ Ibid.

- b. The Los Angeles Water Board Executive Officer approves a request by a Permittee to comply with alternative water quality-based effluent limitations, and the U.S. EPA does not object to the Executive Officer’s decision within 60 days of receiving notice.
- c. Upon Los Angeles Water Board Executive Officer approval, Permittees shall comply with the following alternative water quality-based effluent limitations:

| Alternative Daily Maximum Effluent Limitations²² | |
|--|--|
| Total PCBs in Suspended Sediment (µg/kg dry weight) | Total PCBs in the Water Column (ng/L) |
| 59.8 | 0.17 |

D. Puddingstone Reservoir Chlordane TMDL

- 1. Permittees subject to the provisions below are identified in Attachment J, Table J-15.
- 2. Permittees shall comply with the following water quality-based effluent limitations per the provisions in Part IV.B.2.c of the Order (U.S. EPA Established TMDLs).
- 3. Permittees shall comply with the following water quality-based effluent limitations for discharges to the Northern subwatershed within the Puddingstone Reservoir watershed:

| Daily Maximum Effluent Limitations²³ | |
|---|---|
| Total Chlordane in Suspended Sediment (µg/kg dry weight) | Total Chlordane in the Water Column (ng/L) |
| 0.75 | 0.57 |

- 4. In lieu of demonstrating compliance per subpart 3 above, Permittees may elect to demonstrate compliance with alternative water quality-based effluent limitations for discharges to the Northern subwatershed within Puddingstone Reservoir as follows:
 - a. Permittees shall submit documentation to the Los Angeles Water Board and U.S. EPA demonstrating that the fish tissue target of 5.6 ppb wet weight has been met for the preceding three or more years. A demonstration that the fish tissue target has been met in any given year must at a minimum include a composite sample of skin off fillets from at least five common carp each measuring at least 350 mm in length.
 - b. The Los Angeles Water Board Executive Officer approves a request by a Permittee to comply with alternative water quality-based effluent limitations, and the U.S. EPA does not object to the Executive Officer’s decision within 60 days of receiving notice.
 - c. Upon Los Angeles Water Board Executive Officer approval, Permittees shall comply with the following alternative water quality-based effluent limitations:

| Alternative Daily Maximum Effluent Limitations²⁴ | |
|---|---|
| Total Chlordane in Suspended Sediment (µg/kg dry weight) | Total Chlordane in the Water Column (ng/L) |
| 3.24 | 0.57 |

E. Puddingstone Reservoir Dieldrin TMDL

- 1. Permittees subject to the provisions below are identified in Attachment J, Table J-15.

²² Ibid.
²³ Ibid.
²⁴ Ibid.

2. Permittees shall comply with the following water quality-based effluent limitations per the provisions in Part IV.B.2.c of the Order (U.S. EPA Established TMDLs).
3. Permittees shall comply with the following water quality-based effluent limitations for discharges to the Northern subwatershed within the Puddingstone Reservoir watershed:

| Daily Maximum Effluent Limitations²⁵ | |
|--|--|
| Dieldrin in Suspended Sediment (µg/kg dry weight) | Dieldrin in the Water Column (ng/L) |
| 0.22 | 0.14 |

4. In lieu of demonstrating compliance per subpart 3 above, Permittees may elect to demonstrate compliance with alternative water quality-based effluent limitations for discharges to the Northern subwatershed within the Puddingstone Reservoir watershed as follows:
 - a. Permittees shall submit documentation to the Los Angeles Water Board and U.S. EPA demonstrating that the fish tissue target of 0.46 ppb wet weight has been met for the preceding three or more years. A demonstration that the fish tissue target has been met in any given year must at a minimum include a composite sample of skin off fillets from at least five common carp each measuring at least 350 mm in length.
 - b. The Los Angeles Water Board Executive Officer approves a request by a Permittee to comply with alternative water quality-based effluent limitations, and the U.S. EPA does not object to the Executive Officer’s decision within 60 days of receiving notice.
 - c. Upon Los Angeles Water Board Executive Officer approval, Permittees shall comply with the following alternative water quality-based effluent limitations:

| Alternative Daily Maximum Effluent Limitations²⁶ | |
|--|--|
| Dieldrin in Suspended Sediment (µg/kg dry weight) | Dieldrin in the Water Column (ng/L) |
| 1.90 | 0.14 |

F. Puddingstone Reservoir DDTs TMDL

1. Permittees subject to the provisions below are identified in Attachment J, Table J-15.
2. Permittees shall comply with the following water quality-based effluent limitations per the provisions in Part IV.B.2.c of the Order (U.S. EPA Established TMDLs).
3. Permittees shall comply with the following water quality-based effluent limitations for discharges to the Northern subwatershed within the Puddingstone Reservoir:

| Daily Maximum Effluent Limitations²⁷ | |
|--|---|
| Total DDTs in Suspended Sediment (µg/kg dry weight) | Total DDTs in the Water Column²⁸ (ng/L) |
| 3.94 | 0.59 |

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ If analytical results for individual DDT compounds are available, then the CTR criteria should be applied as follows in lieu of the total DDT daily maximum effluent limitation: 4-4’ DDT and 4-4’ DDE are each assigned a daily maximum effluent limitation of 0.59 ng/L; 4-4’ DDD is assigned a daily maximum effluent limitation of 0.83 ng/L.

4. In lieu of demonstrating compliance per subpart 3 above, Permittees may elect to demonstrate compliance with alternative water quality-based effluent limitations for discharges to the Northern subwatershed within the Puddingstone Reservoir watershed as follows:
 - a. Permittees shall submit documentation to the Los Angeles Water Board and U.S. EPA demonstrating that the fish tissue target of 21 ppb wet weight has been met for the preceding three or more years. A demonstration that the fish tissue target has been met in any given year must at a minimum include a composite sample of skin off fillets from at least five common carp each measuring at least 350 mm in length.
 - b. The Los Angeles Water Board Executive Officer approves a request by a Permittee to comply with alternative water quality-based effluent limitations, and the U.S. EPA does not object to the Executive Officer’s decision within 60 days of receiving notice.
 - c. Upon Los Angeles Water Board Executive Officer approval, Permittees shall comply with the following alternative water quality-based effluent limitations:

| Alternative Daily Maximum Effluent Limitations²⁹ | |
|--|--|
| Total DDTs in Suspended Sediment (µg/kg dry weight) | Total DDTs in the Water Column (ng/L) |
| 5.28 | 0.59 |

²⁹ Measured at the point of discharge.

**ATTACHMENT S – TMDLS IN THE LOS CERRITOS CHANNEL AND ALAMITOS BAY
WATERSHED MANAGEMENT AREA**

I. LOS CERRITOS CHANNEL METALS TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Table J-17.
- B. Permittees shall comply with the following grouped¹ dry weather² mass-based water quality-based effluent limitation for discharges to Los Cerritos Channel no later than September 30, 2023, expressed as total recoverable metals:

| MS4 Permittee | Constituent | Effluent Limitations Daily Maximum (g/day) |
|--------------------------------------|--------------------|---|
| Los Angeles County MS4 Permittees | Copper | 67.2 |
| City of Long Beach | Copper | 41.4 |

- C. In lieu of calculating loads, Permittees may demonstrate compliance with the following dry-weather³ concentration-based water quality-based effluent limitations for discharges to Los Cerritos Channel no later than September 30, 2023, expressed as total recoverable metals:

| Constituent | Effluent Limitation Daily Maximum (µg/L total recoverable metals) |
|--------------------|--|
| Copper | 19.1 |

- D. Permittees shall comply with the following grouped⁴ wet weather⁵ mass-based water quality-based effluent limitation for discharges to Los Cerritos Channel no later than September 30, 2026, expressed as total recoverable metals:

| MS4 Permittee | Effluent Limitations Daily Maximum (g/day) | | |
|--------------------------------------|---|--|--|
| | Copper | Lead | Zinc |
| Los Angeles County MS4 Permittees | $4.709 \times 10^{-6} \times \text{Daily Storm Volume (L)}$ | $26.852 \times 10^{-6} \times \text{Daily Storm Volume (L)}$ | $46.027 \times 10^{-6} \times \text{Daily Storm Volume (L)}$ |
| City of Long Beach | $2.904 \times 10^{-6} \times \text{Daily Storm Volume (L)}$ | $16.560 \times 10^{-6} \times \text{Daily Storm Volume (L)}$ | $28.385 \times 10^{-6} \times \text{Daily Storm Volume (L)}$ |

¹ The grouped mass-based effluent limitation assigned to the Los Angeles County MS4 Permittees are shared among all the MS4 Permittees within the Los Cerritos Channel drainage area, except for the City of Long Beach. An individual mass-based effluent limitation is assigned to the City of Long Beach.

² Dry weather is defined as any day when the maximum daily flow in Los Cerritos Channel is less than 23 cubic feet per second (cfs) measured at Stearns Street Monitoring Station.

³ Ibid.

⁴ The grouped mass-based effluent limitations assigned to the Los Angeles County MS4 Permittees are shared among all the MS4 Permittees within the Los Cerritos Channel drainage area, except for the City of Long Beach. Individual mass-based effluent limitations are assigned to the City of Long Beach.

⁵ Wet weather is defined as any day when the maximum daily flow in Los Cerritos Channel is equal to or greater than 23 cfs measured at Stearns Street Monitoring Station.

- E. In lieu of calculating loads, Permittees may demonstrate compliance with the following wet weather⁶ concentration-based water quality-based effluent limitations for discharges to Los Cerritos Channel no later than September 30, 2026, expressed as total recoverable metals:

| Constituent | Effluent Limitations Daily Maximum (µg/L total recoverable metals) |
|-------------|--|
| Copper | 7.613 |
| Lead | 43.412 |
| Zinc | 74.412 |

- F. Permittees shall comply with the dry and wet weather water quality-based effluent limitations for discharges of metals to Los Cerritos Channel, per the schedule below:

| Deadline | Percentage of Total Drainage Area Served by the MS4 required to meet the Effluent Limitations | |
|-----------------------------|---|-------------|
| | Dry weather | Wet weather |
| Effective Date of the Order | 70% | 35% |
| September 30, 2023 | 100% | 65% |
| September 30, 2026 | 100% | 100% |

- G. Alternatively, Permittees shall attain the following percent reduction in the difference between the current loadings and the dry and wet weather water quality-based effluent limitations at storm drain outfalls, as measured at the relevant existing MS4 permit monitoring location and/or at relevant MS4 monitoring stations identified in an approved monitoring plan:

| Deadline | Percent Reduction in the difference between the current loadings and the Effluent Limitations | |
|-----------------------------|---|-------------|
| | Dry weather | Wet weather |
| Effective Date of the Order | 70% | 35% |
| September 30, 2023 | 100% | 65% |
| September 30, 2026 | 100% | 100% |

II. COLORADO LAGOON OC PESTICIDES, PCBS, SEDIMENT TOXICITY, PAHS, AND METALS TMDL

- A. Permittees subject to the provisions below are identified in Attachment J, Table J-17.
- B. Permittees shall comply with the following concentration-based receiving water limitations for bed sediments in Colorado Lagoon, as of the effective date of the Order:

| Constituent | Receiving Water Limitations Monthly Average (µg/kg dry weight) |
|-----------------|---|
| Lead | 46,700 |
| Zinc | 150,000 |
| Total Chlordane | 0.50 |
| Dieldrin | 0.02 |

⁶ Ibid.

| Constituent | Receiving Water Limitations Monthly Average (µg/kg dry weight) |
|--------------------|---|
| Total PAHs | 4,022 |
| Total PCBs | 22.70 |
| Total DDTs | 1.58 |

- C. To determine compliance with the concentration-based receiving water limitations, Permittees shall monitor pollutant concentrations in the bed sediment of Colorado Lagoon at sampling locations in the Western Arm, Central Arm and Northern Arm that represent the cumulative inputs from MS4 discharges to Colorado Lagoon.
- D. Permittees shall comply with the following grouped annual mass-based water quality-based effluent limitations for storm-borne sediments discharged to Colorado Lagoon from the three major storm drains listed below, as of the effective date of the Order:

| Constituent | Annual Mass-Based Effluent Limitations (mg/yr) | | |
|--------------------|---|-------------------|-------------------|
| | Long Beach and LACFCD | Long Beach | Long Beach |
| | Project 452 | Line I | Line K |
| Lead | 476,646.68 | 329,171.33 | 181,573.76 |
| Zinc | 1,530,985.05 | 1,057,295.47 | 583,213.37 |
| Total Chlordane | 5.10 | 3.53 | 1.94 |
| Dieldrin | 0.20 | 0.14 | 0.08 |
| Total PAHs | 41,050.81 | 28,349.62 | 15,637.89 |
| Total PCBs | 231.69 | 160.00 | 88.26 |
| Total DDTs | 16.13 | 11.14 | 6.14 |

- E. To determine compliance with the annual mass-based water quality-based effluent limitations, Permittees shall monitor pollutant concentrations of the storm-borne sediment discharged from Project 452 storm drain, Line I storm drain, and Line K storm drain outfalls to Colorado Lagoon. In addition, flow from these storm drains shall be measured when samples are collected.

EXHIBIT B

**LOS ANGELES REGIONAL WATER
QUALITY CONTROL BOARD
ORDER NO. R4-2012-0175**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576 - 6600 • Fax (213) 576 - 6640
<http://www.waterboards.ca.gov/losangeles>

**ORDER NO. R4-2012-0175 as amended by State Water Board Order WQ 2015-0075 and
Los Angeles Water Board Order R4-2012-0175-A01
NPDES PERMIT NO. CAS004001**

**WASTE DISCHARGE REQUIREMENTS
FOR MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) DISCHARGES WITHIN THE
COASTAL WATERSHEDS OF LOS ANGELES COUNTY, EXCEPT THOSE DISCHARGES
ORIGINATING FROM THE CITY OF LONG BEACH MS4**

The municipal discharges of storm water and non-storm water by the Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities within the coastal watersheds of Los Angeles County with the exception of the City of Long Beach (hereinafter referred to separately as Permittees and jointly as the Dischargers) from the discharge points identified below are subject to waste discharge requirements as set forth in this Order.

I. FACILITY INFORMATION

Table 1. Discharger Information

| | |
|--|---|
| Dischargers | The Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities within the coastal watersheds of Los Angeles County with the exception of the City of Long Beach (See Table 4) |
| Name of Facility | Municipal Separate Storm Sewer Systems (MS4s) within the coastal watersheds of Los Angeles County with the exception of the City of Long Beach MS4 |
| Facility Address | Various (see Table 2) |
| The U.S. Environmental Protection Agency (USEPA) and the California Regional Water Quality Control Board, Los Angeles Region (Regional Water Board) have classified the Greater Los Angeles County MS4 as a large municipal separate storm sewer system (MS4) pursuant to 40 CFR section 122.26(b)(4) and a major facility pursuant to 40 CFR section 122.2. | |

Table 2. Facility Information

| Permittee (WDID) | Contact Information | |
|-----------------------------------|----------------------------|--|
| Agoura Hills (4B190147001) | Mailing Address | 30001 Ladyface Court Agoura Hills, CA 91301 |
| | Mailing Address | 111 South First Street |
| Alhambra | Mailing Address | 111 South First Street |

| Permittee (WDID) | Contact Information | |
|--|----------------------------|---|
| (4B190148001) | | Alhambra, CA 91801-3796 |
| Arcadia (4B190149001) | Mailing Address | 11800 Goldring Road Arcadia, CA 91006-5879 |
| Artesia (4B190150001) | Mailing Address | 18747 Clarkdale Avenue Artesia, CA 90701-5899 |
| Azusa (4B190151001) | Mailing Address | 213 East Foothill Boulevard Azusa, CA 91702 |
| Baldwin Park (4B190152001) | Mailing Address | 14403 East Pacific Avenue Baldwin Park, CA 91706-4297 |
| Bell (4B190153001) | Mailing Address | 6330 Pine Avenue Bell, CA 90201-1291 |
| Bell Gardens (4B190139002) | Mailing Address | 7100 South Garfield Avenue Bell Gardens, CA 90201-3293 |
| Bellflower (4B190154001) | Mailing Address | 16600 Civic Center Drive Bellflower, CA 90706-5494 |
| Beverly Hills (4B190132002) | Mailing Address | 455 North Rexford Drive Beverly Hills, CA 90210 |
| Bradbury (4B190155001) | Mailing Address | 600 Winston Avenue Bradbury, CA 91010-1199 |
| Burbank (4B190101002) | Mailing Address | P.O. Box 6459 Burbank, CA 91510 |
| Calabasas (4B190157001) | Mailing Address | 100 Civic Center Way Calabasas, CA 91302-3172 |
| Carson (4B190158001) | Mailing Address | P.O. Box 6234 Carson, CA 90745 |
| Cerritos (4B190159001) | Mailing Address | P.O. Box 3130 Cerritos, CA 90703-3130 |
| Claremont (4B190160001) | Mailing Address | 207 Harvard Avenue Claremont, CA 91711-4719 |
| Commerce (4B190161001) | Mailing Address | 2535 Commerce Way Commerce, CA 90040-1487 |
| Compton (4B190162001) | Mailing Address | 205 South Willowbrook Avenue Compton, CA 90220-3190 |
| Covina (4B190163001) | Mailing Address | 125 East College Street Covina, CA 91723-2199 |
| Cudahy (4B190164001) | Mailing Address | P.O. Box 1007 Cudahy, CA 90201-6097 |
| Culver City (4B190165001) | Mailing Address | 9770 Culver Boulevard Culver City, CA 90232-0507 |
| Diamond Bar (4B190166001) | Mailing Address | 21825 East Copley Drive Diamond Bar, CA 91765-4177 |
| Downey (4B190167001) | Mailing Address | P.O. Box 7016 Downey, CA 90241-7016 |
| Duarte (4B190168001) | Mailing Address | 1600 Huntington Drive Duarte, CA 91010-2592 |
| El Monte (4B190169001) | Mailing Address | P.O. Box 6008 El Monte, CA 91731 |
| El Segundo (4B190170001) | Mailing Address | 350 Main Street El Segundo, CA 90245-3895 |
| Gardena (4B190118002) | Mailing Address | P.O. Box 47003 Gardena, CA 90247-3778 |

| Permittee (WDID) | Contact Information | |
|---|----------------------------|--|
| Glendale (4B190171001) | Mailing Address | Engineering Section, 633 East Broadway, Room 209 |
| | | Glendale, CA 91206-4308 |
| Glendora (4B190172001) | Mailing Address | 116 East Foothill Boulevard |
| | | Glendora, CA 91741 |
| Hawaiian Gardens (4B190173001) | Mailing Address | 21815 Pioneer Boulevard |
| | | Hawaiian Gardens, CA 90716 |
| Hawthorne (4B190174001) | Mailing Address | 4455 West 126 th Street |
| | | Hawthorne, CA 90250-4482 |
| Hermosa Beach (4B190175001) | Mailing Address | 1315 Valley Drive |
| | | Hermosa Beach, CA 90254-3884 |
| Hidden Hills (4B190176001) | Mailing Address | 6165 Spring Valley Road |
| | | Hidden Hills, CA 91302 |
| Huntington Park (4B190177001) | Mailing Address | 6550 Miles Avenue |
| | | Huntington Park, CA 90255 |
| Industry (4B190178001) | Mailing Address | P.O. Box 3366 |
| | | Industry, CA 91744-3995 |
| Inglewood (4B190179001) | Mailing Address | 1 W. Manchester Blvd, 3 rd Floor |
| | | Inglewood, CA 90301-1750 |
| Irwindale (4B190180001) | Mailing Address | 5050 North Irwindale Avenue |
| | | Irwindale, CA 91706 |
| La Canada Flintridge (4B190181001) | Mailing Address | 1327 Foothill Boulevard |
| | | La Canada Flintridge, CA 91011-2137 |
| La Habra Heights (4B190182001) | Mailing Address | 1245 North Hacienda Boulevard |
| | | La Habra Heights, CA 90631-2570 |
| La Mirada (4B190183001) | Mailing Address | 13700 La Mirada Boulevard |
| | | La Mirada, CA 90638-0828 |
| La Puente (4B190184001) | Mailing Address | 15900 East Marin Street |
| | | La Puente, CA 91744-4788 |
| La Verne (4B190185001) | Mailing Address | 3660 "D" Street |
| | | La Verne, CA 91750-3599 |
| Lakewood (4B190186001) | Mailing Address | P.O. Box 158 |
| | | Lakewood, CA 90714-0158 |
| Lawndale (4B190127002) | Mailing Address | 14717 Burin Avenue |
| | | Lawndale, CA 90260 |
| Lomita (4B190187001) | Mailing Address | P.O. Box 339 |
| | | Lomita, CA 90717-0098 |
| Los Angeles (4B190188001) | Mailing Address | 1149 S. Broadway, 10 th Floor |
| | | Los Angeles, CA 90015 |
| Lynwood (4B190189001) | Mailing Address | 11330 Bullis Road |
| | | Lynwood, CA 90262-3693 |
| Malibu (4B190190001) | Mailing Address | 23825 Stuart Ranch Road |
| | | Malibu, CA 90265-4861 |
| Manhattan Beach (4B190191001) | Mailing Address | 1400 Highland Avenue |
| | | Manhattan Beach, CA 90266-4795 |
| Maywood (4B190192001) | Mailing Address | 4319 East Slauson Avenue |
| | | Maywood, CA 90270-2897 |

| Permittee (WDID) | Contact Information | |
|--|----------------------------|---|
| Monrovia (4B190193001) | Mailing Address | 415 South Ivy Avenue Monrovia, CA 91016-2888 |
| Montebello (4B190194001) | Mailing Address | 1600 West Beverly Boulevard Montebello, CA 90640-3970 |
| Monterey Park (4B190195001) | Mailing Address | 320 West Newmark Avenue Monterey Park, CA 91754-2896 |
| Norwalk (4B190196001) | Mailing Address | P.O. Box 1030 Norwalk, CA 90651-1030 |
| Palos Verdes Estates (4B190197001) | Mailing Address | 340 Palos Verdes Drive West Palos Verdes Estates, CA 90274 |
| Paramount (4B190198001) | Mailing Address | 16400 Colorado Avenue Paramount, CA 90723-5091 |
| Pasadena (4B190199001) | Mailing Address | P.O. Box 7115 Pasadena, CA 91109-7215 |
| Pico Rivera (4B190200001) | Mailing Address | P.O. Box 1016 Pico Rivera, CA 90660-1016 |
| Pomona (4B190145003) | Mailing Address | P.O. Box 660 Pomona, CA 91769-0660 |
| Rancho Palos Verdes (4B190201001) | Mailing Address | 30940 Hawthorne Boulevard Rancho Palos Verdes, CA 90275 |
| Redondo Beach (4B190143002) | Mailing Address | P.O. Box 270 Redondo Beach, CA 90277-0270 |
| Rolling Hills (4B190202001) | Mailing Address | 2 Portuguese Bend Road Rolling Hills, CA 90274-5199 |
| Rolling Hills Estates (4B190203001) | Mailing Address | 4045 Palos Verdes Drive North Rolling Hills Estates, CA 90274 |
| Rosemead (4B190204001) | Mailing Address | 8838 East Valley Boulevard Rosemead, CA 91770-1787 |
| San Dimas (4B190205001) | Mailing Address | 245 East Bonita Avenue San Dimas, CA 91773-3002 |
| San Fernando (4B190206001) | Mailing Address | 117 Macneil Street San Fernando, CA 91340 |
| San Gabriel (4B190207001) | Mailing Address | 425 South Mission Drive San Gabriel, CA 91775 |
| San Marino (4B190208001) | Mailing Address | 2200 Huntington Drive San Marino, CA 91108-2691 |
| Santa Clarita (4B190117001) | Mailing Address | 23920 West Valencia Boulevard, Suite 300 Santa Clarita, CA 91355 |
| Santa Fe Springs (4B190108003) | Mailing Address | P.O. Box 2120 Santa Fe Springs, CA 90670-2120 |
| Santa Monica (4B190122002) | Mailing Address | 1685 Main Street Santa Monica, CA 90401-3295 |
| Sierra Madre (4B190209001) | Mailing Address | 232 West Sierra Madre Boulevard Sierra Madre, CA 91024-2312 |
| Signal Hill (4B190210001) | Mailing Address | 2175 Cherry Avenue Signal Hill, CA 90755 |
| South El | Mailing Address | 1415 North Santa Anita Avenue |

| Permittee (WDID) | Contact Information | |
|--|----------------------------|--|
| Monte (4B190211001) | | South El Monte, CA 91733-3389 |
| South Gate (4B190212001) | Mailing Address | 8650 California Avenue South Gate, CA 90280 |
| South Pasadena (4B190213001) | Mailing Address | 1414 Mission Street South Pasadena, CA 91030-3298 |
| Temple City (4B190214001) | Mailing Address | 9701 Las Tunas Drive Temple City, CA 91780-2249 |
| Torrance (4B190215001) | Mailing Address | 3031 Torrance Boulevard Torrance, CA 90503-5059 |
| Vernon (4B190216001) | Mailing Address | 4305 Santa Fe Avenue Vernon, CA 90058-1786 |
| Walnut (4B190217001) | Mailing Address | P.O. Box 682 Walnut, CA 91788 |
| West Covina (4B190218001) | Mailing Address | P.O. Box 1440 West Covina, CA 91793-1440 |
| West Hollywood (4B190219001) | Mailing Address | 8300 Santa Monica Boulevard West Hollywood, CA 90069-4314 |
| Westlake Village (4B190220001) | Mailing Address | 31200 Oak Crest Drive Westlake Village, CA 91361 |
| Whittier (4B190221001) | Mailing Address | 13230 Penn Street Whittier, CA 90602-1772 |
| County of Los Angeles (4B190107099) | Mailing Address | 900 South Fremont Avenue Alhambra, CA 91803 |
| Los Angeles County Flood Control District (4B190107101) | Mailing Address | 900 South Fremont Avenue Alhambra, CA 91803 |

Table 3. Discharge Location

| Discharge Point | Effluent Description | Discharge Point Latitude | Discharge Point Longitude | Receiving Water |
|---|---------------------------------|--------------------------|---------------------------|---|
| All Municipal Separate Storm Sewer System discharge points within Los Angeles County with the exception of the City of Long Beach | Storm Water and Non-Storm Water | Numerous | Numerous | Surface waters identified in Tables 2-1, 2-1a, 2-3, and 2-4, and Appendix 1, Table 1 of the <i>Water Quality Control Plan - Los Angeles Region (Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties)</i> , and other unidentified tributaries to these surface waters within the following Watershed Management Areas: (1) Santa Clara River Watershed; (2) Santa Monica Bay Watershed Management Area, including Malibu Creek Watershed and Ballona Creek Watershed; (3) Los Angeles River Watershed; (4) Dominguez Channel and Greater Los Angeles/Long Beach Harbors Watershed Management Area; (5) Los Cerritos Channel and Alamitos Bay Watershed Management Area; (6) San Gabriel River Watershed; and (7) Santa Ana River Watershed. ¹ |

¹ Note that the Santa Ana River Watershed lies primarily within the boundaries of the Santa Ana Regional Water Quality Control Board. However, a portion of the Chino Basin subwatershed lies within the jurisdictions of Pomona and Claremont in Los Angeles County. The primary receiving waters within the Los Angeles County portion of the Chino Basin subwatershed are San Antonio Creek and Chino Creek.

Table 4. Administrative Information

| | |
|---|--|
| This Order was adopted by the California Regional Water Quality Control Board, Los Angeles Region on: | November 8, 2012 |
| This Order becomes effective on: | December 28, 2012 |
| This Order was amended by the State Water Resources Control Board on: | June 16, 2015 |
| This Order was amended by the California Regional Water Quality Control Board, Los Angeles Region on: | September 8, 2016 |
| This Order expires on: | December 28, 2017 |
| In accordance with Title 23, Division 3, Chapter 9 of the California Code of Regulations and Title 40, Part 122 of the Code of Federal Regulations, each Discharger shall file a Report of Waste Discharge as application for issuance of new waste discharge requirements no later than: | 180 days prior to the Order expiration date above |

In accordance with section 2235.4 of Title 23 of the California Code of Regulations, the terms and conditions of an expired permit are automatically continued pending issuance of a new permit if all requirements of the federal NPDES regulations on continuation of expired permits are complied with. Accordingly, if a new order is not adopted by the expiration date above, then the Permittees shall continue to implement the requirements of this Order until a new one is adopted.

I, Samuel Unger, 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, Los Angeles Region, on November 8, 2012; amended by the State Water Resources Control Board by Order WQ 2015-0075 on June 16, 2015; and amended by the California Regional Water Quality Control Board, Los Angeles Region, on September 8, 2016.



Samuel Unger, Executive Officer

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II. FINDINGS

The California Regional Water Quality Control Board, Los Angeles Region (hereinafter Regional Water Board) finds:

A. Nature of Discharges and Sources of Pollutants

Storm water and non-storm water discharges consist of surface runoff generated from various land uses, which are conveyed via the municipal separate storm sewer system and ultimately discharged into surface waters throughout the region. Discharges of storm water and non-storm water from the Municipal Separate Storm Sewer Systems (MS4s) within the Coastal Watersheds of Los Angeles County convey pollutants to surface waters throughout the Los Angeles Region. In general, the primary pollutants of concern in these discharges identified by the Los Angeles County Flood Control District Integrated Receiving Water Impacts Report (1994-2005) are indicator bacteria, total aluminum, copper, lead, zinc, diazinon, and cyanide. Aquatic toxicity, particularly during wet weather, is also a concern based on a review of Annual Monitoring Reports from 2005-10. Storm water and non-storm water discharges of debris and trash are also a pervasive water quality problem in the Los Angeles Region though significant strides have been made by a number of Permittees in addressing this problem through the implementation of control measures to achieve wasteload allocations established in trash TMDLs.

Pollutants in storm water and non-storm water have damaging effects on both human health and aquatic ecosystems. Water quality assessments conducted by the Regional Water Board have identified impairment of beneficial uses of water bodies in the Los Angeles Region caused or contributed to by pollutant loading from municipal storm water and non-storm water discharges. As a result of these impairments, there are beach postings and closures, fish consumption advisories, local and global ecosystem and aesthetic impacts from trash and debris, reduced habitat for threatened and endangered species, among others. The Regional Water Board and USEPA have established 33 total maximum daily loads (TMDLs) that identify Los Angeles County MS4 discharges as one of the pollutant sources causing or contributing to these water quality impairments.

B. Permit History

Prior to the issuance of this Order, Regional Water Board Order No. 01-182 served as the NPDES Permit for MS4 storm water and non-storm water discharges within the Coastal Watersheds of the County of Los Angeles. The requirements of Order No. 01-182 applied to the Los Angeles County Flood Control District, the unincorporated areas of Los Angeles County under County jurisdiction, and 84 Cities within the Los Angeles County Flood Control District with the exception of the City of Long Beach. The first county-wide MS4 permit for the County of Los Angeles and the incorporated areas therein was Order No. 90-079, adopted by the Regional Water Board on June 18, 1990.

Under Order No. 01-182, the Los Angeles County Flood Control District was designated the Principal Permittee, and the County of Los Angeles and 84 incorporated Cities were each designated Permittees. The Principal Permittee coordinated and facilitated activities necessary to comply with the requirements of Order No. 01-182, but was not responsible for ensuring compliance of any of the other Permittees. The designation of a Principal Permittee has not been carried over from Order No. 01-182.

Order No. 01-182 was subsequently amended by the Regional Water Board on September 14, 2006 by Order No. R4-2006-0074 to incorporate provisions consistent with the assumptions and requirements of the Santa Monica Bay Beaches Dry Weather Bacteria TMDL (SMB Dry Weather Bacteria TMDL) waste load allocations (WLAs). As a result of a legal challenge to Order No. R4-2006-0074, the Los Angeles County Superior Court issued a peremptory writ of mandate on July 23, 2010 requiring the Regional Water Board to void and set aside the amendments adopted through Order No. R4-2006-0074 in Order No. 01-182. The Court concluded that the permit proceeding at which Order No. R4-2006-0074 was adopted was procedurally deficient. The Court did not address the substantive merits of the amendments themselves, and thus made no determination about the substantive validity of Order No. R4-2006-0074. In compliance with the writ of mandate, the Regional Water Board voided and set aside the amendments adopted through Order No. R4-2006-0074 on April 14, 2011. This Order reincorporates requirements equivalent to the 2006 provisions to implement the SMB Dry Weather Bacteria TMDL.

In addition, Order No. 01-182 was amended on August 9, 2007 by Order No. R4-2007-0042 to incorporate provisions consistent with the assumptions and requirements of the Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL, and was again amended on December 10, 2009 by Order No. R4-2009-0130 to incorporate provisions consistent with the assumptions and requirements of the Los Angeles River Watershed Trash TMDL.

C. Permit Application

On June 12, 2006, prior to the expiration date of Order No. 01-182, all of the Permittees filed Reports of Waste Discharge (ROWD) applying for renewal of their waste discharge requirements that serve as an NPDES permit to discharge storm water and authorized and conditionally exempt non-storm water through their MS4 to surface waters. Specifically, the Los Angeles County Flood Control District (LACFCD) submitted an ROWD application on behalf of itself, the County of Los Angeles, and 78 other Permittees. Several Permittees under Order No. 01-182 elected to not be included as part of the Los Angeles County Flood Control District's ROWD. On June 12, 2006, the Cities of Downey and Signal Hill each submitted an individual ROWD application requesting a separate MS4 Permit; and the Upper San Gabriel River Watershed Coalition, comprised of the cities of Azusa, Claremont, Glendora, Irwindale, and Whittier also submitted an individual ROWD application requesting a separate MS4 Permit for these cities. In 2010, the LACFCD withdrew from its participation in the 2006 ROWD submitted in conjunction with the County and 78 other co-permittees, and submitted a new ROWD also requesting an individual MS4 permit. The LACFCD also requested that, if an individual MS4 permit was not issued to it, it no longer be designated as the

Principal Permittee and it be relieved of Principal Permittee responsibilities. The Regional Water Board evaluated each of the 2006 ROWDs and notified all of the Permittees that their ROWDs did not satisfy federal storm water regulations contained in the USEPA Interpretive Policy Memorandum on Reapplication Requirements for Municipal Separate Storm Sewer Systems; Final Rule, August 9, 1996 (61 *Fed Reg.* 41697). Because each ROWD did not satisfy federal requirements, the Regional Water Board deemed all four 2006 ROWDs incomplete. The Regional Water Board also evaluated the LACFCD's 2010 ROWD and found that it too did not satisfy federal requirements for MS4s.

Though five separate ROWDs were submitted, the Regional Water Board retains discretion as the permitting authority to determine whether to issue permits for discharges from MS4s on a system-wide or jurisdiction-wide basis (Clean Water Act (CWA) § 402(p)(3)(B)(i); 40 CFR section 122.26, subdivisions (a)(1)(v) and (a)(3)(ii)). Because of the complexity and networking of the MS4 within Los Angeles County, which often results in commingled discharges, the Regional Water Board has previously adopted a system-wide approach to permitting MS4 discharges within Los Angeles County.

In evaluating the five separate ROWDs, the Regional Water Board considered the appropriateness of permitting discharges from MS4s within Los Angeles County on a system-wide or jurisdiction-wide basis or a combination of both. Based on that evaluation, the Regional Water Board again determined that, because of the complexity and networking of the MS4 within Los Angeles County, that one system-wide permit is appropriate. In order to provide individual Permittees with more specific requirements, certain provisions of this Order are organized by watershed management area, which is appropriate given the requirements to implement 33 watershed-based TMDLs. The Regional Water Board also determined that because the LACFCD owns and operates large portions of the MS4 infrastructure, including but not limited to catch basins, storm drains, outfalls and open channels, in each coastal watershed management area within Los Angeles County, the LACFCD should remain a Permittee in the single system-wide permit; however, this Order relieves the LACFCD of its role as "Principal Permittee."

D. Permit Coverage and Facility Description

The Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities within the Los Angeles County Flood Control District with the exception of the City of Long Beach (see Table 5, List of Permittees), hereinafter referred to separately as Permittees and jointly as the Dischargers, discharge storm water and non-storm water from municipal separate storm sewer systems (MS4s), also called storm drain systems. For the purposes of this Order, references to the "Discharger" or "Permittee" in applicable federal and state laws, regulations, plans, or policy are held to be equivalent to references to the Discharger, or Permittees herein.

The area covered under this Order encompasses more than 3,000 square miles. This area contains a vast drainage network that serves incorporated and unincorporated areas in every Watershed Management Area within the Los Angeles Region. Maps

depicting the major drainage infrastructure within the area covered under this Order are included in Attachment C of this Order.

Table 5. List of Permittees

| | | |
|---------------|----------------------|--|
| Agoura Hills | Hawaiian Gardens | Pomona |
| Alhambra | Hawthorne | Rancho Palos Verdes |
| Arcadia | Hermosa Beach | Redondo Beach |
| Artesia | Hidden Hills | Rolling Hills |
| Azusa | Huntington Park | Rolling Hills Estates |
| Baldwin Park | Industry | Rosemead |
| Bell | Inglewood | San Dimas |
| Bell Gardens | Irwindale | San Fernando |
| Bellflower | La Canada Flintridge | San Gabriel |
| Beverly Hills | La Habra Heights | San Marino |
| Bradbury | La Mirada | Santa Clarita |
| Burbank | La Puente | Santa Fe Springs |
| Calabasas | La Verne | Santa Monica |
| Carson | Lakewood | Sierra Madre |
| Cerritos | Lawndale | Signal Hill |
| Claremont | Lomita | South El Monte |
| Commerce | Los Angeles | South Gate |
| Compton | Lynwood | South Pasadena |
| Covina | Malibu | Temple City |
| Cudahy | Manhattan Beach | Torrance |
| Culver City | Maywood | Vernon |
| Diamond Bar | Monrovia | Walnut |
| Downey | Montebello | West Covina |
| Duarte | Monterey Park | West Hollywood |
| El Monte | Norwalk | Westlake Village |
| El Segundo | Palos Verdes Estates | Whittier |
| Gardena | Paramount | County of Los Angeles |
| Glendale | Pasadena | Los Angeles County Flood Control District |
| Glendora | Pico Rivera | |

E. Los Angeles County Flood Control District

In 1915, the California Legislature enacted the Los Angeles County Flood Control Act, establishing the Los Angeles County Flood Control District (LACFCD). The objects and purposes of the Act are to provide for the control and conservation of the flood, storm and other waste waters within the flood control district. Among its other powers, the LACFCD also has the power to preserve, enhance, and add recreational features to lands or interests in lands contiguous to its properties for the protection, preservation, and use of the scenic beauty and natural environment for the properties or the lands. The LACFCD is governed, as a separate entity, by the County of Los Angeles Board of Supervisors.

The LACFCD's system includes the majority of drainage infrastructure within incorporated and unincorporated areas in every watershed, including approximately 500 miles of open channel, 3,500 miles of underground drains, and an estimated 88,000 catch basins, and several dams. Portions of the LACFCD's current system were originally unmodified natural rivers and water courses.

The LACFCD's system conveys both storm and non-storm water throughout the Los Angeles basin. Other Permittees' MS4s connect and discharge to the LACFCD's system.

The waters and pollutants discharged from the LACFCD's system come from various sources. These sources can include storm water and non-storm water from the Permittees under this permit and other NPDES and non-NPDES Permittees discharging into the LACFCD's system, including industrial waste water dischargers, waste water treatment facilities, industrial and construction stormwater Permittees, water suppliers, government entities, CERCLA potentially responsible parties, and Caltrans. Sources can also include discharges from school districts that do not operate large or medium-sized municipal storm sewers and discharges from entities that have waste discharge requirements or waivers of waste discharge requirements.

Unlike other Permittees, including the County of Los Angeles, the LACFCD does not own or operate any municipal sanitary sewer systems, public streets, roads, or highways.

The LACFCD in contrast to the County of Los Angeles has no planning, zoning, development permitting or other land use authority over industrial or commercial facilities, new developments or re-development projects, or development construction sites located in any incorporated or unincorporated areas within its service area. The Permittees that have such land use authority are responsible for implementing a storm water management program to inspect and control pollutants from industrial and commercial facilities, new development and re-development projects, and development construction sites within their jurisdictional boundaries. Nonetheless, as an owner and operator of MS4s, the LACFCD is required by federal regulations to control pollutant discharges into and from its MS4, including the ability to control through interagency agreements among co-Permittees and other owners of a MS4 the contribution of pollutants from one portion of the MS4 to another portion of the MS4.

F. Permit Scope

This Order regulates municipal discharges of storm water and non-storm water from the Permittees' MS4s. Section 122.26(b)(8) of title 40 of the Code of Federal Regulations (CFR) defines an MS4 as "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) [o]wned 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, 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 a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii) [d]esignated or used for collecting or conveying storm water; (iii) [w]hich is not a combined sewer; and (iv) [w]hich is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.”

Storm water discharges consist of those discharges that originate from precipitation events. Federal regulations define “storm water” as “storm water runoff, snow melt runoff, and surface runoff and drainage.” (40 CFR § 122.26(b)(13).) While “surface runoff and drainage” is not defined in federal law, USEPA’s preamble to its final storm water regulations demonstrates that the term is related to precipitation events such as rain and/or snowmelt. (55 *Fed. Reg.* 47990, 47995-96 (Nov. 16, 1990)).

Non-storm water discharges consist of all discharges through an MS4 that do not originate from precipitation events. Non-storm water discharges through an MS4 are prohibited unless authorized under a separate NPDES permit; authorized by USEPA pursuant to Sections 104(a) or 104(b) of the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); composed of natural flows; the result of emergency fire fighting activities; or conditionally exempted in this Order.

A permit issued to more than one Permittee for MS4 discharges may contain separate storm water management programs for particular Permittees or groups of Permittees. 40 CFR § 122.26(d)(2)(iv). Given the LACFCD’s limited land use authority, it is appropriate for the LACFCD to have a separate and uniquely-tailored storm water management program. Accordingly, the storm water management program minimum control measures imposed on the LACFCD in Part VI.D of this Order differ in some ways from the minimum control measures imposed on other Permittees. Namely, aside from its own properties and facilities, the LACFCD is not subject to the Industrial/Commercial Facilities Program, the Planning and Land Development Program, and the Development Construction Program. However, as a discharger of storm and non-storm water, the LACFCD remains subject to the Public Information and Participation Program and the Illicit Connections and Illicit Discharges Elimination Program. Further, as the owner and operator of certain properties, facilities and infrastructure, the LACFCD remains subject to requirements of a Public Agency Activities Program.

G. Geographic Coverage and Watershed Management Areas

The municipal storm water and non-storm water discharges flow into receiving waters in the Watershed Management Areas of the Santa Clara River Watershed; Santa Monica Bay Watershed Management Area, including Malibu Creek Watershed and Ballona Creek Watershed; Los Angeles River Watershed; Dominguez Channel and Greater Los Angeles/Long Beach Harbors Watershed Management Area; Los Cerritos Channel and Alamitos Bay Watershed Management Area; San Gabriel River Watershed; and Santa Ana River Watershed.

This Order redefines Watershed Management Areas (WMAs) consistent with the delineations used in the Regional Water Board's Watershed Management Initiative. Permittees included in each of the WMAs are listed in Attachment K.

Maps depicting each WMA, its subwatersheds, and the major receiving waters therein are included in Attachment B.

Federal, state, regional or local entities in jurisdictions outside the Los Angeles County Flood Control District, and not currently named as Permittee to this Order, may operate MS4 facilities and/or discharge to the MS4 and water bodies covered by this Order. Pursuant to 40 CFR sections 122.26(d)(1)(ii) and 122.26(d)(2)(iv), each Permittee shall maintain the necessary legal authority to control the contribution of pollutants to its MS4 and shall include in its storm water management program a comprehensive planning process that includes intergovernmental coordination, where necessary.

Sources of MS4 discharges into receiving waters in the County of Los Angeles but not covered by this Order include the following:

- About 34 square miles of unincorporated area in Ventura County, which drain into Malibu Creek and then to Santa Monica Bay,
- About 9 square miles of the City of Thousand Oaks, which also drain into Malibu Creek and then to Santa Monica Bay, and
- About 86 square miles of area in Orange County, which drain into Coyote Creek and then into the San Gabriel River.

Specifically, the Orange County Flood Control District (OCFCD) owns and operates the Los Alamitos Retarding Basin and Pumping Station (Los Alamitos Retarding Basin). The Los Alamitos Retarding Basin is within the San Gabriel River Watershed, and is located adjacent to the Los Angeles and Orange County boundary. The majority of the 30-acre Los Alamitos Retarding Basin is in Orange County; however, the northwest corner of the facility is located in the County of Los Angeles. Storm water and non-storm water discharges, which drain to the Los Alamitos Retarding Basin, are pumped to the San Gabriel River Estuary (SGR Estuary) through pumps and subterranean piping. The pumps and discharge point are located in the County of Los Angeles.

The OCFCD pumps the water within the Los Alamitos Retarding Basin to the San Gabriel River Estuary through four discharge pipes, which are covered by tide gates. The discharge point is located approximately 700 feet downstream from the 2nd Street Bridge in Long Beach. The total pumping capacity of the four pumps is 800 cubic feet per second (cfs). There is also a 5 cfs sump pump that discharges nuisance flow continuously to the Estuary through a smaller diameter uncovered pipe.

The discharge from the Los Alamitos Retarding Basin is covered under the Orange County Municipal NPDES Storm Water Permit (NPDES Permit No. CAS618030, Santa Ana Regional Water Quality Control Board Order No. R8-2010-0062), which was issued to the County of Orange, Orange County Flood Control District and Incorporated Cities on May 22, 2009. The Orange County MS4 Permit references the San Gabriel River Metals and Selenium TMDL (Metals TMDL). The waste load allocations listed in the

Metals TMDL for Coyote Creek are included in the Orange County MS4 Permit. However, the Orange County MS4 Permit does not contain the dry weather copper waste load allocations assigned to the Estuary.

H. Legal Authorities

This Order is issued pursuant to CWA section 402 and implementing regulations adopted by the USEPA and chapter 5.5, division 7 of the California Water Code (commencing with section 13370). This Order serves as an NPDES permit for point source discharges from the Permittees' MS4s to surface waters. This Order also serves as waste discharge requirements (WDRs) pursuant to article 4, chapter 4, division 7 of the California Water Code (commencing with Section 13260).

- I. Municipal Separate Storm Sewer System Requirements.** The 1972 Clean Water Act² established the NPDES Program to regulate the discharge of pollutants from point sources to waters of the United States. However, pollution from storm water and dry-weather urban runoff was largely unabated for over a decade. In response to the 1987 Amendments to the Clean Water Act, USEPA developed Phase I of the NPDES Storm Water Permitting Program in 1990, which established a framework for regulating municipal and industrial discharges of storm water and non-storm water. The Phase I program addressed sources of storm water and dry-weather urban runoff that had the greatest potential to negatively impact water quality. In particular, under Phase I, USEPA required NPDES Permit coverage for discharges from medium and large MS4 with populations of 100,000 or more. Operators of MS4s regulated under the Phase I NPDES Storm Water Program were required to obtain permit coverage for municipal discharges of storm water and non-storm water to waters of the United States

Early in the history of this MS4 Permit, the Regional Water Board designated the MS4s owned and/or operated by the incorporated cities and Los Angeles County unincorporated areas within the Coastal Watersheds of Los Angeles County as a large MS4 due to the total population of Los Angeles County, including that of unincorporated and incorporated areas, and the interrelationship between the Permittees' MS4s, pursuant to 40 CFR section 122.26(b)(4). The total population of the cities and County unincorporated areas covered by this Order was 9,519,338 in 2000 and has increased by approximately 300,000 to 9,818,605 in 2010, according to the United States Census.

This Order implements the federal Phase I NPDES Storm Water Program requirements. These requirements include three fundamental elements: (i) a requirement to effectively prohibit non-storm water discharges through the MS4, (ii) requirements to implement controls to reduce the discharge of pollutants to the maximum extent practicable, and (iii) other provisions the Regional Water Board has determined appropriate for the control of such pollutants.

- J. Background and Rationale for Requirements.** The Regional Water Board developed the requirements in this Order based on information submitted as part of the Permittees' applications, through monitoring and reporting programs, and other available

² Federal Water Pollution Control Act; 33 U.S.C. § 1251 et seq., which, as amended in 1977, is commonly known as the Clean Water Act.

information. In accordance with federal regulations at 40 CFR section 124.8, a Fact Sheet (Attachment F) has been prepared to explain the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing this Order. The Fact Sheet is hereby incorporated into this Order and also constitutes part of the Findings of the Regional Water Board for this Order. Attachments A through E and G through R are also incorporated into this Order.

K. Water Quality Control Plans. The Clean Water Act requires the Regional Water Board to establish water quality standards for each water body in its region. Water quality standards include beneficial uses, water quality objectives and criteria that are established at levels sufficient to protect those beneficial uses, and an antidegradation policy to prevent degrading waters. The Regional Water Board adopted a *Water Quality Control Plan - Los Angeles Region* (hereinafter Basin Plan) on June 13, 1994 and has amended it on multiple occasions since 1994. 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 Los Angeles Region. Pursuant to California Water Code section 13263(a), the requirements of this Order implement the Basin Plan. Beneficial uses applicable to the surface water bodies that receive discharges from the Los Angeles County MS4 generally include those listed below.

Table 6. Basin Plan Beneficial Uses

| Discharge Point | Receiving Water Name | Beneficial Uses |
|--|---|---|
| All Municipal Separate Storm Sewer Systems (MS4s) discharge points within Los Angeles County coastal watersheds with the exception of the City of Long Beach | Multiple surface water bodies of the Los Angeles Region | Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Industrial Process Supply (PROC); Ground Water Recharge (GWR); Freshwater Replenishment (FRSH); Navigation (NAV); Hydropower Generation (POW); Water Contact Recreation (REC-1); Limited Contact Recreation (LREC-1); Non-Contact Water Recreation (REC-2); Commercial and Sport Fishing (COMM); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Preservation of Areas of Special Biological Significance (BIOL); Wildlife Habitat (WILD); Preservation of Rare and Endangered Species (RARE); Marine Habitat (MAR); Wetland Habitat (WET); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN); Shellfish Harvesting (SHELL) |

1. Total Maximum Daily Loads (TMDLs)

Clean Water Act section 303(d)(1) requires each state to identify the waters within its boundaries that do not meet water quality standards. Water bodies that do not meet water quality standards are considered impaired and are placed on the state’s “CWA Section 303(d) List”. For each listed water body, the state is required to establish a TMDL of each pollutant impairing the water quality standards in that water body. A TMDL is a tool for implementing water quality standards and is based on the relationship between pollution sources and in-stream water quality conditions. The

TMDL establishes the allowable pollutant loadings for a water body and thereby provides the basis to establish water quality-based controls. These controls should provide the pollution reduction necessary for a water body to meet water quality standards. A TMDL is the sum of the allowable pollutant loads of a single pollutant from all contributing point sources (the waste load allocations or WLAs) and non-point sources (load allocations or LAs), plus the contribution from background sources and a margin of safety. (40 CFR section 130.2(i).) MS4 discharges are considered point source discharges.

Numerous receiving waters within Los Angeles County do not meet water quality standards or fully support beneficial uses and therefore have been classified as impaired on the State's 303(d) List. The Regional Water Board and USEPA have each established TMDLs to address many of these water quality impairments. Pursuant to CWA section 402(p)(B)(3)(iii) and 40 CFR section 122.44(d)(1)(vii)(B), this Order includes requirements that are consistent with and implement WLAs that are assigned to discharges from the Los Angeles County MS4 from 33 State-adopted and USEPA established TMDLs. This Order requires Permittees to comply with the TMDL Provisions in Part VI.E and Attachments L through R, which are consistent with the assumptions and requirements of the TMDL WLAs assigned to discharges from the Los Angeles County MS4. A comprehensive list of TMDLs by watershed management area and the Permittees subject to each TMDL is included in Attachment K.

Waste load allocations in these TMDLs are expressed in several ways depending on the nature of the pollutant and its impacts on receiving waters and beneficial uses. Bacteria WLAs assigned to MS4 discharges are expressed as the number of allowable exceedance days that a water body may exceed the Basin Plan water quality objectives for protection of the REC-1 beneficial use. Since the TMDLs and the WLAs contained therein are expressed as receiving water conditions, receiving water limitations have been included in this Order that are consistent with and implement the allowable exceedance day WLAs. Water quality-based effluent limitations are also included equivalent to the Basin Plan water quality objectives to allow the opportunity for Permittees to individually demonstrate compliance at an outfall or jurisdictional boundary, thus isolating the Permittee's pollutant contributions from those of other Permittees and from other pollutant sources to the receiving water.

WLAs for trash are expressed as progressively decreasing allowable amounts of trash discharges from a Permittee's jurisdictional area within the drainage area to the impaired water body. The Trash TMDLs require each Permittee to make annual reductions of its discharges of trash over a set period, until the numeric target of zero trash discharged from the MS4 is achieved. The Trash TMDLs specify a specific formula for calculating and allocating annual reductions in trash discharges from each jurisdictional area within a watershed. The formula results in specified annual amounts of trash that may be discharged from each jurisdiction into the receiving waters. Translation of the WLAs or compliance points described in the TMDLs into jurisdiction-specific load reductions from the baseline levels, as specified

in the TMDL, logically results in the articulation of an annual limitation on the amount of a pollutant that may be discharged. The specification of allowable annual trash discharge amounts meets the definition of an “effluent limitation”, as that term is defined in subdivision (c) of section 13385.1 of the California Water Code. Specifically, the trash discharge limitations constitute a “numeric restriction ... on the quantity [or] discharge rate ... of a pollutant or pollutants that may be discharged from an authorized location.”

TMDL WLAs for other pollutants (e.g., metals and toxics) are expressed as concentration and/or mass and water quality-based effluent limitations have been specified consistent with the expression of the WLA, including any applicable averaging periods. Some TMDLs specify that, if certain receiving water conditions are achieved, such achievement constitutes attainment of the WLA. In these cases, receiving water limitations and/or provisions outlining these alternate means of demonstrating compliance are included in the TMDL provisions in Part VI.E of this Order.

The inclusion of water quality-based effluent limitations and receiving water limitations to implement applicable WLAs provides a clear means of identifying required water quality outcomes within the permit and ensures accountability by Permittees to implement actions necessary to achieve the limitations.

A number of the TMDLs for bacteria, metals, and toxics establish WLAs that are assigned jointly to a group of Permittees whose storm water and/or non-storm water discharges are or may be commingled in the MS4 prior to discharge to the receiving water subject to the TMDL. TMDLs address commingled MS4 discharges by assigning a WLA to a group of MS4 Permittees based on co-location within the same subwatershed. Permittees with co-mingled MS4 discharges are jointly responsible for meeting the water quality-based effluent limitations and receiving water limitations assigned to MS4 discharges in this Order. "Joint responsibility" means that the Permittees that have commingled MS4 discharges are responsible for implementing programs in their respective jurisdictions, or within the MS4 for which they are an owner and/or operator, to meet the water quality-based effluent limitations and/or receiving water limitations assigned to such commingled MS4 discharges.

In these cases, federal regulations state that co-permittees need only comply with permit conditions relating to discharges from the MS4 for which they are owners or operators (40 CFR § 122.26(a)(3)(vi)). Individual co-permittees are only responsible for their contributions to the commingled MS4 discharge. This Order does not require a Permittee to individually ensure that a commingled MS4 discharge meets the applicable water quality-based effluent limitations included in this Order, unless such Permittee is shown to be solely responsible for an exceedance.

Additionally, this Order allows a Permittee to clarify and distinguish their individual contributions and demonstrate that its MS4 discharge did not cause or contribute to exceedances of applicable water quality-based effluent limitations and/or receiving

water limitations. If such a demonstration is made, though the Permittee’s discharge may commingle with that of other Permittees, the Permittee would not be held jointly responsible for the exceedance of the water quality-based effluent limitation or receiving water limitation. Individual co-permittees who demonstrate compliance with the water quality-based effluent limitations will not be held responsible for violations by non-compliant co-permittees.

Given the interconnected nature of the Permittees’ MS4s, however, the Regional Water Board expects Permittees to work cooperatively to control the contribution of pollutants from one portion of the MS4 to another portion of the system through inter-agency agreements or other formal arrangements.

L. Ocean Plan. In 1972, the State Water Resources Control Board (State Water Board) adopted the Water Quality Control Plan for Ocean Waters of California, California Ocean Plan (hereinafter Ocean Plan). The State Water Board adopted the most recent amended Ocean Plan on September 15, 2009. The Office of Administration Law approved it on March 10, 2010. On October 8, 2010, USEPA approved the 2009 Ocean Plan. The Ocean Plan is applicable, in its entirety, to the ocean waters of the State. In order to protect beneficial uses, the Ocean Plan establishes water quality objectives and a program of implementation. Pursuant to California Water Code section 13263(a), the requirements of this Order implement the Ocean Plan. The Ocean Plan identifies beneficial uses of ocean waters of the State to be protected as summarized in the table below.

Table 7. Ocean Plan Beneficial Uses

| Discharge Point | Receiving Water Name | Beneficial Uses |
|--|----------------------|--|
| All Municipal Separate Storm Sewer Systems (MS4s) discharge points within Los Angeles County coastal watersheds with the exception of the City of Long Beach | Pacific Ocean | Industrial Water Supply (IND); Water Contact (REC-1) and Non-Contact Recreation (REC-2), including aesthetic enjoyment; Navigation (NAV); Commercial and Sport Fishing (COMM); Mariculture; Preservation and Enhancement of Designated Areas of Special Biological Significance (ASBS); Rare and Endangered Species (RARE); Marine Habitat (MAR); Fish Migration (MIGR); Fish Spawning (SPWN) and Shellfish Harvesting (SHELL) |

M. Antidegradation Policy

40 CFR section 131.12 requires that state water quality standards include an antidegradation policy consistent with the federal antidegradation policy. The State Water Board established California’s antidegradation policy in State Water Board Resolution No. 68-16 (“Statement of Policy with Respect to Maintaining the Quality of the Waters of the State”). Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing water quality be maintained unless degradation is

justified based on specific findings. The Regional Water Board's Basin Plan implements, and incorporates by reference, both the state and federal antidegradation policies. The permitted discharge is consistent with the antidegradation provision of section 131.12 and State Water Board Resolution No. 68-16 as set out in the Fact Sheet.

- N. Anti-Backsliding Requirements.** Section 402(o)(2) of the CWA and federal regulations at 40 CFR section 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 permit. The Fact Sheet of this Order contains further discussion regarding anti-backsliding.
- O. Endangered Species Act.** This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code, §§ 2050 to 2115.5) or the Federal Endangered Species Act (16 U.S.C.A., §§ 1531 to 1544). This Order requires compliance with requirements to protect the beneficial uses of waters of the United States. Permittees are responsible for meeting all requirements of the applicable Endangered Species Act.
- P. Monitoring and Reporting.** Section 308(a) of the federal Clean Water Act, and 40 CFR sections 122.41(h), (j)-(l), 122.41(i), and 122.48, require that all NPDES permits specify monitoring and reporting requirements. Federal regulations applicable to large and medium MS4s also specify additional monitoring and reporting requirements. (40 C.F.R. §§ 122.26(d)(2)(i)(F) & (d)(2)(iii)(D), 122.42(c).) California Water Code section 13383 authorizes the Regional Water Board to establish monitoring, inspection, entry, reporting, and recordkeeping requirements. The Monitoring and Reporting Program establishes monitoring, reporting, and recordkeeping requirements that implement the federal and State laws and/or regulations. This Monitoring and Reporting Program is provided in Attachment E.
- Q. Standard and Special Provisions.** Standard Provisions, which apply to all NPDES permits in accordance with 40 CFR section 122.41, and additional conditions applicable to specified categories of permits in accordance with 40 CFR section 122.42, are provided in Attachment D. Dischargers must comply with all standard provisions and with those additional conditions that are applicable under 40 CFR section 122.42 provided in Attachment D. The Regional Water Board has also included in Part VI of this Order various special provisions applicable to the Dischargers. A rationale for the various special provisions contained in this Order is provided in the attached Fact Sheet (Attachment F).
- R. State Mandates**
Article XIII B, Section 6(a) of the California Constitution provides that whenever "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." The

requirements of this Order do not constitute state mandates that are subject to a subvention of funds for several reasons as described in detail in the attached Fact Sheet (Attachment F).

- S. California Water Code Section 13241.** The California Supreme Court has ruled that although California Water Code section 13263 requires the State and Regional Water Boards (collectively, Water Boards) to consider the factors set forth in California Water Code section 13241 when issuing an NPDES permit, the Water Boards may not consider the factors to justify imposing pollutant restriction that are less stringent than the applicable federal regulations require. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 618, 626-627). However, when the pollutant restrictions in an NPDES permit are more stringent than federal law requires, California Water Code section 13263 requires that the Water Boards consider the factors described in section 13241 as they apply to those specific restrictions. As noted in the preceding finding, the Regional Water Board finds that the requirements in this permit are not more stringent than the minimum federal requirements. Therefore, a 13241 analysis is not required for permit requirements that implement the effective prohibition on the discharge of non-storm water discharges into the MS4, or for controls to reduce the discharge of pollutants in storm water to the maximum extent practicable, or other provisions that the Regional Water Board has determined appropriate to control such pollutants, as those requirements are mandated by federal law. Notwithstanding the above, the Regional Water Board has developed an economic analysis of the permit's requirements, consistent with California Water Code section 13241. That analysis is provided in the Fact Sheet (Attachment F of this Order).
- T. California Environmental Quality Act (CEQA).** This action to adopt an NPDES Permit is exempt from the provisions of Chapter 3 of the California Environmental Quality Act (CEQA) (Public Resources Code, § 21100, et seq.) pursuant to California Water Code section 13389. (*County of Los Angeles v. Cal. Water Boards* (2006) 143 Cal.App.4th 985.)
- U. Notification of Interested Parties.** In accordance with State and federal laws and regulations, the Regional Water Board has notified the Permittees and interested agencies and persons of its intent to prescribe waste discharge requirements for the discharges authorized by this Order and has provided them with an opportunity to provide written and oral comments. Details of notification, as well as the meetings and workshops held on drafts of the permit, are provided in the Fact Sheet of this Order.
- V. Consideration of Public Comment.** The Regional Water Board, in a public meeting, heard and considered all oral and written comments pertaining to the discharges authorized by this Order and the requirements contained herein. The Regional Water Board has prepared written responses to all timely comments, which are incorporated by reference as part of this Order.
- W.** This Order serves as an NPDES permit pursuant to CWA section 402 or amendments thereto, and becomes effective fifty (50) days after the date of its adoption, provided that the Regional Administrator, USEPA, Region IX, expresses no objections.

X. This Order supersedes Order No. 01-182 as amended, except for enforcement purposes.

Y. Review by the State Water Board. Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with California 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 Regional Water Board action, except that if the thirtieth day following the action 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 on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

THEREFORE, IT IS HEREBY ORDERED, that the Dischargers, in order to meet the provisions contained in Division 7 of the California Water Code (commencing with section 13000), and regulations, plans, and policies adopted thereunder, and the provisions of the Clean Water Act and regulations and guidelines adopted thereunder, shall comply with the following requirements:

III. DISCHARGE PROHIBITIONS

A. Prohibitions – Non-Storm Water Discharges

1. Prohibition of Non-Storm Water Discharges. Each Permittee shall, for the portion of the MS4 for which it is an owner or operator, prohibit non-storm water discharges through the MS4 to receiving waters except where such discharges are either:

- a. Authorized non-storm water discharges separately regulated by an individual or general NPDES permit;
- b. Temporary non-storm water discharges authorized by USEPA³ pursuant to sections 104(a) or 104(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that either: (i) will comply with water quality standards as applicable or relevant and appropriate requirements (“ARARs”) under section 121(d)(2) of CERCLA; or (ii) are subject to either (a) a written waiver of ARARs by USEPA pursuant to section 121(d)(4) of CERCLA or (b) a written determination by USEPA that compliance with ARARs is not practicable considering the exigencies of the situation pursuant to 40 CFR. section 300.415(j);
- c. Authorized non-storm water discharges from emergency fire fighting activities (i.e., flows necessary for the protection of life or property)⁴;

³ These typically include short-term, high volume discharges resulting from the development or redevelopment of groundwater extraction wells, or USEPA or State-required compliance testing of potable water treatment plants, as part of a USEPA authorized groundwater remediation action under CERCLA.

⁴ Discharges from vehicle washing, building fire suppression system maintenance and testing (e.g., sprinkler line flushing), fire hydrant maintenance and testing, and other routine maintenance activities are not considered emergency fire fighting activities.

- d. Natural flows, including:
 - i. Natural springs;
 - ii. Flows from riparian habitats and wetlands;
 - iii. Diverted stream flows, authorized by the State or Regional Water Board;
 - iv. Uncontaminated ground water infiltration⁵;
 - v. Rising ground waters, where ground water seepage is not otherwise covered by a NPDES permit⁶; or
- e. Conditionally exempt non-storm water discharges in accordance with Parts III.A.2 and III.A.3 below.

2. Conditional Exemptions from Non-Storm Water Discharge Prohibition. The following categories of non-storm water discharges are conditionally exempt from the non-storm water discharge prohibition, provided they meet all required conditions specified below, or as otherwise approved by the Regional Water Board Executive Officer, in all areas regulated by this Order with the exception of direct discharges to Areas of Special Biological Significance (ASBS) within Los Angeles County. Conditional exemptions from the prohibition on non-storm water discharges through the MS4 to an ASBS are identified in Part III.A.3 below.

- a. Conditionally Exempt Essential Non-Storm Water Discharges: These consist of those discharges that fall within one of the categories below; meet all required best management practices (BMPs) as specified in i. and ii. below, including those enumerated in the referenced BMP manuals; are essential public services discharge activities; and are directly or indirectly required by other state or federal statute and/or regulation:
 - i. Discharges from essential *non-emergency* fire fighting activities⁷ provided appropriate BMPs are implemented based on the CAL FIRE, Office of the State Fire Marshal's *Water-Based Fire Protection Systems Discharge Best Management Practices Manual* (September 2011) for water-based fire protection system discharges, and based on Riverside County's *Best Management Practices Plan for Urban Runoff Management* (May 1, 2004) or equivalent BMP manual for fire training activities and post-emergency fire fighting activities;

⁵ Uncontaminated ground water infiltration is water other than waste water that enters the MS4 (including foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow. (See 40 CFR § 35.2005(20).)

⁶ A NPDES permit for discharges associated with ground water dewatering is required within the Los Angeles Region.

⁷ This includes fire fighting training activities, which simulate emergency responses, and routine maintenance and testing activities necessary for the protection of life and property, including building fire suppression system maintenance and testing (e.g. sprinkler line flushing) and fire hydrant testing and maintenance. Discharges from vehicle washing are not considered essential and as such are not conditionally exempt from the non-storm water discharge prohibition.

- ii. Discharges from drinking water supplier distribution systems, where not otherwise regulated by an individual or general NPDES permit⁸, provided appropriate BMPs are implemented based on the American Water Works Association (California-Nevada Section) *Guidelines for the Development of Your Best Management Practices (BMP) Manual for Drinking Water System Releases* (2005) or equivalent industry standard BMP manual. Additionally, each Permittee shall work with drinking water suppliers that may discharge to the Permittee's MS4 to ensure for all discharges greater than 100,000 gallons: (1) notification at least 72 hours prior to a planned discharge and as soon as possible after an unplanned discharge; (2) monitoring of any pollutants of concern⁹ in the drinking water supplier distribution system release; and (3) record keeping by the drinking water supplier. Permittees shall require that the following information is maintained by the drinking water supplier(s) for all discharges to the MS4 (planned and unplanned) greater than 100,000 gallons: name of discharger, date and time of notification (for planned discharges), method of notification, location of discharge, discharge pathway, receiving water, date of discharge, time of the beginning and end of the discharge, duration of the discharge, flow rate or velocity, total number of gallons discharged, type of dechlorination equipment used, type of dechlorination chemicals used, concentration of residual chlorine, type(s) of sediment controls used, pH of discharge, type(s) of volumetric and velocity controls used, and field and laboratory monitoring data. Records shall be retained for five years and made available upon request by the Permittee or Regional Water Board.
- b. Those discharges that fall within one of the categories below, provided that the discharge itself is not a source of pollutants and meets all required conditions specified in Table 8 or as otherwise specified or approved by the Regional Water Board Executive Officer:
- i. Dewatering of lakes¹⁰;
 - ii. Landscape irrigation;
 - iii. Dechlorinated/debrominated swimming pool/spa discharges¹¹, where not otherwise regulated by a separate NPDES permit;

⁸ Drinking water supplier distribution system releases means sources of flows from drinking water storage, supply and distribution systems (including flows from system failures), pressure releases, system maintenance, distribution line testing, and flushing and dewatering of pipes, reservoirs, and vaults, and minor non-invasive well maintenance activities not involving chemical addition(s) where not otherwise regulated by NPDES Permit No. CAG674001, NPDES Permit No. CAG994005, or another separate NPDES permit.

⁹ Pollutants of concern from drinking water supplier distribution system releases may include trash and debris, including organic matter, total suspended solids (TSS), residual chlorine, pH, and any pollutant for which there is a water quality-based effluent limitation (WQBEL) in Part VI.E applicable to discharges from the MS4 to the receiving water. Determination of the pollutants of concern for a particular discharge shall be based on an evaluation of the potential for the constituent(s) to be present in the discharge at levels that may cause or contribute to exceedances of applicable WQBELs or receiving water limitations.

¹⁰ Dewatering of lakes does not include dewatering of drinking water reservoirs. Dewatering of drinking water reservoirs is addressed in Part III.A.2.a.ii.

¹¹ Conditionally exempt dechlorinated/debrominated swimming pool/spa discharges do not include swimming pool/spa filter backwash or swimming pool/spa water containing bacteria, detergents, wastes, or algaecides, or any other chemicals including salts from pools commonly referred to as "salt water pools" in excess of applicable water quality objectives.

- iv. Dewatering of decorative fountains¹²;
- v. Non-commercial car washing by residents or by non-profit organizations;
- vi. Street/sidewalk wash water¹³.

3. Conditional Exemptions from Non-Storm Water Discharge Prohibition within an ASBS. The following non-storm water discharges from the MS4 directly to an ASBS are conditionally exempt pursuant to the California Ocean Plan as specified below, provided that:

- a. The discharges are essential for emergency response purposes, structural stability, slope stability or occur naturally, including the following discharges:
 - i. Discharges associated with emergency fire fighting activities (i.e., flows necessary for the protection of life or property)¹⁴;
 - ii. Foundation and footing drains;
 - iii. Water from crawl space or basement pumps;
 - iv. Hillside dewatering;
 - v. Naturally occurring ground water seepage via a MS4; and
 - vi. Non-anthropogenic flows from a naturally occurring stream via a culvert or MS4, as long as there are no contributions of anthropogenic runoff.
- b. The discharges fall within one of the conditionally exempt essential non-storm water discharge categories in Part III.A.2.a. above.
- c. Conditionally exempt non-storm water discharges shall not cause or contribute¹⁵ to an exceedance of applicable receiving water limitations and/or water quality-based effluent limitations in this Order or the water quality objectives in Chapter II of the Ocean Plan, or alter natural ocean water quality in an ASBS.

4. Permittee Requirements. Each Permittee shall:

- a. Develop and implement procedures to ensure that a discharger, if not a named Permittee in this Order, fulfills the following for non-storm water discharges to the Permittee's MS4:

¹² Conditionally exempt discharges from dewatering of decorative fountains do not include fountain water containing bacteria, detergents, wastes, or algacides, or any other chemicals in excess of applicable water quality objectives.

¹³ Conditionally exempt non-storm water discharges of street/sidewalk wash water only include those discharges resulting from use of high pressure, low volume spray washing using only potable water with no cleaning agents at an average usage of 0.006 gallons per square feet of sidewalk area in accordance with Regional Water Board Resolution No. 98-08. Conditionally exempt non-storm water discharges of street/sidewalk wash water do not include hosing of any sidewalk or street with a garden hose with a pressure nozzle.

¹⁴ See note 4.

¹⁵ Based on the water quality characteristics of the conditionally exempt non-storm water discharge itself.

- i. Notifies the Permittee of the planned discharge in advance, consistent with requirements in Table 8 or recommendations pursuant to the applicable BMP manual;
 - ii. Obtains any local permits required by the MS4 owner(s) and/or operator(s);
 - iii. Provides documentation that it has obtained any other necessary permits or water quality certifications¹⁶ for the discharge;
 - iv. Conducts monitoring of the discharge, if required by the Permittee;
 - v. Implements BMPs and/or control measures as specified in Table 8 or in the applicable BMP manual(s) as a condition of the approval to discharge into the Permittee's MS4; and
 - vi. Maintains records of its discharge to the MS4, consistent with requirements in Table 8 or recommendations pursuant to the applicable BMP manual. For lake dewatering, Permittees shall require that the following information is maintained by the lake owner / operator: name of discharger, date and time of notification, method of notification, location of discharge, discharge pathway, receiving water, date of discharge, time of the beginning and end of the discharge, duration of the discharge, flow rate or velocity, total number of gallons discharged, type(s) of sediment controls used, pH of discharge, type(s) of volumetric and velocity controls used, and field and laboratory monitoring data. Records shall be made available upon request by the Permittee or Regional Water Board.
- b. Develop and implement procedures that minimize the discharge of landscape irrigation water into the MS4 by promoting conservation programs.
- i. Permittees shall coordinate with the local water purveyor(s), where applicable, to promote landscape water use efficiency requirements for existing landscaping, use of drought tolerant, native vegetation, and the use of less toxic options for pest control and landscape management.
 - ii. Permittees shall develop and implement a coordinated outreach and education program to minimize the discharge of irrigation water and pollutants associated with irrigation water consistent with Part VI.D.4.c of this Order (Public Information and Participation Program).
- c. Evaluate monitoring data collected pursuant to the Monitoring and Reporting Program (MRP) of this Order (Attachment E), and any other associated data or information, and determine whether any of the authorized or conditionally exempt non-storm water discharges identified in Parts III.A.1, III.A.2, and III.A.3 above are a source of pollutants that may be causing or contributing to an exceedance of applicable receiving water limitations in Part V and/or water

¹⁶ Pursuant to the Federal Clean Water Act § 401.

quality-based effluent limitations in Part VI.E. To evaluate monitoring data, the Permittee shall either use applicable interim or final water quality-based effluent limitations for the pollutant or, if there are no applicable interim or final water quality-based effluent limitations for the pollutant, use applicable action levels provided in Attachment G. Based on non-storm water outfall-based monitoring as implemented through the MRP, if monitoring data show exceedances of applicable water quality-based effluent limitations or action levels, the Permittee shall take further action to determine whether the discharge is causing or contributing to exceedances of receiving water limitations in Part V.

- d. If the Permittee determines that any of the conditionally exempt non-storm water discharges identified in Part III.A.2.b above is a source of pollutants that causes or contributes to an exceedance of applicable receiving water limitations and/or water quality-based effluent limitations, the Permittee(s) shall report its findings to the Regional Water Board in its annual report. Based on this determination, the Permittee(s) shall also either:
 - i. Effectively prohibit¹⁷ the non-storm water discharge to the MS4; or
 - ii. Impose conditions in addition to those in Table 8, subject to approval by the Regional Water Board Executive Officer, on the non-storm water discharge such that it will not be a source of pollutants; or
 - iii. Require diversion of the non-storm water discharge to the sanitary sewer;
or
 - iv. Require treatment of the non-storm water discharge prior to discharge to the receiving water.
- e. If the Permittee determines that any of the authorized or conditionally exempt essential non-storm water discharges identified in Parts III.A.1.a through III.A.1.c, III.A.2.a, or III.A.3 above is a source of pollutants that causes or contributes to an exceedance of applicable receiving water limitations and/or water quality-based effluent limitations, the Permittee shall notify the Regional Water Board within 30 days if the non-storm water discharge is an authorized discharge with coverage under a separate NPDES permit or authorized by USEPA under CERCLA in the manner provided in Part III.A.1.b above, or a conditionally exempt essential non-storm water discharge or emergency non-storm water discharge.
- f. If the Permittee prohibits the discharge from the MS4, as per Part III.A.4.d.i, then the Permittee shall implement procedures developed under Part VI.D.9 (Illicit Connections and Illicit Discharges Elimination Program) in order to eliminate the discharge to the MS4.

¹⁷ To “effectively prohibit” means to not allow the non-storm water discharge through the MS4 unless the discharger obtains coverage under a separate NPDES permit prior to discharge to the MS4.

5. If a Permittee demonstrates that the water quality characteristics of a specific authorized or conditionally exempt essential non-storm water discharge resulted in an exceedance of applicable receiving water limitations and/or water quality-based effluent limitations during a specific sampling event, the Permittee shall not be found in violation of applicable receiving water limitations and/or water quality-based effluent limitations for that specific sampling event. Such demonstration must be based on source specific water quality monitoring data from the authorized or conditionally exempt essential non-storm water discharge or other relevant information documenting the characteristics of the specific non-storm water discharge as identified in Table 8.
6. Notwithstanding the above, the Regional Water Board Executive Officer, based on an evaluation of monitoring data and other relevant information for specific categories of non-storm water discharges, may modify a category or remove categories of conditionally exempt non-storm water discharges from Parts III.A.2 and III.A.3 above if the Executive Officer determines that a discharge category is a source of pollutants that causes or contributes to an exceedance of applicable receiving water limitations and/or water quality-based effluent limitations, or may require that a discharger obtain coverage under a separate individual or general State or Regional Water Board permit for a non-storm water discharge.

Table 8. Required Conditions for Conditionally Exempt Non-Storm Water Discharges

| Discharge Category | General Conditions Under Which Discharge Through the MS4 is Allowed | Conditions/BMPs that are Required to be Implemented Prior to Discharge Through the MS4 |
|--------------------------|---|--|
| All Discharge Categories | See discharge specific conditions below. | <p>Ensure conditionally exempt non-storm water discharges avoid potential sources of pollutants in the flow path to prevent introduction of pollutants to the MS4 and receiving water.</p> <p>Whenever there is a discharge of 100,000 gallons or more into the MS4, Permittees shall require advance notification by the discharger to the potentially affected MS4 Permittees, including at a minimum the LACFCD, if applicable, and the Permittee with jurisdiction over the land area from which the discharge originates.</p> |
| Dewatering of lakes | Discharge allowed only if all necessary permits/water quality certifications for dredge and fill activities, including water diversions, are obtained prior to discharge. | <p>Ensure procedures for advanced notification by the lake owner / operator to the Permittee(s) no less than 72 hours prior to the planned discharge.</p> <p>Immediately prior to discharge, visible trash on the shoreline or on the surface of the lake shall be removed and disposed of in a legal manner.</p> <p>Immediately prior to discharge, the discharge pathway and the MS4 inlet to which the discharge is directed, shall be inspected and cleaned out.</p> <p>Discharges shall be volumetrically and velocity controlled to minimize resuspension of sediments.</p> <p>Measures shall be taken to stabilize lake bottom sediments.</p> <p>Ensure procedures for water quality monitoring for pollutants of concern¹⁸ in the lake.</p> <p>Ensure record-keeping of lake dewatering by the lake owner / operator.</p> |

¹⁸ Pollutants of concern include, at a minimum, trash and debris, including organic matter, TSS, and any pollutant for which there is a water quality-based effluent limitation in Part VI.E for the lake and/or receiving water.

| | | |
|---|--|---|
| <p>Landscape irrigation using potable water</p> | <p>Discharge allowed if runoff due to potable landscape irrigation is minimized through the implementation of an ordinance specifying water efficient landscaping standards, as well as an outreach and education program focusing on water conservation and landscape water use efficiency.</p> | <p>Implement BMPs to minimize runoff and prevent introduction of pollutants to the MS4 and receiving water.</p> <p>Implement water conservation programs to minimize discharge by using less water.</p> |
| <p>Landscape irrigation using reclaimed or recycled water</p> | <p>Discharge of reclaimed or recycled water runoff from landscape irrigation is allowed if the discharge is in compliance with the producer and distributor operations and management (O&M) plan, and all relevant portions thereof, including the Irrigation Management Plan.</p> | <p>Discharges must comply with applicable O&M Plans, and all relevant portions thereof, including the Irrigation Management Plan.</p> |

| | | |
|---|--|--|
| <p>Dechlorinated/ debrominated swimming pool/spa discharges</p> | <p>Discharges allowed after implementation of specified BMPs.</p> <p>Pool or spa water containing copper-based algaecides is not allowed to be discharged to the MS4.</p> <p>Discharges of cleaning waste water and filter backwash allowed only if authorized by a separate NPDES permit.</p> | <p>Implement BMPs and ensure discharge avoids potential sources of pollutants in the flow path to prevent introduction of pollutants prior to discharge to the MS4 and receiving water.</p> <p>Swimming pool water must be dechlorinated or debrominated using holding time, aeration, and/or sodium thiosulfate. Chlorine residual in the discharge shall not exceed 0.1 mg/L.</p> <p>Swimming pool water shall not contain any detergents, wastes, or algaecides, or any other chemicals including salts from pools commonly referred to as "salt water pools" in excess of applicable water quality objectives.¹⁹</p> <p>Swimming pool discharges are to be pH adjusted, if necessary, and be within the range of 6.5 and 8.5 standard units.</p> <p>Swimming pool discharges shall be volumetrically and velocity controlled to promote evaporation and/or infiltration.</p> <p>Ensure procedures for advanced notification by the pool owner to the Permittee(s) at least 72 hours prior to planned discharge for discharges of 100,000 gallons or more.</p> <p>For discharges of 100,000 gallons or more, immediately prior to discharge, the discharge pathway and the MS4 inlet to which the discharge is directed, shall be inspected and cleaned out.</p> |
| <p>Dewatering of decorative fountains</p> | <p>Discharges allowed after implementation of specified BMPs.</p> <p>Fountain water containing copper-based algaecides may not be discharged to the MS4.</p> <p>Fountain water containing dyes may not be discharged to the MS4.</p> | <p>Implement BMPs and ensure discharge avoids potential sources of pollutants in the flow path to prevent introduction of pollutants prior to discharge to the MS4 and receiving water.</p> <p>Fountain water must be dechlorinated or debrominated using holding time, aeration, and/or sodium thiosulfate. Chlorine residual in the discharge shall not exceed 0.1 mg/L.</p> <p>Fountain discharges are to be pH adjusted, if necessary, and be within the range of 6.5 and 8.5 standard units.</p> <p>Fountain discharges shall be volumetrically and velocity controlled to promote evaporation and/or infiltration.</p> <p>Ensure procedures for advanced notification by the fountain owner to the Permittee(s) at least 72 hours prior to planned discharge for discharges of 100,000 gallons or more.</p> <p>For discharges of 100,000 gallons or more, immediately prior to discharge, the discharge pathway and the MS4 inlet to which the discharge is directed, shall be inspected and cleaned out.</p> |
| <p>Non-commercial car washing by residents or by non-</p> | <p>Discharges allowed after implementation of specified BMPs.</p> | <p>Implement BMPs and ensure discharge avoids potential sources of pollutants in the flow path to prevent introduction of pollutants prior to discharge to the MS4 and receiving water.</p> <p>Minimize the amount of water used by employing water conservation practices such as turning off</p> |

¹⁹ Applicable mineral water quality objectives for surface waters are contained in Chapter 3 of the Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties.

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| profit organizations | | <p>nozzles or kinking the hose when not spraying a car, and using a low volume pressure washer.</p> <p>Encourage use of biodegradable, phosphate free detergents and non-toxic cleaning products.</p> <p>Where possible, wash cars on a permeable surface where wash water can percolate into the ground (e.g. gravel or grassy areas).</p> <p>Empty buckets of soapy or rinse water into the sanitary sewer system (e.g., sinks or toilets).</p> |
| Street/sidewalk wash water | Discharges allowed after implementation of specified BMPs. | <p>Sweeping should be used as an alternate BMP whenever possible and sweepings should be disposed of in the trash.</p> <p>BMPs shall be in accordance with Regional Water Board Resolution No. 98-08 that requires: 1) removal of trash, debris, and free standing oil/grease spills/leaks (use absorbent material if necessary) from the area before washing and 2) use of high pressure, low volume spray washing using only potable water with no cleaning agents at an average usage of 0.006 gallons per square feet of sidewalk area. In areas of unsanitary conditions (e.g., areas where the congregation of transient populations can reasonably be expected to result in a significant threat to water quality), whenever practicable, Permittees shall collect and divert street and alley wash water from the Permittee's street and sidewalk cleaning public agency activities to the sanitary sewer.</p> |

IV. EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

A. Effluent Limitations

1. **Technology Based Effluent Limitations:** Each Permittee shall reduce pollutants in storm water discharges from the MS4 to the maximum extent practicable (MEP).
2. **Water Quality-Based Effluent Limitations (WQBELs).** This Order establishes WQBELs consistent with the assumptions and requirements of all available TMDL waste load allocations assigned to discharges from the Permittees' MS4s.
 - a. Each Permittee shall comply with applicable WQBELs as set forth in Part VI.E of this Order, pursuant to applicable compliance schedules.

B. Land Discharge Specifications – Not Applicable

C. Reclamation Specifications – Not Applicable

V. RECEIVING WATER LIMITATIONS

A. Receiving Water Limitations

1. Discharges from the MS4 that cause or contribute to the violation of receiving water limitations are prohibited.
2. Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible²⁰, shall not cause or contribute to a condition of nuisance.
3. The Permittees shall comply with Parts V.A.1 and V.A.2 through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the storm water management program and its components and other requirements of this Order including any modifications. The storm water management program and its components shall be designed to achieve compliance with receiving water limitations. If exceedances of receiving water limitations persist, notwithstanding implementation of the storm water management program and its components and other requirements of this Order, the Permittee shall assure compliance with discharge prohibitions and receiving water limitations by complying with the following procedure:
 - a. Upon a determination by either the Permittee or the Regional Water Board that discharges from the MS4 are causing or contributing to an exceedance of an applicable Receiving Water Limitation, the Permittee shall promptly notify and thereafter submit an Integrated Monitoring Compliance Report (as described in the Program Reporting Requirements, Part XVIII.A.5 of the Monitoring and Reporting Program) to the Regional Water Board for approval. The Integrated Monitoring Compliance shall describe the BMPs that are currently being

²⁰ Pursuant to 40 CFR § 122.26(a)(3)(vi), a Permittee is only responsible for discharges of storm water and non-storm water from the MS4 for which it is an owner or operator.

implemented by the Permittee and additional BMPs, including modifications to current BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedances of receiving water limitations. The Integrated Monitoring Compliance Report shall include an implementation schedule. This Integrated Monitoring Compliance Report shall be incorporated in the annual Storm Water Report unless the Regional Water Board directs an earlier submittal. The Regional Water Board may require modifications to the Integrated Monitoring Compliance Report.

- b. The Permittee shall submit any modifications to the Integrated Monitoring Compliance Report required by the Regional Water Board within 30 days of notification.
 - c. Within 30 days following the Regional Water Board Executive Officer's approval of the Integrated Monitoring Compliance Report, the Permittee shall revise the storm water management program and its components and monitoring program to incorporate the approved modified BMPs that have been and will be implemented, an implementation schedule, and any additional monitoring required.
 - d. The Permittee shall implement the revised storm water management program and its components and monitoring program according to the approved implementation schedule.
4. So long as the Permittee has complied with the procedures set forth in Part V.A.3. above and is implementing the revised storm water management program and its components, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the Regional Water Board to modify current BMPs or develop additional BMPs.

B. Ground Water Limitations – Not Applicable

VI. PROVISIONS

A. Standard Provisions

1. **Federal Standard Provisions.** Each Permittee shall comply with all Standard Provisions included in Attachment D of this Order, in accordance with 40 CFR sections 122.41 and 122.42.
2. **Legal Authority**
 - a. Each Permittee must establish and maintain adequate legal authority, within its respective jurisdiction, to control pollutant discharges into and from its MS4 through ordinance, statute, permit, contract or similar means. This legal authority must, at a minimum, authorize or enable the Permittee to:

- i.** Control the contribution of pollutants to its MS4 from storm water discharges associated with industrial and construction activity and control the quality of storm water discharged from industrial and construction sites. This requirement applies both to industrial and construction sites with coverage under an NPDES permit, as well as to those sites that do not have coverage under an NPDES permit.
- ii.** Prohibit all non-storm water discharges through the MS4 to receiving waters not otherwise authorized or conditionally exempt pursuant to Part III.A;
- iii.** Prohibit and eliminate illicit discharges and illicit connections to the MS4;
- iv.** Control the discharge of spills, dumping, or disposal of materials other than storm water to its MS4;
- v.** Require compliance with conditions in Permittee ordinances, permits, contracts or orders (i.e., hold dischargers to its MS4 accountable for their contributions of pollutants and flows);
- vi.** Utilize enforcement mechanisms to require compliance with applicable ordinances, permits, contracts, or orders;
- vii.** Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Co-permittees;
- viii.** Control of the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements with other owners of the MS4 such as the State of California Department of Transportation;
- ix.** Carry out all inspections, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with applicable municipal ordinances, permits, contracts and orders, and with the provisions of this Order, including the prohibition of non-storm water discharges into the MS4 and receiving waters. This means the Permittee must have authority to enter, monitor, inspect, take measurements, review and copy records, and require regular reports from entities discharging into its MS4;
- x.** Require the use of control measures to prevent or reduce the discharge of pollutants to achieve water quality standards/receiving water limitations;
- xi.** Require that structural BMPs are properly operated and maintained; and
- xii.** Require documentation on the operation and maintenance of structural BMPs and their effectiveness in reducing the discharge of pollutants to the MS4.

- b.** Each Permittee must submit a statement certified by its chief legal counsel that the Permittee has the legal authority within its jurisdiction to implement and enforce each of the requirements contained in 40 CFR § 122.26(d)(2)(i)(A-F) and this Order. Each Permittee shall submit this certification annually as part of its Annual Report beginning with the first Annual Report required under this Order. These statements must include:
 - i.** Citation of applicable municipal ordinances or other appropriate legal authorities and their relationship to the requirements of 40 CFR § 122.26(d)(2)(i)(A)-(F) and of this Order; and
 - ii.** Identification of the local administrative and legal procedures available to mandate compliance with applicable municipal ordinances identified in subsection (i) above and therefore with the conditions of this Order, and a statement as to whether enforcement actions can be completed administratively or whether they must be commenced and completed in the judicial system.

3. Fiscal Resources

- a.** Each Permittee shall conduct a fiscal analysis of the annual capital and operation and maintenance expenditures necessary to implement the requirements of this Order.
- b.** Each Permittee shall also enumerate and describe in its Annual Report the source(s) of funds used in the past year, and proposed for the coming year, to meet necessary expenditures on the Permittee's storm water management program.

4. Responsibilities of the Permittees

- a.** Each Permittee is required to comply with the requirements of this Order applicable to discharges within its boundaries. Permittees are not responsible for the implementation of the provisions applicable to other Permittees. Each Permittee shall:
 - i.** Comply with the requirements of this Order and any modifications thereto.
 - ii.** Coordinate among its internal departments and agencies, as necessary, to facilitate the implementation of the requirements of this Order applicable to such Permittees in an efficient and cost-effective manner.
 - iii.** Participate in intra-agency coordination (e.g. Planning Department, Fire Department, Building and Safety, Code Enforcement, Public Health, Parks and Recreation, and others) and inter-agency coordination (e.g. co-Permittees, other NPDES permittees) necessary to successfully implement the provisions of this Order.

5. Public Review

- a. All documents submitted to the Regional Water Board in compliance with the terms and conditions of this Order shall be made available to members of the public pursuant to the Freedom of Information Act (5 U.S.C. § 552 (as amended)) and the Public Records Act (Cal. Government Code § 6250 et seq.).
- b. All documents submitted to the Regional Water Board Executive Officer for approval shall be made available to the public for a 30-day period to allow for public comment.

6. Regional Water Board Review

Any formal determination or approval made by the Regional Water Board Executive Officer pursuant to the provisions of this Order may be reviewed by the Regional Water Board. A Permittee(s) or a member of the public may request such review upon petition within 30 days of the effective date of the notification of such decision to the Permittee(s) and interested parties on file at the Regional Water Board.

7. Reopener and Modification

- a. This Order may be modified, revoked, reissued, or terminated in accordance with the provisions of 40 CFR sections 122.44, 122.62, 122.63, 122.64, 124.5, 125.62, and 125.64. Causes for taking such actions include, but are not limited to:
 - i. Endangerment to human health or the environment resulting from the permitted activity, including information that the discharge(s) regulated by this Order may have the potential to cause or contribute to adverse impacts on water quality and/or beneficial uses;
 - ii. Acquisition of newly-obtained information that would have justified the application of different conditions if known at the time of Order adoption;
 - iii. To address changed conditions identified in required reports or other sources deemed significant by the Regional Water Board;
 - iv. To incorporate provisions as a result of future amendments to the Basin Plan, such as a new or revised water quality objective or the adoption or reconsideration of a TMDL, including the program of implementation. Within 18 months of the effective date of a revised TMDL or as soon as practicable thereafter, where the revisions warrant a change to the provisions of this Order, the Regional Water Board may modify this Order consistent with the assumptions and requirements of the revised WLA(s), including the program of implementation;

- v. To incorporate provisions as a result of new or amended statewide water quality control plans or policies adopted by the State Water Board, or in consideration of any State Water Board action regarding the precedential language of State Water Board Order WQ 99-05;
 - vi. To incorporate provisions as a result of the promulgation of new or amended federal or state laws or regulations, USEPA guidance concerning regulated activities, or judicial decisions that becomes effective after adoption of this Order.
 - vii. To incorporate effluent limitations for toxic constituents determined to be present in significant amount in the discharge through a more comprehensive monitoring program included as part of this Order and based on the results of the reasonable potential analysis;
 - viii. In accordance with the provisions set forth in 40 CFR Parts 122 and 124, to include requirements for the implementation of the watershed management approach or to include new Minimum Levels (MLs); and/or
 - ix. To include provisions or modifications to WQBELs in Part VI.E and Attachments L-R in this Order prior to the final compliance deadlines, if practicable, that would allow an action-based, BMP compliance demonstration approach with regard to final WQBELs for storm water discharges. Such modifications shall be based on the Regional Water Board's evaluation of whether Watershed Management Programs in Part VI.C. have resulted in attainment of interim WQBELs for storm water and review of relevant research, including but not limited to data and information provided by Permittees and other stakeholders, on storm water quality and the efficacy and reliability of storm water control technologies. Provisions or modifications to WQBELs in Part VI.E. shall only be included in this Order where there is evidence that storm water control technologies can reliably achieve final WQBELs.
- b.** After notice and opportunity for a hearing, this Order may be terminated or modified for cause, including, but not limited to:
- i. Violation of any term or condition contained in this Order;
 - ii. Obtaining this Order by misrepresentation, or failure to disclose all relevant facts; or
 - iii. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- c.** The filing of a request by a Permittee for a modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any condition of this Order.

- d. This Order may be modified to make corrections or allowances for changes in the permitted activity, following the procedures at 40 CFR section 122.63, if processed as a minor modification. Minor modifications may only:
 - i. Correct typographical errors; or
 - ii. Require more frequent monitoring or reporting by a Permittee.
- 8. Any discharge of waste to any point(s) other than specifically described in this Order is prohibited, and constitutes a violation of this Order.
- 9. A copy of this Order shall be maintained by each Permittee so as to be available during normal business hours to Permittee employees responsible for implementation of the provisions of this Order and members of the public.
- 10. The discharge of any product registered under the Federal Insecticide, Fungicide, and Rodenticide Act to any waste stream that may ultimately be released to waters of the United States, is prohibited, unless specifically authorized elsewhere in this Order or another NPDES permit. This requirement is not applicable to products used for lawn and agricultural purposes.
- 11. Oil or oily material, chemicals, refuse, or other pollutionable materials shall not be stored or deposited in areas where they may be picked up by rainfall and carried off of the property and/or discharged to surface waters. Any such spill of such materials shall be contained and removed immediately.
- 12. If there is any storage of hazardous or toxic materials or hydrocarbons at a facility owned and/or operated by a Permittee and if the facility is not manned at all times, a 24-hour emergency response telephone number shall be prominently posted where it can easily be read from the outside.

13. Enforcement

- a. Violation of any of the provisions of this Order may subject the violator to any of the penalties described herein or in Attachment D of this Order, or any combination thereof, at the discretion of the prosecuting authority; except that only one kind of penalty may be applied for each kind of violation.
- b. Failure to comply with provisions or requirements of this Order, or violation of other applicable laws or regulations governing discharges through the MS4 to receiving waters, may subject a Permittee to administrative or civil liabilities, criminal penalties, and/or other enforcement remedies to ensure compliance. Additionally, certain violations may subject a Permittee to civil or criminal enforcement from appropriate local, state, or federal law enforcement entities.
- c. The California Water Code provides that any person who violates a waste discharge requirement or a provision of the California Water Code is subject to civil penalties of up to \$5,000 per day, \$10,000 per day, or \$25,000 per day of

violation, or when the violation involves the discharge of pollutants, is subject to civil penalties of up to \$10 per gallon per day or \$25 per gallon per day of violation; or some combination thereof, depending on the violation, or upon the combination of violations.

- d. California Water Code section 13385(h)(1) requires the Regional Water Board to assess a mandatory minimum penalty of three-thousand dollars (\$3,000) for each serious violation. Pursuant to California Water Code section 13385(h)(2), a “serious violation” is defined as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent or more, or for a Group I pollutant by 40 percent or more. Appendix A of 40 CFR section 123.45 specifies the Group I and II pollutants. Pursuant to California Water Code section 13385.1(a)(1), a “serious violation” is also defined as “a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.”
- e. California Water Code section 13385(i) requires the Regional Water Board to assess a mandatory minimum penalty of three-thousand dollars (\$3,000) for each violation whenever a person violates a waste discharge requirement effluent limitation in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations within that time period.
- f. Pursuant to California Water Code section 13385.1(d), for the purposes of section 13385.1 and subdivisions (h), (i), and (j) of section 13385, “effluent limitation” means a numeric restriction or a numerically expressed narrative restriction, on the quantity, discharge rate, concentration, or toxicity units of a pollutant or pollutants that may be discharged from an authorized location. An effluent limitation may be final or interim, and may be expressed as a prohibition. An effluent limitation, for these purposes, does not include a receiving water limitation, a compliance schedule, or a best management practice.
- g. Unlike subdivision (c) of California Water Code section 13385, where violations of effluent limitations may be assessed administrative civil liability on a per day basis, the mandatory minimum penalties provisions identified above require the Regional Water Board to assess mandatory minimum penalties for “each violation” of an effluent limitation. Some water quality-based effluent limitations in Attachments L through R of this Order (e.g., trash, as described immediately below) are expressed as annual effluent limitations. Therefore, for such limitations, there can be no more than one violation of each interim or final effluent limitation per year.

h. Trash TMDLs.

- i. Consistent with the 2009 amendments to Order No. 01-182 to incorporate the Los Angeles River Trash TMDL, the water quality-based effluent limitations in Attachments L through R of this Order for trash are expressed as annual effluent limitations. Therefore, for such limitations, there can be no more than one violation of each interim or final effluent limitation per year. Trash is considered a Group I pollutant, as specified in Appendix A to 40 CFR section 123.45. Therefore, each annual violation of a trash effluent limitation in Attachments L through R of this Order by forty percent or more would be considered a “serious violation” under California Water Code section 13385(h). With respect to the final effluent limitation of zero trash, any detectable discharge of trash necessarily is a serious violation, in accordance with the State Water Board’s Enforcement Policy. Violations of the effluent limitations in Attachments L through R of this Order would not constitute “chronic” violations that would give rise to mandatory liability under California Water Code section 13385(i) because four or more violations of the effluent limitations subject to a mandatory penalty cannot occur in a period of six consecutive months.
- ii. For the purposes of enforcement under California Water Code section 13385, subdivisions (a), (b), and (c), not every storm event may result in trash discharges. In trash TMDLs adopted by the Regional Water Board, the Regional Water Board states that improperly deposited trash is mobilized during storm events of greater than 0.25 inches of precipitation. Therefore, violations of the effluent limitations are limited to the days of a storm event of greater than 0.25 inches. Once a Permittee has violated the annual effluent limitation, any subsequent discharges of trash during any day of a storm event of greater than 0.25 inches during the same storm year constitutes an additional “day in which the violation [of the effluent limitation] occurs”.

14. This Order does not exempt any Permittee from compliance with any other laws, regulations, or ordinances that may be applicable.

15. The provisions of this Order are severable. If any provisions of this Order or the application of any provision of this Order to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected.

B. Monitoring and Reporting Program (MRP) Requirements

1. Dischargers shall comply with the MRP and future revisions thereto, in Attachment E of this Order or may, in coordination with an approved Watershed Management Program per Part VI.C, implement a customized monitoring program that achieves the five Primary Objectives set forth in Part II.A. of Attachment E and includes the elements set forth in Part II.E. of Attachment E.

2. Compliance Determination for Commingled Discharges

- a.** For commingled discharges addressed by a TMDL, a Permittee shall demonstrate compliance with the requirements of Part E as specified at Part E.2.b.
- b.** For commingled discharges not addressed by a TMDL, a Permittee shall demonstrate compliance with the requirements of Part V.A as follows:
 - i.** Pursuant to 40 CFR section 122.26(a)(3)(vi), each Permittee is only responsible for discharges from the MS4 for which they are owners and/or operators.
 - ii.** Where Permittees have commingled discharges to the receiving water, or where Permittees' discharges commingle in the receiving water, compliance in the receiving water shall be determined for the group of Permittees as a whole unless an individual Permittee demonstrates that its discharge did not cause or contribute to the exceedance, pursuant to subpart iv. below.
 - iii.** For purposes of compliance determination, each Permittee is responsible for demonstrating that its discharge did not cause or contribute to an exceedance of the receiving water limitation in the target receiving water.
 - iv.** A Permittee may demonstrate that its discharge did not cause or contribute to an exceedance of a receiving water limitation in one of the following ways:
 - (1) Demonstrate that there was no discharge from the Permittee's MS4 into the applicable receiving water during the relevant time period;
 - (2) Demonstrate that the discharge from the Permittee's MS4 was controlled to a level that did not cause or contribute to the exceedance in the receiving water;
 - (3) Demonstrate that there is an alternative source of the pollutant that caused the exceedance, that the pollutant is not typically associated with MS4 discharges, and that the pollutant was not discharged from the Permittee's MS4; or
 - (4) Demonstrate that the Permittee is in compliance with the Watershed Management Programs provisions under VI.C.

C. Watershed Management Programs

1. General

- a.** The purpose of this Part VI.C is to allow Permittees the flexibility to develop Watershed Management Programs to implement the requirements of this Order

on a watershed scale through customized strategies, control measures, and BMPs.

- b.** Participation in a Watershed Management Program is voluntary and allows a Permittee to address the highest watershed priorities, including complying with the requirements of Part V.A. (Receiving Water Limitations), Part VI.E (Total Maximum Daily Load Provisions) and Attachments L through R, by customizing the control measures in Parts III.A.4 (Prohibitions – Non-Storm Water Discharges) and VI.D (Minimum Control Measures).
- c.** Customized strategies, control measures, and BMPs shall be implemented on a watershed basis, where applicable, through each Permittee’s storm water management program and/or collectively by all participating Permittees through a Watershed Management Program.
- d.** The Watershed Management Programs shall ensure that discharges from the Permittee’s MS4: (i) achieve applicable water quality-based effluent limitations in Part VI.E and Attachments L through R pursuant to the corresponding compliance schedules, (ii) do not cause or contribute to exceedances of receiving water limitations in Parts V.A and VI.E and Attachments L through R, and (iii) do not include non-storm water discharges that are effectively prohibited pursuant to Part III.A. The programs shall also ensure that controls are implemented to reduce the discharge of pollutants to the maximum extent practicable (MEP) pursuant to Part IV.A.1.
- e.** Watershed Management Programs shall be developed either collaboratively or individually using the Regional Water Board’s Watershed Management Areas (WMAs). Where appropriate, WMAs may be separated into subwatersheds to focus water quality prioritization and implementation efforts by receiving water.
- f.** Each Watershed Management Program shall be consistent with Part VI.C.5-C.8 and shall:
 - i.** Prioritize water quality issues resulting from storm water and non-storm water discharges from the MS4 to receiving waters within each WMA,
 - ii.** Identify and implement strategies, control measures, and BMPs to achieve the outcomes specified in Part VI.C.1.d,
 - iii.** Execute an integrated monitoring program and assessment program pursuant to Attachment E – MRP, Part IV to determine progress towards achieving applicable limitations and/or action levels in Attachment G, and
 - iv.** Modify strategies, control measures, and BMPs as necessary based on analysis of monitoring data collected pursuant to the MRP to ensure that applicable water quality-based effluent limitations and receiving water limitations and other milestones set forth in the Watershed Management Program are achieved in the required timeframes.

- v. Provide appropriate opportunity for meaningful stakeholder input, including but not limited to, a permit-wide watershed management program technical advisory committee (TAC) that will advise and participate in the development of the Watershed Management Programs and enhanced Watershed Management Programs from month 6 through the date of program approval. The composition of the TAC may include at least one Permittee representative from each Watershed Management Area for which a Watershed Management Program will be developed, and must include a minimum of one public representative from a non-governmental organization with public membership, and staff from the Regional Water Board and USEPA Region IX.
- g. Permittees may elect to develop an enhanced Watershed Management Program (EWMP). An EWMP is one that comprehensively evaluates opportunities, within the participating Permittees' collective jurisdictional area in a Watershed Management Area, for collaboration among Permittees and other partners on multi-benefit regional projects that, wherever feasible, retain (i) all non-storm water runoff and (ii) all storm water runoff from the 85th percentile, 24-hour storm event for the drainage areas tributary to the projects, while also achieving other benefits including flood control and water supply, among others. In drainage areas within the EWMP area where retention of the 85th percentile, 24-hour storm event is not feasible, the EWMP shall include a Reasonable Assurance Analysis to demonstrate that applicable water quality based effluent limitations and receiving water limitations shall be achieved through implementation of other watershed control measures. An EWMP shall:

 - i. Be consistent with the provisions in Part VI.C.1.a.-f and VI.C.5-C.8;
 - ii. Incorporate applicable State agency input on priority setting and other key implementation issues;
 - iii. Provide for meeting water quality standards and other CWA obligations by utilizing provisions in the CWA and its implementing regulations, policies and guidance;
 - iv. Include multi-benefit regional projects to ensure that MS4 discharges achieve compliance with all final WQBELs set forth in Part VI.E. and do not cause or contribute to exceedances of receiving water limitations in Part V.A. by retaining through infiltration or capture and reuse the storm water volume from the 85th percentile, 24-hour storm for the drainage areas tributary to the multi-benefit regional projects.;
 - v. In drainage areas where retention of the storm water volume from the 85th percentile, 24-hour event is not technically feasible, include other watershed control measures to ensure that MS4 discharges achieve compliance with all interim and final WQBELs set forth in Part VI.E. with compliance deadlines occurring after approval of a EWMP and to ensure that MS4

discharges do not cause or contribute to exceedances of receiving water limitations in Part V.A.;

- vi. Maximize the effectiveness of funds through analysis of alternatives and the selection and sequencing of actions needed to address human health and water quality related challenges and non-compliance;
- vii. Incorporate effective innovative technologies, approaches and practices, including green infrastructure;
- viii. Ensure that existing requirements to comply with technology-based effluent limitations and core requirements (e.g., including elimination of non-storm water discharges of pollutants through the MS4, and controls to reduce the discharge of pollutants in storm water to the maximum extent practicable) are not delayed;
- ix. Ensure that a financial strategy is in place.

2. Compliance with Receiving Water Limitations Not Otherwise Addressed by a TMDL through a WMP or EWMP

- a. For receiving water limitations in Part V.A. associated with water body-pollutant combinations not addressed through a TMDL, but which a Permittee elects to address through a Watershed Management Program or EWMP as set forth in this Part VI.C., a Permittee shall comply as follows:
 - i. **For pollutants that are in the same class²¹ as those addressed in a TMDL for the watershed and for which the water body is identified as impaired on the State's Clean Water Act Section 303(d) List as of the effective date of this Order:**

- (1) Permittees shall demonstrate that the Watershed Control Measures to achieve the applicable TMDL provisions identified pursuant to Part VI.C.5.b.iv.(3) will also adequately address contributions of the pollutant(s) within the same class from MS4 discharges to receiving waters, consistent with the assumptions and requirements of the corresponding TMDL provisions, including interim and final requirements and deadlines for their achievement, such that the MS4 discharges of the pollutant(s) will not cause or contribute to exceedances of receiving water limitations in Part V.A.
- (2) Permittees shall include the water body-pollutant combination(s) in the Reasonable Assurance Analysis in Part VI.C.5.b.iv.(5).
- (3) Permittees shall identify milestones and dates for their achievement consistent with those in the corresponding TMDL.

²¹ Pollutants are considered in a similar class if they have similar fate and transport mechanisms, can be addressed via the same types of control measures, and within the same timeline already contemplated as part of the Watershed Management Program for the TMDL.

ii. For pollutants that are not in the same class as those addressed in a TMDL for the watershed, but for which the water body is identified as impaired on the State's Clean Water Act Section 303(d) List as of the effective date of this Order:

- (1) Permittees shall assess contributions of the pollutant(s) from MS4 discharges to the receiving waters and sources of the pollutant(s) within the drainage area of the MS4 pursuant to Part VI.C.5.a.iii.
- (2) Permittees shall identify Watershed Control Measures pursuant to Part VI.C.5.b. that will adequately address contributions of the pollutant(s) from MS4 discharges to receiving waters such that the MS4 discharges of the pollutant(s) will not cause or contribute to exceedances of receiving water limitations in Part V.A.
- (3) Permittees shall include the water body-pollutant in the Reasonable Assurance Analysis in Part VI.C.5.b.iv.(5).
- (4) Permittees shall identify enforceable requirements and milestones and dates for their achievement to control MS4 discharges such that they do not cause or contribute to exceedances of receiving water limitations within a timeframe(s) that is as short as possible, taking into account the technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary. The time between dates shall not exceed one year. Milestones shall relate to a specific water quality endpoint (e.g., x% of the MS4 drainage area is meeting the receiving water limitations) and dates shall relate either to taking a specific action or meeting a milestone.
- (5) Where the final date(s) in (4) is beyond the term of this Order, the following conditions shall apply:
 - (a) For an EWMP, in drainage areas where retention of (i) all non-storm water runoff and (ii) all storm water runoff from the 85th percentile, 24-hour storm event will be achieved, each participating Permittee shall continue to target implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges that are a source of pollutants to receiving waters.
 - (b) For a WMP and in areas of a EWMP where retention of the volume in (a) is technically infeasible and where the Regional Water Board determines that MS4 discharges cause or contribute to the water quality impairment, participating Permittees may initiate development of a stakeholder-proposed TMDL upon approval of the Watershed Management Program or EWMP. For MS4 discharges from these drainage areas to the receiving waters, any extension of

this compliance mechanism beyond the term of this Order shall be consistent with the implementation schedule in a TMDL for the waterbody pollutant combination(s) adopted by the Regional Water Board.

iii. For pollutants for which there are exceedances of receiving water limitations in Part V.A., but for which the water body is not identified as impaired on the State's Clean Water Act Section 303(d) List as of the effective date of this Order:

- (1) Upon an exceedance of a receiving water limitation, based on data collected pursuant to the MRP and approved IMPs and CIMPs, Permittees shall assess contributions of the pollutant(s) from MS4 discharges to the receiving waters and sources of the pollutant(s) within the drainage area of the MS4 pursuant to Part VI.C.5.a.iii.
- (2) If MS4 discharges are identified as a source of the pollutant(s) that has caused or contributed to, or has the potential to cause or contribute to, the exceedance(s) of receiving water limitations in Part V.A., Permittees shall address contributions of the pollutant(s) from MS4 discharges through modifications to the WMP or EWMP pursuant to Part VI.C.8.a.ii.
 - (a) In a modified WMP or EWMP, Permittees shall identify Watershed Control Measures pursuant to Part VI.C.5.b. that will adequately address contributions of the pollutant(s) from MS4 discharges to receiving waters such that the MS4 discharges of the pollutant(s) will not cause or contribute to exceedances of receiving water limitations in Part V.A.
 - (b) Permittees shall modify the Reasonable Assurance Analysis pursuant to Part VI.C.5.b.iv.(5) to address the pollutant(s).
 - (c) Permittees shall identify enforceable requirements and milestones and dates for their achievement to control MS4 discharges such that they do not cause or contribute to exceedances of receiving water limitations within a timeframe(s) that is as short as possible, taking into account the technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary. The time between dates shall not exceed one year. Milestones shall relate to a specific water quality endpoint (e.g., x% of the MS4 drainage area is meeting the receiving water limitations) and dates shall relate either to taking a specific action or meeting a milestone.
 - (d) Where the final date(s) in (4) is beyond the term of this Order, the following conditions shall apply:
 - (i) For an EWMP, in drainage areas where retention of (i) all non-storm water runoff and (ii) all storm water runoff from the 85th percentile, 24-hour storm event will be achieved,

each participating Permittee shall continue to target implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges that are a source of pollutants to receiving waters.

- (ii) For a WMP and in areas of a EWMP where retention of the volume in (a) is technically infeasible, for newly identified exceedances of receiving water limitations, a Permittee may request that the Regional Water Board approve a modification to its WMP or EWMP to include these additional water body-pollutant combinations.
- b. A Permittee's full compliance with all requirements and dates for their achievement in an approved Watershed Management Program or EWMP shall constitute a Permittee's compliance with the receiving water limitations provisions in Part V.A. of this Order for the specific water body-pollutant combinations addressed by an approved Watershed Management Program or EWMP.
 - c. If a Permittee fails to meet any requirement or date for its achievement in an approved Watershed Management Program or EWMP, the Permittee shall be subject to the provisions of Part V.A. for the waterbody-pollutant combination(s) that were to be addressed by the requirement. For water body-pollutant combinations that are not addressed by a TMDL, final compliance with receiving water limitations is determined by verification through monitoring that the receiving water limitation provisions in Part V.A.1 and 2 have been achieved.
 - d. Upon notification of a Permittee's intent to develop a WMP or EWMP and prior to approval of its WMP or EWMP, a Permittee's full compliance with all of the following requirements shall constitute a Permittee's compliance with the receiving water limitations provisions in Part V.A. not otherwise addressed by a TMDL, if all the following requirements are met:
 - i. Provides timely notice of its intent to develop a WMP or EWMP,
 - ii. Meets all interim and final deadlines for development of a WMP or EWMP,
 - iii. For the area to be covered by the WMP or EWMP, targets implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges of pollutants through the MS4 to receiving waters, to address known contributions of pollutants from MS4 discharges that cause or contribute to exceedances of receiving water limitations, and

- iv. Receives final approval of its WMP or EWMP within 28 or 40 months, respectively.

3. Compliance with Receiving Water Limitations Addressed by a TMDL through a WMP or EWMP

- a. A Permittee's full compliance with all requirements and dates for their achievement in an approved Watershed Management Program or EWMP shall constitute a Permittee's compliance with provisions pertaining to applicable interim water quality based effluent limitations and interim receiving water limitations in Part VI.E. and Attachments L-R for the pollutant(s) addressed by the approved Watershed Management Program or EWMP.
- b. Upon notification of a Permittee's intent to develop a WMP or EWMP and prior to approval of its WMP or EWMP, a Permittee's full compliance with all of the following requirements shall constitute a Permittee's compliance with the receiving water limitations provisions in Part V.A., if all the following requirements are met:
 - i. Provides timely notice of its intent to develop a WMP or EWMP,
 - ii. Meets all interim and final deadlines for development of a WMP or EWMP,
 - iii. For the area to be covered by the WMP or EWMP, targets implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges of pollutants through the MS4 to receiving waters, to address known contributions of pollutants from MS4 discharges that cause or contribute to exceedances of receiving water limitations, and
 - iv. Receives final approval of its WMP or EWMP within 28 or 40 months, respectively.
- c. Subdivision b. does not apply to receiving water limitations corresponding to final compliance deadlines pursuant to TMDL provisions in Part VI.E. that have passed or will occur prior to approval of a WMP or EWMP.

4. Process

- a. Timelines for Implementation
 - i. Implementation of the following requirements shall occur per the schedule specified in Table 9 below:

Table 9. Watershed Management Program Implementation Requirements

| Part | Provision | Due Date |
|-------------|--|--|
| VI.C.4.b | Notify Regional Water Board of intent to develop Watershed Management Program or enhanced WMP and request submittal date for draft program plan | 6 months after Order effective date |
| VI.C.4.c | For Permittee(s) that elect not to implement the conditions of Part VI.C.4.c.i or c.ii, submit draft plan to Regional Water Board | 1 year after Order effective date |
| VI.C.4.c | For Permittee(s) that elect to implement the conditions of Part VI.C.4.c.i or c.ii, submit draft plan to Regional Water Board | 18 months after Order effective date |
| VI.C.4.c.iv | For Permittees that elect to collaborate on an enhanced WMP that meets the requirements of Part VI.C.4.c.iv, submit draft plan to Regional Water Board | 18 months after Order effective date, provide final work plan for development of enhanced WMP 30 months after Order effective date, submit draft plan |
| VI.C.4.c | Comments provided to Permittees by Regional Water Board | 4 months after submittal of draft plan |
| VI.C.4.c | Submit final plan to Regional Water Board | 3 months after receipt of Regional Water Board comments on draft plan |
| VI.C.4.c | Approval or denial of final plan by Regional Water Board or by the Executive Officer on behalf of the Regional Water Board | 3 months after submittal of final plan |
| VI.C.6 | Begin implementation of Watershed Management Program or EWMP | Upon approval of final plan |
| VI.C.8 | Comprehensive evaluation of Watershed Management | Every two years from date of |

| | |
|--|----------|
| Program or EWMP and submittal of modifications to plan | approval |
|--|----------|

- b.** Permittees that elect to develop a Watershed Management Program or EWMP must notify the Regional Water Board no later than six months after the effective date of this Order.
 - i.** Such notification shall specify if the Permittee(s) are requesting a 12-month or 18-month submittal date for the draft Watershed Management Program, per Part VI.C.4.c.i – ii, or if the Permittees are requesting a 18/30-month submittal date for the draft EWMP per Part VI.C.4.c.iv.
 - ii.** As part of their notice of intent to develop a WMP or EWMP, Permittees shall identify all applicable interim and final trash WQBELs and all other final WQBELs and receiving water limitations pursuant to Part VI.E. and the applicable attachment(s) with compliance deadlines occurring prior to approval of a WMP or EWMP. Permittees shall identify watershed control measures, where possible from existing TMDL implementation plans, that will be implemented by participating Permittees concurrently with the development of a Watershed Management Program or EWMP to ensure that MS4 discharges achieve compliance with applicable interim and final trash WQBELs and all other final WQBELs and receiving water limitations set forth in Part VI.E. and the applicable attachment(s) by the applicable compliance deadlines occurring prior to approval of a WMP or EWMP.
 - iii.** As part of their notification, Permittees electing to develop an EWMP shall submit all of the following in addition to the requirements of Part VI.C.4.b.i.-ii.:
 - (1) Plan concept and geographical scope,
 - (2) Cost estimate for plan development,
 - (3) Executed MOU/agreement among participating Permittees to fund plan development, or final draft MOU among participating Permittees along with a signed letter of intent from each participating City Manager or head of agency. If a final draft MOU is submitted, the MOU shall be fully executed by all participating Permittees within 12 months of the effective date of this Order.
 - (4) Interim milestones for plan development and deadlines for their achievement,
 - (5) Identification of, and commitment to fully implement, one structural BMP or a suite of BMPs at a scale that provides meaningful water quality improvement within each watershed covered by the plan within 30 months of the effective date of this Order in addition to

watershed control measures to be implemented pursuant to b.ii. above. The structural BMP or suite of BMPs shall be subject to approval by the Regional Water Board Executive Officer, and

- (6) Demonstration that the requirements in Parts VI.C.4.c.iv.(1) and (2) have been met.
- c. Permittees that elect to develop a Watershed Management Program shall submit a draft plan to the Regional Water Board as follows:
- i. For Permittees that elect to collaborate on the development of a Watershed Management Program, Permittees shall submit the draft Watershed Management Program no later than 18 months after the effective date of this Order if the following conditions are met in greater than 50% of the land area covered by the WMP:
 - (1) Demonstrate that there are LID ordinances in place and/or commence development of a Low Impact Development (LID) ordinance(s) meeting the requirements of this Order's Planning and Land Development Program within 60 days of the effective date of the Order and have a draft ordinance within 6 months of the effective date of the Order, and
 - (2) Demonstrate that there are green streets policies in place and/or commence development of a policy(ies) that specifies the use of green street strategies for transportation corridors within 60 days of the effective date of the Order and have a draft policy within 6 months of the effective date of the Order.
 - (3) Demonstrate in the notification of the intent to develop a Watershed Management Program that Parts VI.C.4.c.i(1) and (2) have been met in greater than 50% of the watershed area.
 - ii. For a Permittee that elects to develop an individual Watershed Management Program, the Permittee shall submit the draft Watershed Management Program no later than 18 months after the effective date of this Order if the following conditions are met:
 - (1) Demonstrate that there is a LID ordinance in place for the Permittee's jurisdiction and/or commence development of a Low Impact Development (LID) ordinance for the Permittee's jurisdiction meeting the requirements of this Order's Planning and Land Development Program within 60 days of the effective date of the Order and have a draft ordinance within 6 months of the effective date of the Order, and
 - (2) Demonstrate that there is a green streets policy in place for the Permittee's jurisdiction and/or commence development of a policy

that specifies the use of green street strategies for transportation corridors within the Permittee's jurisdiction within 60 days of the effective date of the Order and have a draft policy within 6 months of the effective date of the Order.

- (3) Demonstrate in the notification of the intent to develop a Watershed Management Program that Parts VI.C.4.c.ii.(1) and (2) have been met.
- iii. For Permittees that elect not to implement the conditions under Part VI.C.4.c.i. or Part VI.C.4.c.ii., Permittees shall submit the draft Watershed Management Program no later than 12 months after the effective date of this Order.
 - iv. For Permittees that elect to collaborate on the development of an EWMP, Permittees shall submit the work plan for development of the EWMP no later than 18 months after the effective date of this Order, and shall submit the draft program no later than 30 months after the effective date of this Order if the following conditions are met in greater than 50% of the land area in the watershed:
 - (1) Demonstrate that there are LID ordinances in place and/or commence development of a Low Impact Development (LID) ordinance(s) meeting the requirements of this Order's Planning and Land Development Program within 60 days of the effective date of the Order and have a draft ordinance within 6 months of the effective date of the Order, and
 - (2) Demonstrate that there are green streets policies in place and/or commence development of a policy(ies) that specifies the use of green street strategies for transportation corridors within 60 days of the effective date of the Order and have a draft policy within 6 months of the effective date of the Order.
 - (3) Demonstrate in the notification of the intent to develop an EWMP that Parts VI.C.4.c.iv.(1) and (2) have been met in greater than 50% of the watershed area.
- d. Until the Watershed Management Program or EWMP is approved by the Regional Water Board or by the Executive Officer on behalf of the Regional Water Board, Permittees that elect to develop a Watershed Management Program or EWMP shall:
 - i. Continue to implement watershed control measures in their existing storm water management programs, including actions within each of the six categories of minimum control measures consistent with 40 CFR section 122.26(d)(2)(iv),

- ii. Continue to implement watershed control measures to eliminate non-storm water discharges through the MS4 that are a source of pollutants to receiving waters consistent with CWA section 402(p)(3)(B)(ii), and
 - iii. Implement watershed control measures, where possible from existing TMDL implementation plans, to ensure that MS4 discharges achieve compliance with interim and final trash WQBELs and all other final WQBELs and receiving water limitations pursuant to Part VI.E. and set forth in Attachments L through R by the applicable compliance deadlines occurring prior to approval of a WMP or EWMP.
- e. Permittees that do not elect to develop a Watershed Management Program or EWMP, or that do not have an approved WMP or EWMP within 28 or 40 months, respectively, of the effective date of this Order, shall be subject to the baseline requirements in Part VI.D and shall demonstrate compliance with receiving water limitations pursuant to Part V.A. and with applicable interim water quality-based effluent limitations in Part VI.E pursuant to subparts VI.E.2.d.i.(1)-(3).
 - f. Permittees subject to the Middle Santa Ana River Watershed Bacteria Indicator TMDL shall submit a Comprehensive Bacteria Reduction Plan (CBRP) for dry weather to the Regional Water Board Executive Officer no later than nine months after the effective date of this Order. The CBRP shall describe, in detail, the specific actions that have been taken or will be taken to achieve compliance with the dry weather water quality-based effluent limitations and the receiving water limitations for the Middle Santa Ana River Watershed Bacteria Indicator TMDL by December 31, 2015. The CBRP shall also establish a schedule for developing a CBRP to comply with the water quality-based effluent limitations and the receiving water limitations for the Middle Santa Ana River Bacteria TMDL during wet weather by December 31, 2025. The CBRP may be developed in lieu of the Watershed Management Program for MS4 discharges of bacteria within the Middle Santa Ana River Watershed.
 - g. Permittees may request an extension of the deadlines for notification of intent to develop a Watershed Management Program or EWMP, submission of a draft plan, and submission of a final plan. The extension is subject to approval by the Regional Water Board or the Executive Officer. Permittees that are granted an extension for any deadlines for development of the WMP/EWMP shall be subject to the baseline requirements in Part VI.D and shall demonstrate compliance with receiving water limitations pursuant to Part V.A. and with applicable interim water quality-based effluent limitations in Part VI.E pursuant to subparts VI.E.2.d.i.(1)-(3) until the Permittee has an approved WMP/EWMP in place.

5. Program Development

a. Identification of Water Quality Priorities

Permittees shall identify the water quality priorities within each WMA that will be addressed by the Watershed Management Program. At a minimum, these priorities shall include achieving applicable water quality-based effluent limitations and/or receiving water limitations established pursuant to TMDLs, as set forth in Part VI.E and Attachments L through R of this Order.

- i. **Water Quality Characterization.** Each plan shall include an evaluation of existing water quality conditions, including characterization of storm water and non-storm water discharges from the MS4 and receiving water quality, to support identification and prioritization/sequencing of management actions.
- ii. **Water Body-Pollutant Classification.** On the basis of the evaluation of existing water quality conditions, water body-pollutant combinations shall be classified into one of the following three categories:
 - (1) **Category 1 (Highest Priority):** Water body-pollutant combinations for which water quality-based effluent limitations and/or receiving water limitations are established in Part VI.E and Attachments L through R of this Order.
 - (2) **Category 2 (High Priority):** Pollutants for which data indicate water quality impairment in the receiving water according to the State's Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (State Listing Policy) and for which MS4 discharges may be causing or contributing to the impairment.
 - (3) **Category 3 (Medium Priority):** Pollutants for which there are insufficient data to indicate water quality impairment in the receiving water according to the State's Listing Policy, but which exceed applicable receiving water limitations contained in this Order and for which MS4 discharges may be causing or contributing to the exceedance.
- iii. **Source Assessment.** Utilizing existing information, potential sources within the watershed for the water body-pollutant combinations in Categories 1 - 3 shall be identified.
 - (1) Permittees shall identify known and suspected storm water and non-storm water pollutant sources in discharges to the MS4 and from the MS4 to receiving waters and any other stressors related to MS4 discharges causing or contributing to the water quality priorities. The identification of known and suspected sources of the highest water quality priorities shall consider the following:
 - (a) Review of available data, including but not limited to:

- (i) Findings from the Permittees' Illicit Connections and Illicit Discharge Elimination Programs;
 - (ii) Findings from the Permittees' Industrial/Commercial Facilities Programs;
 - (iii) Findings from the Permittees' Development Construction Programs;
 - (iv) Findings from the Permittees' Public Agency Activities Programs;
 - (v) TMDL source investigations;
 - (vi) Watershed model results;
 - (vii) Findings from the Permittees' monitoring programs, including but not limited to TMDL compliance monitoring and receiving water monitoring; and
 - (viii) Any other pertinent data, information, or studies related to pollutant sources and conditions that contribute to the highest water quality priorities.
- (b) Locations of the Permittees' MS4s, including, at a minimum, all MS4 major outfalls and major structural controls for storm water and non-storm water that discharge to receiving waters.
 - (c) Other known and suspected sources of pollutants in non-storm water or storm water discharges from the MS4 to receiving waters within the WMA.
- iv. Prioritization.** Based on the findings of the source assessment, the issues within each watershed shall be prioritized and sequenced. Watershed priorities shall include at a minimum:
- (1) TMDLs
 - (a) Controlling pollutants for which there are water quality-based effluent limitations and/or receiving water limitations with interim or final compliance deadlines within the permit term, or TMDL compliance deadlines that have already passed and limitations have not been achieved.
 - (b) Controlling pollutants for which there are water quality-based effluent limitations and/or receiving water limitations with interim or final compliance deadlines between September 6, 2012 and October 25, 2017.

(2) Other Receiving Water Considerations

- (a) Controlling pollutants for which data indicate impairment or exceedances of receiving water limitations in the receiving water and the findings from the source assessment implicates discharges from the MS4 shall be considered the second highest priority.

b. Selection of Watershed Control Measures

- i. Permittees shall identify strategies, control measures, and BMPs to implement through their individual storm water management programs, and collectively on a watershed scale, with the goal of creating an efficient program to focus individual and collective resources on watershed priorities.

ii. The objectives of the Watershed Control Measures shall include:

- (1) Prevent or eliminate non-storm water discharges to the MS4 that are a source of pollutants from the MS4 to receiving waters.
- (2) Implement pollutant controls necessary to achieve all applicable interim and final water quality-based effluent limitations and/or receiving water limitations pursuant to corresponding compliance schedules.
- (3) Ensure that discharges from the MS4 do not cause or contribute to exceedances of receiving water limitations.

iii. Watershed Control Measures may include:

- (1) Structural and/or non-structural controls and operation and maintenance procedures that are designed to achieve applicable water quality-based effluent limitations, receiving water limitations in Part VI.E and/or Attachments L through R;
- (2) Retrofitting areas of existing development known or suspected to contribute to the highest water quality priorities with regional or sub-regional controls or management measures; and
- (3) Stream and/or habitat rehabilitation or restoration projects where stream and/or habitat rehabilitation or restoration are necessary for, or will contribute to demonstrable improvements in the physical, chemical, and biological receiving water conditions and restoration and/or protection of water quality standards in receiving waters.

iv. The following provisions of this Order shall be incorporated as part of the Watershed Management Program:

(1) Minimum Control Measures.

(a) Permittees shall assess the minimum control measures (MCMs) as defined in Part VI.D.4 to Part VI.D.10 of this Order to identify opportunities for focusing resources on the high priority issues in each watershed. For each of the following minimum control measures, Permittees shall identify potential modifications that will address watershed priorities:

(i) Development Construction Program

(ii) Industrial/Commercial Facilities Program

(iii) Illicit Connection and Illicit Discharges Detection and Elimination Program

(iv) Public Agency Activities Program

(v) Public Information and Participation Program

(b) At a minimum, the Watershed Management Program shall include management programs consistent with 40 CFR section 122.26(d)(2)(iv)(A)-(D).

(c) If the Permittee(s) elects to eliminate a control measure identified in Parts VI.D.4, VI.D.5, VI.D.6 and VI.D.8 to VI.D.10 because that specific control measure is not applicable to the Permittee(s), the Permittee(s) shall provide a justification for its elimination. The Planning and Land Development Program is not eligible for elimination.

(d) Such customized actions, once approved as part of the Watershed Management Program, shall replace in part or in whole the requirements in Parts VI.D.4, VI.D.5, VI.D.6 and VI.D.8 to VI.D.10 for participating Permittees.

(2) Non-Storm Water Discharge Measures. Where Permittees identify non-storm water discharges from the MS4 as a source of pollutants that cause or contribute to exceedance of receiving water limitations, the Watershed Control Measures shall include strategies, control measures, and/or BMPs that must be implemented to effectively eliminate the source of pollutants consistent with Parts III.A and VI.D.10. These may include measures to prohibit the non-storm water discharge to the MS4, additional BMPs to reduce pollutants in the non-storm water discharge or conveyed by the non-storm water discharge,

diversion to a sanitary sewer for treatment, or strategies to require the non-storm water discharge to be separately regulated under a general NPDES permit.

- (3) TMDL Control Measures. Permittees shall compile control measures that have been identified in TMDLs and corresponding implementation plans. Permittees shall identify those control measures to be modified, if any, to most effectively address TMDL requirements within the watershed. If not sufficiently identified in previous documents, or if implementation plans have not yet been developed (e.g., USEPA established TMDLs), the Permittees shall evaluate and identify control measures to achieve water quality-based effluent limitations and/or receiving water limitations established in this Order pursuant to these TMDLs.
 - (a) TMDL control measures shall include where necessary control measures to address both storm water and non-storm water discharges from the MS4.
 - (b) TMDL control measures may include baseline or customized activities covered under the general MCM categories in Part VI.D as well as BMPs and other control measures covered under the non-storm water discharge provisions of Part III.A of this Order.
 - (c) The WMP shall include, at a minimum, those actions that will be implemented during the permit term to achieve interim and/or final water quality-based effluent limitations and/or receiving water limitations with compliance deadlines within the permit term.
- (4) Each plan shall include the following components:
 - (a) Identification of specific structural controls and non-structural best management practices, including operational source control and pollution prevention, and any other actions or programs to achieve all water quality-based effluent limitations and receiving water limitations contained in this Part VI.E and Attachments L through R to which the Permittee(s) is subject;
 - (b) For each structural control and non-structural best management practice, the number, type, and location(s) and/or frequency of implementation;
 - (c) For any pollution prevention measures, the nature, scope, and timing of implementation;
 - (d) For each structural control and non-structural best management practice, interim milestones and dates for achievement to ensure that TMDL compliance deadlines will be met; and

- (e) The plan shall clearly identify the responsibilities of each participating Permittee for implementation of watershed control measures.
- (5) Permittees shall conduct a Reasonable Assurance Analysis for each water body-pollutant combination addressed by the Watershed Management Program. A Reasonable Assurance Analysis (RAA) shall be quantitative and performed using a peer-reviewed model in the public domain. Models to be considered for the RAA, without exclusion, are the Watershed Management Modeling System (WMMS), Hydrologic Simulation Program-FORTRAN (HSPF), and the Structural BMP Prioritization and Analysis Tool (SBPAT). The RAA shall commence with assembly of all available, relevant subwatershed data collected within the last 10 years, including land use and pollutant loading data, establishment of quality assurance/quality control (QA/QC) criteria, QA/QC checks of the data, and identification of the data set meeting the criteria for use in the analysis. Data on performance of watershed control measures needed as model input shall be drawn only from peer-reviewed sources. These data shall be statistically analyzed to determine the best estimate of performance and the confidence limits on that estimate for the pollutants to be evaluated. The objective of the RAA shall be to demonstrate the ability of Watershed Management Programs and EWMPs to ensure that Permittees' MS4 discharges achieve applicable water quality based effluent limitations and do not cause or contribute to exceedances of receiving water limitations.
- (a) Permittees shall demonstrate using the RAA that the activities and control measures identified in the Watershed Control Measures will achieve applicable water quality-based effluent limitations and/or receiving water limitations in Attachments L through R with compliance deadlines during the permit term.
 - (b) Where the TMDL Provisions in Part VI.E and Attachments L through R do not include interim or final water quality-based effluent limitations and/or receiving water limitations with compliance deadlines during the permit term, Permittees shall identify interim milestones and dates for their achievement to ensure adequate progress toward achieving interim and final water quality-based effluent limitations and/or receiving water limitations with deadlines beyond the permit term.
 - (c) For water body-pollutant combinations not addressed by TMDLs, Permittees shall demonstrate using the RAA that the activities and control measures identified in the Watershed Control Measures will achieve applicable receiving water limitations as soon as possible.

- (6) Permittees shall provide documentation that they have the necessary legal authority to implement the Watershed Control Measures identified in the plan, or that other legal authority exists to compel implementation of the Watershed Control Measures.

c. Compliance Schedules

Permittees shall incorporate compliance schedules in Attachments L through R into the plan and, where necessary develop interim milestones and dates for their achievement. Compliance schedules and interim milestones and dates for their achievement shall be used to measure progress towards addressing the highest water quality priorities and achieving applicable water quality-based effluent limitations and/or receiving water limitations.

- i. Schedules must be adequate for measuring progress on a watershed scale once every two years.
- ii. Schedules must be developed for both the strategies, control measures and BMPs implemented by each Permittee within its jurisdiction and for those that will be implemented by multiple Permittees on a watershed scale.
- iii. Schedules shall incorporate the following:
 - (1) Compliance deadlines occurring within the permit term for all applicable interim and/or final water quality-based effluent limitations and/or receiving water limitations in Part VI.E and Attachments L through R of this Order,
 - (2) Interim milestones and dates for their achievement within the permit term for any applicable final water quality-based effluent limitation and/or receiving water limitation in Part VI.E and Attachments L through R, where deadlines within the permit term are not otherwise specified.
 - (3) For watershed priorities related to addressing exceedances of receiving water limitations in Part V.A and not otherwise addressed by Part VI.E:
 - (a) Milestones based on measureable criteria or indicators, to be achieved in the receiving waters and/or MS4 discharges,
 - (b) A schedule with dates for achieving the milestones, and
 - (c) A final date for achieving the receiving water limitations as soon as possible, consistent with Parts VI.C.2.a.ii.(4) & VI.C.2.a.iii.(2)(c).

- (d) The milestones and implementation schedule in (a)-(c) fulfill the requirements in Part V.A.3.a to prepare an Integrated Monitoring Compliance Report.

6. Watershed Management Program Implementation

Each Permittee shall begin implementing the Watershed Management Program or EWMP immediately upon approval of the plan by the Regional Water Board or the Executive Officer on behalf of the Regional Water Board.

- a. Permittees may request an extension of deadlines for achievement of interim milestones and final compliance deadlines established pursuant to Part VI.C.5.c.iii., with the exception of those final compliance deadlines established in a TMDL. Permittees shall provide requests in writing at least 90 days prior to the deadline and shall include in the request the justification for the extension. Extensions must be affirmatively approved by the Regional Water Board Executive Officer, notwithstanding Part VI.C.8.a.iii.
- b. Where a Permittee believes that additional time to comply with a final receiving water limitation compliance deadline set within a WMP/EWMP is necessary, and the Permittee fails to timely request or is not granted an extension by the Executive Officer, a Permittee may, no less than 90 days prior to the final compliance deadline, request a time schedule order pursuant to California Water Code section 13300 for the Regional Water Board's consideration.

7. Integrated Watershed Monitoring and Assessment

Permittees in each WMA shall develop an integrated monitoring program as set forth in Part IV of the MRP (Attachment E) or implement a customized monitoring program with the primary objective of allowing for the customization of the outfall monitoring program (Parts VIII and IX) in conjunction with an approved Watershed Management Program or EWMP, as defined below. Each monitoring program shall assess progress toward achieving the water quality-based effluent limitations and/or receiving water limitations per the compliance schedules, and progress toward addressing the water quality priorities for each WMA. The customized monitoring program shall be submitted as part of the Watershed Management Program, or where Permittees elect to develop an EWMP, shall be submitted within 18 months of the effective date of this Order. If pursuing a customized monitoring program, the Permittee(s) shall provide sufficient justification for each element of the program that differs from the monitoring program requirements as set forth in Attachment E. Monitoring programs shall be subject to approval by the Executive Officer following a public comment period. The customized monitoring program shall be designed to address the Primary Objectives detailed in Attachment E, Part II.A and shall include the following program elements:

- Receiving Water Monitoring
- Storm Water Outfall Monitoring
- Non-Storm Water Outfall Monitoring
- New Development/Re-Development Effectiveness Tracking
- Regional Studies

8. Adaptive Management Process

a. Watershed Management Program Adaptive Management Process

- i. Permittees in each WMA shall implement an adaptive management process, every two years from the date of program approval, adapting the Watershed Management Program or EWMP to become more effective, based on, but not limited to a consideration of the following:
 - (1) Progress toward achieving interim and/or final water quality-based effluent limitations and/or receiving water limitations in Part VI.E and Attachments L through R, according to established compliance schedules;
 - (2) Progress toward achieving improved water quality in MS4 discharges and achieving receiving water limitations through implementation of the watershed control measures based on an evaluation of outfall-based monitoring data and receiving water monitoring data;
 - (3) Achievement of interim milestones;
 - (4) Re-evaluation of the water quality priorities identified for the WMA based on more recent water quality data for discharges from the MS4 and the receiving water(s) and a reassessment of sources of pollutants in MS4 discharges;
 - (5) Availability of new information and data from sources other than the Permittees' monitoring program(s) within the WMA that informs the effectiveness of the actions implemented by the Permittees;
 - (6) Regional Water Board recommendations; and
 - (7) Recommendations for modifications to the Watershed Management Program solicited through a public participation process.
- ii. Based on the results of the adaptive management process, Permittees shall report any modifications, including where appropriate new compliance deadlines and interim milestones, with the exception of those compliance deadlines established in a TMDL, necessary to improve the effectiveness of

the Watershed Management Program or EWMP in the Annual Report, as required pursuant to Part XVIII.A.6 of the MRP (Attachment E), and as part of the Report of Waste Discharge (ROWD) required pursuant to Part II.B of Attachment D – Standard Provisions.

(1) The adaptive management process fulfills the requirements in Part V.A.4 to address continuing exceedances of receiving water limitations.

iii. Permittees shall implement any modifications to the Watershed Management Program or EWMP upon approval by the Regional Water Board Executive Officer or within 60 days of submittal if the Regional Water Board Executive Officer expresses no objections.

iv. Permittees shall report the following information to the Regional Water Board concurrently with the reporting for the adaptive management process:

(1) On-the-ground structural control measures completed;

(2) Non-structural control measures completed;

(3) Monitoring data that evaluates the effectiveness of implemented control measures in improving water quality;

(4) Comparison of the effectiveness of the control measures to the results projected by the RAA;

(5) Comparison of control measures completed to date with control measures projected to be completed to date pursuant to the Watershed Management Program or EWMP;

(6) Control measures proposed to be completed in the next two years pursuant to the Watershed Management Program or EWMP and the schedule for completion of those control measures;

(7) Status of funding and implementation for control measures proposed to be completed in the next two years.

b. Watershed Management Program Resubmittal Process

i. In addition to adapting the Watershed Management Program or EWMP every two years as described in Part VI.C.8.a., Permittees must submit an updated Watershed Management Program or EWMP with an updated Reasonable Assurance Analysis by June 30, 2021, or sooner as directed by the Regional Water Board Executive Officer or as deemed necessary by Permittees through the Adaptive Management Process, for review and approval by the Regional Water Board Executive Officer. The updated Reasonable Assurance Analysis must incorporate both water quality data and control measure performance data, and any other information informing the two-year adaptive management process, gathered through December 31, 2020. As appropriate,

the Permittees must consider any new numeric analyses or other methods developed for the reasonable assurance analysis. The updated Watershed Management Program or EWMP must comply with all provisions in Part VI.C. The Regional Water Board Executive Officer will allow a 60-day public review and comment period with an option to request a hearing. The Regional Water Board Executive Officer must approve or disapprove the updated Watershed Management Program or EWMP by June 30, 2022. The Executive Officer may waive the requirement of this provision, following a 60-day public review and comment period, if a Permittee demonstrates through water quality monitoring data that the approved Watershed Management Program or EWMP is meeting appropriate water quality targets in accordance with established deadlines.

D. Storm Water Management Program Minimum Control Measures

1. General Requirements

- a. Each Permittee shall implement the requirements in Parts VI.D.4 through VI.D.10 below, or may in lieu of the requirements in Parts VI.D.4 through VI.D.10 implement customized actions within each of these general categories of control measures as set forth in an approved Watershed Management Program per Part VI.C. Implementation shall be consistent with the requirements of 40 CFR § 122.26(d)(2)(iv).
- b. Timelines for Implementation
 - i. Unless otherwise noted in Part VI.D, each Permittee that does not elect to develop a Watershed Management Program or EWMP per Part VI.C shall implement the requirements contained in Part VI.D within 6 months after the effective date of this Order. In the interim, a Permittee shall continue to implement its existing storm water management program, including actions within each of the six categories of minimum control measures consistent with 40 CFR section 122.26(d)(2)(iv).
 - ii. Permittees that elect to develop a Watershed Management Program or EWMP shall continue to implement their existing storm water management programs, including actions within each of the six categories of minimum control measures consistent with 40 CFR section 122.26(d)(2)(iv) until the Watershed Management Program or EWMP is approved by the Regional Water Board Executive Officer.

2. Progressive Enforcement and Interagency Coordination

- a. Each Permittee shall develop and implement a Progressive Enforcement Policy to ensure that (1) regulated Industrial/Commercial facilities, (2) construction sites, (3) development and redevelopment sites with post-construction controls, and (4)

illicit discharges are each brought into compliance with all storm water and non-storm water requirements within a reasonable time period as specified below.

i. Follow-up Inspections

In the event that a Permittee determines, based on an inspection or illicit discharge investigation conducted, that a facility or site operator has failed to adequately implement all necessary BMPs, that Permittee shall take progressive enforcement actions which, at a minimum, shall include a follow-up inspection within 4 weeks from the date of the initial inspection and/or investigation.

ii. Enforcement Action

In the event that a Permittee determines that a facility or site operator has failed to adequately implement BMPs after a follow-up inspection, that Permittee shall take enforcement action as established through authority in its municipal code and ordinances, through the judicial system, or refer the case to the Regional Water Board, per the Interagency Coordination provisions below.

iii. Records Retention

Each Permittee shall maintain records, per their existing record retention policies, and make them available on request to the Regional Water Board, including inspection reports, warning letters, notices of violations, and other enforcement records, demonstrating a good faith effort to bring facilities into compliance.

iv. Referral of Violations of Municipal Ordinances and California Water Code § 13260

A Permittee may refer a violation(s) of its municipal storm water ordinances and/or California Water Code section 13260 by Industrial and Commercial facilities and construction site operators to the Regional Water Board provided that the Permittee has made a good faith effort of applying its Progressive Enforcement Policy to achieve compliance with its own ordinances. At a minimum, a Permittee's good faith effort must be documented with:

- (1) Two follow-up inspections, and
- (2) Two warning letters or notices of violation.

v. Referral of Violations of the Industrial and Construction General Permits, including Requirements to File a Notice of Intent or No Exposure Certification

For those facilities or site operators in violation of municipal storm water ordinances and subject to the Industrial and/or Construction General Permits, Permittees may escalate referral of such violations to the Regional Water Board (promptly via telephone or electronically) after one inspection and one written notice of violation (copied to the Regional Water Board) to the facility

or site operator regarding the violation. In making such referrals, Permittees shall include, at a minimum, the following documentation:

- (1) Name of the facility or site,
- (2) Operator of the facility or site,
- (3) Owner of the facility or site,
- (4) WDID Number (if applicable),
- (5) Records of communication with the facility/site operator regarding the violation, which shall include at least one inspection report,
- (6) The written notice of violation (copied to the Regional Water Board),
- (7) For industrial sites, the industrial activity being conducted at the facility that is subject to the Industrial General Permit, and
- (8) For construction sites, site acreage and Risk Factor rating.

b. Investigation of Complaints Transmitted by the Regional Water Board Staff

Each Permittee shall initiate, within one business day,²² investigation of complaints from facilities within its jurisdiction. The initial investigation shall include, at a minimum, a limited inspection of the facility to confirm validity of the complaint and to determine if the facility is in compliance with municipal storm water ordinances and, if necessary, to oversee corrective action.

c. Assistance with Regional Water Board Enforcement Actions

As directed by the Regional Water Board Executive Officer, Permittees shall assist Regional Water Board enforcement actions by:

- i. Assisting in identification of current owners, operators, and lessees of properties and sites.
- ii. Providing staff, when available, for joint inspections with Regional Water Board inspectors.
- iii. Appearing to testify as witnesses in Regional Water Board enforcement hearings.
- iv. Providing copies of inspection reports and documentation demonstrating application of its Progressive Enforcement Policy.

3. Modifications/Revisions

- a. Each Permittee shall modify its storm water management programs, protocols, practices, and municipal codes to make them consistent with the requirements in this Order.

²² Permittees may comply with the Permit by taking initial steps (such as logging, prioritizing, and tasking) to “initiate” the investigation within that one business day. However, the Regional Water Board would expect that the initial investigation, including a site visit, to occur within four business days.

4. Requirements Applicable to the Los Angeles County Flood Control District

a. Public Information and Participation Program (PIPP)

i. General

- (1) The LACFCD shall participate in a regional Public Information and Participation Program (PIPP) or alternatively, shall implement its own PIPP that includes the requirements listed in this part. The LACFCD shall collaborate, as necessary, with other Permittees to implement PIPP requirements. The objectives of the PIPP are as follows:
 - (a) To measurably increase the knowledge of the target audience about the MS4, the adverse impacts of storm water pollution on receiving waters and potential solutions to mitigate the impacts.
 - (b) To measurably change the waste disposal and storm water pollution generation behavior of target audiences by encouraging the implementation of appropriate alternatives by providing information to the public.
 - (c) To involve and engage a diversity of socio-economic groups and ethnic communities in Los Angeles County to participate in mitigating the impacts of stormwater pollution.

ii. PIPP Implementation

- (1) The LACFCD shall implement the PIPP requirements listed in this Part VI.D.5 using one or more of the following approaches:
 - (a) By participating in a collaborative PIPP covering the entire service area of the Los Angeles County Flood Control District,
 - (b) By participating in one or more Watershed Group sponsored PIPPs, and/or
 - (c) Individually within the service area of the Los Angeles County Flood Control District.

- (2) If the LACFCD participates in a collaborative District-wide or Watershed Group PIPP, the LACFCD shall provide the contact information for their appropriate staff responsible for storm water public education activities to the designated PIPP coordinator and contact information changes no later than 30 days after a change occurs.

iii. Public Participation

- (1) The LACFCD, in collaboration with the County of Los Angeles, shall continue to maintain the countywide hotline (888-CLEAN-LA) for public reporting of clogged catch basin inlets and illicit discharges/dumping, faded or missing catch basin labels, and general storm water management information.
 - (a) The LACFCD shall include the reporting information, updated when necessary, in public information, and the government pages of the telephone book, as they are developed or published.
 - (b) The LACFCD, in collaboration with the County of Los Angeles, shall continue to maintain the www.888cleanla.com website.

iv. Residential Outreach Program

- (1) Working in conjunction with a District-wide or Watershed Group sponsored PIPP or individually, the LACFCD shall implement the following activities:
 - (a) Conduct storm water pollution prevention public service announcements and advertising campaigns
 - (b) Facilitate the dissemination of public education materials including, at a minimum, information on the proper handling (i.e., disposal, storage and/or use) of:
 - (i) Vehicle waste fluids
 - (ii) Household waste materials (i.e., trash and household hazardous waste)
 - (iii) Construction waste materials
 - (iv) Pesticides and fertilizers (including integrated pest management practices [IPM] to promote reduced use of pesticides),
 - (v) Green waste (including lawn clippings and leaves)
 - (vi) Animal wastes
 - (c) Facilitate the dissemination of activity-specific storm water pollution prevention public education materials, at a minimum, for the following points of purchase:
 - (i) Automotive parts stores

- (ii) Home improvement centers / lumber yards / hardware stores / paint stores
- (iii) Landscaping / gardening centers
- (iv) Pet shops / feed stores
- (d) Maintain a storm water website, which shall include educational material and opportunities for the public to participate in storm water pollution prevention and clean-up activities listed in Part VI.D.5.
- (e) When implementing activities in (a)-(d), the LACFCD shall use effective strategies to educate and involve ethnic communities in storm water pollution prevention through culturally effective methods.

b. Industrial/Commercial Facilities Program

If the LACFCD operates, or has authority over, any facility(ies) identified in Part VI.D.6.b, LACFCD shall comply with the requirements in Part VI.D.6 for those facilities.

c. Public Agency Activities Program

i. General

- (1) The LACFCD shall implement a Public Agency Activities Program to minimize storm water pollution impacts from LACFCD-owned or operated facilities and activities. Requirements for Public Agency Facilities and Activities consist of the following components:
 - (a) Public Construction Activities Management.
 - (b) Public Facility Inventory
 - (c) Public Facility and Activity Management
 - (d) Vehicle and Equipment Washing
 - (e) Landscape and Recreational Facilities Management
 - (f) Storm Drain Operation and Maintenance
 - (g) Parking Facilities Management
 - (h) Emergency Procedures
 - (i) Employee and Contractor Training

ii. Public Construction Activities Management

- (1) The LACFCD shall implement and comply with the Planning and Land Development Program requirements in Part VI.D.7 of this Order at LACFCD-owned or operated public construction projects that are categorized under the project types identified in Part VI.D.7 of this Order.
- (2) The LACFCD shall implement and comply with the appropriate Development Construction Program requirements in Part VI.D.8 of this Order at LACFCD-owned or operated construction projects as applicable.
- (3) For LACFCD-owned or operated projects that disturb less than one acre of soil, the LACFCD shall require the implementation of an effective combination of erosion and sediment control BMPs from Table 13 (see Construction Development Program).
- (4) The LACFCD shall obtain separate coverage under the Construction General Permit for all LACFCD-owned or operated construction sites that require coverage.

iii. Public Facility Inventory

- (1) The LACFCD shall maintain an updated watershed-based inventory and map of all LACFCD-owned or operated facilities that are potential sources of storm water pollution. The incorporation of facility information into a GIS is recommended. Sources to be tracked include but are not limited to the following:
 - (a) Chemical storage facilities
 - (b) Equipment storage and maintenance facilities (including landscape maintenance-related operations)
 - (c) Fueling or fuel storage facilities
 - (d) Materials storage yards
 - (e) Pesticide storage facilities
 - (f) LACFCD buildings
 - (g) LACFCD vehicle storage and maintenance yards
 - (h) All other LACFCD-owned or operated facilities or activities that the LACFCD determines may contribute a substantial pollutant load to the MS4.
- (2) The LACFCD shall include the following minimum fields of information for each LACFCD-owned or operated facility in its watershed-based inventory and map.
 - (a) Name of facility
 - (b) Name of facility manager and contact information

- (c) Address of facility (physical and mailing)
 - (d) A narrative description of activities performed and principal products used at each facility and status of exposure to storm water.
 - (e) Coverage under the Industrial General Permit or other individual or general NPDES permits or any applicable waiver issued by the Regional or State Water Board pertaining to storm water discharges.
- (3) The LACFCD shall update its inventory and map once during the Permit term. The update shall be accomplished through a collection of new information obtained through field activities.

iv. Public Agency Facility and Activity Management

- (1) The LACFCD shall obtain separate coverage under the Industrial General Permit for all LACFCD-owned or operated facilities where industrial activities are conducted that require coverage under the Industrial General Permit.
- (2) The LACFCD shall implement the following measures for flood management projects:
 - (a) Develop procedures to assess the impacts of flood management projects on the water quality of receiving waterbodies; and
 - (b) Evaluate existing structural flood control facilities during the planning phases of major maintenance or rehabilitation projects to determine if retrofitting the facility to provide additional pollutant removal from storm water is feasible.

- (3) The LACFCD shall implement and maintain the general and activity-specific BMPs listed in Table 18 (BMPs for Public Agency Facilities and Activities) or an equivalent set of BMPs when such activities occur at LACFCD-owned or operated facilities and field activities (e.g., project sites) including but not limited to the facility types listed in Part VI.D.9.c above, and at any area that includes the activities described in Table 18, or that have the potential to discharge pollutants in storm water.
- (4) Any contractors hired by the LACFCD to conduct Public Agency Activities shall be contractually required to implement and maintain the general and activity specific BMPs listed in Table 18 or an equivalent set of BMPs. The LACFCD shall conduct oversight of contractor activities to ensure these BMPs are implemented and maintained.
- (5) Effective source control BMPs for the activities listed in Table 18 shall be implemented at LACFCD-owned or operated facilities, unless the pollutant generating activity does not occur. The LACFCD shall require implementation of additional BMPs where storm water from the MS4 discharges to a significant ecological area (SEA, see Attachment A for definition), a water body subject to TMDL Provisions in Part VI.E, or a CWA section 303(d) listed water body (see Part VI.E below). Likewise, for those BMPs that are not adequately protective of water quality standards, the LACFCD shall implement additional site-specific controls.

v. Vehicle and Equipment Washing

- (1) The LACFCD shall implement and maintain the activity specific BMPs listed in Table 18 (BMPs for Public Agency Facilities and Activities) or an equivalent set of BMPs for all fixed vehicle and equipment washing areas;
- (2) The LACFCD shall prevent discharges of wash waters from vehicle and equipment washing to the MS4 by implementing any of the following measures at existing facilities with vehicle or equipment wash areas:
 - (a) Self-contain, and haul off for disposal; or
 - (b) Equip with a clarifier or an alternative pre-treatment device and plumb to the sanitary sewer in accordance with applicable waste water provider regulations

- (3) The LACFCD shall ensure that any LACFCD facilities constructed, redeveloped, or replaced shall not discharge wastewater from vehicle and equipment wash areas to the MS4 by plumbing all areas to the sanitary sewer in accordance with applicable waste water provider regulations, or self-containing all waste water/ wash water and hauling to a point of legal disposal.

vi. Landscape and Recreational Facilities Management

- (1) The LACFCD shall implement and maintain the activity specific BMPs listed in Table 18 (BMPs for Public Agency Facilities and Activities) or an equivalent set of BMPs for all its public right-of-ways, flood control facilities and open channels and reservoirs, and landscape and recreational facilities and activities.
- (2) The LACFCD shall implement an IPM program that includes the following:
 - (a) Pesticides are used only if monitoring indicates they are needed, and pesticides are applied according to applicable permits and established guidelines.
 - (b) Treatments are made with the goal of removing only the target organism.
 - (c) Pest controls are selected and applied in a manner that minimizes risks to human health, beneficial non-target organisms, and the environment.
 - (d) The use of pesticides, including Organophosphates and Pyrethroids, does not threaten water quality.
 - (e) Partner, as appropriate, with other agencies and organizations to encourage the use of IPM.
 - (f) Adopt and verifiably implement policies, procedures, and/ or ordinances requiring the minimization of pesticide use and encouraging the use of IPM techniques (including beneficial insects) for Public Agency Facilities and Activities.
 - (g) Policies, procedures, and ordinances shall include a schedule to reduce the use of pesticides that cause impairment of surface waters by implementing the following procedures:
 - (i) Prepare and annually update an inventory of pesticides used by all internal departments, divisions, and other operational units.
 - (ii) Quantify pesticide use by staff and hired contractors.
 - (iii) Demonstrate implementation of IPM alternatives where feasible to reduce pesticide use.

- (3) The LACFCD shall implement the following requirements:
 - (a) Use a standardized protocol for the routine and non-routine application of pesticides (including pre-emergents), and fertilizers.
 - (b) Ensure there is no application of pesticides or fertilizers (1) when two or more consecutive days with greater than 50% chance of rainfall are predicted by NOAA, (2) within 48 hours of a ½-inch rain event, or (3) when water is flowing off the area where the application is to occur. This requirement does not apply to the application of aquatic pesticides or pesticides which require water for activation.
 - (c) Ensure that no banned or unregistered pesticides are stored or applied.
 - (d) Ensure that all staff applying pesticides are certified in the appropriate category by the California Department of Pesticide Regulation, or are under the direct supervision of a pesticide applicator certified in the appropriate category.
 - (e) Implement procedures to encourage the retention and planting of native vegetation to reduce water, pesticide and fertilizer needs; and
 - (f) Store pesticides and fertilizers indoors or under cover on paved surfaces, or use secondary containment.
 - (i) Reduce the use, storage, and handling of hazardous materials to reduce the potential for spills.
 - (ii) Regularly inspect storage areas.

vii. Storm Drain Operation and Management

- (1) The LACFCD shall implement and maintain the activity specific BMPs listed in Table 18 or equivalent set of BMPs for storm drain operation and maintenance.
- (2) Ensure that all the material removed from the MS4 does not reenter the system. Solid material shall be dewatered in a contained area and liquid material shall be disposed in accordance with any of the following measures:
 - (a) Self-contain, and haul off for legal disposal; or
 - (b) Equip with a clarifier or an alternative pre-treatment device; and plumb to the sanitary sewer in accordance with applicable waste water provider regulations.
- (3) Catch Basin Cleaning
 - (a) In areas that are not subject to a trash TMDL, the LACFCD shall determine priority areas and shall update its map or list of catch basins with their GPS coordinates and priority:

Priority A: Catch basins that are designated as consistently generating the highest volumes of trash and/or debris.

Priority B: Catch basins that are designated as consistently generating moderate volumes of trash and/or debris.

Priority C: Catch basins that are designated as generating low volumes of trash and/or debris.

The map or list shall contain the rationale or data to support priority designations.

- (b) In areas not subject to a trash TMDL, the LACFCD shall inspect its catch basins according to the following schedule:

Priority A: A minimum of 3 times during the wet season (October 1 through April 15) and once during the dry season every year.

Priority B: A minimum of once during the wet season and once during the dry season every year.

Priority C: A minimum of once per year.

Catch basins shall be cleaned as necessary on the basis of inspections. At a minimum, LACFCD shall ensure that any catch basin that is determined to be at least 25% full of trash shall be cleaned out. LACFCD shall maintain inspection and cleaning records for Regional Water Board review.

- (c) In areas that are subject to a trash TMDL, the subject Permittees shall implement the applicable provisions in Part VI.E.

(4) Catch Basin Labels and Open Channel Signage

(a) LACFCD shall label all catch basin inlets that they own with a legible “no dumping” message.

(b) The LACFCD shall inspect the legibility of the catch basin stencil or label nearest the inlet prior to the wet season every year.

(c) The LACFCD shall record all catch basins with illegible stencils and re-stencil or re-label within 180 days of inspection.

(d) The LACFCD shall post signs, referencing local code(s) that prohibit littering and illegal dumping, at designated public access points to open channels, creeks, urban lakes, and other relevant waterbodies.

(5) Open Channel Maintenance

The LACFCD shall implement a program for Open Channel Maintenance that includes the following:

- (a) Visual monitoring of LACFCD owned open channels and other drainage structures for trash and debris at least annually;
 - (b) Removal of trash and debris from open channels a minimum of once per year before the wet season;
 - (c) Elimination of the discharge of contaminants produced by storm drain maintenance and clean outs; and
 - (d) Proper disposal of debris and trash removed during open channel maintenance.
- (6) Infiltration from Sanitary Sewer to MS4/Preventive Maintenance
- (a) The LACFCD shall implement controls and measures to prevent and eliminate infiltration of seepage from sanitary sewers to its MS4 thorough routine preventive maintenance of its MS4.
 - (b) The LACFCD shall implement controls to limit infiltration of seepage from sanitary sewers to its MS4 where necessary. Such controls must include:
 - (i) Adequate plan checking for construction and new development;
 - (ii) Incident response training for its employees that identify sanitary sewer spills;
 - (iii) Code enforcement inspections;
 - (iv) MS4 maintenance and inspections;
 - (v) Interagency coordination with sewer agencies; and
 - (vi) Proper education of its staff and contractors conducting field operations on its MS4.
- (7) LACFCD-Owned Treatment Control BMPs
- (a) The LACFCD shall implement an inspection and maintenance program for all LACFCD-owned treatment control BMPs, including post-construction treatment control BMPs.
 - (b) The LACFCD shall ensure proper operation of all its treatment control BMPs and maintain them as necessary for proper operation, including all post-construction treatment control BMPs.
 - (c) Any residual water produced by a treatment control BMP and not being internal to the BMP performance when being maintained shall be:
 - (i) Hauled away and legally disposed of; or
 - (ii) Applied to the land without runoff; or
 - (iii) Discharged to the sanitary sewer system (with permits or authorization); or

- (iv) Treated or filtered to remove bacteria, sediments, nutrients, and meet the limitations set in Table 19 (Discharge Limitations for Dewatering Treatment BMPs), prior to discharge to the MS4.

viii. Parking Facilities Management

LACFCD-owned parking lots exposed to storm water shall be kept clear of debris and excessive oil buildup and cleaned no less than 2 times per month and/or inspected no less than 2 times per month to determine if cleaning is necessary. In no case shall a LACFCD-owned parking lot be cleaned less than once a month.

ix. Emergency Procedures

The LACFCD may conduct repairs and rehabilitation of essential public service systems and infrastructure in emergency situations with a self-waiver of the provisions of this Order as follows:

- (1) The LACFCD shall abide by all other regulatory requirements, including notification to other agencies as appropriate.
- (2) Where the self-waiver has been invoked, the LACFCD shall notify the Regional Water Board Executive Officer of the occurrence of the emergency no later than 30 business days after the situation of emergency has passed.
- (3) Minor repairs of essential public service systems and infrastructure in emergency situations (that can be completed in less than one week) are not subject to the notification provisions. Appropriate BMPs to reduce the threat to water quality shall be implemented.

x. Employee and Contractor Training

- (1) The LACFCD shall, no later than one year after Order adoption and annually thereafter before June 30, train all of their employees and contractors in targeted positions (whose interactions, jobs, and activities affect storm water quality) on the requirements of the overall storm water management program to:
 - (a) Promote a clear understanding of the potential for activities to pollute storm water.
 - (b) Identify opportunities to require, implement, and maintain appropriate BMPs in their line of work.

- (2) The LACFCD shall, no later than one year after Order adoption and annually thereafter before June 30, train all of their employees and contractors who use or have the potential to use pesticides or fertilizers (whether or not they normally apply these as part of their work). Outside contractors can self-certify, providing they certify they have received all applicable training required in the Order and have documentation to that effect. Training programs shall address:
 - (a) The potential for pesticide-related surface water toxicity.
 - (b) Proper use, handling, and disposal of pesticides.
 - (c) Least toxic methods of pest prevention and control, including IPM.
 - (d) Reduction of pesticide use.
- (3) The LACFCD shall require appropriate training of contractor employees in targeted positions as described above.

d. Illicit Connections and Illicit Discharge Elimination Program

i. General

- (1) The LACFCD shall continue to implement an Illicit Connection and Illicit Discharge (IC/ID) Program to detect, investigate, and eliminate IC/IDs to its MS4. The IC/ID Program must be implemented in accordance with the requirements and performance measures specified in the following subsections.
- (2) As stated in Part VI.A.2 of this Order, each Permittee must have adequate legal authority to prohibit IC/IDs to the MS4 and enable enforcement capabilities to eliminate the source of IC/IDs.
- (3) The LACFCD's IC/ID Program shall consist of at least the following major program components:
 - (a) An up-to-date map of LACFCD's MS4
 - (b) Procedures for conducting source investigations for IC/IDs
 - (c) Procedures for eliminating the source of IC/IDs
 - (d) Procedures for public reporting of illicit discharges
 - (e) Spill response plan
 - (f) IC/IDs education and training for LACFCD staff

ii. MS4 Mapping

- (1) The LACFCD shall maintain an up-to-date and accurate electronic map of its MS4. If possible, the map should be maintained within a GIS. The map must show the following, at a minimum:
 - (a) Within one year of Permit adoption, the location of outfalls owned and maintained by the LACFCD. Each outfall shall be given an alphanumeric identifier, which must be noted on the map. Each mapped outfall shall be located using a geographic positioning system (GPS). Photographs of the major outfalls shall be taken to provide baseline information to track operation and maintenance needs over time.
 - (b) The location and length of open channels and underground storm drain pipes with a diameter of 36 inches or greater that are owned and operated by the LACFCD.
 - (c) The location and name of all waterbodies receiving discharges from those MS4 major outfalls identified in (a).
 - (d) All LACFCD's dry weather diversions installed within the MS4 to direct flows from the MS4 to the sanitary sewer system, including the owner and operator of each diversion.
 - (e) By the end of the Permit term, map all known permitted and documented connections to its MS4 system.
- (2) The MS4 map shall be updated as necessary.

iii. Illicit Discharge Source Investigation and Elimination

- (1) The LACFCD shall develop written procedures for conducting investigations to prioritize and identify the source of all illicit discharges to its MS4, including procedures to eliminate the discharge once the source is located.
- (2) At a minimum, the LACFCD shall initiate²³ an investigation(s) to identify and locate the source within one business day of becoming aware of the illicit discharge.
- (3) When conducting investigations, the LACFCD shall comply with the following:
 - (a) Illicit discharges suspected of being sanitary sewage and/or significantly contaminated shall be investigated first.
 - (b) The LACFCD shall track all investigations to document, at a minimum, the date(s) the illicit discharge was observed; the results

²³ Permittees may comply with the Permit by taking initial steps (such as logging, prioritizing, and tasking) to "initiate" the investigation within one business day. However, the Regional Water Board would expect that the initial investigation, including a site visit, occur within two business days of becoming aware of the illicit discharge.

- of the investigation; any follow-up of the investigation; and the date the investigation was closed.
- (c) The LACFCD shall prioritize and investigate the source of all observed illicit discharges to its MS4.
 - (d) If the source of the illicit discharge is found to be a discharge authorized under an NPDES permit, the LACFCD shall document the source and report to the Regional Water Board within 30 days of determination. No further action is required.
 - (e) If the source of the illicit discharge has been determined to originate from within the jurisdiction of other Permittee(s) with land use authority over the suspected responsible party/parties, the LACFCD shall immediately alert the appropriate Permittee(s) of the problem for further action by the Permittee(s).
- (4) When taking corrective action to eliminate illicit discharges, the LACFCD shall comply with the following:
- (a) If the source of the illicit discharge has been determined or suspected by the LACFCD to originate within an upstream jurisdiction(s), the LACFCD shall immediately notify the upstream jurisdiction(s), and notify the Regional Water Board within 30 days of such determination and provide all the information collected and efforts taken.
 - (b) Once the Permittee with land use authority over the suspected responsible party/parties has been alerted, the LACFCD may continue to work in cooperation with the Permittee(s) to notify the responsible party/parties of the problem, and require the responsible party/parties to immediately initiate necessary corrective actions to eliminate the illicit discharge. Upon being notified that the discharge has been eliminated, the LACFCD may, in conjunction with the Permittee(s) conduct a follow-up investigation to verify that the discharge has been eliminated and cleaned up to the satisfaction of the LACFCD. The LACFCD shall document its follow-up investigation. The LACFCD may seek recovery and remediation costs from responsible parties or require compensation for the cost of all inspection and investigation activities. Resulting enforcement actions shall follow the program's Progressive Enforcement Policy.
 - (c) If the source of the illicit discharge cannot be traced to a suspected responsible party, the LACFCD, in conjunction with other affected Permittees, shall continue implementing the illicit discharge/spill response plan.

- (5) In the event the LACFCD and/or other Permittees are unable to eliminate an ongoing illicit discharge following full execution of its legal authority and in accordance with its Progressive Enforcement Policy, including the inability to find the responsible party/parties, or other circumstances prevent the full elimination of an ongoing illicit discharge, the LACFCD and/or other Permittees shall notify the Regional Water Board within 30 days of such determination and provide available information to the Regional Water Board.

iv. Identification and Response to Illicit Connections

- (1) Investigation

The LACFCD, upon discovery or upon receiving a report of a suspected illicit connection, shall initiate an investigation within 21 days, to determine the following: (1) source of the connection, (2) nature and volume of discharge through the connection, and (3) responsible party for the connection.

- (2) Elimination

The LACFCD, upon confirmation of an illicit connection to its MS4, shall ensure that the connection is:

- (a) Permitted or documented, provided the connection will only discharge storm water and non-storm water allowable under this Order or other individual or general NPDES Permits/WDRs, or
- (b) Eliminated within 180 days of completion of the investigation, using its formal enforcement authority, if necessary, to eliminate the illicit connection.

- (3) Documentation

Formal records must be maintained for all illicit connection investigations and the formal enforcement taken to eliminate illicit connections.

v. Public Reporting of Non-Stormwater Discharges and Spills

- (1) The LACFCD shall, in collaboration with the County, continue to maintain the 888-CLEAN-LA hotline and corresponding internet site at www.888cleanla.org to promote, publicize, and facilitate public reporting of illicit discharges or water quality impacts associated with discharges into or from MS4s.
- (2) The LACFCD shall include information regarding public reporting of illicit discharges or improper disposal on the signage adjacent to open channels as required in Part VI.D.9.h.vi.(4).
- (3) The LACFCD shall develop and maintain written procedures that document how complaint calls and internet submissions are received, documented, and tracked to ensure that all complaints are adequately addressed. The procedures shall be evaluated annually to determine whether changes or updates are needed to ensure that the procedures accurately document the methods employed by the LACFCD. Any identified changes shall be made to the procedures subsequent to the annual evaluation.
- (4) The LACFCD shall maintain documentation of the complaint calls and internet submissions and record the location of the reported spill or IC/ID and the actions undertaken, including referrals to other agencies, in response to all IC/ID complaints.

vi. Illicit Discharge and Spill Response Plan

- (1) The LACFCD shall implement an ID and spill response plan for all spills that may discharge into its system. The ID and spill response plan shall clearly identify agencies responsible for ID and spill response and cleanup, contact information, and shall contain at a minimum the following requirements:
 - (a) Coordination with spill response teams throughout all appropriate departments, programs and agencies so that maximum water quality protection is provided.
 - (b) Initiation of investigation of all public and employee ID and spill complaints within one business day of receiving the complaint to assess validity.
 - (c) Response to ID and spills within 4 hours of becoming aware of the ID or spill, except where such IDs or spills occur on private property, in which case the response should be within 2 hours of gaining legal access to the property.
 - (d) IDs or spills that may endanger health or the environment shall be reported to appropriate public health agencies and the Office of Emergency Services (OES).

vii. Illicit Connection and Illicit Discharge Education and Training

- (1) The LACFCD must continue to implement a training program regarding the identification of IC/IDs for all LACFCD field staff, who, as part of their normal job responsibilities (e.g., storm drain inspection and maintenance), may come into contact with or otherwise observe an illicit discharge or illicit connection to its MS4. Contact information, including the procedure for reporting an illicit discharge, must be included in the LACFCD's fleet vehicles that are used by field staff. Training program documents must be available for review by the Regional Water Board.
- (2) The LACFCD's training program should address, at a minimum, the following:
 - (a) IC/ID identification, including definitions and examples,
 - (b) investigation,
 - (c) elimination,
 - (d) cleanup,
 - (e) reporting, and
 - (f) documentation.
- (3) The LACFCD must create a list of applicable positions which require IC/ID training and ensure that training is provided at least twice during the term of this Order. The LACFCD must maintain documentation of the training activities.
- (4) New LACFCD staff members must be provided with IC/ID training within 180 days of starting employment.
- (5) The LACFCD shall require its contractors to train their employees in targeted positions as described above.

5. Public Information and Participation Program

a. General

- i. Each Permittee shall implement a Public Information and Participation Program (PIPP) that includes the requirements listed in this Part VI.D.5. Each Permittee shall be responsible for developing and implementing the PIPP and implementing specific PIPP requirements. The objectives of the PIPP are as follows:
 - (1) To measurably increase the knowledge of the target audiences about the MS4, the adverse impacts of storm water pollution on receiving waters and potential solutions to mitigate the impacts.
 - (2) To measurably change the waste disposal and storm water pollution generation behavior of target audiences by developing and encouraging the implementation of appropriate alternatives.

- (3) To involve and engage a diversity of socio-economic groups and ethnic communities in Los Angeles County to participate in mitigating the impacts of storm water pollution.

b. PIPP Implementation

- i. Each Permittee shall implement the PIPP requirements listed in this Part VI.D.4 using one or more of the following approaches:
 - (1) By participating in a County-wide PIPP,
 - (2) By participating in one or more Watershed Group sponsored PIPPs, and/or
 - (3) Or individually within its jurisdiction.
- ii. If a Permittee participates in a County-wide or Watershed Group PIPP, the Permittee shall provide the contact information for their appropriate staff responsible for storm water public education activities to the designated PIPP coordinator and contact information changes no later than 30 days after a change occurs.

c. Public Participation

- i. Each Permittee, whether participating in a County-wide or Watershed Group sponsored PIPP, or acting individually, shall provide a means for public reporting of clogged catch basin inlets and illicit discharges/dumping, faded or missing catch basin labels, and general storm water and non-storm water pollution prevention information.
 - (1) Permittees may elect to use the 888-CLEAN-LA hotline as the general public reporting contact or each Permittee or Watershed Group may establish its own hotline, if preferred.
 - (2) Each Permittee shall include the reporting information, updated when necessary, in public information, and the government pages of the telephone book, as they are developed or published.
 - (3) Each Permittee shall identify staff or departments who will serve as the contact person(s) and shall make this information available on its website.
 - (4) Each Permittee is responsible for providing current, updated hotline contact information to the general public within its jurisdiction.
- ii. Organize events targeted to residents and population subgroups to educate and involve the community in storm water and non-storm water pollution prevention and clean-up (e.g., education seminars, clean-ups, and community catch basin stenciling).

d. Residential Outreach Program

- i. Working in conjunction with a County-wide or Watershed Group sponsored PIPP or individually, each Permittee shall implement the following activities:

- (1) Conduct storm water pollution prevention public service announcements and advertising campaigns
- (2) Public education materials shall include but are not limited to information on the proper handling (i.e., disposal, storage and/or use) of:
 - (a) Vehicle waste fluids
 - (b) Household waste materials (i.e., trash and household hazardous waste, including personal care products and pharmaceuticals)
 - (c) Construction waste materials
 - (d) Pesticides and fertilizers (including integrated pest management practices [IPM] to promote reduced use of pesticides)
 - (e) Green waste (including lawn clippings and leaves)
 - (f) Animal wastes
- (3) Distribute activity specific storm water pollution prevention public education materials at, but not limited to, the following points of purchase:
 - (a) Automotive parts stores
 - (b) Home improvement centers / lumber yards / hardware stores/paint stores
 - (c) Landscaping / gardening centers
 - (d) Pet shops / feed stores
- (4) Maintain storm water websites or provide links to storm water websites via the Permittee's website, which shall include educational material and opportunities for the public to participate in storm water pollution prevention and clean-up activities listed in Part VI.D.4.
- (5) Provide independent, parochial, and public schools within in each Permittee's jurisdiction with materials to educate school children (K-12) on storm water pollution. Material may include videos, live presentations, and other information. Permittees are encouraged to work with, or leverage, materials produced by other statewide agencies and associations such as the State Water Board's "Erase the Waste" educational program and the California Environmental Education Interagency Network (CEEIN) to implement this requirement.
- (6) When implementing activities in subsections (1)-(5), Permittees shall use effective strategies to educate and involve ethnic communities in storm water pollution prevention through culturally effective methods.

6. Industrial/Commercial Facilities Program

a. General

- i. Each Permittee shall implement an Industrial / Commercial Facilities Program that meets the requirements of this Part VI.D.6. The Industrial / Commercial

Facilities Program shall be designed to prevent illicit discharges into the MS4 and receiving waters, reduce industrial / commercial discharges of storm water to the maximum extent practicable, and prevent industrial / commercial discharges from the MS4 from causing or contributing to a violation of receiving water limitations. At a minimum, the Industrial / Commercial Facilities Program shall be implemented in accordance with the requirements listed in this Part VI.D.6, or as approved in a Watershed Management Program per Part VI.C. Minimum program components shall include the following components:

- (1) Track
- (2) Educate
- (3) Inspect
- (4) Ensure compliance with municipal ordinances at industrial and commercial facilities that are critical sources of pollutants in storm water

b. Track Critical Industrial / Commercial Sources

- i. Each Permittee shall maintain an updated watershed-based inventory or database containing the latitude / longitude coordinates of all industrial and commercial facilities within its jurisdiction that are critical sources of storm water pollution. The inventory or database shall be maintained in electronic format and incorporation of facility information into a Geographical Information System (GIS) is recommended. Critical Sources to be tracked are summarized below:

- (1) Commercial Facilities
 - (a) Restaurants
 - (b) Automotive service facilities (including those located at automotive dealerships)
 - (c) Retail Gasoline Outlets
 - (d) Nurseries and Nursery Centers (Merchant Wholesalers, Nondurable Goods, and Retail Trade)
- (2) USEPA "Phase I" Facilities [as specified in 40 CFR §122.26(b)(14)(i)-(xi)]
- (3) Other federally-mandated facilities [as specified in 40 CFR §122.26(d)(2)(iv)(C)]
 - (a) Municipal landfills
 - (b) Hazardous waste treatment, disposal, and recovery facilities
 - (c) Industrial facilities subject to section 313 "Toxic Release Inventory" reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) [42 U.S.C. § 11023]
- (4) All other commercial or industrial facilities that the Permittee determines may contribute a substantial pollutant load to the MS4.

- ii. Each Permittee shall include the following minimum fields of information for each critical source industrial and commercial facility identified in its watershed-based inventory or database:
 - (1) Name of facility
 - (2) Name of owner/ operator and contact information
 - (3) Address of facility (physical and mailing)
 - (4) North American Industry Classification System (NAICS) code
 - (5) Standard Industrial Classification (SIC) code
 - (6) A narrative description of the activities performed and/or principal products produced
 - (7) Status of exposure of materials to storm water
 - (8) Name of receiving water
 - (9) Identification of whether the facility is tributary to a CWA § 303(d) listed water body segment or water body segment subject to a TMDL, where the facility generates pollutants for which the water body segment is impaired.
 - (10) Ability to denote if the facility is known to maintain coverage under the State Water Board's General NPDES Permit for the Discharge of Stormwater Associated with Industrial Activities (Industrial General Permit) or other individual or general NPDES permits or any applicable waiver issued by the Regional or State Water Board pertaining to storm water discharges.
 - (11) Ability to denote if the facility has filed a No Exposure Certification with the State Water Board.
- iii. Each Permittee shall update its inventory of critical sources at least annually. The update shall be accomplished through collection of new information obtained through field activities or through other readily available inter- and intra-agency informational databases (e.g., business licenses, pretreatment permits, sanitary sewer connection permits, and similar information).

c. Educate Industrial / Commercial Sources

- i. At least once during the five-year period of this Order, each Permittee shall notify the owner/operator of each of its inventoried commercial and industrial sites identified in Part VI.D.6.b of the BMP requirements applicable to the site/source.
- ii. Business Assistance Program
 - (1) Each Permittee shall implement a Business Assistance Program to provide technical information to businesses to facilitate their efforts to reduce the discharge of pollutants in storm water. Assistance shall be targeted to select business sectors or small businesses upon a determination that their activities may be contributing substantial pollutant

loads to the MS4 or receiving water. Assistance may include technical guidance and provision of educational materials. The Program may include:

- (a) On-site technical assistance, telephone, or e-mail consultation regarding the responsibilities of business to reduce the discharge of pollutants, procedural requirements, and available guidance documents.
- (b) Distribution of storm water pollution prevention educational materials to operators of auto repair shops; car wash facilities; restaurants and mobile sources including automobile/equipment repair, washing, or detailing; power washing services; mobile carpet, drape, or upholstery cleaning services; swimming pool, water softener, and spa services; portable sanitary services; and commercial applicators and distributors of pesticides, herbicides and fertilizers, if present.

d. Inspect Critical Commercial Sources

i. Frequency of Mandatory Commercial Facility Inspections

Each Permittee shall inspect all commercial facilities identified in Part VI.D.6.b twice during the 5-year term of the Order, provided that the first mandatory compliance inspection occurs no later than 2 years after the effective date of this Order. A minimum interval of 6 months between the first and the second mandatory compliance inspection is required. In addition, each Permittee shall implement the activities outlined in the following subparts.

ii. Scope of Mandatory Commercial Facility Inspections

Each Permittee shall inspect all commercial facilities to confirm that storm water and non-storm water BMPs are being effectively implemented in compliance with municipal ordinances. At each facility, inspectors shall verify that the operator is implementing effective source control BMPs for each corresponding activity. Each Permittee shall require implementation of additional BMPs where storm water from the MS4 discharges to a significant ecological area (SEA), a water body subject to TMDL provisions in Part VI.E, or a CWA § 303(d) listed impaired water body. Likewise, for those BMPs that are not adequately protective of water quality standards, a Permittee may require additional site-specific controls.

e. Inspect Critical Industrial Sources

Each Permittee shall conduct industrial facility compliance inspections as specified below.

i. Frequency of Mandatory Industrial Facility Compliance Inspections

(1) Minimum Inspection Frequency

Each Permittee shall perform an initial mandatory compliance inspection at all industrial facilities identified in Part VI.D.6.b no later than 2 years after the effective date of this Order. After the initial inspection, all

facilities that have not filed a No Exposure Certification with the State Water Board are subject to a second mandatory compliance inspection. A minimum interval of 6 months between the first and the second mandatory compliance inspection is required. A facility need not be inspected more than twice during the term of the Order unless subject to an enforcement action as specified in Part VI.D.6.h below.

(2) Exclusion of Facilities Previously Inspected by the Regional Water Board

Each Permittee shall review the State Water Board's Storm Water Multiple Application and Report Tracking System (SMARTS) database²⁴ at defined intervals to determine if an industrial facility has recently been inspected by the Regional Water Board. The first interval shall occur approximately 2 years after the effective date of the Order. The Permittee does not need to inspect the facility if it is determined that the Regional Water Board conducted an inspection of the facility within the prior 24 month period. The second interval shall occur approximately 4 years after the effective date of the Order. Likewise, the Permittee does not need to inspect the facility if it is determined that the Regional Water Board conducted an inspection of the facility within the prior 24 month period.

(3) No Exposure Verification

As a component of the first mandatory inspection, each Permittee shall identify those facilities that have filed a No Exposure Certification with the State Water Board. Approximately 3 to 4 years after the effective date of the Order, each Permittee shall evaluate its inventory of industrial facilities and perform a second mandatory compliance inspection at a minimum of 25% of the facilities identified to have filed a No Exposure Certification. The purpose of this inspection is to verify the continuity of the no exposure status.

(4) Exclusion Based on Watershed Management Program

A Permittee is exempt from the mandatory inspection frequencies listed above if it is implementing industrial inspections in accordance with an approved Watershed Management Program per Part VI.C.

ii. Scope of Mandatory Industrial Facility Inspections

Each Permittee shall confirm that each industrial facility:

- (1) Has a current Waste Discharge Identification (WDID) number for coverage under the Industrial General Permit, and that a Storm Water Pollution Prevention Plan (SWPPP) is available on-site; *or*
- (2) Has applied for, and has received a current No Exposure Certification for facilities subject to this requirement;
- (3) Is effectively implementing BMPs in compliance with municipal ordinances. Facilities must implement the source control BMPs identified

²⁴ SMARTS is accessible at <https://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp>

in Table 10, unless the pollutant generating activity does not occur. The Permittees shall require implementation of additional BMPs where storm water from the MS4 discharges to a water body subject to TMDL Provisions in Part VI.E, or a CWA § 303(d) listed impaired water body. Likewise, if the specified BMPs are not adequately protective of water quality standards, a Permittee may require additional site-specific controls. For critical sources that discharge to MS4s that discharge to SEAs, each Permittee shall require operators to implement additional pollutant-specific controls to reduce pollutants in storm water runoff that are causing or contributing to exceedances of water quality standards.

- (4) Applicable industrial facilities identified as not having either a current WDID or No Exposure Certification shall be notified that they must obtain coverage under the Industrial General Permit and shall be referred to the Regional Water Board per the Progressive Enforcement Policy procedures identified in Part VI.D.2.

f. Source Control BMPs for Commercial and Industrial Facilities

Effective source control BMPs for the activities listed in Table 10 shall be implemented at commercial and industrial facilities, unless the pollutant generating activity does not occur:

Table 10. Source Control BMPs at Commercial and Industrial Facilities

| Pollutant-Generating Activity | BMP Narrative Description |
|---|---|
| Unauthorized Non-Storm water Discharges | Effective elimination of non-storm water discharges |
| Accidental Spills/ Leaks | Implementation of effective spills/ leaks prevention and response procedures |
| Vehicle/ Equipment Fueling | Implementation of effective fueling source control devices and practices |
| Vehicle/ Equipment Cleaning | Implementation of effective equipment/ vehicle cleaning practices and appropriate wash water management practices |
| Vehicle/ Equipment Repair | Implementation of effective vehicle/ equipment repair practices and source control devices |
| Outdoor Liquid Storage | Implementation of effective outdoor liquid storage source controls and practices |
| Outdoor Equipment Operations | Implementation of effective outdoor equipment source control devices and practices |
| Outdoor Storage of Raw Materials | Implementation of effective source control practices and structural devices |
| Storage and Handling of Solid Waste | Implementation of effective solid waste storage/ handling practices and appropriate control measures |
| Building and Grounds Maintenance | Implementation of effective facility maintenance practices |

| Pollutant-Generating Activity | BMP Narrative Description |
|---|---|
| Parking/ Storage Area Maintenance | Implementation of effective parking/ storage area designs and housekeeping/ maintenance practices |
| Storm water Conveyance System Maintenance Practices | Implementation of proper conveyance system operation and maintenance protocols |
| Pollutant-Generating Activity | BMP Narrative Description from Regional Water Board Resolution No. 98-08 |
| Sidewalk Washing | <ol style="list-style-type: none"> 1. Remove trash, debris, and free standing oil/grease spills/leaks (use absorbent material, if necessary) from the area before washing; and 2. Use high pressure, low volume spray washing using only potable water with no cleaning agents at an average usage of 0.006 gallons per square feet of sidewalk area. |
| Street Washing | Collect and divert wash water to the sanitary sewer – publically owned treatment works (POTW). Note: POTW approval may be needed. |

g. Significant Ecological Areas (SEAs)

See VI.D.6.e.ii.3.

h. Progressive Enforcement

Each Permittee shall implement its Progressive Enforcement Policy to ensure that Industrial / Commercial facilities are brought into compliance with all storm water requirements within a reasonable time period. See Part VI.D.2 for requirements for the development and implementation of a Progressive Enforcement Policy.

7. Planning and Land Development Program

a. Purpose

- i. Each Permittee shall implement a Planning and Land Development Program pursuant to Part VI.D.7.b for all New Development and Redevelopment projects subject to this Order to:
 - (1) Lessen the water quality impacts of development by using smart growth practices such as compact development, directing development towards existing communities via infill or redevelopment, and safeguarding of environmentally sensitive areas.
 - (2) Minimize the adverse impacts from storm water runoff on the biological integrity of Natural Drainage Systems and the beneficial uses of water

bodies in accordance with requirements under CEQA (Cal. Pub. Resources Code § 21000 et seq.).

- (3) Minimize the percentage of impervious surfaces on land developments by minimizing soil compaction during construction, designing projects to minimize the impervious area footprint, and employing Low Impact Development (LID) design principles to mimic predevelopment hydrology through infiltration, evapotranspiration and rainfall harvest and use.
- (4) Maintain existing riparian buffers and enhance riparian buffers when possible.
- (5) Minimize pollutant loadings from impervious surfaces such as roof tops, parking lots, and roadways through the use of properly designed, technically appropriate BMPs (including Source Control BMPs such as good housekeeping practices), LID Strategies, and Treatment Control BMPs.
- (6) Properly select, design and maintain LID and Hydromodification Control BMPs to address pollutants that are likely to be generated, reduce changes to pre-development hydrology, assure long-term function, and avoid the breeding of vectors²⁵.
- (7) Prioritize the selection of BMPs to remove storm water pollutants, reduce storm water runoff volume, and beneficially use storm water to support an integrated approach to protecting water quality and managing water resources in the following order of preference:
 - (a) On-site infiltration, bioretention and/or rainfall harvest and use.
 - (b) On-site biofiltration, off-site ground water replenishment, and/or off-site retrofit.

b. Applicability

i. New Development Projects

- (1) Development projects subject to Permittee conditioning and approval for the design and implementation of post-construction controls to mitigate storm water pollution, prior to completion of the project(s), are:
 - (a) All development projects equal to 1 acre or greater of disturbed area and adding more than 10,000 square feet of impervious surface area
 - (b) Industrial parks 10,000 square feet or more of surface area
 - (c) Commercial malls 10,000 square feet or more surface area
 - (d) Retail gasoline outlets 5,000 square feet or more of surface area
 - (e) Restaurants (SIC 5812) 5,000 square feet or more of surface area

²⁵ Treatment BMPs when designed to drain within 96 hours of the end of rainfall minimize the potential for the breeding of vectors. See California Department of Public Health *Best Management Practices for Mosquito Control in California* (2012) at <http://www.westnile.ca.gov/resources.php>

- (f) Parking lots 5,000 square feet or more of impervious surface area, or with 25 or more parking spaces
- (g) Street and road construction of 10,000 square feet or more of impervious surface area shall follow USEPA guidance regarding Managing Wet Weather with Green Infrastructure: Green Streets²⁶ (December 2008 EPA-833-F-08-009) to the maximum extent practicable. Street and road construction applies to standalone streets, roads, highways, and freeway projects, and also applies to streets within larger projects.
- (h) Automotive service facilities (SIC 5013, 5014, 5511, 5541, 7532-7534 and 7536-7539) 5,000 square feet or more of surface area
- (i) Redevelopment projects in subject categories that meet Redevelopment thresholds identified in Part VI.D.6.b.ii (Redevelopment Projects) below
- (j) Projects located in or directly adjacent to, or discharging directly to a Significant Ecological Area (SEA), where the development will:
 - (i) Discharge storm water runoff that is likely to impact a sensitive biological species or habitat; and
 - (ii) Create 2,500 square feet or more of impervious surface area
- (k) Single-family hillside homes. To the extent that a Permittee may lawfully impose conditions, mitigation measures or other requirements on the development or construction of a single-family home in a hillside area as defined in the applicable Permittee's Code and Ordinances, each Permittee shall require that during the construction of a single-family hillside home, the following measures are implemented:
 - (i) Conserve natural areas
 - (ii) Protect slopes and channels
 - (iii) Provide storm drain system stenciling and signage
 - (iv) Divert roof runoff to vegetated areas before discharge unless the diversion would result in slope instability
 - (v) Direct surface flow to vegetated areas before discharge unless the diversion would result in slope instability.

ii. Redevelopment Projects

- (1) Redevelopment projects subject to Permittee conditioning and approval for the design and implementation of post-construction controls to mitigate storm water pollution, prior to completion of the project(s), are:
 - (a) Land-disturbing activity that results in the creation or addition or replacement of 5,000 square feet or more of impervious surface area

²⁶ <http://water.epa.gov/infrastructure/greeninfrastructure/index.cfm>

on an already developed site on development categories identified in Part VI.D.6.c. (New Development/Redevelopment Performance Criteria).

- (b) Where Redevelopment results in an alteration to more than fifty percent of impervious surfaces of a previously existing development, and the existing development was not subject to post-construction storm water quality control requirements, the entire project must be mitigated.
- (c) Where Redevelopment results in an alteration of less than fifty percent of impervious surfaces of a previously existing development, and the existing development was not subject to post-construction storm water quality control requirements, only the alteration must be mitigated, and not the entire development.
 - (i) Redevelopment does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, original purpose of facility or emergency redevelopment activity required to protect public health and safety. Impervious surface replacement, such as the reconstruction of parking lots and roadways which does not disturb additional area and maintains the original grade and alignment, is considered a routine maintenance activity. Redevelopment does not include the repaving of existing roads to maintain original line and grade.
 - (ii) Existing single-family dwelling and accessory structures are exempt from the Redevelopment requirements unless such projects create, add, or replace 10,000 square feet of impervious surface area.
- (d) In this section, Existing Development or Redevelopment projects shall mean all discretionary permit projects or project phases that have not been deemed complete for processing, or discretionary permit projects without vesting tentative maps that have not requested and received an extension of previously granted approvals within 90 days of adoption of the Order. Projects that have been deemed complete within 90 days of adoption of the Order are not subject to the requirements Section 7.c. For Permittee's projects the effective date shall be the date the governing body or their designee approves initiation of the project design.
- (e) Specifically, the Newhall Ranch Project Phases I and II (a.k.a. the Landmark and Mission Village projects) are deemed to be an existing development that will at a minimum, be designed to comply with the Specific LID Performance Standards attached to the Waste Discharge Requirements (Order No. R4-2012-0139). All subsequent phases of the Newhall Ranch Project constructed during the term of this Order shall be subject to the requirements of this Order.

c. New Development/ Redevelopment Project Performance Criteria

i. Integrated Water Quality/Flow Reduction/Resources Management Criteria

- (1) Each Permittee shall require all New Development and Redevelopment projects (referred to hereinafter as “new projects”) identified in Part VI.D.7.b to control pollutants, pollutant loads, and runoff volume emanating from the project site by: (1) minimizing the impervious surface area and (2) controlling runoff from impervious surfaces through infiltration, bioretention and/or rainfall harvest and use.
- (2) Except as provided in Part VI.D.7.c.ii. (Technical Infeasibility or Opportunity for Regional Ground Water Replenishment), Part VI.D.7.d.i (Local Ordinance Equivalence), or Part VI.D.7.c.v (Hydromodification), below, each Permittee shall require the project to retain on-site the Stormwater Quality Design Volume (SWQDv) defined as the runoff from:
 - (a) The 0.75-inch, 24-hour rain event or
 - (b) The 85th percentile, 24-hour rain event, as determined from the Los Angeles County 85th percentile precipitation isohyetal map, *whichever is greater.*
- (3) Bioretention and biofiltration systems shall meet the design specifications provided in Attachment H to this Order unless otherwise approved by the Regional Water Board Executive Officer.
- (4) When evaluating the potential for on-site retention, each Permittee shall consider the maximum potential for evapotranspiration from green roofs and rainfall harvest and use.

ii. Alternative Compliance for Technical Infeasibility or Opportunity for Regional Ground Water Replenishment

- (1) In instances of technical infeasibility or where a project has been determined to provide an opportunity to replenish regional ground water supplies at an offsite location, each Permittee may allow projects to comply with this Order through the alternative compliance measures as described in Part VI.D.7.c.iii.
- (2) To demonstrate technical infeasibility, the project applicant must demonstrate that the project cannot reliably retain 100 percent of the SWQDv on-site, even with the maximum application of green roofs and rainwater harvest and use, and that compliance with the applicable post-construction requirements would be technically infeasible by submitting a site-specific hydrologic and/or design analysis conducted and endorsed by a registered professional engineer, geologist, architect, and/or landscape architect. Technical infeasibility may result from conditions including the following:

- (a) The infiltration rate of saturated in-situ soils is less than 0.3 inch per hour and it is not technically feasible to amend the in-situ soils to attain an infiltration rate necessary to achieve reliable performance of infiltration or bioretention BMPs in retaining the SWQDv on-site.
 - (b) Locations where seasonal high ground water is within 5 to 10 feet of the surface,
 - (c) Locations within 100 feet of a ground water well used for drinking water,
 - (d) Brownfield development sites where infiltration poses a risk of causing pollutant mobilization,
 - (e) Other locations where pollutant mobilization is a documented concern²⁷,
 - (f) Locations with potential geotechnical hazards, or
 - (g) Smart growth and infill or redevelopment locations where the density and/ or nature of the project would create significant difficulty for compliance with the on-site volume retention requirement.
- (3) To utilize alternative compliance measures to replenish ground water at an offsite location, the project applicant shall demonstrate (i) why it is not advantageous to replenish ground water at the project site, (ii) that ground water can be used for beneficial purposes at the offsite location, and (iii) that the alternative measures shall also provide equal or greater water quality benefits to the receiving surface water than the Water Quality/Flow Reduction/Resource Management Criteria in Part VI.7.D.c.i.

iii. Alternative Compliance Measures

When a Permittee determines a project applicant has demonstrated that it is technically infeasible to retain 100 percent of the SWQDv on-site, or is proposing an alternative offsite project to replenish regional ground water supplies, the Permittee shall require one of the following mitigation options:

(1) On-site Biofiltration

- (a) If using biofiltration due to demonstrated technical infeasibility, then the new project must biofiltrate 1.5 times the portion of the SWQDv that is not reliably retained on-site, as calculated by Equation 1 below.

Equation 1:

$$B_v = 1.5 * [SWQD_v - R_v]$$

²⁷ Pollutant mobilization is considered a documented concern at or near properties that are contaminated or store hazardous substances underground.

Where:

B_v = biofiltration volume

$SWQD_v$ = the storm water runoff from a 0.75 inch, 24-hour storm or the 85th percentile storm, *whichever is greater*.

R_v = volume reliably retained on-site

(b) Conditions for On-site Biofiltration

- (i) Biofiltration systems shall meet the design specifications provided in Attachment H to this Order unless otherwise approved by the Regional Water Board Executive Officer.
- (ii) Biofiltration systems discharging to a receiving water that is included on the Clean Water Act section 303(d) list of impaired water quality-limited water bodies due to nitrogen compounds or related effects shall be designed and maintained to achieve enhanced nitrogen removal capability. See Attachment H for design criteria for underdrain placement to achieve enhanced nitrogen removal.

(2) Offsite Infiltration

- (a) Use infiltration or bioretention BMPs to intercept a volume of storm water runoff equal to the $SWQD_v$, less the volume of storm water runoff reliably retained on-site, at an approved offsite project, and
- (b) Provide pollutant reduction (treatment) of the storm water runoff discharged from the project site in accordance with the Water Quality Mitigation Criteria provided in Part VI.D.7.c.iv.
- (c) The required offsite mitigation volume shall be calculated by Equation 2 below and equal to:

Equation 2:

$$M_v = 1.0 * [SWQD_v - R_v]$$

Where:

M_v = mitigation volume

$SWQD_v$ = runoff from the 0.75 inch, 24-hour storm event or the 85th percentile storm, *whichever is greater*

R_v = the volume of storm water runoff reliably retained on-site.

(3) Ground Water Replenishment Projects

Permittees may propose, in their Watershed Management Program or EWMP, regional projects to replenish regional ground water supplies at offsite locations, provided the groundwater supply has a designated beneficial use in the Basin Plan.

- (a) Regional groundwater replenishment projects must use infiltration, ground water replenishment, or bioretention BMPs to intercept a volume of storm water runoff equal to the SWQDv for new development and redevelopment projects, subject to Permittee conditioning and approval for the design and implementation of post-construction controls, within the approved project area, and
- (b) Provide pollutant reduction (treatment) of the storm water runoff discharged from development projects, within the project area, subject to Permittee conditioning and approval for the design and implementation of post-construction controls to mitigate storm water pollution in accordance with the Water Quality Mitigation Criteria provided in Part VI.D.7.c.iv.
- (c) Permittees implementing a regional ground water replenishment project in lieu of onsite controls shall ensure the volume of runoff captured by the project shall be equal to:

Equation 2:

$$Mv = 1.0 * [SWQDv - Rv]$$

Where:

Mv = mitigation volume

SWQDv = runoff from the 0.75 inch, 24-hour storm event or the 85th percentile storm, whichever is greater

Rv = the volume of storm water runoff reliably retained on-site.

- (d) Regional groundwater replenishment projects shall be located in the same sub-watershed (defined as draining to the same HUC-12 hydrologic area in the Basin Plan) as the new development or redevelopment projects which did not implement on site retention BMPs . Each Permittee may consider locations outside of the HUC-12 but within the HUC-10 subwatershed area if there are no opportunities within the HUC-12 subwatershed or if greater pollutant reductions and/or ground water replenishment can be achieved at a location within the expanded HUC-10 subwatershed. The use of a mitigation, ground water replenishment, or retrofit project outside of the HUC-12 subwatershed is subject to the approval of the Executive Officer of the Regional Water Board.

(4) Offsite Project - Retrofit Existing Development

Use infiltration, bioretention, rainfall harvest and use and/or biofiltration BMPs to retrofit an existing development, with similar land uses as the new development or land uses associated with comparable or higher storm water runoff event mean concentrations (EMCs) than the new development. Comparison of EMCs for different land uses shall be based on published data from studies performed in southern California. The retrofit plan shall be designed and constructed to:

- (a) Intercept a volume of storm water runoff equal to the mitigation volume (Mv) as described above in Equation 2, except biofiltration BMPs shall be designed to meet the biofiltration volume as described in Equation 1 and
- (b) Provide pollutant reduction (treatment) of the storm water runoff from the project site as described in the Water Quality Mitigation Criteria provided in Part VI.D.7.c.iv.

(5) Conditions for Offsite Projects

- (a) Project applicants seeking to utilize these alternative compliance provisions may propose other offsite projects, which the Permittees may approve if they meet the requirements of this subpart.
- (b) Location of offsite projects. Offsite projects shall be located in the same sub-watershed (defined as draining to the same HUC-12 hydrologic area in the Basin Plan) as the new development or redevelopment project. Each Permittee may consider locations outside of the HUC-12 but within the HUC-10 subwatershed area if there are no opportunities within the HUC-12 subwatershed or if greater pollutant reductions and/or ground water replenishment can be achieved at a location within the expanded HUC-10 subwatershed. The use of a mitigation, ground water replenishment, or retrofit project outside of the HUC-12 subwatershed is subject to the approval of the Executive Officer of the Regional Water Board.
- (c) Project applicant must demonstrate that equal benefits to ground water recharge cannot be met on the project site.
- (d) Each Permittee shall develop a prioritized list of offsite mitigation, ground water replenishment and/or retrofit projects, and when feasible, the mitigation must be directed to the highest priority project within the same HUC-12 or if approved by the Regional Water Board Executive Officer, the HUC-10 drainage area, as the new development project.
- (e) Infiltration/bioretention shall be the preferred LID BMP for offsite mitigation or ground water replenishment projects. Offsite retrofit projects may include green streets, parking lot retrofits, green roofs, and rainfall harvest and use. Biofiltration BMPs may be considered for retrofit projects when infiltration, bioretention or rainfall harvest and use is technically infeasible.

- (f) Each Permittee shall develop a schedule for the completion of offsite projects, including milestone dates to identify, fund, design, and construct the projects. Offsite projects shall be completed as soon as possible, and at the latest, within 4 years of the certificate of occupancy for the first project that contributed funds toward the construction of the offsite project, unless a longer period is otherwise authorized by the Executive Officer of the Regional Water Board. For public offsite projects, each Permittee must provide in their annual reports a summary of total offsite project funds raised to date and a description (including location, general design concept, volume of water expected to be retained, and total estimated budget) of all pending public offsite projects. Funding sufficient to address the offsite volume must be transferred to the Permittee (for public offsite mitigation projects) or to an escrow account (for private offsite mitigation projects) within one year of the initiation of construction.
- (g) Offsite projects must be approved by the Permittee and may be subject to approval by the Regional Water Board Executive Officer, if a third-party petitions the Executive Officer to review the project. Offsite projects will be publicly noticed on the Regional Water Board's website for 30 days prior to approval.
- (h) The project applicant must perform the offsite projects as approved by either the Permittee or the Regional Water Board Executive Officer or provide sufficient funding for public or private offsite projects to achieve the equivalent mitigation storm water volume.

(6) Regional Storm Water Mitigation Program

A Permittee or Permittee group may apply to the Regional Water Board for approval of a regional or sub-regional storm water mitigation program to substitute in part or wholly for New and Redevelopment requirements for the area covered by the regional or sub-regional storm water mitigation program. Upon review and a determination by the Regional Water Board Executive Officer that the proposal is technically valid and appropriate, the Regional Water Board may consider for approval such a program if its implementation meets all of the following requirements:

- (a) Retains the runoff from the 85th percentile, 24-hour rain event or the 0.75 inch, 24-hour rain event, whichever is greater;
- (b) Results in improved storm water quality;
- (c) Protects stream habitat;
- (d) Promotes cooperative problem solving by diverse interests;
- (e) Is fiscally sustainable and has secure funding; and
- (f) Is completed in five years including the construction and start-up of treatment facilities.

- (g) Nothing in this provision shall be construed as to delay the implementation of requirements for new and redevelopment, as approved in this Order.

(7) Water Quality Mitigation Criteria

- (a) Each Permittee shall require all New Development and Redevelopment projects that have been approved for offsite mitigation or ground water replenishment projects as defined in Part VI.D.7.c.ii-iii to also provide treatment of storm water runoff from the project site. Each Permittee shall require these projects to design and implement post-construction storm water BMPs and control measures to reduce pollutant loading as necessary to:
 - (i) Meet the pollutant specific benchmarks listed in Table 11 at the treatment systems outlet or prior to the discharge to the MS4, and
 - (ii) Ensure that the discharge does not cause or contribute to an exceedance of water quality standards at the Permittee’s downstream MS4 outfall.
- (b) Each Permittee may allow the project proponent to install flow-through modular treatment systems including sand filters, or other proprietary BMP treatment systems with a demonstrated efficiency at least equivalent to a sand filter. The sizing of the flow through treatment device shall be based on a rainfall intensity of:
 - (i) 0.2 inches per hour, or
 - (ii) The one year, one-hour rainfall intensity as determined from the most recent Los Angeles County isohyetal map, *whichever is greater*.

Table 11. Benchmarks Applicable to New Development Treatment BMPs²⁸

Conventional Pollutants

| Pollutant | Suspended Solids mg/L | Total P mg/L | Total N mg/L | TKN mg/L |
|------------------------|-----------------------|--------------|--------------|----------|
| Effluent Concentration | 14 | 0.13 | 1.28 | 1.09 |

²⁸ The treatment control BMP performance benchmarks were developed from the median effluent water quality values of the six highest performing BMPs, per pollutant, in the storm water BMP database (<http://www.bmpdatabase.org/>, last visited September 25, 2012).

Metals

| Pollutant | Total Cd µg/L | Total Cu µg/L | Total Cr µg/L | Total Pb µg/L | Total Zn µg/L |
|---------------------------|------------------|------------------|------------------|------------------|------------------|
| Effluent Concentration | 0.3 | 6 | 2.8 | 2.5 | 23 |

(c) In addition to the requirements for controlling pollutant discharges as described in Part VI.D.7.c.iii. and the treatment benchmarks described above, each Permittee shall ensure that the new development or redevelopment will not cause or contribute to an exceedance of applicable water quality-based effluent limitations established in Part VI.E pursuant to Total Maximum Daily Loads (TMDLs).

iv. Hydromodification (Flow/ Volume/ Duration) Control Criteria

Each Permittee shall require all New Development and Redevelopment projects located within natural drainage systems as described in Part VI.D.7.c.iv.(1)(a)(iii) to implement hydrologic control measures, to prevent accelerated downstream erosion and to protect stream habitat in natural drainage systems. The purpose of the hydrologic controls is to minimize changes in post-development hydrologic storm water runoff discharge rates, velocities, and duration. This shall be achieved by maintaining the project’s pre-project storm water runoff flow rates and durations.

(1) Description

(a) Hydromodification control in natural drainage systems shall be achieved by maintaining the Erosion Potential (Ep) in streams at a value of 1, unless an alternative value can be shown to be protective of the natural drainage systems from erosion, incision, and sedimentation that can occur as a result of flow increases from impervious surfaces and prevent damage to stream habitat in natural drainage system tributaries (see Attachment J - Determination of Erosion Potential).

(ii) Hydromodification control may include one, or a combination of on-site, regional or sub-regional hydromodification control BMPs, LID strategies, or stream and riparian buffer restoration measures. Any in-stream restoration measure shall not adversely affect the beneficial uses of the natural drainage systems.

(iii) Natural drainage systems that are subject to the hydromodification assessments and controls as described in this Part of the Order, include all drainages that have not been improved (e.g., channelized or armored with concrete, shotcrete, or rip-rap) or drainage systems that are tributary to a natural drainage system, except as provided in Part VI.D.7c.iv.(1)(b)--Exemptions to

Hydromodification Controls [see below]. The clearing or dredging of a natural drainage system does not constitute an “improvement.”

- (iv) Until the State Water Board or the Regional Water Board adopts a final Hydromodification Policy or criteria, Permittees shall implement the Hydromodification Control Criteria described in Part VI.D.7.c.iv.(1)(c) to control the potential adverse impacts of changes in hydrology that may result from new development and redevelopment projects located within natural drainage systems as described in Part VI.D.7.c.iv.(1)(a)(iii).
- (b) Exemptions to Hydromodification Controls. Permittees may exempt the following New Development and Redevelopment projects from implementation of hydromodification controls where assessments of downstream channel conditions and proposed discharge hydrology indicate that adverse hydromodification effects to beneficial uses of Natural Drainage Systems are unlikely:
 - (i) Projects that are replacement, maintenance or repair of a Permittee’s existing flood control facility, storm drain, or transportation network.
 - (ii) Redevelopment Projects in the Urban Core that do not increase the effective impervious area or decrease the infiltration capacity of pervious areas compared to the pre-project conditions.
 - (iii) Projects that have any increased discharge directly or via a storm drain to a sump, lake, area under tidal influence, into a waterway that has a 100-year peak flow (Q100) of 25,000 cfs or more, or other receiving water that is not susceptible to hydromodification impacts.
 - (iv) Projects that discharge directly or via a storm drain into concrete or otherwise engineered (not natural) channels (e.g., channelized or armored with rip rap, shotcrete, etc.), which, in turn, discharge into receiving water that is not susceptible to hydromodification impacts (as in Parts VI.D.7.c.iv.(1)(b)(i)-(iii) above).
 - (v) LID BMPs implemented on single family homes are sufficient to comply with Hydromodification criteria.
- (c) Hydromodification Control Criteria. The Hydromodification Control Criteria to protect natural drainage systems are as follows:
 - (i) Except as provided for in Part VI.D.7.c.iv.(1)(b), projects disturbing an area greater than 1 acre but less than 50 acres within natural drainage systems will be presumed to meet pre-development hydrology if one of the following demonstrations is made:

1. The project is designed to retain on-site, through infiltration, evapotranspiration, and/or harvest and use, the storm water volume from the runoff of the 95th percentile, 24-hour storm, or
 2. The runoff flow rate, volume, velocity, and duration for the post-development condition do not exceed the pre-development condition for the 2-year, 24-hour rainfall event. This condition may be substantiated by simple screening models, including those described in *Hydromodification Effects on Flow Peaks and Durations in Southern California Urbanizing Watersheds* (Hawley et al., 2011) or other models acceptable to the Executive Officer of the Regional Water Board, or
 3. The Erosion Potential (Ep) in the receiving water channel will approximate 1, as determined by a Hydromodification Analysis Study and the equation presented in Attachment J. Alternatively, Permittees can opt to use other work equations to calculate Erosion Potential with Executive Officer approval.
- (ii) Projects disturbing 50 acres or more within natural drainage systems will be presumed to meet pre-development hydrology based on the successful demonstration of one of the following conditions:
1. The site infiltrates on-site at least the runoff from a 2-year, 24-hour storm event, or
 2. The runoff flow rate, volume, velocity, and duration for the post-development condition does not exceed the pre-development condition for the 2-year, 24-hour rainfall events. These conditions must be substantiated by hydrologic modeling acceptable to the Regional Water Board Executive Officer, or
 3. The Erosion Potential (Ep) in the receiving water channel will approximate 1, as determined by a Hydromodification Analysis Study and the equation presented in Attachment J.

(c) Alternative Hydromodification Criteria

- (i) Permittees may satisfy the requirement for Hydromodification Controls by implementing the hydromodification requirements in the County of Los Angeles Low Impact Development Manual (2009) for all projects disturbing an area greater than 1 acre within natural drainage systems.
- (ii) Each Permittee may alternatively develop and implement watershed specific Hydromodification Control Plans (HCPs). Such plans shall be developed no later than one year after the effective date of this Order.

(iii) The HCP shall identify:

1. Stream classifications
2. Flow rate and duration control methods
3. Sub-watershed mitigation strategies
4. Stream and/or riparian buffer restoration measures, which will maintain the stream and tributary Erosion Potential at 1 unless an alternative value can be shown to be protective of the natural drainage systems from erosion, incision, and sedimentation that can occur as a result of flow increases from impervious surfaces and prevent damage to stream habitat in natural drainage system tributaries.

(iv) The HCP shall contain the following elements:

1. Hydromodification Management Standards
2. Natural Drainage Areas and Hydromodification Management Control Areas
3. New Development and Redevelopment Projects subject to the HCP
4. Description of authorized Hydromodification Management Control BMPs
5. Hydromodification Management Control BMP Design Criteria
6. For flow duration control methods, the range of flows to control for, and goodness of fit criteria
7. Allowable low critical flow, Q_c , which initiates sediment transport
8. Description of the approved Hydromodification Model
9. Any alternate Hydromodification Management Model and Design
10. Stream Restoration Measures Design Criteria
11. Monitoring and Effectiveness Assessment
12. Record Keeping
13. The HCP shall be deemed in effect upon Executive Officer approval.

v. Watershed Equivalence.

Regardless of the methods through which Permittees allow project applicants to implement alternative compliance measures, the subwatershed-wide (defined as draining to the same HUC-12 hydrologic area in the Basin Plan) result of all development must be at least the same level of water quality protection as would have been achieved if all projects utilizing these alternative

compliance provisions had complied with Part VI.D.7.c.i (Integrated Water Quality/Flow Reduction/Resource Management Criteria).

vi. Annual Report

Each Permittee shall provide in their annual report to the Regional Water Board a list of mitigation project descriptions and estimated pollutant and flow reduction analyses (compiled from design specifications submitted by project applicants and approved by the Permittee(s)). Within 4 years of Order adoption, Permittees must submit in their Annual Report, a comparison of the expected aggregate results of alternative compliance projects to the results that would otherwise have been achieved by retaining on site the SWQDv.

d. Implementation

i. Local Ordinance Equivalence

A Permittee that has adopted a local LID ordinance prior to the adoption of this Order, and which includes a retention requirement numerically equal to the 0.75-inch, 24-hour rain event or the 85th percentile, 24-hour rain event, whichever is greater, may submit documentation to the Regional Water Board that the alternative requirements in the local ordinance will provide equal or greater reduction in storm water discharge pollutant loading and volume as would have been obtained through strict conformance with Part VI.D.7.c.i. (Integrated Water Quality/Flow Reduction Resources Management Criteria) or Part VI.D.7.c.ii. (Alternative Compliance Measures for Technical Infeasibility or Opportunity for Regional Ground water Replenishment) of this Order and, if applicable, Part VI.D.7.c.iv. (Hydromodification (Flow/Volume Duration) Control Criteria).

- (1) Documentation shall be submitted within 180 days after the effective date of this Order.
- (2) The Regional Water Board shall provide public notice of the proposed equivalency determination and a minimum 30-day period for public comment. After review and consideration of public comments, the Regional Water Board Executive Officer will determine whether implementation of the local ordinance provides equivalent pollutant control to the applicable provisions of this Order. Local ordinances that do not strictly conform to the provisions of this Order must be approved by the Regional Water Board Executive Officer as being “equivalent” in effect to the applicable provisions of this Order in order to substitute for the requirements in Parts VI.D.7.c.i and, where applicable, VI.D.7.c.iv.
- (3) Where the Regional Water Board Executive Officer determines that a Permittee’s local LID ordinance does not provide equivalent pollutant control, the Permittee shall either
 - (a) Require conformance with Parts VI.D.7.c.i and, where applicable, VI.D.7.c.iv, or
 - (b) Update its local ordinance to conform to the requirements herein within two years of the effective date of this Order.

ii. Project Coordination

- (1) Each Permittee shall facilitate a process for effective approval of post-construction storm water control measures. The process shall include:
 - (a) Detailed LID site design and BMP review including BMP sizing calculations, BMP pollutant removal performance, and municipal approval; and

- (b) An established structure for communication and delineated authority between and among municipal departments that have jurisdiction over project review, plan approval, and project construction through memoranda of understanding or an equivalent agreement.

iii. Maintenance Agreement and Transfer

- (1) Prior to issuing approval for final occupancy, each Permittee shall require that all new development and redevelopment projects subject to post-construction BMP requirements, with the exception of simple LID BMPs implemented on single family residences, provide an operation and maintenance plan, monitoring plan, where required, and verification of ongoing maintenance provisions for LID practices, Treatment Control BMPs, and Hydromodification Control BMPs including but not limited to: final map conditions, legal agreements, covenants, conditions or restrictions, CEQA mitigation requirements, conditional use permits, and/or other legally binding maintenance agreements. Permittees shall require maintenance records be kept on site for treatment BMPs implemented on single family residences.
 - (a) Verification at a minimum shall include the developer's signed statement accepting responsibility for maintenance until the responsibility is legally transferred; and either:
 - (i) A signed statement from the public entity assuming responsibility for BMP maintenance; or
 - (ii) Written conditions in the sales or lease agreement, which require the property owner or tenant to assume responsibility for BMP maintenance and conduct a maintenance inspection at least once a year; or
 - (iii) Written text in project covenants, conditions, and restrictions (CCRs) for residential properties assigning BMP maintenance responsibilities to the Home Owners Association; or
 - (iv) Any other legally enforceable agreement or mechanism that assigns responsibility for the maintenance of BMPs.
 - (b) Each Permittee shall require all development projects subject to post-construction BMP requirements to provide a plan for the operation and maintenance of all structural and treatment controls. The plan shall be submitted for examination of relevance to keeping the BMPs in proper working order. Where BMPs are transferred to Permittee for ownership and maintenance, the plan shall also include all relevant costs for upkeep of BMPs in the transfer. Operation and Maintenance plans for private BMPs shall be kept on-site for periodic review by Permittee inspectors.

iv. Tracking, Inspection, and Enforcement of Post-Construction BMPs

- (1) Each Permittee shall implement a tracking system and an inspection and enforcement program for new development and redevelopment post-construction storm water no later than 60 days after Order adoption date.
 - (a) Implement a GIS or other electronic system for tracking projects that have been conditioned for post-construction BMPs. The electronic system, at a minimum, should contain the following information:
 - (i) Municipal Project ID
 - (ii) State WDID No.
 - (iii) Project Acreage
 - (iv) BMP Type and Description
 - (v) BMP Location (coordinates)
 - (vi) Date of Acceptance
 - (vii) Date of Maintenance Agreement
 - (viii) Maintenance Records
 - (ix) Inspection Date and Summary
 - (x) Corrective Action
 - (xi) Date Certificate of Occupancy Issued
 - (xii) Replacement or Repair Date
 - (b) Inspect all development sites upon completion of construction and prior to the issuance of occupancy certificates to ensure proper installation of LID measures, structural BMPs, treatment control BMPs and hydromodification control BMPs. The inspection may be combined with other inspections provided it is conducted by trained personnel.
 - (c) Verify proper maintenance and operation of post-construction BMPs previously approved for new development and redevelopment and operated by the Permittee. The post-construction BMP maintenance inspection program shall incorporate the following elements:
 - (i) The development of a Post-construction BMP Maintenance Inspection checklist
 - (ii) Inspection at least once every 2 years after project completion, of post-construction BMPs to assess operation conditions with particular attention to criteria and procedures for post-construction

treatment control and hydromodification control BMP repair, replacement, or re-vegetation.

- (d) For post-construction BMPs operated and maintained by parties other than the Permittee, the Permittee shall require the other parties to document proper maintenance and operations.
- (e) Undertake enforcement action per the established Progressive Enforcement Policy as appropriate based on the results of the inspection. See Part VI.D.2 for requirements for the development and implementation of a Progressive Enforcement Policy.

8. Development Construction Program

- a. Each Permittee shall develop, implement, and enforce a construction program that:
 - i. Prevents illicit construction-related discharges of pollutants into the MS4 and receiving waters.
 - ii. Implements and maintains structural and non-structural BMPs to reduce pollutants in storm water runoff from construction sites.
 - iii. Reduces construction site discharges of pollutants to the MS4 to the MEP.
 - iv. Prevents construction site discharges to the MS4 from causing or contributing to a violation of water quality standards.
- b. Each Permittee shall establish for its jurisdiction an enforceable erosion and sediment control ordinance for all construction sites that disturb soil.

c. Applicability

The provisions contained in Part VI.D.8.d below apply exclusively to construction sites less than 1 acre. Provisions contained in Part VI.D.8.e – j, apply exclusively to construction sites 1 acre or greater. The requirements contained in this part apply to all activities involving soil disturbance with the exception of agricultural activities. Activities covered by this permit include but are not limited to grading, vegetation clearing, soil compaction, paving, re-paving and linear underground/overhead projects (LUPs).

d. Requirements for Construction Sites Less than One Acre

- i. For construction sites less than 1 acre, each Permittee shall:
 - (1) Through the use of the Permittee's erosion and sediment control ordinance or and/or building permit, require the implementation of an effective combination of erosion and sediment control BMPs from Table 12 to prevent erosion and sediment loss, and the discharge of construction wastes.

Table 12. Applicable Set of BMPs for All Construction Sites

| | |
|-----------------------------------|--|
| Erosion Controls | Scheduling |
| | Preservation of Existing Vegetation |
| Sediment Controls | Silt Fence |
| | Sand Bag Barrier |
| | Stabilized Construction Site Entrance/Exit |
| Non-Storm Water Management | Water Conservation Practices |
| | Dewatering Operations |
| Waste Management | Material Delivery and Storage |
| | Stockpile Management |
| | Spill Prevention and Control |
| | Solid Waste Management |
| | Concrete Waste Management |
| | Sanitary/Septic Waste Management |

- (2) Possess the ability to identify all construction sites with soil disturbing activities that require a permit, regardless of size, and shall be able to provide a list of permitted sites upon request of the Regional Water Board. Permittees may use existing permit databases or other tracking systems to comply with these requirements.
 - (3) Inspect construction sites on as needed based on the evaluation of the factors that are a threat to water quality. In evaluating the threat to water quality, the following factors shall be considered: soil erosion potential; site slope; project size and type; sensitivity of receiving water bodies; proximity to receiving water bodies; non-storm water discharges; past record of non-compliance by the operators of the construction site; and any water quality issues relevant to the particular MS4.
 - (4) Implement the Permittee’s Progressive Enforcement Policy to ensure that construction sites are brought into compliance with the erosion and sediment control ordinance within a reasonable time period. See Part VI.D.2 for requirements for the development and implementation of a Progressive Enforcement Policy.
- e. Each Permittee shall require operators of public and private construction sites within its jurisdiction to select, install, implement, and maintain BMPs that comply with its erosion and sediment control ordinance.
 - f. The requirements contained in this part apply to all activities involving soil disturbance with the exception of agricultural activities. Activities covered by this permit include but are not limited to grading, vegetation clearing, soil compaction, paving, re-paving and linear underground/overhead projects (LUPs).

g. Construction Site Inventory / Electronic Tracking System

- i. Each Permittee shall use an electronic system to inventory grading permits, encroachment permits, demolition permits, building permits, or construction permits (and any other municipal authorization to move soil and/ or construct or destruct that involves land disturbance) issued by the Permittee. To satisfy this requirement, the use of a database or GIS system is recommended.
- ii. Each Permittee shall complete an inventory and continuously update as new sites are permitted and sites are completed. The inventory / tracking system shall contain, at a minimum:
 - (1) Relevant contact information for each project (e.g., name, address, phone, email, etc. for the owner and contractor.
 - (2) The basic site information including location, status, size of the project and area of disturbance.
 - (3) The proximity all water bodies, water bodies listed as impaired by sediment-related pollutants, and water bodies for which a sediment-related TMDL has been adopted and approved by USEPA.
 - (4) Significant threat to water quality status, based on consideration of factors listed in Appendix 1 to the Statewide General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit).
 - (5) Current construction phase where feasible.
 - (6) The required inspection frequency.
 - (7) The project start date and anticipated completion date.
 - (8) Whether the project has submitted a Notice of Intent and obtained coverage under the Construction General Permit.
 - (9) The date the Permittee approved the Erosion and Sediment Control Plan (ESCP).
 - (10) Post-Construction Structural BMPs subject to Operation and Maintenance Requirements.

h. Construction Plan Review and Approval Procedures

- i. Each Permittee shall develop procedures to review and approve relevant construction plan documents.
- ii. The review procedures shall be developed and implemented such that the following minimum requirements are met:
 - (1) Prior to issuing a grading or building permit, each Permittee shall require each operator of a construction activity within its jurisdiction to prepare and submit an ESCP prior to the disturbance of land for the Permittee's review and written approval. The construction site operator shall be prohibited from commencing construction activity prior to receipt of written

approval by the Permittee. Each Permittee shall not approve any ESCP unless it contains appropriate site-specific construction site BMPs that meet the minimum requirements of a Permittee's erosion and sediment control ordinance.

- (2) ESCPs must include the elements of a Storm Water Pollution Prevention Plan (SWPPP). SWPPPs prepared in accordance with the requirements of the Construction General Permit can be accepted as ESCPs.
- (3) At a minimum, the ESCP must address the following elements:
 - (a) Methods to minimize the footprint of the disturbed area and to prevent soil compaction outside of the disturbed area.
 - (b) Methods used to protect native vegetation and trees.
 - (c) Sediment/Erosion Control.
 - (d) Controls to prevent tracking on and off the site.
 - (e) Non-storm water controls (e.g., vehicle washing, dewatering, etc.).
 - (f) Materials Management (delivery and storage).
 - (g) Spill Prevention and Control.
 - (h) Waste Management (e.g., concrete washout/waste management; sanitary waste management).
 - (i) Identification of site Risk Level as identified per the requirements in Appendix 1 of the Construction General Permit.
- (4) The ESCP must include the rationale for the selection and design of the proposed BMPs, including quantifying the expected soil loss from different BMPs.
- (5) Each Permittee shall require that the ESCP is developed and certified by a Qualified SWPPP Developer (QSD).
- (6) Each Permittee shall require that all structural BMPs be designed by a licensed California Engineer.
- (7) Each Permittee shall require that for all sites, the landowner or the landowner's agent sign a statement on the ESCP as follows:
 - (a) "I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure 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, to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that submitting false and/ or inaccurate information, failing to update the ESCP to reflect current conditions, or failing to properly and/ or adequately implement the ESCP may result in revocation of grading and/ or other permits or other sanctions provided by law."

- (8) Prior to issuing a grading or building permit, each Permittee must verify that the construction site operators have existing coverage under applicable permits, including, but not limited to the State Water Board's Construction General Permit, and State Water Board 401 Water Quality Certification.
- (9) Each Permittee shall develop and implement a checklist to be used to conduct and document review of each ESCP.

i. BMP Implementation Level

- i. Each Permittee shall implement technical standards for the selection, installation and maintenance of construction BMPs for all construction sites within its jurisdiction.
- ii. The BMP technical standards shall require:
 - (1) The use of BMPs that are tailored to the risks posed by the project. Sites are to be ranked from Low Risk (Risk 1) to High Risk (Risk 3). Project risks are to be calculated based on the potential for erosion from the site and the sensitivity of the receiving water body. Receiving water bodies that are listed on the Clean Water Act (CWA) Section 303(d) list for sediment or siltation are considered High Risk. Likewise, water bodies with designated beneficial uses of SPWN, COLD, and MIGR are also considered to be High Risk. The combined (sediment/receiving water) site risk shall be calculated using the methods provided in Appendix 1 of the Construction General Permit. At a minimum, the BMP technical standards shall include requirements for High Risk sites as defined in Table 15.
 - (2) The use of BMPs for all construction sites, sites equal or greater to 1 acre, and for paving projects per Tables 14 and 16 of this Order.
 - (3) Detailed installation designs and cut sheets for use within ESCPs.
 - (4) Maintenance expectations for each BMP, or category of BMPs, as appropriate.
- iii. Permittees are encouraged to adopt respective BMPs from latest versions of the *California BMP Handbook, Construction* or *Caltrans Stormwater Quality Handbooks, Construction Site Best Management Practices (BMPs) Manual* and addenda. Alternatively, Permittees are authorized to develop or adopt equivalent BMP standards consistent for Southern California and for the range of activities presented below in Tables 13 through 16.
- iv. The local BMP technical standards shall be readily available to the development community and shall be clearly referenced within each Permittee's storm water or development services website, ordinance, permit approval process and/or ESCP review forms. The local BMP technical standards shall also be readily available to the Regional Water Board upon request.
- v. Local BMP technical standards shall be available for the following:

Table 13. Minimum Set of BMPs for All Construction Sites

| | |
|-----------------------------|--|
| Erosion Controls | Scheduling |
| | Preservation of Existing Vegetation |
| Sediment Controls | Silt Fence |
| | Sand Bag Barrier |
| | Stabilized Construction Site Entrance/Exit |
| Non-Storm Management | water Water Conservation Practices |
| | Dewatering Operations |
| Waste Management | Material Delivery and Storage |
| | Stockpile Management |
| | Spill Prevention and Control |
| | Solid Waste Management |
| | Concrete Waste Management |
| | Sanitary/Septic Waste Management |

Table 14. Additional BMPs Applicable to Construction Sites Disturbing 1 Acre or More

| | |
|-----------------------------|--|
| Erosion Controls | Hydraulic Mulch |
| | Hydroseeding |
| | Soil Binders |
| | Straw Mulch |
| | Geotextiles and Mats |
| | Wood Mulching |
| Sediment Controls | Fiber Rolls |
| | Gravel Bag Berm |
| | Street Sweeping and/ or Vacuum |
| | Storm Drain Inlet Protection |
| | Scheduling |
| | Check Dam |
| Additional Controls | Wind Erosion Controls |
| | Stabilized Construction Entrance/ Exit |
| | Stabilized Construction Roadway |
| | Entrance/ Exit Tire Wash |
| Non-Storm Management | water Vehicle and Equipment Washing |
| | Vehicle and Equipment Fueling |
| | Vehicle and Equipment Maintenance |
| Waste Management | Material Delivery and Storage |
| | Spill Prevention and Control |

Table 15. Additional Enhanced BMPs for High Risk Sites

| | |
|-------------------------|-----------------|
| Erosion Controls | Hydraulic Mulch |
| | Hydroseeding |
| | Soil Binders |
| | Straw Mulch |

| | |
|-----------------------------------|---|
| | Geotextiles and Mats |
| | Wood Mulching |
| | Slope Drains |
| Sediment Controls | Silt Fence |
| | Fiber Rolls |
| | Sediment Basin |
| | Check Dam |
| | Gravel Bag Berm |
| | Street Sweeping and/or Vacuum |
| | Sand Bag Barrier |
| | Storm Drain Inlet Protection |
| Additional Controls | Wind Erosion Controls |
| | Stabilized Construction Entrance/Exit |
| | Stabilized Construction Roadway |
| | Entrance/Exit Tire Wash |
| | Advanced Treatment Systems* |
| Non-Storm water Management | Water Conservation Practices |
| | Dewatering Operations (Ground water dewatering only under NPDES Permit No. CAG994004) |
| | Vehicle and Equipment Washing |
| | Vehicle and Equipment Fueling |
| | Vehicle and Equipment Maintenance |
| Waste Management | Material Delivery and Storage |
| | Stockpile Management |
| | Spill Prevention and Control |
| | Solid Waste Management |

* Applies to public roadway projects.

Table 16. Minimum Required BMPs for Roadway Paving or Repair Operation (For Private or Public Projects)

| | |
|----|--|
| 1. | Restrict paving and repaving activity to exclude periods of rainfall or predicted rainfall unless required by emergency conditions. |
| 2. | Install gravel bags and filter fabric or other equivalent inlet protection at all susceptible storm drain inlets and at manholes to prevent spills of paving products and tack coat. |
| 3. | Prevent the discharge of release agents including soybean oil, other oils, or diesel to the storm water drainage system or receiving waters. |
| 4. | Minimize non storm water runoff from water use for the roller and for evaporative cooling of the asphalt. |
| 5. | Clean equipment over absorbent pads, drip pans, plastic sheeting or other material to capture all spillage and dispose of properly. |
| 6. | Collect liquid waste in a container, with a secure lid, for transport to a maintenance facility to be reused, recycled or disposed of properly. |
| 7. | Collect solid waste by vacuuming or sweeping and securing in an |

| | |
|-----|--|
| | appropriate container for transport to a maintenance facility to be reused, recycled or disposed of properly. |
| 8. | Cover the “cold-mix” asphalt (i.e., pre-mixed aggregate and asphalt binder) with protective sheeting during a rainstorm. |
| 9. | Cover loads with tarp before haul-off to a storage site, and do not overload trucks. |
| 10. | Minimize airborne dust by using water spray or other approved dust suppressant during grinding. |
| 11. | Avoid stockpiling soil, sand, sediment, asphalt material and asphalt grindings materials or rubble in or near storm water drainage system or receiving waters. |
| 12. | Protect stockpiles with a cover or sediment barriers during a rain. |

j. Construction Site Inspection

- i. Each Permittee shall use its legal authority to implement procedures for inspecting public and private construction sites.
- ii. The inspection procedures shall be implemented as follows:
 - (1) Inspect the public and private construction sites as specified in Table 17 below:

Table 17. Inspection Frequencies for Sites One Acre or Greater

| Site | Inspection Frequency Shall Occur |
|---|--|
| a. All sites 1 acre or larger that discharge to a tributary listed by the state as an impaired water for sediment or turbidity under the CWA § 303(d) | (1) when two or more consecutive days with greater than 50% chance of rainfall are predicted by NOAA ²⁹ , (2) within 48 hours of a ½-inch rain event and at (3) least once every two weeks |
| b. Other sites 1 acre or more determined to be a significant threat to water quality ³⁰ | |
| c. All other construction sites with 1 acre or more of soil disturbance not meeting the criteria above | At least monthly |

(2) Each Permittee shall inspect all phases of construction as follows:

(a) Prior to Land Disturbance

Prior to allowing an operator to commence land disturbance, each Permittee shall perform an inspection to ensure all necessary erosion

²⁹ www.srh.noaa.gov/forecast

³⁰ In evaluating the threat to water quality, the following factors shall be considered: soil erosion potential; site slope; project size and type; sensitivity of receiving water bodies; proximity to receiving water bodies; non-storm water discharges; past record of non-compliance by the operators of the construction site; and any water quality issues relevant to the particular MS4.

and sediment structural and non-structural BMP materials and procedures are available per the erosion and sediment control plan.

- (b) During Active Construction, including Land Development³¹ and Vertical Construction³²

In accordance with the frequencies specified in Part VI.D.8.j and Table 17 of this Order, each Permittee shall perform an inspection to ensure all necessary erosion and sediment structural and non-structural BMP materials and procedures are available per the erosion and sediment control plan throughout the construction process.

- (c) Final Landscaping / Site Stabilization³³

At the conclusion of the project and as a condition of approving and/or issuing a Certificate of Occupancy, each Permittee shall inspect the constructed site to ensure that all graded areas have reached final stabilization and that all trash, debris, and construction materials, and temporary erosion and sediment BMPs are removed.

- (3) Based on the required frequencies above, each construction project shall be inspected a minimum of three times.

- (4) Inspection Standard Operating Procedures

Each Permittee shall develop, implement, and revise as necessary, standard operating procedures that identify the inspection procedures each Permittee will follow. Inspections of construction sites, and the standard operating procedures, shall include, but are not limited to:

- (a) Verification of active coverage under the Construction General Permit for sites disturbing 1 acre or more, or that are part of a planned development that will disturb 1 acre or more and a process for referring non-filers to the Regional Water Board.
- (b) Review of the applicable ESCP and inspection of the construction site to determine whether all BMPs have been selected, installed, implemented, and maintained according to the approved plan and subsequent approved revisions.
- (c) Assessment of the appropriateness of the planned and installed BMPs and their effectiveness.
- (d) Visual observation and record keeping of non-storm water discharges, potential illicit discharges and connections, and potential discharge of pollutants in storm water runoff.
- (e) Development of a written or electronic inspection report generated from an inspection checklist used in the field.

³¹ Activities include cuts and fills, rough and finished grading; alluvium removals; canyon cleanouts; rock undercuts; keyway excavations; stockpiling of select material for capping operations; and excavation and street paving, lot grading, curbs, gutters and sidewalks, public utilities, public water facilities including fire hydrants, public sanitary sewer systems, storm sewer system and/or other drainage improvement.

³² The build out of structures from foundations to roofing, including rough landscaping.

³³ All soil disturbing activities at each individual parcel within the site have been completed.

- (f) Tracking of the number of inspections for the inventoried construction sites throughout the reporting period to verify that the sites are inspected at the minimum frequencies required in Table 17 of this Order.

k. Enforcement

Each Permittee shall implement its Progressive Enforcement Policy to ensure that construction sites are brought into compliance with all storm water requirements within a reasonable time period. See Part VI.D.2 for requirements for the development and implementation of a Progressive Enforcement Policy.

I. Permittee Staff Training

- i. Each Permittee shall ensure that all staff whose primary job duties are related to implementing the construction storm water program are adequately trained.
- ii. Each Permittee may conduct in-house training or contract with consultants. Training shall be provided to the following staff positions of the MS4:

(1) Plan Reviewers and Permitting Staff

Ensure staff and consultants are trained as qualified individuals, knowledgeable in the technical review of local erosion and sediment control ordinance, local BMP technical standards, ESCP requirements, and the key objectives of the State Water Board QSD program. Permittees may provide internal training to staff or require staff to obtain QSD certification.

(2) Erosion Sediment Control/Storm Water Inspectors

Each Permittee shall ensure that its inspectors are knowledgeable in inspection procedures consistent with the State Water Board sponsored program QSD or a Qualified SWPPP Practitioner (QSP) or that a designated person on staff who has been trained in the key objectives of the QSD/QSP programs supervises inspection operations. Each Permittee may provide internal training to staff or require staff to obtain QSD/QSP certification. Each inspector must be knowledgeable of the local BMP technical standards and ESCP requirements.

(3) Third-Party Plan Reviewers, Permitting Staff, and Inspectors

If the Permittee utilizes outside parties to conduct inspections and/or review plans, each Permittee shall ensure these staff are trained per the requirements listed above. Outside contractors can self-certify, providing they certify they have received all applicable training required in the Permit and have documentation to that effect.

9. Public Agency Activities Program

- a. Each Permittee shall implement a Public Agency Activities Program to minimize storm water pollution impacts from Permittee-owned or operated facilities and activities and to identify opportunities to reduce storm water pollution impacts

from areas of existing development. Requirements for Public Agency Facilities and Activities consist of the following components:

- i. Public Construction Activities Management
- ii. Public Facility Inventory
- iii. Inventory of Existing Development for Retrofitting Opportunities
- iv. Public Facility and Activity Management
- v. Vehicle and Equipment Wash Areas
- vi. Landscape, Park, and Recreational Facilities Management
- vii. Storm Drain Operation and Maintenance
- viii. Streets, Roads, and Parking Facilities Maintenance
- ix. Emergency Procedures
- x. Municipal Employee and Contractor Training

b. Public Construction Activities Management

- i. Each Permittee shall implement and comply with the Planning and Land Development Program requirements in Part VI.D.7 of this Order at Permittee-owned or operated (i.e., public or Permittee sponsored) construction projects that are categorized under the project types identified in Part VI.D.7.b of this Order.
- ii. Each Permittee shall implement and comply with the appropriate Development Construction Program requirements in Part VI.D.8 of this Order at Permittee-owned or operated construction projects as applicable.
- iii. For Permittee-owned or operated projects (including those under a capital improvement project plan) that disturb less than one acre of soil, each Permittee shall require an effective combination of erosion and sediment control BMPs from Table 13 (see Construction Development Program, minimum BMPs).
- iv. Each Permittee shall obtain separate coverage under the Construction General Permit for all Permittee-owned or operated construction sites that require coverage.

c. Public Facility Inventory

- i. Each Permittee shall maintain an updated inventory of all Permittee-owned or operated (i.e., public) facilities within its jurisdiction that are potential sources of storm water pollution. The incorporation of facility information into a GIS is recommended. Sources to be tracked include but are not limited to the following:
 - (1) Animal control facilities
 - (2) Chemical storage facilities

- (3) Composting facilities
 - (4) Equipment storage and maintenance facilities (including landscape maintenance-related operations)
 - (5) Fueling or fuel storage facilities (including municipal airports)
 - (6) Hazardous waste disposal facilities
 - (7) Hazardous waste handling and transfer facilities
 - (8) Incinerators
 - (9) Landfills
 - (10) Materials storage yards
 - (11) Pesticide storage facilities
 - (12) Fire stations
 - (13) Public restrooms
 - (14) Public parking lots
 - (15) Public golf courses
 - (16) Public swimming pools
 - (17) Public parks
 - (18) Public works yards
 - (19) Public marinas
 - (20) Recycling facilities
 - (21) Solid waste handling and transfer facilities
 - (22) Vehicle storage and maintenance yards
 - (23) Storm water management facilities (e.g., detention basins)
 - (24) All other Permittee-owned or operated facilities or activities that each Permittee determines may contribute a substantial pollutant load to the MS4.
- ii. Each Permittee shall include the following minimum fields of information for each Permittee-owned or operated facility in its inventory.
- (1) Name of facility
 - (2) Name of facility manager and contact information
 - (3) Address of facility (physical and mailing)
 - (4) A narrative description of activities performed and potential pollution sources.
 - (5) Coverage under the Industrial General Permit or other individual or general NPDES permits or any applicable waiver issued by the Regional or State Water Board pertaining to storm water discharges.

- iii. Each Permittee shall update its inventory at least once during the 5-year term of the Order. The update shall be accomplished through collection of new information obtained through field activities or through other readily available inter and intra-agency informational databases (e.g., property management, land-use approvals, accounting and depreciation ledger account, and similar information).

d. Inventory of Existing Development for Retrofitting Opportunities

- i. Each Permittee shall develop an inventory of retrofitting opportunities that meets the requirements of this Part VI.9.d. Retrofit opportunities shall be identified within the public right-of-way or in coordination with a TMDL implementation plan(s). The goals of the existing development retrofitting inventory are to address the impacts of existing development through regional or sub-regional retrofit projects that reduce the discharges of storm water pollutants into the MS4 and prevent discharges from the MS4 from causing or contributing to a violation of water quality standards as defined in Part V.A, Receiving Water Limitations.
- ii. Each Permittee shall screen existing areas of development to identify candidate areas for retrofitting using watershed models or other screening level tools.
- iii. Each Permittee shall evaluate and rank the areas of existing development identified in the screening to prioritize retrofitting candidates. Criteria for evaluation may include but are not limited to:
 - (1) Feasibility, including general private and public land availability;
 - (2) Cost effectiveness;
 - (3) Pollutant removal effectiveness;
 - (4) Tributary area potentially treated;
 - (5) Maintenance requirements;
 - (6) Landowner cooperation;
 - (7) Neighborhood acceptance;
 - (8) Aesthetic qualities;
 - (9) Efficacy at addressing concern; and
 - (10) Potential improvements to public health and safety.
- iv. Each Permittee shall consider the results of the evaluation in the following programs:
 - (1) The Permittee's storm water management program: Highly feasible projects expected to benefit water quality should be given a high priority to implement source control and treatment control BMPs in a Permittee's SWMP.

- (2) Off-site mitigation for New Development and Redevelopment: Each Permittee shall consider high priority retrofit projects as candidates for off-site mitigation projects per Part VI.D.7.c.iii.(4).(d).
 - (3) Where feasible, at the discretion of the Permittee, the existing development retrofitting program may be coordinated with flood control projects and other infrastructure improvement programs per Part VI.D.9.e.ii.(2) below.
- v. Each Permittee shall cooperate with private landowners to encourage site specific retrofitting projects. Each Permittee shall consider the following practices in cooperating with private landowners to retrofit existing development:
- (1) Demonstration retrofit projects;
 - (2) Retrofits on public land and easements that treat runoff from private developments;
 - (3) Education and outreach;
 - (4) Subsidies for retrofit projects;
 - (5) Requiring retrofit projects as enforcement, mitigation or ordinance compliance;
 - (6) Public and private partnerships;
 - (7) Fees for existing discharges to the MS4 and reduction of fees for retrofit implementation.

e. Public Agency Facility and Activity Management

- i. Each Permittee shall obtain separate coverage under the Industrial General Permit for all Permittee-owned or operated facilities where industrial activities are conducted that require coverage under the Industrial General Permit.
- ii. Each Permittee shall implement the following measures for Permittee- owned and operated flood management projects:
 - (1) Develop procedures to assess the impacts of flood management projects on the water quality of receiving water bodies; and
 - (2) Evaluate existing structural flood control facilities to determine if retrofitting the facility to provide additional pollutant removal from storm water is feasible.
- iii. Each Permittee shall ensure the implementation and maintenance of activity specific BMPs listed in Table 18 (BMPs for Public Agency Facilities and Activities) or an equivalent set of BMPs when such activities occur at Permittee-owned or operated facilities and field activities (e.g., project sites) including but not limited to the facility types listed in Part VI.D.9.c above, and at any area that includes the activities described in Table 18, or that have the potential to discharge pollutants in storm water.

- iv. Any contractors hired by the Permittee to conduct Public Agency Activities including, but not limited to, storm and/or sanitary sewer system inspection and repair, street sweeping, trash pick-up and disposal, and street and right-of-way construction and repair shall be contractually required to implement and maintain the activity specific BMPs listed in Table 18. Each Permittee shall conduct oversight of contractor activities to ensure these BMPs are implemented and maintained.
- v. Permittee-owned or operated facilities that have obtained coverage under the Industrial General Permit shall implement and maintain BMPs consistent with the associated SWPPP and are therefore not required to implement and maintain the activity specific BMPs listed in Table 18.
- vi. Effective source control BMPs for the activities listed in Table 18 shall be implemented at Permittee-owned or operated facilities, unless the pollutant generating activity does not occur. Each Permittee shall require implementation of additional BMPs where storm water from the MS4 discharges to a significant ecological area (SEA, see Attachment A for definition), a water body subject to TMDL provisions in Part VI.E., or a CWA § 303(d) listed water body (see Part VI.E below). Likewise, for those BMPs that are not adequately protective of water quality standards, a Permittee may require additional site-specific controls.

Table 18. BMPs for Public Agency Facilities and Activities

| General and Activity Specific BMPs | | |
|---|--|---|
| General BMPs | Scheduling and Planning | |
| | Spill Prevention and Control | |
| | Sanitary/Septic Waste Management | |
| | Material Use | |
| | Safer Alternative Products | |
| | Vehicle/Equipment Cleaning, Fueling and Maintenance | |
| | Illicit Connection Detection, Reporting and Removal | |
| | Illegal Spill Discharge Control | |
| | Maintenance Facility Housekeeping Practices | |
| Flexible Pavement | Asphalt Cement Crack and Joint Grinding/ Sealing | |
| | Asphalt Paving | |
| | Structural Pavement Failure (Digouts) Pavement Grinding and Paving | |
| | Emergency Pothole Repairs | |
| | Sealing Operations | |
| Rigid Pavement | Portland Cement Crack and Joint Sealing | |
| | Mudjacking and Drilling | |
| | Concrete Slab and Spall Repair | |
| Slope/ Vegetation | Drains/ | |
| | | Shoulder Grading |
| | | Nonlandscaped Chemical Vegetation Control |
| | Nonlandscaped Mechanical Vegetation Control/ | |

| General and Activity Specific BMPs | |
|---|--|
| | Mowing |
| | Nonlandscaped Tree and Shrub Pruning, Brush Chipping, Tree and Shrub Removal |
| | Fence Repair |
| | Drainage Ditch and Channel Maintenance |
| | Drain and Culvert Maintenance |
| | Curb and Sidewalk Repair |
| Litter/ Debris/ Graffiti | Sweeping Operations |
| | Litter and Debris Removal |
| | Emergency Response and Cleanup Practices |
| | Graffiti Removal |
| Landscaping | Chemical Vegetation Control |
| | Manual Vegetation Control |
| | Landscaped Mechanical Vegetation Control/ Mowing |
| | Landscaped Tree and Shrub Pruning, Brush Chipping, Tree and Shrub Removal |
| | Irrigation Line Repairs |
| | Irrigation (Watering), Potable and Nonpotable |
| Environmental | Storm Drain Stenciling |
| | Roadside Slope Inspection |
| | Roadside Stabilization |
| | Stormwater Treatment Devices |
| | Traction Sand Trap Devices |
| Bridges | Welding and Grinding |
| | Sandblasting, Wet Blast with Sand Injection and Hydroblasting |
| | Painting |
| | Bridge Repairs |
| Other Structures | Pump Station Cleaning |
| | Tube and Tunnel Maintenance and Repair |
| | Tow Truck Operations |
| | Toll Booth Lane Scrubbing Operations |
| Electrical | Sawcutting for Loop Installation |
| Traffic Guidance | Thermoplastic Striping and Marking |
| | Paint Striping and Marking |
| | Raised/ Recessed Pavement Marker Application and Removal |
| | Sign Repair and Maintenance |
| | Median Barrier and Guard Rail Repair |
| | Emergency Vehicle Energy Attenuation Repair |
| Storm Maintenance | Minor Slides and Slipouts Cleanup/ Repair |
| Management and Support | Building and Grounds Maintenance |
| | Storage of Hazardous Materials (Working Stock) |
| | Material Storage Control (Hazardous Waste) |

| General and Activity Specific BMPs | |
|---|---|
| | Outdoor Storage of Raw Materials |
| | Vehicle and Equipment Fueling |
| | Vehicle and Equipment Cleaning |
| | Vehicle and Equipment Maintenance and Repair |
| | Aboveground and Underground Tank Leak and Spill Control |

f. Vehicle and Equipment Washing

- i. Each Permittee shall implement and maintain the activity specific BMPs listed in Table 18 (BMPs for Public Agency Facilities and Activities) for all fixed vehicle and equipment washing; including fire fighting and emergency response vehicles.
- ii. Each Permittee shall prevent discharges of wash waters from vehicle and equipment washing to the MS4 by implementing any of the following measures at existing facilities with vehicle or equipment wash areas:
 - (1) Self-contain, and haul off for disposal; or
 - (2) Equip with a clarifier or an alternative pre-treatment device and plumb to the sanitary sewer in accordance with applicable waste water provider regulations.
- iii. Each Permittee shall ensure that any municipal facilities constructed, redeveloped, or replaced shall not discharge wastewater from vehicle and equipment wash areas to the MS4 by plumbing all areas to the sanitary sewer in accordance with applicable waste water provider regulations, or self-containing all waste water/ wash water and hauling to a point of legal disposal.

g. Landscape, Park, and Recreational Facilities Management

- i. Each Permittee shall implement and maintain the activity specific BMPs listed in Table 18 for all public right-of-ways, flood control facilities and open channels, lakes and reservoirs, and landscape, park, and recreational facilities and activities.
- ii. Each Permittee shall implement an IPM program that includes the following:
 - (1) Pesticides are used only if monitoring indicates they are needed, and pesticides are applied according to applicable permits and established guidelines.
 - (2) Treatments are made with the goal of removing only the target organism.
 - (3) Pest controls are selected and applied in a manner that minimizes risks to human health, beneficial non-target organisms, and the environment.
 - (4) The use of pesticides, including Organophosphates and Pyrethroids, does not threaten water quality.

- (5) Partner with other agencies and organizations to encourage the use of IPM.
 - (6) Adopt and verifiably implement policies, procedures, and/ or ordinances requiring the minimization of pesticide use and encouraging the use of IPM techniques (including beneficial insects) for Public Agency Facilities and Activities.
 - (7) Policies, procedures, and ordinances shall include commitments and a schedule to reduce the use of pesticides that cause impairment of surface waters by implementing the following procedures:
 - (a) Prepare and annually update an inventory of pesticides used by all internal departments, divisions, and other operational units.
 - (b) Quantify pesticide use by staff and hired contractors.
 - (c) Demonstrate implementation of IPM alternatives where feasible to reduce pesticide use.
- iii.** Each Permittee shall implement the following requirements:
- (1) Use a standardized protocol for the routine and non-routine application of pesticides (including pre-emergents), and fertilizers.
 - (2) Ensure there is no application of pesticides or fertilizers (1) when two or more consecutive days with greater than 50% chance of rainfall are predicted by NOAA³⁴, (2) within 48 hours of a ½-inch rain event, or (3) when water is flowing off the area where the application is to occur. This requirement does not apply to the application of aquatic pesticides described in Part VI.D.9.g.iii.(1) above or pesticides which require water for activation.
 - (3) Ensure that no banned or unregistered pesticides are stored or applied.
 - (4) Ensure that all staff applying pesticides are certified in the appropriate category by the California Department of Pesticide Regulation, or are under the direct supervision of a pesticide applicator certified in the appropriate category.
 - (5) Implement procedures to encourage the retention and planting of native vegetation to reduce water, pesticide and fertilizer needs; and
 - (6) Store pesticides and fertilizers indoors or under cover on paved surfaces, or use secondary containment.
 - (a) Reduce the use, storage, and handling of hazardous materials to reduce the potential for spills.
 - (b) Regularly inspect storage areas.

³⁴ www.srh.noaa.gov/forecast

h. Storm Drain Operation and Maintenance

- i.** Each Permittee shall implement and maintain the activity specific BMPs listed in Table 18 for storm drain operation and maintenance.
- ii.** Ensure that all material removed from the MS4 does not reenter the system. Solid material shall be dewatered in a contained area and liquid material shall be disposed in accordance with any of the following measures:
 - (1) Self-contain, and haul off for legal disposal; or
 - (2) Applied to the land without runoff; or
 - (3) Equip with a clarifier or an alternative pre-treatment device; and plumb to the sanitary sewer in accordance with applicable waste water provider regulations.
- iii.** Catch Basin Cleaning
 - (1) In areas that are not subject to a trash TMDL, each Permittee shall determine priority areas and shall update its map or list of Catch Basins with their GPS coordinates and priority:
 - Priority A: Catch basins that are designated as consistently generating the highest volumes of trash and/or debris.
 - Priority B: Catch basins that are designated as consistently generating moderate volumes of trash and/or debris.
 - Priority C: Catch basins that are designated as generating low volumes of trash and/or debris.The map or list shall contain the rationale or data to support priority designations.
 - (2) In areas that are not subject to a trash TMDL, each Permittee shall inspect catch basins according to the following schedule:
 - Priority A: A minimum of 3 times during the wet season (October 1 through April 15) and once during the dry season every year.
 - Priority B: A minimum of once during the wet season and once during the dry season every year.
 - Priority C: A minimum of once per year.Catch basins shall be cleaned as necessary on the basis of inspections. At a minimum, Permittees shall ensure that any catch basin that is determined to be at least 25% full of trash shall be cleaned out. Permittees shall maintain inspection and cleaning records for Regional Water Board review.
 - (3) In areas that are subject to a trash TMDL, the subject Permittees shall implement the applicable provisions in Part VI.E.

iv. Trash Management at Public Events

- (1) Each Permittee shall require the following measures for any event in the public right of way or wherever it is foreseeable that substantial quantities of trash and litter may be generated, including events located in areas that are subject to a trash TMDL:
 - (a) Proper management of trash and litter generated; and
 - (b) Arrangement for temporary screens to be placed on catch basins; or
 - (c) Provide clean out of catch basins, trash receptacles, and grounds in the event area within one business day subsequent to the event.

v. Trash Receptacles

- (1) Each Permittee shall ensure trash receptacles, or equivalent trash capturing devices, are covered in areas newly identified as high trash generation areas within its jurisdiction.
- (2) Each Permittee shall ensure that all trash receptacles are cleaned out and maintained as necessary to prevent trash overflow.

vi. Catch Basin Labels and Open Channel Signage

- (1) Each Permittee shall label all storm drain inlets that they own with a legible “no dumping” message.
- (2) Each Permittee shall inspect the legibility of the stencil or label nearest each inlet prior to the wet season every year.
- (3) Each Permittee shall record all catch basins with illegible stencils and re-stencil or re-label within 180 days of inspection.
- (4) Each Permittee shall post signs, referencing local code(s) that prohibit littering and illegal dumping, at designated public access points to open channels, creeks, urban lakes, and other relevant water bodies.

vii. Additional Trash Management Practices

- (1) In areas that are not subject to a trash TMDL, each Permittee shall install trash excluders, or equivalent devices, on or in catch basins or outfalls to prevent the discharge of trash to the MS4 or receiving water no later than four years after the effective date of this Order in areas defined as Priority A (Part VI.D.9.h.iii.(1)) except at sites where the application of such BMP(s) alone will cause flooding. Lack of maintenance that causes flooding is not an acceptable exception to the requirement to install BMPs. Alternatively, each Permittee may implement alternative or enhanced BMPs beyond the provisions of this Order (such as but not limited to increased street sweeping, adding trash cans near trash generation sites, prompt enforcement of trash accumulation, increased trash collection on public property, increased litter prevention messages or trash nets within the MS4) that provide substantially equivalent removal of trash. Each Permittee shall demonstrate that BMPs, which substituted for trash excluders, provide equivalent trash removal performance as excluders.

When outfall trash capture is provided, revision of the schedule for inspection and cleanout of catch basins in Part VI.D.9.h.iii.(2) shall be reported in the next year's annual report.

viii. Storm Drain Maintenance

Each Permittee shall implement a program for Storm Drain Maintenance that includes the following:

- (1) Visual monitoring of Permittee-owned open channels and other drainage structures for trash and debris at least annually.
- (2) Removal of trash and debris from open channels a minimum of once per year before the wet season.
- (3) Elimination of the discharge of contaminants during MS4 maintenance and clean outs.
- (4) Proper disposal of debris and trash removed during storm drain maintenance.

ix. Infiltration from Sanitary Sewer to MS4/Preventive Maintenance

- (1) Each Permittee shall implement controls and measures to prevent and eliminate infiltration of seepage from sanitary sewers to MS4s through thorough, routine preventive maintenance of the MS4.
- (2) Each Permittee that operates both a municipal sanitary sewer system and a MS4 must implement controls and measures to prevent and eliminate infiltration of seepage from the sanitary sewers to the MS4s that must include overall sanitary sewer and MS4 surveys and thorough, routine preventive maintenance of both. Implementation of a Sewer System Management Plan in accordance with the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, may be used to fulfill this requirement.
- (3) Each Permittee shall implement controls to limit infiltration of seepage from sanitary sewers to the MS4 where necessary. Such controls must include:
 - (a) Adequate plan checking for construction and new development;
 - (b) Incident response training for its municipal employees that identify sanitary sewer spills;
 - (c) Code enforcement inspections;
 - (d) MS4 maintenance and inspections;
 - (e) Interagency coordination with sewer agencies; and
 - (f) Proper education of its municipal staff and contractors conducting field operations on the MS4 or its municipal sanitary sewer (if applicable).

x. Permittee Owned Treatment Control BMPs

- (1) Each Permittee shall implement an inspection and maintenance program for all Permittee owned treatment control BMPs, including post-construction treatment control BMPs.
- (2) Each Permittee shall ensure proper operation of all treatment control BMPs and maintain them as necessary for proper operation, including all post-construction treatment control BMPs.
- (3) Any residual water³⁵ produced by a treatment control BMP and not being internal to the BMP performance when being maintained shall be:
 - (a) Hauled away and legally disposed of; or
 - (b) Applied to the land without runoff; or
 - (c) Discharged to the sanitary sewer system (with permits or authorization); or
 - (d) Treated or filtered to remove bacteria, sediments, nutrients, and meet the limitations set in Table 19 (Discharge Limitations for Dewatering Treatment BMPs), prior to discharge to the MS4.

Table 19. Discharge Limitations for Dewatering Treatment BMPs³⁶

| Parameter | Units | Limitation |
|------------------------|--------------|-------------------|
| Total Suspended Solids | mg/L | 100 |
| Turbidity | NTU | 50 |
| Oil and Grease | mg/L | 10 |

i. Streets, Roads, and Parking Facilities Maintenance

- i. Each Permittee shall designate streets and/or street segments within its jurisdiction as one of the following:
 - Priority A: Streets and/or street segments that are designated as consistently generating the highest volumes of trash and/or debris.
 - Priority B: Streets and/or street segments that are designated as consistently generating moderate volumes of trash and/or debris.
 - Priority C: Streets and/or street segments that are designated as generating low volumes of trash and/or debris.
- ii. Each Permittee shall perform street sweeping of curbed streets according to the following schedule:
 - Priority A: Streets and/or street segments that are designated as Priority A shall be swept at least two times per month.

³⁵ See Attachment A.

³⁶ Technology based effluent limitations.

Priority B: Streets and/or street segments that are designated as Priority B shall be swept at least once per month.

Priority C: Streets and/or street segments that are designated as Priority C shall be swept as necessary but in no case less than once per year.

iii. Road Reconstruction

Each Permittee shall require that for any project that includes roadbed or street paving, repaving, patching, digouts, or resurfacing roadbed surfaces, that the following BMPs be implemented for each project.

- (1) Restrict paving and repaving activity to exclude periods of rainfall or predicted rainfall³⁷ unless required by emergency conditions.
- (2) Install sand bags or gravel bags and filter fabric at all susceptible storm drain inlets and at manholes to prevent spills of paving products and tack coat;
- (3) Prevent the discharge of release agents including soybean oil, other oils, or diesel into the MS4 or receiving waters.
- (4) Prevent non-storm water runoff from water use for the roller and for evaporative cooling of the asphalt.
- (5) Clean equipment over absorbent pads, drip pans, plastic sheeting or other material to capture all spillage and dispose of properly.
- (6) Collect liquid waste in a container, with a secure lid, for transport to a maintenance facility to be reused, recycled or disposed of properly.
- (7) Collect solid waste by vacuuming or sweeping and securing in an appropriate container for transport to a maintenance facility to be reused, recycled or disposed of properly.
- (8) Cover the “cold-mix” asphalt (i.e., pre-mixed aggregate and asphalt binder) with protective sheeting during a rainstorm.
- (9) Cover loads with tarp before haul-off to a storage site, and do not overload trucks.
- (10) Minimize airborne dust by using water spray during grinding.
- (11) Avoid stockpiling soil, sand, sediment, asphalt material and asphalt grindings materials or rubble in or near MS4 or receiving waters.
- (12) Protect stockpiles with a cover or sediment barriers during a rain.

iv. Parking Facilities Maintenance

- (1) Permittee-owned parking lots exposed to storm water shall be kept clear of debris and excessive oil buildup and cleaned no less than 2 times per month and/or inspected no less than 2 times per month to determine if

³⁷ A probability of precipitation (POP) of 50% is required.

cleaning is necessary. In no case shall a Permittee-owned parking lot be cleaned less than once a month.

j. Emergency Procedures

- i. Each Permittee may conduct repairs of essential public service systems and infrastructure in emergency situations with a self-waiver of the provisions of this Order as follows:
 - (1) The Permittee shall abide by all other regulatory requirements, including notification to other agencies as appropriate.
 - (2) Where the self-waiver has been invoked, the Permittee shall submit to the Regional Water Board Executive Officer a statement of the occurrence of the emergency, an explanation of the circumstances, and the measures that were implemented to reduce the threat to water quality, no later than 30 business days after the situation of emergency has passed.
 - (3) Minor repairs of essential public service systems and infrastructure in emergency situations (that can be completed in less than one week) are not subject to the notification provisions. Appropriate BMPs to reduce the threat to water quality shall be implemented.

k. Municipal Employee and Contractor Training

- i. Each Permittee shall, no later than 1 year after Order adoption and annually thereafter before June 30, train all of their employees in targeted positions (whose interactions, jobs, and activities affect storm water quality) on the requirements of the overall storm water management program, or shall ensure contractors performing privatized/contracted municipal services are appropriately trained to:
 - (1) Promote a clear understanding of the potential for activities to pollute storm water.
 - (2) Identify opportunities to require, implement, and maintain appropriate BMPs in their line of work.Outside contractors can self-certify, providing they certify they have received all applicable training required in the Permit and have documentation to that effect.
- ii. Each Permittee shall, no later than 1 year after Order adoption and annually thereafter before June 30, train all of their employees and contractors who use or have the potential to use pesticides or fertilizers (whether or not they normally apply these as part of their work). Training programs shall address:
 - (1) The potential for pesticide-related surface water toxicity.
 - (2) Proper use, handling, and disposal of pesticides.
 - (3) Least toxic methods of pest prevention and control, including IPM.
 - (4) Reduction of pesticide use.

- iii. Outside contractors can self-certify, providing they certify they have received all applicable training required in the Permit and have documentation to that effect.

10. Illicit Connections and Illicit Discharges Elimination Program

a. General

- i. Each Permittee shall continue to implement an Illicit Connection and Illicit Discharge Elimination (IC/ID) Program to detect, investigate, and eliminate IC/IDs to the MS4. The IC/ID Program must be implemented in accordance with the requirements and performance measures specified in this Order.
- ii. As stated in Part VI.A.2 of this Order, each Permittee must have adequate legal authority to prohibit IC/IDs to the MS4 and enable enforcement capabilities to eliminate the source of IC/IDs.
- iii. Each Permittee's IC/ID Program shall consist of at least the following major program components:
 - (1) Procedures for conducting source investigations for IC/IDs
 - (2) Procedures for eliminating the source of IC/IDs
 - (3) Procedures for public reporting of illicit discharges
 - (4) Spill response plan
 - (5) IC/IDs education and training for Permittee staff

b. Illicit Discharge Source Investigation and Elimination

- i. Each Permittee shall develop written procedures for conducting investigations to identify the source of all suspected illicit discharges, including procedures to eliminate the discharge once the source is located.
- ii. At a minimum, each Permittee shall initiate an investigation(s) to identify and locate the source within 72 hours of becoming aware of the illicit discharge.
- iii. When conducting investigations, each Permittee shall comply with the following:
 - (1) Illicit discharges suspected of being sanitary sewage and/or significantly contaminated shall be investigated first.
 - (2) Each Permittee shall track all investigations to document at a minimum the date(s) the illicit discharge was observed; the results of the investigation; any follow-up of the investigation; and the date the investigation was closed.
 - (3) Each Permittee shall investigate the source of all observed illicit discharges.
- iv. When taking corrective action to eliminate illicit discharges, each Permittee shall comply with the following:

- (1) If the source of the illicit discharge has been determined to originate within the Permittee's jurisdiction, the Permittee shall immediately notify the responsible party/parties of the problem, and require the responsible party to initiate all necessary corrective actions to eliminate the illicit discharge. Upon being notified that the discharge has been eliminated, the Permittee shall conduct a follow-up investigation to verify that the discharge has been eliminated and cleaned-up to the satisfaction of the Permittee(s). Each Permittee shall document its follow-up investigation. Each Permittee may seek recovery and remediation costs from responsible parties or require compensation for the cost of all inspection, investigation, cleanup and oversight activities. Resulting enforcement actions shall follow the program's Progressive Enforcement Policy, per Part VI.D.2.
 - (2) If the source of the illicit discharge has been determined to originate within an upstream jurisdiction, the Permittee shall notify the upstream jurisdiction and the Regional Water Board within 30 days of such determination and provide all of the information collected regarding efforts to identify its source. Each Permittee may seek recovery and remediation costs from responsible parties or require compensation for the cost of all inspection, investigation, cleanup and oversight activities. Resulting enforcement actions shall follow the program's Progressive Enforcement Policy, per Part VI.D.2.
 - (3) If the source of the illicit discharge cannot be traced to a suspected responsible party, affected Permittees shall implement its spill response plan and then initiate a permanent solution as described in section 10.b.v below.
- v. In the event the Permittee is unable to eliminate an ongoing illicit discharge following full execution of its legal authority and in accordance with its Progressive Enforcement Policy, or other circumstances prevent the full elimination of an ongoing illicit discharge, including the inability to find the responsible party/parties, the Permittee shall provide for diversion of the entire flow to the sanitary sewer or provide treatment. In either instance, the Permittee shall notify the Regional Water Board in writing within 30 days of such determination and shall provide a written plan for review and comment that describes the efforts that have been undertaken to eliminate the illicit discharge, a description of the actions to be undertaken, anticipated costs, and a schedule for completion.

c. Identification and Response to Illicit Connections

i. Investigation

Each Permittee, upon discovery or upon receiving a report of a suspected illicit connection, shall initiate an investigation within 21 days, to determine the following: (1) source of the connection, (2) nature and volume of discharge through the connection, and (3) responsible party for the connection.

ii. Elimination

Each Permittee, upon confirmation of an illicit MS4 connection, shall ensure that the connection is:

- (1) Permitted or documented, provided the connection will only discharge storm water and non-storm water allowed under this Order or other individual or general NPDES Permits/WDRs, or
- (2) Eliminated within 180 days of completion of the investigation, using its formal enforcement authority, if necessary, to eliminate the illicit connection.

iii. Documentation

Formal records must be maintained for all illicit connection investigations and the formal enforcement taken to eliminate illicit connections.

d. Public Reporting of Non-Storm Water Discharges and Spills

- i.** Each Permittee shall promote, publicize, and facilitate public reporting of illicit discharges or water quality impacts associated with discharges into or from MS4s through a central contact point, including phone numbers and an internet site for complaints and spill reporting. Each Permittee shall also provide the reporting hotline to Permittee staff to leverage the field staff that has direct contact with the MS4 in detecting and eliminating illicit discharges.
- ii.** Each Permittee shall implement the central point of contact and reporting hotline requirements listed in this part in one or more of the following methods:
 - (1) By participating in a County-wide sponsored hotline
 - (2) By participating in one or more Watershed Group sponsored hotlines
 - (3) Or individually within its own jurisdiction
 - (4) The LACFCD shall, in collaboration with the County, continue to maintain the 888-CLEAN-LA hotline and internet site to promote, publicize, and facilitate public reporting of illicit discharges or water quality impacts associated with discharges into or from MS4s.
- iii.** Each Permittee shall ensure that signage adjacent to open channels, as required in Part F.8.h.vi, includes information regarding dumping prohibitions and public reporting of illicit discharges.
- iv.** Each Permittee shall develop and maintain written procedures that document how complaint calls are received, documented, and tracked to ensure that all complaints are adequately addressed. The procedures shall be evaluated to determine whether changes or updates are needed to ensure that the procedures accurately document the methods employed by the Permittee. Any identified changes shall be made to the procedures subsequent to the evaluation.

- v. Each Permittee shall maintain documentation of the complaint calls and record the location of the reported spill or IC/ ID and the actions undertaken in response to all IC/ID complaints, including referrals to other agencies.

e. Spill Response Plan

- i. Each Permittee shall implement a spill response plan for all sewage and other spills that may discharge into its MS4. The spill response plan shall clearly identify agencies responsible for spill response and cleanup, telephone numbers and e-mail address for contacts, and shall contain at a minimum the following requirements:
 - (1) Coordination with spill response teams throughout all appropriate departments, programs and agencies so that maximum water quality protection is provided.
 - (2) Initiate investigation of all public and employee spill complaints within one business day of receiving the complaint to assess validity.
 - (3) Response to spills for containment within 4 hours of becoming aware of the spill, except where such spills occur on private property, in which case the response should be within 2 hours of gaining legal access to the property.
 - (4) Spills that may endanger health or the environment shall be reported to appropriate public health agencies and the Office of Emergency Services (OES).

f. Illicit Connection and Illicit Discharge Education and Training

- i. Each Permittee must continue to implement a training program regarding the identification of IC/IDs for all municipal field staff, who, as part of their normal job responsibilities (e.g., street sweeping, storm drain maintenance, collection system maintenance, road maintenance), may come into contact with or otherwise observe an illicit discharge or illicit connection to the MS4. Contact information, including the procedure for reporting an illicit discharge, must be readily available to field staff. Training program documents must be available for review by the permitting authority.
 - ii. Each Permittee shall ensure contractors performing privatized/contracted municipal services such as, but not limited to, storm and/or sanitary sewer system inspection and repair, street sweeping, trash pick-up and disposal, and street and right-of-way construction and repair are trained regarding IC/ID identification and reporting. Permittees may provide training or include contractual requirements for IC/ID identification and reporting training. Outside contractors can self-certify, providing they certify they have received all applicable training required in the Permit and have documentation to that effect.
 - iii. Each Permittee's training program should address, at a minimum, the following:

- (1) IC/ID identification, including definitions and examples,
 - (2) investigation,
 - (3) elimination,
 - (4) cleanup,
 - (5) reporting, and
 - (6) documentation.
- iv. Each Permittee must create a list of applicable positions and contractors which require IC/ID training and ensure that training is provided at least twice during the term of the Order. Each Permittee must maintain documentation of the training activities.
 - v. New Permittee staff members must be provided with IC/ID training within 180 days of starting employment.

E. Total Maximum Daily Load Provisions

- 1. The provisions of this Part VI.E. implement and are consistent with the assumptions and requirements of all waste load allocations (WLAs) established in TMDLs for which some or all of the Permittees in this Order are responsible.
 - a. Part VI.E of this Order includes provisions that are designed to assure that Permittees achieve WLAs and meet other requirements of TMDLs covering receiving waters impacted by the Permittees' MS4 discharges. TMDL provisions are grouped by WMA (WMA) in Attachments L through R.
 - b. The Permittees subject to each TMDL are identified in Attachment K.
 - c. The Permittees shall comply with the applicable water quality-based effluent limitations and/or receiving water limitations contained in Attachments L through R, consistent with the assumptions and requirements of the WLAs established in the TMDLs, including implementation plans and schedules, where provided for in the State adoption and approval of the TMDL (40 CFR §122.44(d)(1)(vii)(B); Cal. Wat. Code §13263(a)).
 - d. A Permittee may comply with water quality-based effluent limitations and receiving water limitations in Attachments L through R using any lawful means.

2. Compliance Determination

a. General

- i. A Permittee shall demonstrate compliance at compliance monitoring points established in each TMDL or, if not specified in the TMDL, at locations identified in an approved TMDL monitoring plan or in accordance with an approved integrated monitoring program per Attachment E, Part VI.C.5 (Integrated Watershed Monitoring and Assessment).

- ii. Compliance with water quality-based effluent limitations shall be determined as described in Parts VI.E.2.d and VI.E.2.e, or for trash water quality-based effluent limitations as described in Part VI.E.5.b, or as otherwise set forth in TMDL specific provisions in Attachments L through R.
- iii. Pursuant to Part VI.C, a Permittee may, individually or as part of a watershed-based group, develop and submit for approval by the Regional Water Board Executive Officer a Watershed Management Program that addresses all water quality-based effluent limitations and receiving water limitations to which the Permittee is subject pursuant to established TMDLs.

b. Commingled Discharges

- i. A number of the TMDLs establish WLAs that are assigned jointly to a group of Permittees whose storm water and/or non-storm water discharges are or may be commingled in the MS4 prior to discharge to the receiving water subject to the TMDL.
- ii. In these cases, pursuant to 40 CFR section 122.26(a)(3)(vi), each Permittee is only responsible for discharges from the MS4 for which they are owners and/or operators.
- iii. Where Permittees have commingled discharges to the receiving water, compliance at the outfall to the receiving water or in the receiving water shall be determined for the group of Permittees as a whole unless an individual Permittee demonstrates that its discharge did not cause or contribute to the exceedance, pursuant to subpart v. below.
- iv. For purposes of compliance determination, each Permittee is responsible for demonstrating that its discharge did not cause or contribute to an exceedance of an applicable water quality-based effluent limitation(s) at the outfall or receiving water limitation(s) in the target receiving water.
- v. A Permittee may demonstrate that its discharge did not cause or contribute to an exceedance of an applicable water quality-based effluent limitation or receiving water limitation in any of the following ways:
 - (1) Demonstrate that there is no discharge from the Permittee's MS4 into the applicable receiving water during the time period subject to the water quality-based effluent limitation and/or receiving water limitation; or
 - (2) Demonstrate that the discharge from the Permittee's MS4 is controlled to a level that does not exceed the applicable water quality-based effluent limitation; or
 - (3) For exceedances of bacteria receiving water limitations or water quality-based effluent limitations, demonstrate through a source investigation pursuant to protocols established under California Water Code section

13178 or for exceedances of other receiving water limitations or water quality-based effluent limitations, demonstrate using other accepted source identification protocols, that pollutant sources within the jurisdiction of the Permittee or the Permittee's MS4 have not caused or contributed to the exceedance of the Receiving Water Limitation(s).

c. Receiving Water Limitations Addressed by a TMDL

- i. For receiving water limitations in Part V.A. associated with water body-pollutant combinations addressed in a TMDL, Permittees shall achieve compliance with the receiving water limitations in Part V.A. as outlined in this Part VI.E. and Attachments L through R of this Order.
- ii. A Permittee's full compliance with the applicable TMDL requirement(s), including compliance schedules, of this Part VI.E. and Attachments L through R constitutes compliance with Part V.A. of this Order for the specific pollutant addressed in the TMDL.
- iii. As long as a Permittee is in compliance with the applicable TMDL requirements in a time schedule order (TSO) issued by the Regional Water Board pursuant to California Water Code sections 13300 and 13385(j)(3), it is not the Regional Water Board's intention to take an enforcement action for violations of Part V.A. of this Order for the specific pollutant(s) addressed in the TSO.

d. Interim Water Quality-Based Effluent Limitations and Receiving Water Limitations

- i. A Permittee shall be considered in compliance with an applicable interim water quality-based effluent limitation and interim receiving water limitation for a pollutant associated with a specific TMDL if any of the following is demonstrated:
 - (1) There are no violations of the interim water quality-based effluent limitation for the pollutant associated with a specific TMDL at the Permittee's applicable MS4 outfall(s),³⁸ including an outfall to the receiving water that collects discharges from multiple Permittees' jurisdictions;
 - (2) There are no exceedances of the applicable receiving water limitation for the pollutant associated with a specific TMDL in the receiving water(s) at, or downstream of, the Permittee's outfall(s);
 - (3) There is no direct or indirect discharge from the Permittee's MS4 to the receiving water during the time period subject to the water quality-based effluent limitation and/or receiving water limitation for the pollutant associated with a specific TMDL; or

³⁸ An outfall may include a manhole or other point of access to the MS4 at the Permittee's jurisdictional boundary.

- (4) The Permittee has submitted and is fully implementing an approved Watershed Management Program or EWMP pursuant to Part VI.C.
- (a) To be considered fully implementing an approved Watershed Management Program or EWMP, a Permittee must be implementing all actions consistent with the approved program and applicable compliance schedules, including structural BMPs.
 - (b) Structural storm water BMPs or systems of BMPs should be designed and maintained to treat storm water runoff from the 85th percentile, 24-hour storm, where feasible and necessary to achieve applicable WQBELs and receiving water limitations, and maintenance records must be up-to-date and available for inspection by the Regional Water Board.
 - (c) A Permittee that does not implement the Watershed Management Program in accordance with the milestones and compliance schedules shall demonstrate compliance with its interim water quality-based effluent limitations and/or receiving water limitations pursuant to Part VI.E.2.d.i.(1)-(3), above.
 - (d) Upon notification of a Permittee's intent to develop a WMP or EWMP and prior to approval of its WMP or EWMP, a Permittee's full compliance with all of the following requirements shall constitute a Permittee's compliance with provisions pertaining to interim WQBELs with compliance deadlines occurring prior to approval of a WMP or EWMP. This subdivision (d) shall not apply to interim trash WQBELs.
 - (1) Provides timely notice of its intent to develop a WMP or EWMP,
 - (2) Meets all interim and final deadlines for development of a WMP or EWMP,
 - (3) For the area to be covered by the WMP or EWMP, targets implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges of pollutants through the MS4 to receiving waters, to address known contributions of pollutants from MS4 discharges that cause or contribute to the impairment(s) addressed by the TMDL(s), and
 - (4) Receives final approval of its WMP or EWMP within 28 or 40 months, respectively.

e. Final Water Quality-based Effluent Limitations and/or Receiving Water Limitations

- i. A Permittee shall be deemed in compliance with an applicable final water quality-based effluent limitation and final receiving water limitation for the pollutant(s) associated with a specific TMDL if any of the following is demonstrated:
- (1) There are no violations of the final water quality-based effluent limitation for the specific pollutant at the Permittee's applicable MS4 outfall(s)³⁹;
 - (2) There are no exceedances of applicable receiving water limitation for the specific pollutant in the receiving water(s) at, or downstream of, the Permittee's outfall(s);
 - (3) There is no direct or indirect discharge from the Permittee's MS4 to the receiving water during the time period subject to the water quality-based effluent limitation and/or receiving water limitation for the pollutant(s) associated with a specific TMDL; or
 - (4) In drainage areas where Permittees are implementing an EWMP, (i) all non-storm water and (ii) all storm water runoff up to and including the volume equivalent to the 85th percentile, 24-hour event is retained for the drainage area tributary to the applicable receiving water, and the Permittee is implementing all requirements of the EWMP, including, but not limited to, Parts VI.C.7 and VI.C.8 of this Order. This provision (4) shall not apply to final trash WQBELs.

3. USEPA Established TMDLs

TMDLs established by the USEPA, to which Permittees are subject, do not contain an implementation plan adopted pursuant to California Water Code section 13242. However, USEPA has included implementation recommendations as part of these TMDLs. In lieu of inclusion of numeric water quality based effluent limitations at this time, this Order requires Permittees subject to WLAs in USEPA established TMDLs to propose and implement best management practices (BMPs) that will be effective in achieving compliance with USEPA established numeric WLAs. The Regional Water Board may, at its discretion, revisit this decision within the term of this Order or in a future permit, as more information is developed to support the inclusion of numeric water quality based effluent limitations.

- a. Each Permittee shall propose BMPs to achieve the WLAs contained in the applicable USEPA established TMDL(s), and a schedule for implementing the BMPs that is as short as possible, in a Watershed Management Program or EWMP.

³⁹ Ibid.

- b.** Each Permittee may either individually submit a Watershed Management Program, or may jointly submit a WMP or EWMP with other Permittees subject to the WLAs contained in the USEPA established TMDL.
- c.** At a minimum, each Permittee shall include the following information in its Watershed Management Program or EWMP, relevant to each applicable USEPA established TMDL:
 - i.** Available data demonstrating the current quality of the Permittee's MS4 discharge(s) in terms of concentration and/or load of the target pollutant(s) to the receiving waters subject to the TMDL;
 - ii.** A detailed description of BMPs that have been implemented, and/or are currently being implemented by the Permittee to achieve the WLA(s), if any;
 - iii.** A detailed time schedule of specific actions the Permittee will take in order to achieve compliance with the applicable WLA(s);
 - iv.** A demonstration that the time schedule requested is as short as possible, taking into account the time since USEPA establishment of the TMDL, and technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the WLA(s);
 - (1) For the Malibu Creek Nutrient TMDL established by USEPA in 2003, in no case shall the time schedule to achieve the final numeric WLAs exceed five years from the effective date of this Order; and
 - v.** If the requested time schedule exceeds one year, the proposed schedule shall include interim requirements and numeric milestones and the date(s) for their achievement.
- d.** Each Permittee subject to a WLA in a TMDL established by USEPA shall submit a draft of a Watershed Management Program or EWMP to the Regional Water Board Executive Officer for approval per the schedule Part VI.C.4.
- e.** If a Permittee does not submit a Watershed Management Program, or the plan is determined to be inadequate by the Regional Water Board Executive Officer and the Permittee does not make the necessary revisions within 90 days of written notification that plan is inadequate, the Permittee shall be required to demonstrate compliance with the numeric WLAs immediately based on monitoring data collected under the MRP (Attachment E) for this Order.

4. State Adopted TMDLs where Final Compliance Deadlines have Passed

- a.** Permittees shall comply immediately with water quality-based effluent limitations and/or receiving water limitations to implement WLAs in state-adopted TMDLs for which final compliance deadlines have passed pursuant to the TMDL implementation schedule.
- b.** Where a Permittee believes that additional time to comply with the final water quality-based effluent limitations and/or receiving water limitations is necessary, a Permittee may within 45 days of Order adoption, or no less than 90 days prior to the final compliance deadline if after adoption of the Order, request a time schedule order pursuant to California Water Code section 13300 for the Regional Water Board's consideration.
- c.** Permittees may either individually request a TSO, or may jointly request a TSO with all Permittees subject to the water quality-based effluent limitations and/or receiving water limitations, to implement the WLAs in the state-adopted TMDL.
- d.** At a minimum, a request for a time schedule order shall include the following:
 - i.** Data demonstrating the current quality of the MS4 discharge(s) in terms of concentration and/or load of the target pollutant(s) to the receiving waters subject to the TMDL;
 - ii.** A detailed description and chronology of structural controls and source control efforts, since the effective date of the TMDL, to reduce the pollutant load in the MS4 discharges to the receiving waters subject to the TMDL;
 - iii.** Justification of the need for additional time to achieve the water quality-based effluent limitations and/or receiving water limitations;
 - iv.** A detailed time schedule of specific actions the Permittee will take in order to achieve the water quality-based effluent limitations and/or receiving water limitations;
 - v.** A demonstration that the time schedule requested is as short as possible, taking into account the technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation(s); and
 - vi.** If the requested time schedule exceeds one year, the proposed schedule shall include interim requirements and the date(s) for their achievement. The interim requirements shall include both of the following:
 - (1) Effluent limitation(s) for the pollutant(s) of concern; and
 - (2) Actions and milestones leading to compliance with the effluent limitation(s).

5. Water Quality-Based Effluent Limitations for Trash

Permittees assigned a Waste Load Allocation in a trash TMDL shall comply as set forth below.

a. Effluent Limitations: Permittees shall comply with the interim and final water quality-based effluent limitations for trash set forth in Attachments L through R for the following Trash TMDLs:

- i. Lake Elizabeth Trash TMDL (Attachment L)
- ii. Santa Monica Bay Nearshore and Offshore Debris TMDL (Attachment M)
- iii. Malibu Creek Watershed Trash TMDL (Attachment M)
- iv. Ballona Creek Trash TMDL (Attachment M)
- v. Machado Lake Trash TMDL (Attachment N)
- vi. Los Angeles River Trash TMDL (Attachment O)
- vii. Peck Road Park Lake Trash TMDL (Attachment O)
- viii. Echo Park Lake Trash TMDL (Attachment O)
- ix. Legg Lake Trash TMDL (Attachment O)

b. Compliance

i. Pursuant to California Water Code section 13360(a), Permittees may comply with the trash effluent limitations using any lawful means. Such compliance options are broadly classified as *full capture*, *partial capture*, *institutional controls*, or *minimum frequency of assessment and collection*, as described below, and any combination of these may be employed to achieve compliance:

(1) Full Capture Systems:

(a) The Basin Plan authorizes the Regional Water Board Executive Officer to certify *full capture systems*, which are systems that meet the operating and performance requirements as described in this Order, and the procedures identified in "Procedures and Requirements for Certification of a Best Management Practice for Trash Control as a Full Capture System."⁴⁰

(b) Permittees are authorized to comply with their effluent limitations through certified *full capture systems* provided the requirements of

⁴⁰ The Regional Water Board currently recognizes eight *full capture systems*. These are: Vortex Separation Systems (VSS) and seven other Executive Officer certified *full capture systems*, including specific types or designs of trash nets; two gross solids removal devices (GSRDs); catch basin brush inserts and mesh screens; vertical and horizontal trash capture screen inserts; and a connector pipe screen device. See August 3, 2004 Los Angeles Regional Water Quality Control Board Memorandum titled "Procedures and Requirements for Certification of a Best Management Practice for Trash Control as a Full Capture System."

paragraph (c), immediately below, and any conditions in the certification, continue to be met.

(c) Permittees may comply with their effluent limitations through progressive installation of *full capture systems* throughout their jurisdictional areas until all areas draining to Lake Elizabeth, Santa Monica Bay, Malibu Creek, Ballona Creek, Machado Lake, the Los Angeles River system, Legg Lake, Peck Road Park Lake, and/or Echo Park Lake are addressed. For purposes of this Order, attainment of the effluent limitations shall be conclusively presumed for any drainage area to Lake Elizabeth, Santa Monica Bay, Malibu Creek (and its tributaries), Ballona Creek (and its tributaries), Machado Lake, the Los Angeles River (and its tributaries), Legg Lake, Peck Road Park Lake, and/or Echo Park Lake where certified *full capture systems* treat all drainage from the area, provided that the *full capture systems* are adequately sized and maintained, and that maintenance records are up-to-date and available for inspection by the Regional Water Board.

(i) A Permittee shall be deemed in compliance with its final effluent limitation if it demonstrates that all drainage areas under its jurisdiction and/or authority are serviced by appropriate certified *full capture systems* as described in paragraph (1)(c).

(ii) A Permittee shall be deemed in compliance with its interim effluent limitations, where applicable:

1. By demonstrating that *full capture systems* treat the percentage of drainage areas in the watershed that corresponds to the required trash abatement.

2. Alternatively, a Permittee may propose a schedule for installation of *full capture systems* in areas under its jurisdiction and/or authority within a given watershed, targeting first the areas of greatest trash generation, for the Executive Officer's approval. The Executive Officer shall not approve any such schedule that does not result in timely compliance with the final effluent limitations, consistent with the established TMDL implementation schedule and applicable State policies. A Permittee shall be deemed in compliance with its interim effluent limitations provided it is fully in compliance with any such approved schedule.

(2) Partial Capture Devices and Institutional Controls: Permittees may comply with their interim and final effluent limitations through the installation of *partial capture devices* and the application of *institutional controls*.⁴¹

(a) Trash discharges from areas serviced solely by *partial capture devices* may be estimated based on demonstrated performance of the

⁴¹ While interim effluent limitations may be complied with using *partial capture devices*, compliance with final effluent limitations cannot be achieved with the exclusive use of *partial capture devices*.

device(s) in the implementing area.⁴² That is, trash reduction is equivalent to the *partial capture devices*' trash removal efficiency multiplied by the percentage of drainage area serviced by the devices.

- (b) Except as provided in subdivision (c), immediately below, trash discharges from areas addressed by *institutional controls* and/or *partial capture devices* (where site-specific performance data is not available) shall be calculated using a mass balance approach, based on the daily generation rate (DGR) for a representative area.⁴³ The DGR shall be determined from direct measurement of trash deposited in the drainage area during any thirty-day period between June 22nd and September 22nd exclusive of rain events⁴⁴, and shall be re-calculated every year thereafter unless a less frequent period for recalculation is approved by the Regional Water Board Executive Officer. The DGR shall be calculated as the total amount of trash collected during this period divided by the length of the collection period.

DGR = (Amount of trash collected during a 30-day collection period⁴⁵ / (30 days)

The DGR for the applicable area under the Permittees' jurisdiction and/or authority shall be extrapolated from that of the representative drainage area(s). A mass balance equation shall be used to estimate the amount of trash discharged during a storm event.⁴⁶ The *Storm Event Trash Discharge* for a given rain event in the Permittee's drainage area shall be calculated by multiplying the number of days since the last street sweeping by the DGR and subtracting the amount of any trash recovered in the catch basins.⁴⁷ For each day of a storm event that generates precipitation greater than 0.25 inch, the Permittee shall calculate a *Storm Event Trash Discharge*.

Storm Event Trash Discharge = [(Days since last street sweeping * DGR)] - [Amount of trash recovered from catch basins]⁴⁸

The sum of the *Storm Event Trash Discharges* for the storm year shall be the Permittee's calculated annual trash discharge.

Total Storm Year Trash Discharge = ∑ Storm Event Trash Discharges from Drainage Area

⁴² Performance shall be demonstrated under different conditions (e.g. low to high trash loading).

⁴³ The area(s) should be representative of the land uses and activities within the Permittees' authority and shall be approved by the Executive Officer prior to the 30-day collection period.

⁴⁴ Provided no special events are scheduled that may affect the representative nature of that collection period.

⁴⁵ Between June 22nd and September 22nd

⁴⁶ Amount of trash shall refer to the uncompressed volume (in gallons) or drip-dry weight (in pounds) of trash collected.

⁴⁷ Any negative values shall be considered to represent a zero discharge.

⁴⁸ When more than one storm event occurs prior to the next street sweeping the discharge shall be calculated from the date of the last assessment.

(c) The Executive Officer may approve alternative compliance monitoring approaches for calculating total storm year trash discharge, upon finding that the program will provide a scientifically-based estimate of the amount of trash discharged from the Permittee's MS4.

(3) Combined Compliance Approaches:

Permittees may comply with their interim and final effluent limitations through a combination of *full capture systems*, *partial capture devices*, and *institutional controls*. Where a Permittee relies on a combination of approaches, it shall demonstrate compliance with the interim and final effluent limitations as specified in (1)(c) in areas where *full capture systems* are installed and as specified in (2)(a) or (2)(b), as appropriate, in areas where *partial capture devices* and *institutional controls* are applied.

(4) Minimum Frequency of Assessment and Collection Approach:

If allowed in a trash TMDL and approved by the Executive Officer, a Permittee may alternatively comply with its final effluent limitations by implementing a program for *minimum frequency of assessment and collection* (MFAC) in conjunction with BMPs. To the satisfaction of the Executive Officer, the MFAC/BMP program must meet the following criteria:

- (a) The MFAC/BMP Program includes an initial minimum frequency of trash assessment and collection and suite of structural and/or nonstructural BMPs. The MFAC/BMP program shall include collection and disposal of all trash found in the receiving water and shoreline. Permittees shall implement an initial suite of BMPs based on current trash management practices in land areas that are found to be sources of trash to the water body. The initial minimum frequency of trash assessment and collection shall be set as specified in the following TMDLs:
- (i) Malibu Creek Watershed Trash TMDL
 - (ii) Machado Lake Trash TMDL
 - (iii) Legg Lake Trash TMDL
- (b) The MFAC/BMP Program includes reasonable assurances that it will be implemented by the responsible Permittees.
- (c) MFAC protocols may be based on SWAMP protocols for rapid trash assessment, or alternative protocols proposed by Permittees and approved by the Regional Water Board Executive Officer.
- (d) Implementation of the MFAC/BMP program should include a Health and Safety Program to protect personnel. The MFAC/BMP program shall not require Permittees to access and collect trash from areas where personnel are prohibited.

- (e) The Regional Water Board Executive Officer may approve or require a revised assessment and collection frequency and definition of the critical conditions under the MFAC:
 - (i) To prevent trash from accumulating in deleterious amounts that cause nuisance or adversely affect beneficial uses between collections;
 - (ii) To reflect the results of trash assessment and collection;
 - (iii) If the amount of trash collected does not show a decreasing trend, where necessary, such that a shorter interval between collections is warranted; or
 - (iv) If the amount of trash collected is decreasing such that a longer interval between collections is warranted.
- (f) At the end of the implementation period, a revised MFAC/BMP program may be required if the Regional Water Board Executive Officer determines that the amount of trash accumulating between collections is causing nuisance or otherwise adversely affecting beneficial uses.
- (g) With regard to (4)(e)(i), (4)(e)(ii), or (4)(e)(iii), above, the Regional Water Board Executive Officer is authorized to allow responsible Permittees to implement additional structural or non-structural BMPs in lieu of modifying the monitoring frequency.

ii. Additional Compliance Provisions and Alternatives for revised Ballona Creek and Los Angeles River Trash TMDLs: For the Ballona Creek and Los Angeles River Trash TMDLs, Permittees may employ alternative compliance options for FCS; partial capture devices and the application of institutional controls; or scientifically based alternative compliance approaches as detailed below. If using an alternative compliance option, Permittees shall submit a revised Watershed Management Program, a revised Enhanced Watershed Management Program, or a separate TMDL implementation plan if the Permittee does not have an approved WMP or EWMP, for Executive Officer approval prior to use of the alternative compliance option.

- (1) FCS Technical Infeasibility: As an alternative to subpart b.i(1)(c)(i) above, in drainage areas where the vast majority of catch basins are retrofitted with FCS, the FCS are properly sized, operated, and maintained, and retrofit of the remaining catch basins is technically infeasible, a Permittee may request that the Executive Officer make a determination that the Permittee is in full compliance with its final WLA if all of the following criteria are met:

- (a) 98% of all catch basins within the Permittee's jurisdictional land area in the watershed are retrofitted with FCS (or, alternatively, 98% of the

jurisdiction's drainage area is addressed by FCS) and at least 97% of the catch basins (or, alternatively, drainage area) within the Permittee's jurisdiction in the subwatershed (the smaller of the HUC-12 equivalent area or tributary subwatershed) are retrofitted with FCS.

- (b) The Permittee submits to the Regional Water Board a report for Executive Officer concurrence, detailing the technical infeasibility of FCS retrofits in the remaining catch basins and evaluating the feasibility of partial capture devices, and the potential to install FCS or partial capture devices along the storm drain or at the MS4 outfall down gradient from the catch basin.
- (c) The Permittee submits to the Regional Water Board a report for Executive Officer approval, detailing the partial capture devices and/or institutional controls that are currently and will continue to be implemented in the affected subwatershed(s), including an assessment of the effectiveness of the partial capture devices and/or institutional controls using existing data and studies representative.

In addition, the Permittee shall re-evaluate the effectiveness of institutional controls and partial capture devices and report the findings to the Regional Water Board for confirmation or change to the determination, if significant land use changes occur in the affected subwatershed (based on permits for new and significant re-development) or if there is a significant change in the suite of implemented partial capture devices and/or institutional controls (e.g., reduced frequency of implementation, reduced spatial coverage of implementation, change in technology employed). Such re-evaluation shall occur within one year of the identification of the significant changes.

- (2) Mass Balance Equivalency: Compliance with interim and final effluent limitations through the installation of partial capture devices and the application of institutional controls. Permittees employing partial capture devices or institutional controls shall use a mass balance approach based on the trash daily generation rate (DGR), to demonstrate compliance.

The DGR shall be reassessed annually. Permittees may request a less frequent assessment of its DGR for Executive Officer approval when the final WLA has been met (as described below) and the responsible jurisdiction continues to implement at the same level of effort partial capture devices and institutional controls. A return to annual DGR calculation shall be required for a period of years to be determined by the Executive Officer after significant land use changes.

Permittees employing institutional controls or a combination of full capture systems, partial capture devices, and institutional controls shall be deemed in compliance with the final WLAs when the reduction of trash

from the jurisdiction's baseline load, in Attachment M and Attachment O, is between 99% and 100% as calculated using a mass balance approach, and the FCS and partial capture devices are properly sized, operated, and maintained.

Alternatively, a Permittee may request that the Executive Officer make a determination that a 97% to 98% reduction of the baseline load, as calculated using a mass balance approach, constitutes full compliance with the final WLA if all of the following criteria are met:

- (a) The Permittee submits to the Regional Water Board a report for Executive Officer approval, including, two or more consecutive years of data showing that the Permittee's compliance was at or above a 97% reduction in its baseline trash load; an evaluation of institutional controls in the jurisdiction demonstrating continued effectiveness and any potential enhancements; and demonstration that opportunities to implement partial capture devices have been fully exploited.

- (3) Scientifically Based Alternative: A Permittee(s) employing an alternative compliance approach shall conduct studies of institutional controls and partial capture devices for their particular subwatershed(s) or demonstrate that existing studies are representative and transferable to the implementing area for Executive Officer approval. The Permittee(s) shall also provide a schedule for periodic compliance effectiveness demonstration and evaluation. FCS and partial capture devices shall be properly sized, operated, and maintained consistent with sizing, operation, and maintenance schedules used to determine their effectiveness.

iii. If a Permittee is not in compliance with its applicable interim and/or final effluent limitation as identified in Attachments L through R, then it shall be in violation of this Order.

- (1) A Permittee relying on *partial capture devices* and/or *institutional controls* that has violated its interim and/or final effluent limitation(s) shall be presumed to have violated the applicable limitation for each day of each storm event that generated precipitation greater than 0.25 inch during the applicable storm year, except those storm days on which it establishes that its cumulative Storm Event Trash Discharges has not exceeded the applicable effluent limitation.
- (2) If a Permittee relying on *full capture systems* has failed to demonstrate that the *full capture systems* for any drainage area are adequately sized and maintained, and that maintenance records are up-to-date and available for inspection by the Regional Water Board, and that it is in compliance with any conditions of its certification, shall be presumed to have discharged trash in an amount that corresponds to the percentage of the baseline waste load allocation represented by the drainage area in question.

- (a) A Permittee may overcome this presumption by demonstrating (using any of the methods authorized in Part VI.E.5.b) that the actual or calculated discharge for that drainage area is in compliance with the applicable interim or final effluent limitation.
- iv. Each Permittee shall be held liable for violations of the effluent limitations assigned to their area. If a Permittee's compliance strategy includes *full* or *partial capture devices* and it chooses to install a full or partial capture device in the MS4 physical infrastructure of another public entity, it is responsible for obtaining all necessary permits to do so. If a Permittee believes it is unable to obtain the permits needed to install a full capture or partial capture device within another Permittee's MS4 physical infrastructure, either Permittee may request the Executive Officer to hold a conference with the Permittees. Nothing in this Order shall affect the right of that public entity or a Permittee to seek indemnity or other recourse from the other as they deem appropriate. Nothing in this subsection shall be construed as relieving a Permittee of any liability that the Permittee would otherwise have under this Order.
- v. **Los Angeles County Flood Control District Compliance for Ballona Creek and Los Angeles River Trash TMDLs:** For the Ballona Creek and Los Angeles River Trash TMDLs, the LACFCD is not assigned a Waste Load Allocation, since Waste Load Allocations are based on jurisdictional area. However, the LACFCD is responsible for performing storm drain operation and maintenance, including but not limited to: catch basin labeling, catch basin label inspections, and open channel signage; open channel maintenance that includes removal of trash and debris; and implementation of activity specific BMPs, including those related to litter/debris/graffiti in compliance with this Order. The LACFCD may be held responsible with a Permittee for non-compliance with Waste Load Allocations where it has either:
- (a) without good cause denied entitlements or other necessary authority to a responsible jurisdiction or agency for the timely installation and/or maintenance of full and/or partial capture trash control devices for purposes of TMDL compliance in parts of the MS4 physical infrastructure that are under its authority, or
- (b) not fulfilled its obligations regarding proper BMP installation, operation, and maintenance for purposes of TMDL compliance within the MS4 physical infrastructure under its authority,

thereby causing or contributing to a responsible jurisdiction and/or agency to be out of compliance with its interim or final Waste Load Allocations.

Under these circumstances, the LACFCD's responsibility shall be limited to non-compliance related to the drainage area(s) within the jurisdiction where the LACFCD has authority over the relevant portions of the MS4 physical infrastructure.

c. Monitoring and Reporting Requirements (pursuant to California Water Code section 13383)

i. Each Permittee shall submit a TMDL Compliance Report as part of its Annual Report detailing compliance with the applicable interim and/or final effluent limitations. Reporting shall include the information specified below. The report shall be submitted on the reporting form specified by the Regional Water Board Executive Officer. The report shall be signed under penalty of perjury by the Permittee's principal executive officer or ranking elected official or duly authorized representative of the officer, consistent with Part V.B of Attachment D (Standard Provisions), who is responsible for ensuring compliance with this Order. Each Permittee shall be charged with and shall demonstrate compliance with its applicable effluent limitations beginning with its December 15, 2013, TMDL Compliance Report.

(1) Reporting Compliance based on Full Capture Systems: Permittees shall provide information on the number and location of full capture installations, the sizing of each full capture installation, the drainage areas addressed by these installations, and compliance with the applicable interim or final effluent limitation, in its TMDL Compliance Report. The Los Angeles Water Board will periodically audit sizing, performance, and other data to validate that a system satisfies the criteria established for a *full capture system* and any conditions established by the Regional Water Board Executive Officer in the certification.

(2) Reporting Compliance based on Partial Capture Systems and/or Institutional Controls:

(a) Using Performance Data Specific to the Permittee's Area: In its TMDL Compliance Report, a Permittee shall provide: (i) site-specific performance data for the applicable device(s); (ii) information on the number and location of such installations, and the drainage areas addressed by these installations; and (iii) calculated compliance with the applicable effluent limitations.

(b) Using Direct Measurement of Trash Discharge: Permittees shall provide an accounting of DGR and trash removal via street sweeping, catch basin clean outs, etc., in a database to facilitate the calculation of discharge for each rain event. The database shall be maintained and provided to the Regional Water Board for inspection upon request. In its TMDL Compliance Report, a Permittee shall provide information on its annual DGR, calculated storm year discharge, and compliance with the applicable effluent limitation.

(3) Reporting Compliance based on Combined Compliance Approaches:

Permittees shall provide the information specified in Part VI.E.5.c.i(1) for areas where *full capture systems* are installed and that are specified in Part VI.E.5.c.i(2)(a) or (b), as appropriate, for areas where *partial capture devices* and *institutional controls* are applied. In its TMDL Compliance

Report, a Permittee shall also provide information on compliance with the applicable effluent limitation based on the combined compliance approaches.

(4) Reporting Compliance based on an MFAC/BMP Approach:

The MFAC/BMP Program includes a Trash Monitoring and Reporting Plan, and a requirement that the responsible Permittees will self-report any non-compliance with its provisions. The results and report of the Trash Monitoring and Reporting Plan must be submitted to Regional Water Board with the Permittee's Annual Report.

- ii. Violation of the reporting requirements of this Part shall be punishable pursuant to, inter alia, California Water Code section 13385, subdivisions (a)(3) and (h)(1), and/or section 13385.1.

ATTACHMENT A – DEFINITIONS

The following are definitions for terms in this Order:

Adverse Impact

A detrimental effect upon water quality or beneficial uses caused by a discharge or loading of a pollutant or pollutants.

Anti-degradation Policies

Laws, policies and regulations set forth and state and federal statutes and regulations e.g., *Statement of Policy with Respect to Maintaining High Quality Water in California*, State Board Resolution No. 68-16; 40 CFR section 131.12.

Applicable Standards and Limitations

All State, interstate, and federal standards are limitations to which a “discharge” or a related activity is subject under the CWA, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, “best management practices,” and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403 and 404 of CWA.

Areas of Special Biological Significance (ASBS)

All those areas of this state as ASBS, listed specifically within the California Ocean Plan or so designated by the State Board which, among other areas, includes the area from Mugu Lagoon to Latigo Point: Oceanwater within a line originating from Laguna Point at 34° 5' 40" north, 119° 6'30" west, thence southeasterly following the mean high tideline to a point at Latigo Point defined by the intersection of the mean high tide line and a line extending due south of Benchmark 24; thence due south to a distance of 1000 feet offshore or to the 100 foot isobaths, whichever distance is greater; thence northwesterly following the 100 foot isobaths or maintaining a 1,000-foot distance from shore, whichever maintains the greater distance from shore, to a point lying due south of Laguna Point, thence due north to Laguna Point.

Arithmetic Mean (μ)

Also called the average, is the sum of measured values divided by the number of samples. For ambient water concentrations, the arithmetic mean is calculated as follows:

$$\text{Arithmetic mean} = \mu = \Sigma x / n$$

where:

Σx is the sum of the measured ambient water concentrations, and n is the number of samples.

Authorized Discharge

Any discharge that is authorized pursuant to an NPDES permit or meets the conditions set forth in this Order.

Authorized Non-Storm Water Discharge

Authorized non-storm water discharges are discharges that are not composed entirely of storm water and that are either: (1) separately regulated by an individual or general NPDES permit and allowed to discharge to the MS4 when in compliance with all NPDES permit conditions; (2)

authorized by USEPA¹ pursuant to sections 104(a) or 104(b) of CERCLA that either (i) will comply with water quality standards as applicable or relevant and appropriate requirements (“ARARs”) under section 121(d)(2) of CERCLA or (ii) are subject to (a) a written waiver of ARARs by USEPA pursuant to section 121(d)(4) of CERCLA or (b) a written determination by USEPA that compliance with ARARs is not practicable considering the exigencies of the situation, pursuant to 40 CFR section 300.415(j); or (3) necessary for emergency responses purposes, including flows from emergency fire fighting activities.

Automotive Service Facilities

A facility that is categorized in any one of the following Standard Industrial Classification (SIC) and North American Industry Classification System (NAICS) codes. For inspection purposes, Permittees need not inspect facilities with SIC codes 5013, 5014, 5541, 5511, provided that these facilities have no outside activities or materials that may be exposed to storm water.

Average Monthly Effluent Limitation (AMEL)

The highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

Bacteria Total Maximum Daily Load (TMDL) Dry Weather

Defined in the Bacteria TMDLs as those days with less than 0.1 inch of rainfall and those days occurring more than 3 days after a rain.

Bacteria Total Maximum Daily Load (TMDL) Wet Weather

Defined in the Bacteria TMDLs as a day with 0.1 inch or more of rain and 3 days following the rain event.

Baseline Waste Load Allocation

The Waste Load Allocation assigned to a Permittee before reductions are required. The progressive reductions in the Waste Load Allocations are based on a percentage of the Baseline Waste Load Allocation. The Baseline Waste Load Allocation for each jurisdiction was calculated based on the annual average amount of trash discharged to the storm drain system from a representative sampling of land use areas, as determined during the Baseline Monitoring Program. The Baseline Waste Load Allocations are incorporated into the Basin Plan at Table 7-2.2.

Basin Plan

The Water Quality Control Plan, Los Angeles Region, Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties, adopted by the Regional Water Board on June 13, 1994 and subsequent amendments.

Beneficial Uses

The existing or potential uses of receiving waters in the permit area as designated by the Regional Water Board in the Basin Plan.

¹ These typically include short-term, high volume discharges resulting from the development or redevelopment of groundwater extraction wells, or USEPA or State-required compliance testing of potable water treatment plants, as part of a USEPA authorized groundwater remediation action under CERCLA.

Best Management Practices (BMPs)

BMPs are practices or physical devices or systems designed to prevent or reduce pollutant loading from storm water or non-storm water discharges to receiving waters, or designed to reduce the volume of storm water or non-storm water discharged to the receiving water.

Bioaccumulative

Those substances taken up by an organism from its surrounding medium through gill membranes, epithelial tissue, or from food and subsequently concentrated and retained in the body of the organism.

Biofiltration

A LID BMP that reduces storm water pollutant discharges by intercepting rainfall on vegetative canopy, and through incidental infiltration and/or evapotranspiration, and filtration. As described in the *Ventura County Technical Guidance Manual*, studies have demonstrated that biofiltration of 1.5 times the storm water quality design volume (SWQDv) provides approximately equivalent or greater reductions in pollutant loading when compared to bioretention or infiltration of the SWQDv.² Incidental infiltration is an important factor in achieving the required pollutant load reduction. Therefore, the term “biofiltration” as used in this Order is defined to include only systems designed to facilitate incidental infiltration or achieve the equivalent pollutant reduction as biofiltration BMPs with an underdrain (subject to Executive Officer approval). Biofiltration BMPs include bioretention systems with an underdrain and bioswales.

Bioretention

A LID BMP that reduces storm water runoff by intercepting rainfall on vegetative canopy, and through evapotranspiration and infiltration. The bioretention system typically includes a minimum 2-foot top layer of a specified soil and compost mixture underlain by a gravel-filled temporary storage pit dug into the *in-situ* soil. As defined in this Order, a bioretention BMP may be designed with an overflow drain, but may not include an underdrain. When a bioretention BMP is designed or constructed with an underdrain it is regulated in this Order as biofiltration.

Bioswale

A LID BMP consisting of a shallow channel lined with grass or other dense, low-growing vegetation. Bioswales are designed to collect storm water runoff and to achieve a uniform sheet flow through the dense vegetation for a period of several minutes.

Carcinogenic

Pollutants are substances that are known to cause cancer in living organisms.

Coefficient of Variation (CV)

CV is a measure of the data variability and is calculated as the estimated standard deviation divided by the arithmetic mean of the observed values.

² Geosyntec Consultants and Larry Walker Associates. 2011. *Ventura County Technical Guidance Manual for Stormwater Quality and Control Measures, Manual Update 2011. Appendix D*. Prepared for the Ventura Countywide Stormwater Quality Management Program. July 13, 2011. pp. D-6 – D-15.

Commercial Development

Any development on private land that is not heavy industrial or residential. The category includes, but is not limited to: hospitals, laboratories and other medical facilities, educational institutions, recreational facilities, plant nurseries, car wash facilities; mini-malls and other business complexes, shopping malls, hotels, office buildings, public warehouses and other light industrial complexes.

Commercial Malls

Any development on private land comprised of one or more buildings forming a complex of stores which sells various merchandise, with interconnecting walkways enabling visitors to easily walk from store to store, along with parking area(s). A commercial mall includes, but is not limited to: mini-malls, strip malls, other retail complexes, and enclosed shopping malls or shopping centers.

Conditionally Exempt Essential Non-Storm Water Discharge

Conditionally exempt essential non-storm water discharges are certain categories of discharges that are not composed entirely of storm water and that are allowed by the Regional Water Board to discharge to the MS4, if in compliance with all specified requirements; are not otherwise regulated by an individual or general NPDES permit; and are essential public services that are directly or indirectly required by other State or federal statute and/or regulation. These include non-storm water discharges from drinking water supplier distribution system releases and non-emergency fire fighting activities. Conditionally exempt essential non-storm water discharges may contain minimal amounts of pollutants, however, when in compliance with industry standard BMPs and control measures, do not result in significant environmental effects. (See 55 Fed. Reg. 47990, 47995 (Nov. 16, 1990)).

Conditionally Exempt Non-Storm Water Discharge

Conditionally exempt non-storm water discharges are certain categories of discharges that are not composed entirely of storm water and that are either not sources of pollutants or may contain only minimal amounts of pollutants and when in compliance with specified BMPs do not result in significant environmental effects. (See 55 Fed. Reg. 47990, 47995 (Nov. 16, 1990)).

Construction Activity

Construction activity includes any construction or demolition activity, clearing, grading, grubbing, or excavation or any other activity that results in land disturbance. Construction does not include emergency construction activities required to immediately protect public health and safety or routine maintenance activities required to maintain the integrity of structures by performing minor repair and restoration work, maintain the original line and grade, hydraulic capacity, or original purposes of the facility. See "Routine Maintenance" definition for further explanation. Where clearing, grading or excavating of underlying soil takes place during a repaving operation, State General Construction Permit coverage is required if more than one acre is disturbed or the activities are part of a larger plan.

Control

To minimize, reduce, eliminate, or prohibit by technological, legal, contractual or other means, the discharge of pollutants from an activity or activities.

Daily Discharge

Daily Discharge is defined as either: (1) the total mass of the constituent discharged over the calendar day (12:00 am through 11:59 pm) or any 24-hour period that reasonably represents a calendar day for purposes of sampling (as specified in the permit), for a constituent with limitations expressed in units of mass or; (2) the unweighted arithmetic mean measurement of the constituent over the day for a constituent with limitations expressed in other units of measurement (e.g., concentration).

The daily discharge may be determined by the analytical results of a composite sample taken over the course of one day (a calendar day or other 24-hour period defined as a day) or by the arithmetic mean of analytical results from one or more grab samples taken over the course of the day.

For composite sampling, if 1 day is defined as a 24-hour period other than a calendar day, the analytical result for the 24-hour period will be considered as the result for the calendar day in which the 24-hour period ends.

Daily Generation Rate (DGR)

The estimated amount of trash deposited within a representative drainage area during a 24-hour period, derived from the amount of trash collected from streets and catch basins in the area over a 30-day period.

Dechlorinated/Debrominated Swimming Pool Discharge

Swimming pool discharges which have no measurable chlorine or bromine and do not contain any detergents, wastes, or additional chemicals not typically found in swimming pool water. The term does not include swimming pool filter backwash.

Detected, but Not Quantified (DNQ)

DNQ are those sample results less than the RL, but greater than or equal to the laboratory's MDL.

Development

Any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

Directly Adjacent

Situated within 200 feet of the contiguous zone required for the continued maintenance, function, and structural stability of the environmentally sensitive area.

Director

The Director of a municipality and Person(s) designated by and under the Director's instruction and supervision.

Discharge

When used without qualification the “discharge of a pollutant.”

Discharging Directly

Outflow from a drainage conveyance system that is composed entirely or predominantly of flows from the subject, property, development, subdivision, or industrial facility, and not commingled with the flows from adjacent lands.

Discharge of a Pollutant

Any addition of any “pollutant” or combination of pollutants to “waters of the United States” from any “point source” or, any addition of any pollutant or combination of pollutants to the waters of the “contiguous zone” or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. The term discharge includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

Disturbed Area

An area that is altered as a result of clearing, grading, and/or excavation.

Drinking Water Supplier Distribution Systems Releases

Sources of flows from drinking water supplier storage, supply and distribution systems including flows from system failures, pressure releases, system maintenance, distribution line testing, fire hydrant flow testing; and flushing and dewatering of pipes, reservoirs, vaults, and minor non-invasive well maintenance activities not involving chemical addition(s). It does not include wastewater discharges from activities that occur at wellheads, such as well construction, well development (i.e., aquifer pumping tests, well purging, etc.), or major well maintenance. For the purposes of this Order, drinking water supplier distribution system releases include treated and raw water (from raw water pipelines, reservoirs, storage tanks, etc.) that are dedicated for drinking water supply.

Effective Impervious Area (EIA)

EIA is the portion of the surface area that is hydrologically connected to a drainage system via a hardened conveyance or impervious surface without any intervening median to mitigate the flow volume.

Effluent Concentration Allowance (ECA)

ECA is a value derived from the water quality criterion/objective, dilution credit, and ambient background concentration that is used, in conjunction with the coefficient of variation for the effluent monitoring data, to calculate a long-term average (LTA) discharge concentration. The ECA has the same meaning as waste load allocation (WLA) as used in USEPA guidance (Technical Support Document For Water Quality-based Toxics Control, March 1991, second printing, EPA/505/2-90-001).

Effluent Limitation

Any restriction imposed on quantities, discharge rates, and concentrations of pollutants, which are discharged from point sources to waters of the U.S. (40 CFR § 122.2).

Enclosed Bays

Enclosed Bays means indentations along the coast that enclose an area of oceanic water within distinct headlands or harbor works. Enclosed bays include all bays where the narrowest distance between the headlands or outermost harbor works is less than 75 percent of the greatest dimension of the enclosed portion of the bay. Enclosed bays include, but are not limited to, Humboldt Bay, Bodega Harbor, Tomales Bay, Drake's Estero, San Francisco Bay, Morro Bay, Los Angeles-Long Beach Harbor, Upper and Lower Newport Bay, Mission Bay, and San Diego Bay. Enclosed bays do not include inland surface waters or ocean waters.

Environmentally Sensitive Areas (ESAs)

An area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which would be easily disturbed or degraded by human activities and developments (California Public Resources Code § 30107.5). Areas subject to storm water mitigation requirements are: areas designated as Significant Ecological Areas by the County of Los Angeles (Los Angeles County Significant Areas Study, Los Angeles County Department of Regional Planning (1976) and amendments); an area designated as a Significant Natural Area by the California Department of Fish and Game's Significant Natural Areas Program, provided that area has been field verified by the Department of Fish and Game; an area listed in the Basin Plan as supporting the "Rare, Threatened, or Endangered Species (RARE)" beneficial use; and an area identified by a Permittee as environmentally sensitive.

Estimated Chemical Concentration

The estimated chemical concentration that results from the confirmed detection of the substance by the analytical method below the ML value.

Estuaries

Estuaries means waters, including coastal lagoons, located at the mouths of streams that serve as areas of mixing for fresh and ocean waters. Coastal lagoons and mouths of streams that are temporarily separated from the ocean by sandbars shall be considered estuaries. Estuarine waters shall be considered to extend from a bay or the open ocean to a point upstream where there is no significant mixing of fresh water and seawater. Estuarine waters included, but are not limited to, the Sacramento-San Joaquin Delta, as defined in California Water Code section 12220, Suisun Bay, Carquinez Strait downstream to the Carquinez Bridge, and appropriate areas of the Smith, Mad, Eel, Noyo, Russian, Klamath, San Diego, and Otay rivers. Estuaries do not include inland surface waters or ocean waters.

Existing Discharger

Any discharger that is not a new discharger. An existing discharger includes an "increasing discharger" (i.e., any existing facility with treatment systems in place for its current discharge that is or will be expanding, upgrading, or modifying its permitted discharge after the effective date of this Order).

Flow-through treatment BMPs

Flow-through treatment BMPs include modular, vault type “high flow biotreatment” devices contained within an impervious vault with an underdrain or designed with an impervious liner and an underdrain.

Full Capture System

Any single device or series of devices, certified by the Executive Officer, that traps all particles retained by a 5 mm mesh screen and has a design treatment capacity of not less than the peak flow rate Q resulting from a one-year, one-hour storm in the sub-drainage area. The Rational Equation is used to compute the peak flow rate:

$$Q = C \times I \times A,$$

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 Los Angeles County rainfall isohyetal maps relevant to the Los Angeles River watershed), and

A = sub-drainage area (acres).

General Construction Activities Storm Water Permit (GCASP)

The general NPDES permit adopted by the State Board which authorizes the discharge of storm water from construction activities under certain conditions.

General Industrial Activities Storm Water Permit (GIASP)

The general NPDES permit adopted by the State Board which authorizes the discharge of storm water from certain industrial activities under certain conditions.

Green Roof

A LID BMP using planter boxes and vegetation to intercept rainfall on the roof surface. Rainfall is intercepted by vegetation leaves and through evapotranspiration. Green roofs may be designed as either a bioretention BMP or as a biofiltration BMP. To receive credit as a bioretention BMP, the green roof system planting medium shall be of sufficient depth to provide capacity within the pore space volume to contain the design storm depth and may not be designed or constructed with an underdrain.

Hillside

Property located in an area with known erosive soil conditions, where the development contemplates grading on any natural slope that is 25% or greater and where grading contemplates cut or fill slopes.

Hydrologic Unit Code (HUC)

A standardized watershed classification system in which each hydrologic unit is identified by a unique hydrologic unit code (HUC). The HUC may consist of an eight (8) to twelve (12) digit number. The 8-digit HUC identifies an area based on four levels of classification: region, sub-region, hydrologic basin, and hydrologic sub-basin. The Watershed Boundary Dataset includes the 12-digit HUC delineation, which further divides each hydrologic unit into watersheds and sub-watersheds based on scientific information and not administrative boundaries. The Watershed Boundary Dataset is the highest resolution and the most detailed

delineation of the watershed boundaries. The mapping precision has been improved to a scale of 1:24,000.

Illicit Connection

Any man-made conveyance that is connected to the storm drain system without a permit, excluding roof drains and other similar type connections. Examples include channels, pipelines, conduits, inlets, or outlets that are connected directly to the storm drain system.

Illicit Discharge

Any discharge into the MS4 or from the MS4 into a receiving water that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. The term illicit discharge includes any non-storm water discharge, except authorized non-storm water discharges; conditionally exempt non-storm water discharges; and non-storm water discharges resulting from natural flows specifically identified in Part III.A.1.d.

Illicit Disposal

Any disposal, either intentionally or unintentionally, of material(s) or waste(s) that can pollute storm water.

Improved drainage system

An improved drainage system is a drainage system that has been channelized or armored. The clearing or dredging of a natural drainage system does not cause the system to be classified as an improved drainage system.

Industrial/Commercial Facility

Any facility involved and/or used in the production, manufacture, storage, transportation, distribution, exchange or sale of goods and/or commodities, and any facility involved and/or used in providing professional and non-professional services. This category of facilities includes, but is not limited to, any facility defined by either the Standard Industrial Classifications (SIC) or the North American Industry Classification System (NAICS). Facility ownership (federal, state, municipal, private) and profit motive of the facility are not factors in this definition.

Industrial Park

A land development that is set aside for industrial development. Industrial parks are usually located close to transport facilities, especially where more than one transport modalities coincide: highways, railroads, airports, and navigable rivers. It includes office parks, which have offices and light industry.

Infiltration BMP

A LID BMP that reduces storm water runoff by capturing and infiltrating the runoff into in-situ soils or amended on-site soils. Examples of infiltration BMPs include infiltration basins, dry wells, and pervious pavement.³

Inland Surface Waters

All surface waters of the State that do not include the ocean, enclosed bays, or estuaries.

³ Some types of infiltration BMPs such as dry wells, may meet the definition of a Class V, deep well injection facility and may be subject to permitting under U.S. EPA requirements.

Inspection

Entry and the conduct of an on-site review of a facility and its operations, at reasonable times, to determine compliance with specific municipal or other legal requirements. The steps involved in performing an inspection, include, but are not limited to:

1. Pre-inspection documentation research.;
2. Request for entry;
3. Interview of facility personnel;
4. Facility walk-through.
5. Visual observation of the condition of facility premises;
6. Examination and copying of records as required;
7. Sample collection (if necessary or required);
8. Exit conference (to discuss preliminary evaluation); and,
9. Report preparation, and if appropriate, recommendations for coming into compliance.

In the case of restaurants, a Permittee may conduct an inspection from the curbside, provided that such "curbside" inspection provides the Permittee with adequate information to determine an operator's compliance with BMPs that must be implemented per requirements of this Order, Regional Water Board Resolution No. 98-08, County and municipal ordinances, and the SQMP.

Instantaneous Maximum Effluent Limitation

The highest allowable value for any single grab sample or aliquot (i.e., each grab sample or aliquot is independently compared to the instantaneous maximum limitation).

Instantaneous Minimum Effluent Limitation

The lowest allowable value for any single grab sample or aliquot (i.e., each grab sample or aliquot is independently compared to the instantaneous minimum limitation).

Institutional Controls

Programmatic trash control measures that do not require construction or structural modifications to the MS4. Examples include street sweeping, public education, and clean out of catch basins that discharge to storm drains.

Integrated Pest Management (IPM) is an ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices, and use of resistant varieties.

Large Municipal Separate Storm Sewer System (MS4)

All MS4s that serve a population greater than 250,000 (1990 Census) as defined in 40 CFR 122.26 (b)(4). The Regional Water Board designated Los Angeles County as a large MS4 in 1990, based on: (i) the U.S. Census Bureau 1990 population count of 8.9 million, and (ii) the interconnectivity of the MS4s in the incorporated and unincorporated areas within the County.

Local SWPPP

The Storm Water Pollution Prevention Plan required by the local agency for a project that disturbs one or more acres of land.

Low Impact Development (LID)

LID consists of building and landscape features designed to retain or filter storm water runoff.

Major Outfall

Major municipal separate storm sewer outfall (or “major outfall”) means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more). (40 CFR § 122.26(b)(5))

Maximum Daily Effluent Limitation (MDEL)

The highest allowable daily discharge of a pollutant, over a calendar day (or 24-hour period). For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the arithmetic mean measurement of the pollutant over the day.

Maximum Extent Practicable (MEP)

In selecting BMPs which will achieve MEP, it is important to remember that municipalities will be responsible to reduce the discharge of pollutants in storm water to the maximum extent practicable. This means choosing effective BMPs, and rejecting applicable BMPs only where other effective BMPs will serve the same purpose, the BMPs would not be technically feasible, or the cost would be prohibitive. The following factors may be useful to consider:

1. Effectiveness: Will the BMP address a pollutant of concern?
2. Regulatory Compliance: Is the BMP in compliance with storm water regulations as well as other environmental regulations?
3. Public acceptance: Does the BMP have public support?
4. Cost: Will the cost of implementing the BMP have a reasonable relationship to the pollution control benefits to be achieved?
5. Technical Feasibility: Is the BMP technically feasible considering soils, geography, water resources, etc.?

After selecting a menu of BMPs, it is of course the responsibility of the discharger to insure that all BMPs are implemented.

Median

The middle measurement in a set of data. The median of a set of data is found by first arranging the measurements in order of magnitude (either increasing or decreasing order). If the number of measurements (n) is odd, then the median = $X_{(n+1)/2}$. If n is even, then the median = $(X_{n/2} + X_{(n/2)+1})/2$ (i.e., the midpoint between the $n/2$ and $n/2+1$).

Method Detection Limit (MDL)

MDL is the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero, as defined in 40 CFR Part 136, Attachment B (revised as of July 3, 1999).

Minimum Level (ML)

ML is the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. The ML is the concentration in a sample that is equivalent to the 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.

Municipal Separate Storm Sewer System (MS4)

A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade 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, 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 a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;

(ii) Designed or used for collecting or conveying storm water;

(iii) Which is not a combined sewer; and

(iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR § 122.2.

(40 CFR § 122.26(b)(8))

National Pollutant Discharge Elimination System (NPDES)

The national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA §307, 402, 318, and 405. The term includes an “approved program.”

Natural Drainage System

A natural drainage system is a drainage system that has not been improved (e.g., channelized or armored). The clearing or dredging of a natural drainage system does not cause the system to be classified as an improved drainage system.

New Development

Land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.

Non-Storm Water Discharge

Any discharge into the MS4 or from the MS4 into a receiving water that is not composed entirely of storm water.

Not Detected (ND)

Sample results which are less than the laboratory's MDL.

Nuisance

Anything that 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.

Ocean Waters

The territorial marine waters of the State as defined by California law to the extent these waters are outside of enclosed bays, estuaries, and coastal lagoons. Discharges to ocean waters are regulated in accordance with the State Water Board's California Ocean Plan.

Outfall

A point source as defined by 40 CFR 122.2 at 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 with 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))

Parking Lot

Land area or facility for the parking or storage of motor vehicles used for businesses, commerce, industry, or personal use, with a lot size of 5,000 square feet or more of surface area, or with 25 or more parking spaces.

Partial Capture Device

Any structural trash control device that has not been certified by the Executive Officer as meeting the "full capture" performance requirements.

Permittee(s)

Co-Permittees and any agency named in this Order as being responsible for permit conditions within its jurisdiction. Permittees to this Order include the Los Angeles County Flood Control District, Los Angeles County, and the cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, 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 Canada 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.

Persistent Pollutants

Persistent pollutants are substances for which degradation or decomposition in the environment is nonexistent or very slow.

Planning Priority Projects

Those projects that are required to incorporate appropriate storm water mitigation measures into the design plan for their respective project. These types of projects include:

1. Ten or more unit homes (includes single family homes, multifamily homes, condominiums, and apartments)
2. A 100,000 or more square feet of impervious surface area industrial/ commercial development (1 ac starting March 2003)
3. Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534, and 7536-7539)
4. Retail gasoline outlets
5. Restaurants (SIC 5812)
6. Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces
7. Redevelopment projects in subject categories that meet Redevelopment thresholds
8. Projects located in or directly adjacent to or discharging directly to an ESA, which meet thresholds; and
9. Those projects that require the implementation of a site-specific plan to mitigate post-development storm water for new development not requiring a SUSMP but which may potentially have adverse impacts on post-development storm water quality, where the following project characteristics exist:
 - a) Vehicle or equipment fueling areas;
 - b) Vehicle or equipment maintenance areas, including washing and repair;
 - c) Commercial or industrial waste handling or storage;
 - d) Outdoor handling or storage of hazardous materials;
 - e) Outdoor manufacturing areas;
 - f) Outdoor food handling or processing;
 - g) Outdoor animal care, confinement, or slaughter; or
 - h) Outdoor horticulture activities.

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 operation, landfill leachate collection system, 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. (40 CFR § 122.2)

Pollutant Minimization Program (PMP)

PMP means waste minimization and pollution prevention actions that include, but are not limited to, product substitution, waste stream recycling, alternative waste management methods, and education of the public and businesses. The goal of the PMP shall be to reduce

all potential sources of a priority pollutant(s) through pollutant minimization (control) strategies, including pollution prevention measures as appropriate, to maintain the effluent concentration at or below the water quality-based effluent limitation. Pollution prevention measures may be particularly appropriate for persistent bioaccumulative priority pollutants where there is evidence that beneficial uses are being impacted. The Regional Water Board may consider cost effectiveness when establishing the requirements of a PMP. The completion and implementation of a Pollution Prevention Plan, if required pursuant to California Water Code section 13263.3(d), shall be considered to fulfill the PMP requirements.

Pollutants

Those "pollutants" defined in CWA §502(6) (33.U.S.C.§1362(6)), and incorporated by reference into California Water Code §13373

Pollution Prevention

Pollution Prevention means any action that causes a net reduction in the use or generation of a hazardous substance or other pollutant that is discharged into water and includes, but is not limited to, input change, operational improvement, production process change, and product reformulation (as defined in California Water Code Section 13263.3). Pollution prevention does not include actions that merely shift a pollutant in wastewater from one environmental medium to another environmental medium, unless clear environmental benefits of such an approach are identified to the satisfaction of the State or Regional Water Board.

Potable Water

Water that meets the drinking water standards of the US Environmental Protection Agency.

Project

All development, redevelopment, and land disturbing activities. The term is not limited to "Project" as defined under CEQA (Pub. Resources Code §21065).

Rain Event

Any rain event greater than 0.1 inch in 24 hours except where specifically stated otherwise.

Rainfall Harvest and Use

Rainfall harvest and use is an LID BMP system designed to capture runoff, typically from a roof but can also include runoff capture from elsewhere within the site, and to provide for temporary storage until the harvested water can be used for irrigation or non-potable uses. The harvested water may also be used for potable water uses if the system includes disinfection treatment and is approved for such use by the local building department.

Rare, Threatened, or Endangered Species (RARE)

A beneficial use for waterbodies in the Los Angeles Region, as designated in the Basin Plan (Table 2-1), that supports habitats necessary, at least in part, for the survival and successful maintenance of plant or animal species established under state or federal law as rare, threatened, or endangered.

Raw Water

Water that is taken from the environment by drinking water suppliers with the intent to subsequently treat or purify it to produce potable water. Raw water does not include

wastewater discharges from activities that occur at wellheads, such as well construction, well development (i.e., aquifer pumping tests, well purging, etc.), or major well maintenance.

Receiving Water

A “water of the United States” into which waste and/or pollutants are or may be discharged.

Receiving Water Limitation

Any applicable numeric or narrative water quality objective or criterion, or limitation to implement the applicable water quality objective or criterion, for the receiving water as contained in Chapter 3 or 7 of the Water Quality Control Plan for the Los Angeles Region (Basin Plan), water quality control plans or policies adopted by the State Water Board, or federal regulations, including but not limited to, 40 CFR § 131.38.

Redevelopment

Land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint; addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

Regional Administrator

The Regional Administrator of the Regional Office of the USEPA or the authorized representative of the Regional Administrator.

Reporting Level (RL)

RL is the ML (and its associated analytical method) chosen by the Discharger for reporting and compliance determination from the MLs included in this Order. The MLs included in this Order correspond to approved analytical methods for reporting a sample result that are selected by the Regional Water Board either from Appendix 4 of the State Implementation Policy (SIP) in accordance with Section 2.4.2 of the SIP or established in accordance with Section 2.4.3 of the SIP. The ML is based on the proper application of method-based analytical procedures for sample preparation and the absence of any matrix interferences. Other factors may be applied to the ML depending on the specific sample preparation steps employed. For example, the treatment typically applied in cases where there are matrix-effects is to dilute the sample or sample aliquot by a factor of ten. In such cases, this additional factor must be applied to the ML in the computation of the RL.

Residual Water

In the context of this Order, water remaining in a structural BMP subsequent to the drawdown or drainage period. The residual water typically contains high concentration(s) of pollutants.

Restaurant

A facility that sells prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption (SIC Code 5812).

Retail Gasoline Outlet

Any facility engaged in selling gasoline and lubricating oils.

Routine Maintenance

Routine maintenance projects include, but are not limited to projects conducted to:

1. Maintain the original line and grade, hydraulic capacity, or original purpose of the facility.
2. Perform as needed restoration work to preserve the original design grade, integrity and hydraulic capacity of flood control facilities.
3. Includes road shoulder work, regrading dirt or gravel roadways and shoulders and performing ditch cleanouts.
4. Update existing lines* and facilities to comply with applicable codes, standards, and regulations regardless if such projects result in increased capacity.
5. Repair leaks

Routine maintenance does not include construction of new** lines or facilities resulting from compliance with applicable codes, standards and regulations.

* Update existing lines includes replacing existing lines with new materials or pipes.

** New lines are those that are not associated with existing facilities and are not part of a project to update or replace existing lines.

Runoff

Any runoff including storm water and dry weather flows from a drainage area that reaches a receiving water body or subsurface. During dry weather it is typically comprised of base flow either contaminated with pollutants or uncontaminated, and nuisance flows.

Screening

Using proactive methods to identify illicit connections through a continuously narrowing process. The methods may include: performing baseline monitoring of open channels, conducting special investigations using a prioritization approach, analyzing maintenance records for catch basin and storm drain cleaning and operation, and verifying all permitted connections into the storm drains. Special investigation techniques may include: dye testing, visual inspection, smoke testing, flow monitoring, infrared, aerial and thermal photography, and remote control camera operation.

Sidewalk Rinsing

Means pressure washing of paved pedestrian walkways with average water usage of 0.006 gallons per square foot, with no cleaning agents, and properly disposing of all debris collected, as authorized under Regional Water Board Resolution No. 98-08.

Significant Ecological Areas (SEAs)

An area that is determined to possess an example of biotic resources that cumulatively represent biological diversity, for the purposes of protecting biotic diversity, as part of the Los Angeles County General Plan.

Areas are designated as SEAs, if they possess one or more of the following criteria:

1. The habitat of rare, endangered, and threatened plant and animal species.
2. Biotic communities, vegetative associations, and habitat of plant and animal species that are either one of a kind, or are restricted in distribution on a regional basis.

3. Biotic communities, vegetative associations, and habitat of plant and animal species that are either one of a kind or are restricted in distribution in Los Angeles County.
4. Habitat that at some point in the life cycle of a species or group of species, serves as a concentrated breeding, feeding, resting, migrating grounds and is limited in availability either regionally or within Los Angeles County.
5. Biotic resources that are of scientific interest because they are either an extreme in physical/geographical limitations, or represent an unusual variation in a population or community.
6. Areas important as game species habitat or as fisheries.
7. Areas that would provide for the preservation of relatively undisturbed examples of natural biotic communities in Los Angeles County.
8. Special areas.

Significant Natural Area (SNA)

An area defined by the California Department of Fish and Game (DFG), Significant Natural Areas Program, as an area that contains an important example of California's biological diversity. The most current SNA maps, reports, and descriptions can be downloaded from the DFG website at <ftp://maphost.dfg.ca.gov/outgoing/whdab/sna/>. These areas are identified using the following biological criteria only, irrespective of any administrative or jurisdictional considerations:

1. Areas supporting extremely rare species or habitats.
2. Areas supporting associations or concentrations of rare species or habitats.
3. Areas exhibiting the best examples of rare species and habitats in the state

Site

The land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

Source Control BMP

Any schedules of activities, prohibitions of practices, maintenance procedures, managerial practices or operational practices that aim to prevent storm water pollution by reducing the potential for contamination at the source of pollution.

Source of Drinking Water

Any water designated as municipal or domestic supply (MUN) in a Regional Water Board Basin Plan.

SQMP

The Los Angeles Countywide Stormwater Quality Management Program.

Standard Deviation (σ)

Standard Deviation is a measure of variability that is calculated as follows:

$$\sigma = \left(\frac{\sum[(x - \mu)^2]}{(n - 1)} \right)^{0.5}$$

where:

x is the observed value;

μ is the arithmetic mean of the observed values; and

n is the number of samples.

State Storm Water Pollution Prevention Plan (State SWPPP)

A plan, as required by a State General Permit, identifying potential pollutant sources and describing the design, placement and implementation of BMPs, to effectively prevent non-stormwater Discharges and reduce Pollutants in Stormwater Discharges during activities covered by the General Permit.

Storm Water

Storm water runoff, snow melt runoff, and surface runoff and drainage related to precipitation events (pursuant to 40 CFR § 122.26(b)(13); 55 Fed. Reg. 47990, 47995 (Nov. 16, 1990)).

Storm Water Discharge Associated with Industrial Activity

Industrial discharge as defined in 40 CFR 122.26(b)(14).

Stormwater Quality Management Program

The Los Angeles Countywide Stormwater Quality Management Program, which includes descriptions of programs, collectively developed by the Permittees in accordance with provisions of the NPDES Permit, to comply with applicable federal and state law, as the same is amended from time to time.

Structural BMP

Any structural facility designed and constructed to mitigate the adverse impacts of storm water and urban runoff pollution (e.g. canopy, structural enclosure). The category may include both Treatment Control BMPs and Source Control BMPs.

SUSMP

The Los Angeles Countywide Standard Urban Stormwater Mitigation Plan. The SUSMP shall address conditions and requirements of new development.

Total Maximum Daily Load (TMDL)

The sum of the individual waste load allocations for point sources and load allocations for nonpoint sources and natural background.

Toxicity Identification Evaluation (TIE)

A set of procedures to identify the specific chemical(s) responsible for toxicity. These procedures are performed in three phases (characterization, identification, and confirmation) using aquatic organism toxicity tests.

Toxicity Reduction Evaluation (TRE)

TRE is a study conducted in a step-wise process designed to identify the causative agents of effluent or ambient toxicity, isolate the sources of toxicity, evaluate the effectiveness of toxicity control options, and then confirm the reduction in toxicity. The first steps of the TRE consist of the collection of data relevant to the toxicity, including additional toxicity testing, and an evaluation of facility operations and maintenance practices, and best management practices. A Toxicity Identification Evaluation (TIE) may be required as part of the TRE, if appropriate. (A TIE is a set of procedures to identify the specific chemical(s) responsible for toxicity. These procedures are performed in three phases (characterization, identification, and confirmation) using aquatic organism toxicity tests.)

Trash Excluders

Any structural trash control device that prevents the discharge of trash to the storm drain system or to receiving waters. A trash exclude may or may not be certified by the Executive Officer as meeting the “full capture” performance requirements.

Treatment

The application of engineered systems that use physical, chemical, or biological processes to remove pollutants. Such processes include, but are not limited to, filtration, gravity settling, media absorption, biodegradation, biological uptake, chemical oxidation and UV radiation.

Treatment Control BMP

Any engineered system designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media absorption or any other physical, biological, or chemical process.

Unconfined ground water infiltration

Water other than waste water that enters the MS4 (including foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow. (See 40 CFR § 35.2005(20).)

Uncontaminated Ground Water Infiltration

Water other than waste water that enters the MS4 (including foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow. (See 40 CFR § 35.2005(20).)

USEPA Phase I Facilities

Facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include:

- i. facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N)
- ii. manufacturing facilities
- iii. oil and gas/mining facilities
- iv. hazardous waste treatment, storage, or disposal facilities
- v. landfills, land application sites, and open dumps
- vi. recycling facilities
- vii. steam electric power generating facilities
- viii. transportation facilities
- ix. sewage of wastewater treatment works
- x. light manufacturing facilities

Vehicle Maintenance/Material Storage Facilities/Corporation Yards

Any Permittee owned or operated facility or portion thereof that:

- i. Conducts industrial activity, operates equipment, handles materials, and provides services similar to Federal Phase I facilities;
- ii. Performs fleet vehicle service/maintenance on ten or more vehicles per day including repair, maintenance, washing, and fueling;
- iii. Performs maintenance and/or repair of heavy industrial machinery/equipment; and

- iv. Stores chemicals, raw materials, or waste materials in quantities that require a hazardous materials business plan or a Spill Prevention, Control, and Countermeasures (SPCC) plan.

Water Quality-based Effluent Limitation

Any restriction imposed on quantities, discharge rates, and concentrations of pollutants, which are discharged from point sources to waters of the U.S. necessary to achieve a water quality standard.

Waters of the State

Any surface water or groundwater, including saline waters, within the boundaries of the state.

Waters of the United States or Waters of the U.S.

- a. All waters that 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 sea; and
- g. "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraph (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR section 423.22(m), which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to man-made bodies of water, which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. 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 CWA, the final authority regarding CWA jurisdiction remains with USEPA.

Wet Season

The calendar period beginning October 1 through April 15.

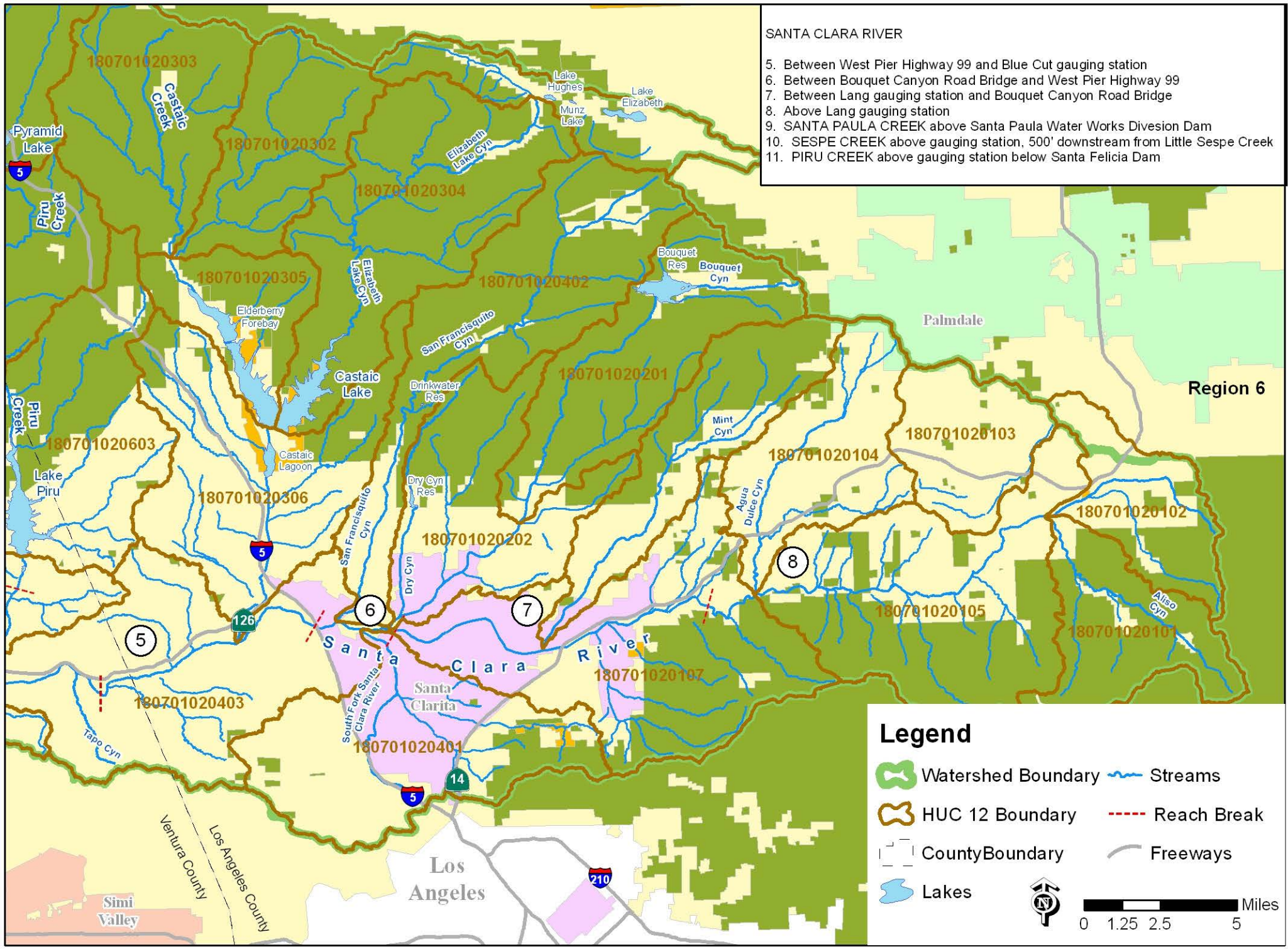
ACRONYMS AND ABBREVIATIONS

| | |
|------------------|--|
| AMEL | Average Monthly Effluent Limitation |
| ASBS | Areas of Special Biological Significance |
| B | Background Concentration |
| BAT | Best Available Technology Economically Achievable |
| Basin Plan | <i>Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties</i> |
| BCT | Best Conventional Pollutant Control Technology |
| BMP | Best Management Practices |
| BMPP | Best Management Practices Plan |
| BPJ | Best Professional Judgment |
| BOD | Biochemical Oxygen Demand 5-day @ 20 °C |
| BPT | Best Practicable Treatment Control Technology |
| C | Water Quality Objective |
| CCR | California Code of Regulations |
| CEEIN | California Environmental Education Interagency Network |
| CEQA | California Environmental Quality Act |
| CFR | Code of Federal Regulations |
| CTR | California Toxics Rule |
| CV | Coefficient of Variation |
| CWA | Clean Water Act |
| CWC | California Water Code |
| Discharger | Los Angeles County MS4 Permittees |
| DMR | Discharge Monitoring Report |
| DNQ | Detected But Not Quantified |
| ELAP | California Department of Public Health Environmental Laboratory Accreditation Program |
| ELG | Effluent Limitations, Guidelines and Standards |
| Ep | Erosion potential |
| ESCP | Erosion and Sediment Control Plan |
| EWMP | Enhanced Watershed Management Program |
| Facility | Los Angeles County MS4s |
| GIS | Geographical Information System |
| gpd | gallons per day |
| HUC | Hydrologic Unit Code |
| IC | Inhibition Coefficient |
| IC ₁₅ | Concentration at which the organism is 15% inhibited |
| IC ₂₅ | Concentration at which the organism is 25% inhibited |
| IC ₄₀ | Concentration at which the organism is 40% inhibited |
| IC ₅₀ | Concentration at which the organism is 50% inhibited |
| IC/ID | Illicit Connection and Illicit Discharge Elimination |
| IPM | Integrated Pest Management |
| LA | Load Allocations |
| LID | Low Impact Development |
| LOEC | Lowest Observed Effect Concentration |
| LUPs | Linear Underground/Overhead Projects |

| | |
|----------------------|--|
| µg/L | micrograms per Liter |
| MCM | Minimum Control Measure |
| mg/L | milligrams per Liter |
| MDEL | Maximum Daily Effluent Limitation |
| MEC | Maximum Effluent Concentration |
| MGD | Million Gallons Per Day |
| ML | Minimum Level |
| MRP | Monitoring and Reporting Program |
| MS4 | Municipal Separate Storm Sewer System |
| NAICS | North American Industry Classification System |
| ND | Not Detected |
| NOEC | No Observable Effect Concentration |
| NPDES | National Pollutant Discharge Elimination System |
| NSPS | New Source Performance Standards |
| NTR | National Toxics Rule |
| OAL | Office of Administrative Law |
| PIPP | Public Information and Participation Program |
| PMP | Pollutant Minimization Plan |
| POTW | Publicly Owned Treatment Works |
| QA | Quality Assurance |
| QA/QC | Quality Assurance/Quality Control |
| QSD | Qualified SWPPP Developer |
| QSP | Qualified SWPPP Practitioner |
| Ocean Plan | <i>Water Quality Control Plan for Ocean Waters of California</i> |
| RAP | Reasonable Assurance Program |
| REAP | Rain Event Action Plan |
| Regional Water Board | California Regional Water Quality Control Board, Los Angeles Region |
| RGOs | Retail Gasoline Outlets |
| RPA | Reasonable Potential Analysis |
| SCP | Spill Contingency Plan |
| SEA | Significant Ecological Area |
| SIC | Standard Industrial Classification |
| SIP | State Implementation Policy (<i>Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California</i>) |
| SMR | Self Monitoring Reports |
| State Water Board | California State Water Resources Control Board |
| SWPPP | Storm Water Pollution Prevention Plan |
| SWQDv | Storm Water Quality Design Volume |
| SWQPA | State Water Quality Protected Area |
| TAC | Test Acceptability Criteria |
| Thermal Plan | <i>Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Water and Enclosed Bays and Estuaries of California</i> |
| TIE | Toxicity Identification Evaluation |
| TMDL | Total Maximum Daily Load |

| | |
|-----------------|---|
| TOC | Total Organic Carbon |
| TRE | Toxicity Reduction Evaluation |
| TSD | Technical Support Document |
| TSS | Total Suspended Solid |
| TU _c | Chronic Toxicity Unit |
| USEPA | United States Environmental Protection Agency |
| WDR | Waste Discharge Requirements |
| WDID | Waste Discharge Identification |
| WET | Whole Effluent Toxicity |
| WLA | Waste Load Allocations |
| WMA | Watershed Management Area |
| WMP | Watershed Management Program |
| WQBELs | Water Quality-Based Effluent Limitations |
| WQS | Water Quality Standards |
| % | Percent |

ATTACHMENT B – WATERSHED MANAGEMENT AREA MAPS



- SANTA CLARA RIVER**
5. Between West Pier Highway 99 and Blue Cut gauging station
 6. Between Bouquet Canyon Road Bridge and West Pier Highway 99
 7. Between Lang gauging station and Bouquet Canyon Road Bridge
 8. Above Lang gauging station
 9. SANTA PAULA CREEK above Santa Paula Water Works Diversion Dam
 10. SESPE CREEK above gauging station, 500' downstream from Little Sespe Creek
 11. PIRU CREEK above gauging station below Santa Felicia Dam

Figure B-1: Upper Santa Clara River Watershed Management Area Hydrologic Units.



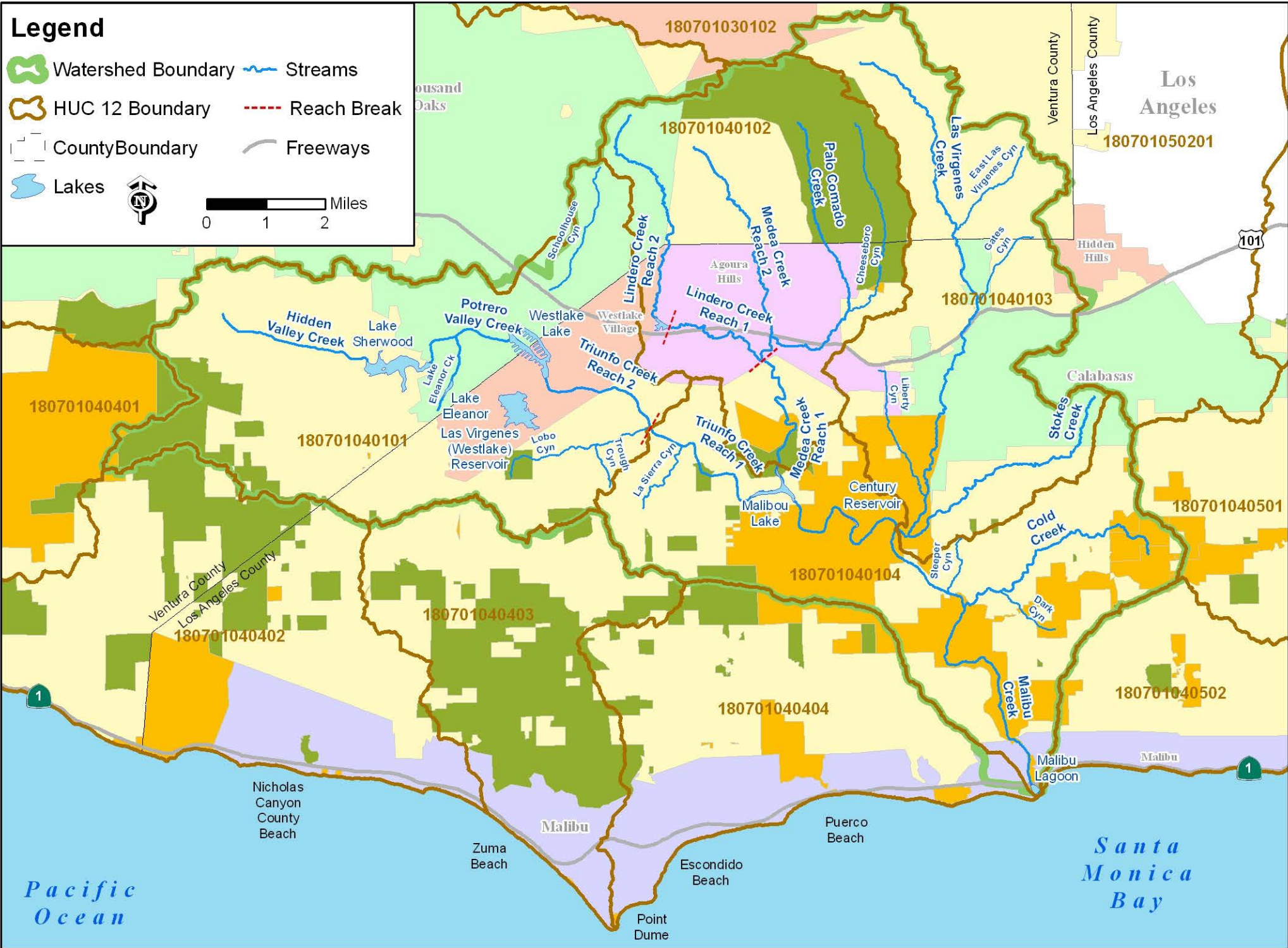


Figure B-2a: Malibu Creek Watershed Hydrologic Units (Santa Monica Bay WMA).

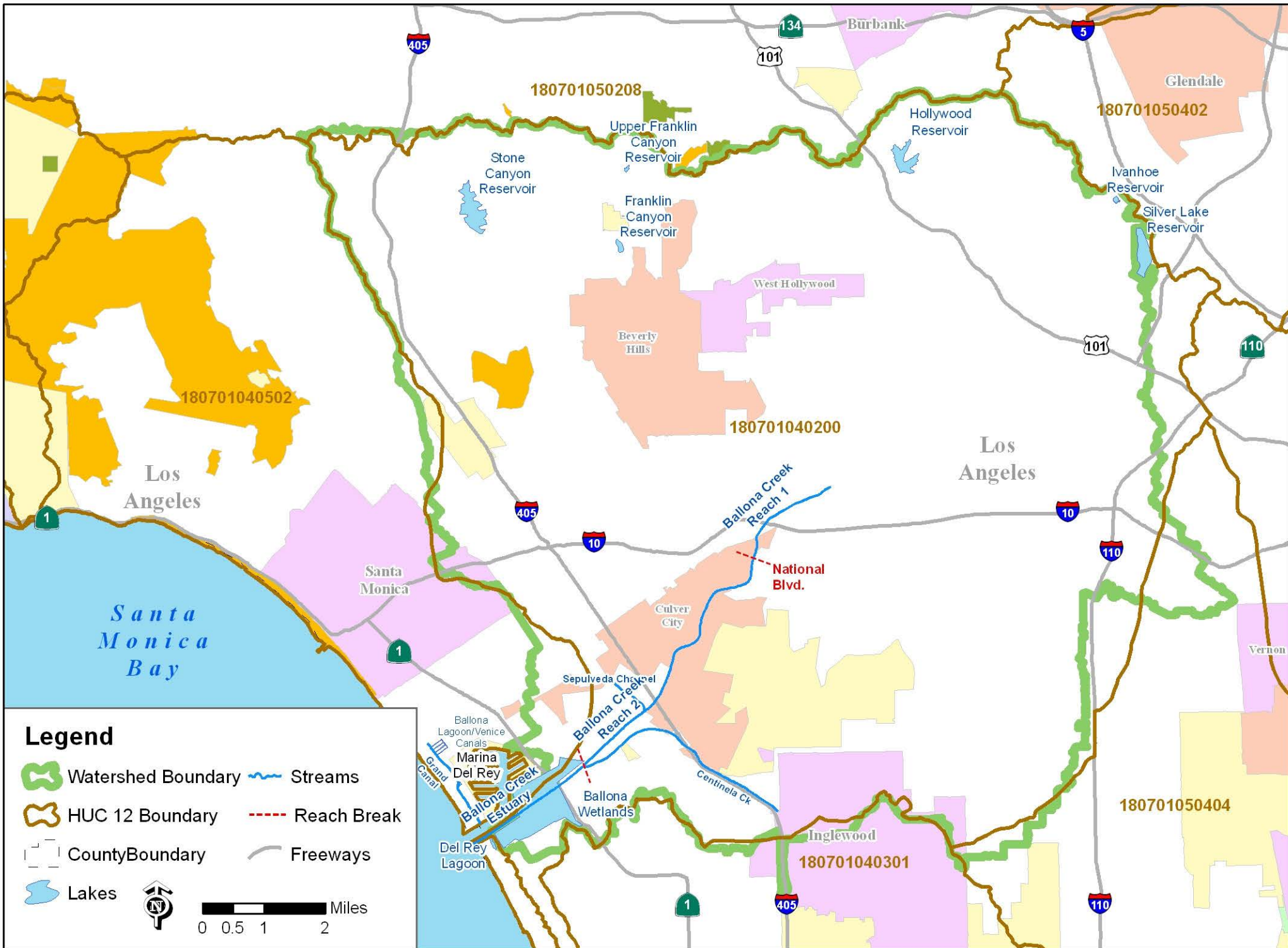


Figure B-2b: Ballona Creek Watershed Hydrologic Units (Santa Monica Bay WMA).



Figure B-2c: Marina Del Rey Watershed Hydrologic Units (Santa Monica Bay WMA).

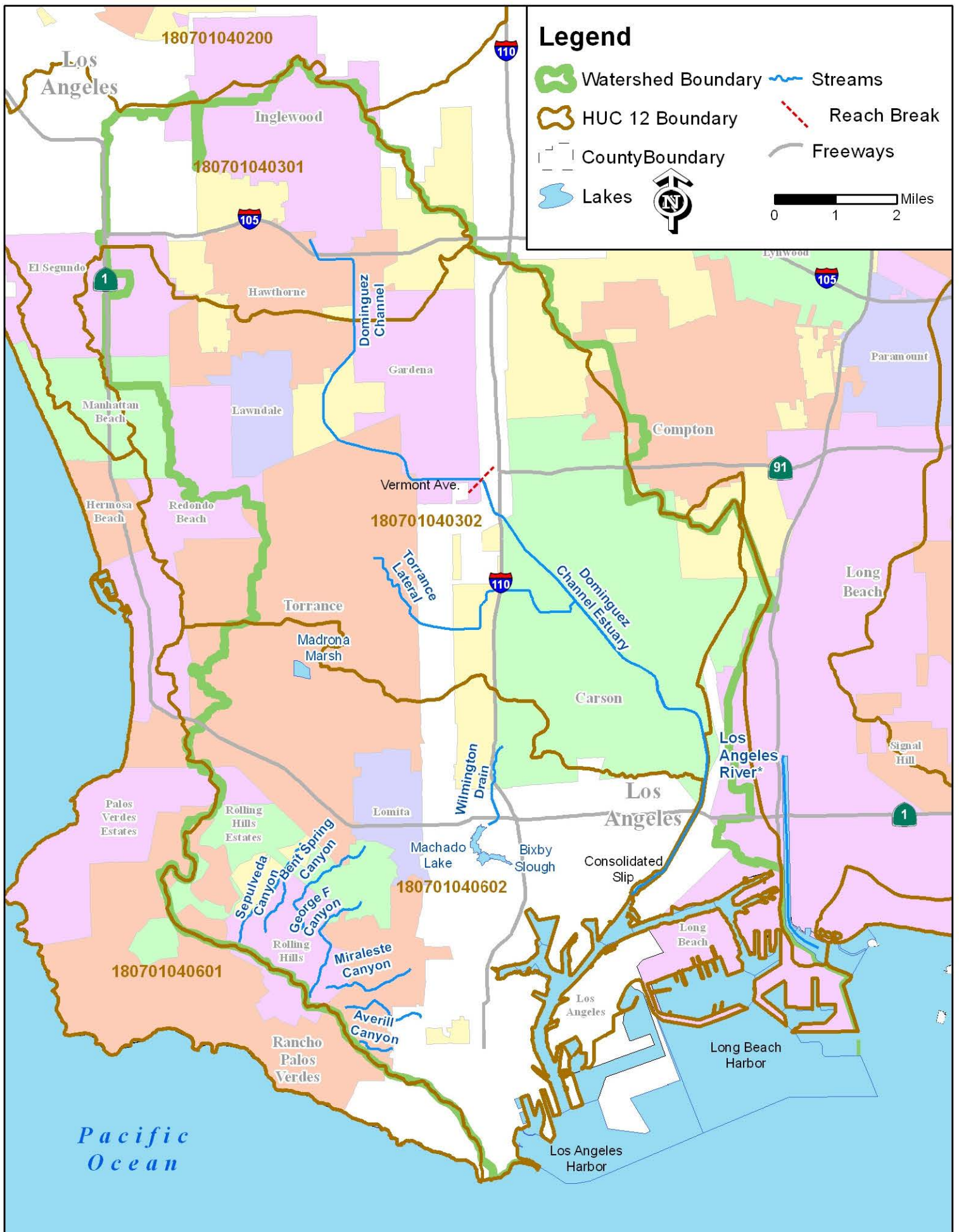


Figure B-3: Dominguez Channel and Los Angeles/Long Beach Harbors Watershed Management Area Hydrologic Units.

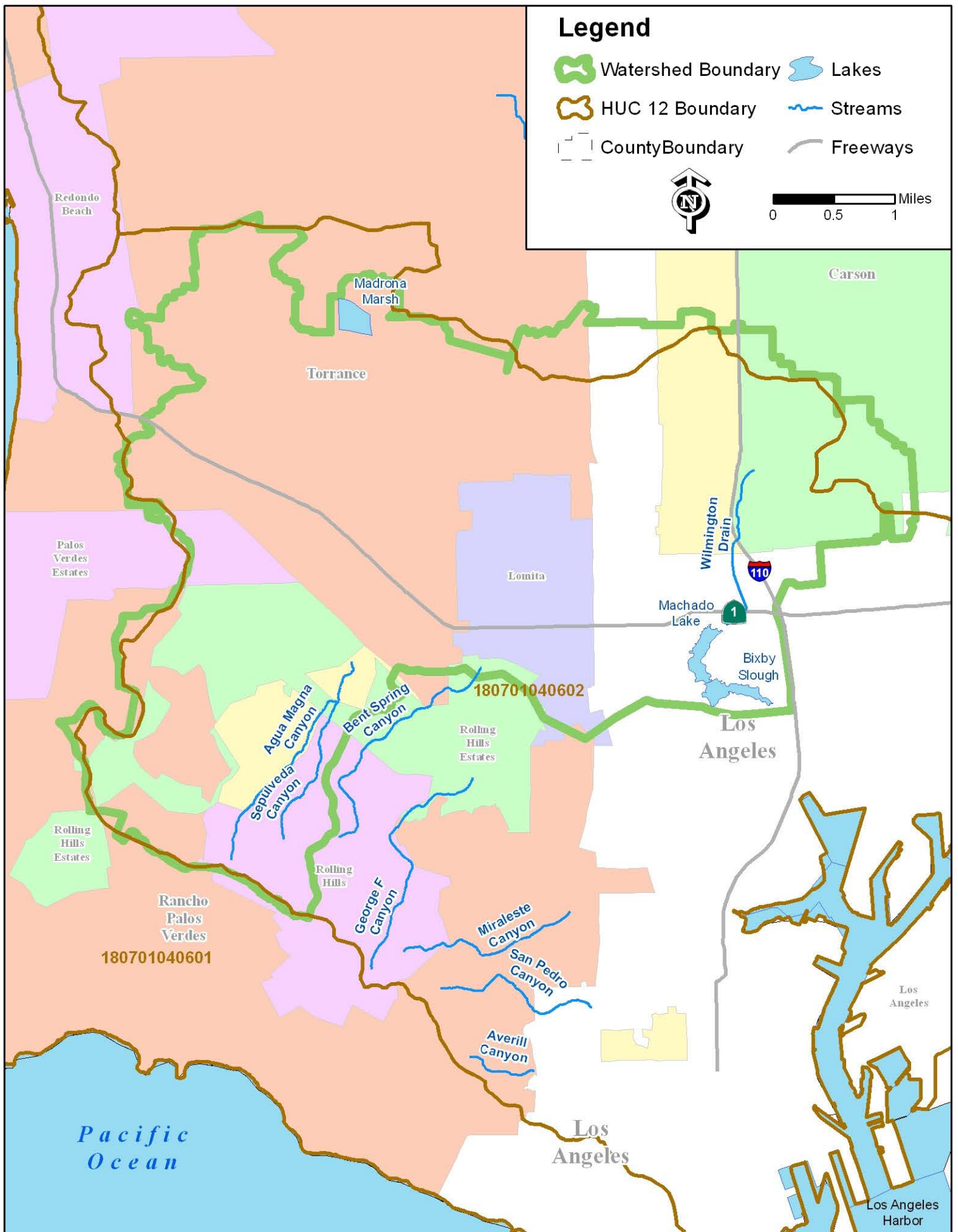


Figure B-3a: Machado Lake Watershed Hydrologic Units (Dominguez Channel & LA/LB Harbors WMA).



Figure B-4: Los Angeles River Watershed Management Area Hydrologic Units.

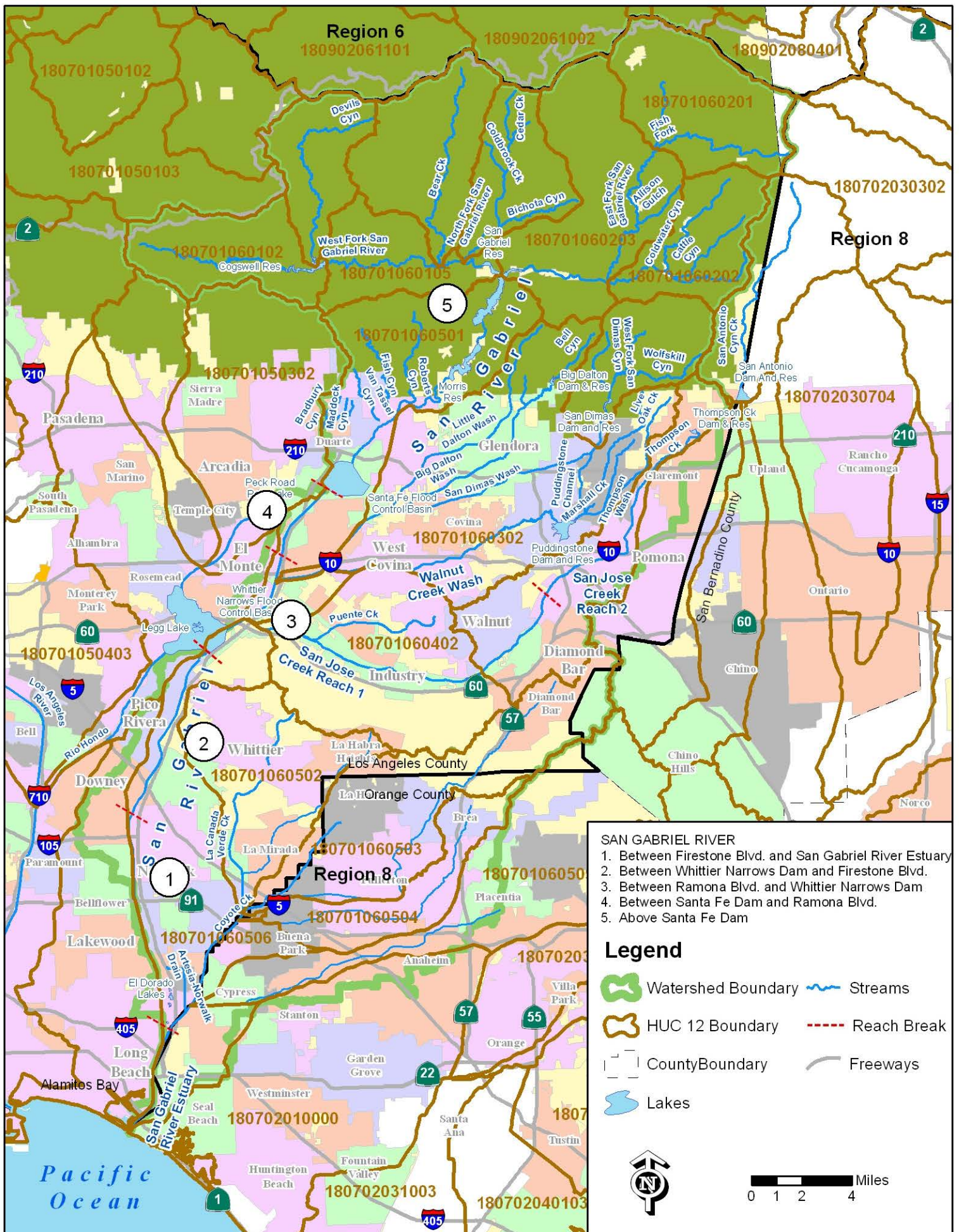


Figure B-5: San Gabriel River Watershed Management Area Hydrologic Units.

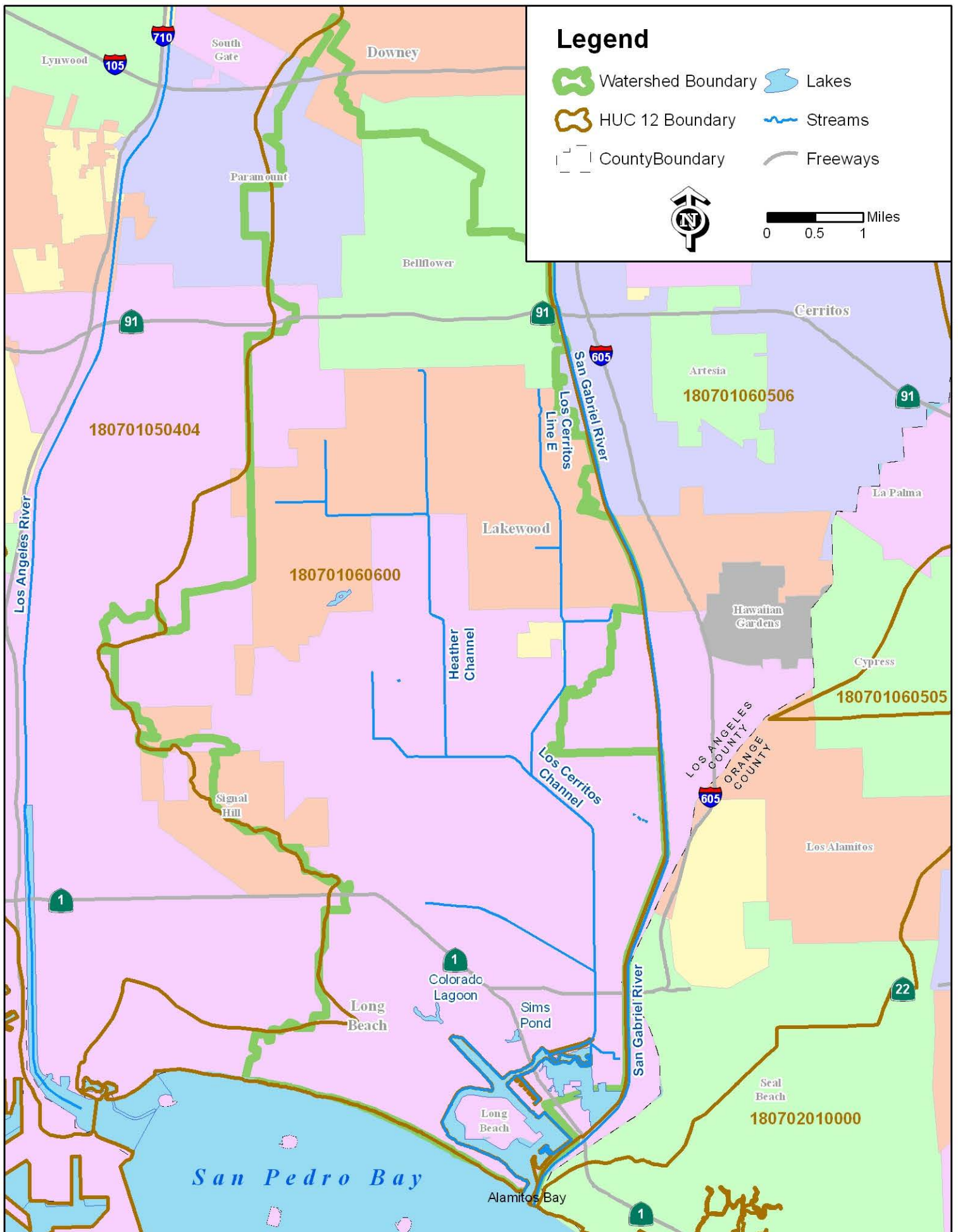


Figure B-6: Los Cerritos Channel and Alamitos Bay Watershed Management Area Hydrologic Units.

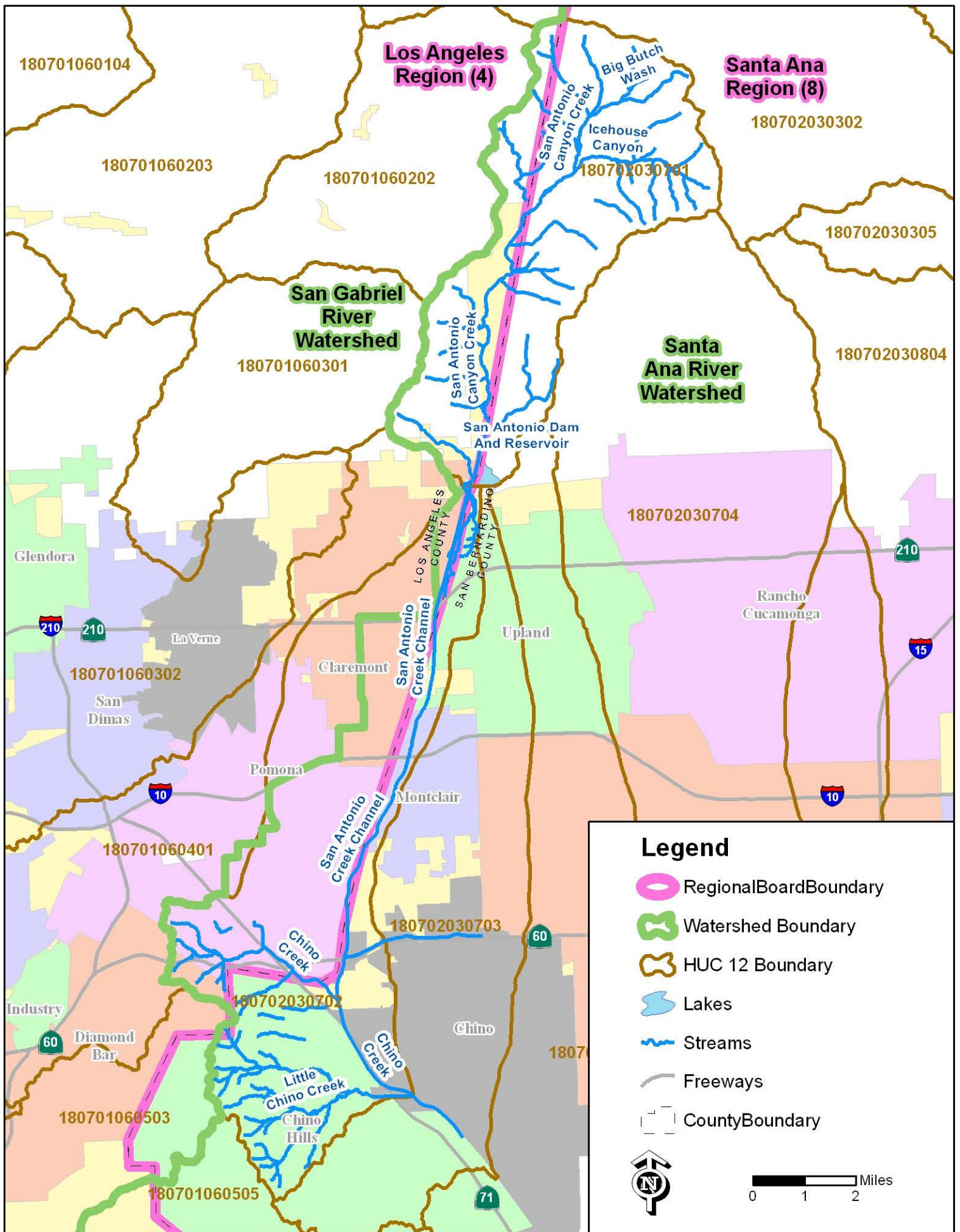


Figure B-7: Middle San Antonio Creek Subwatershed Hydrologic Units.

ATTACHMENT C – MS4 MAPS BY WATERSHED MANAGEMENT AREA

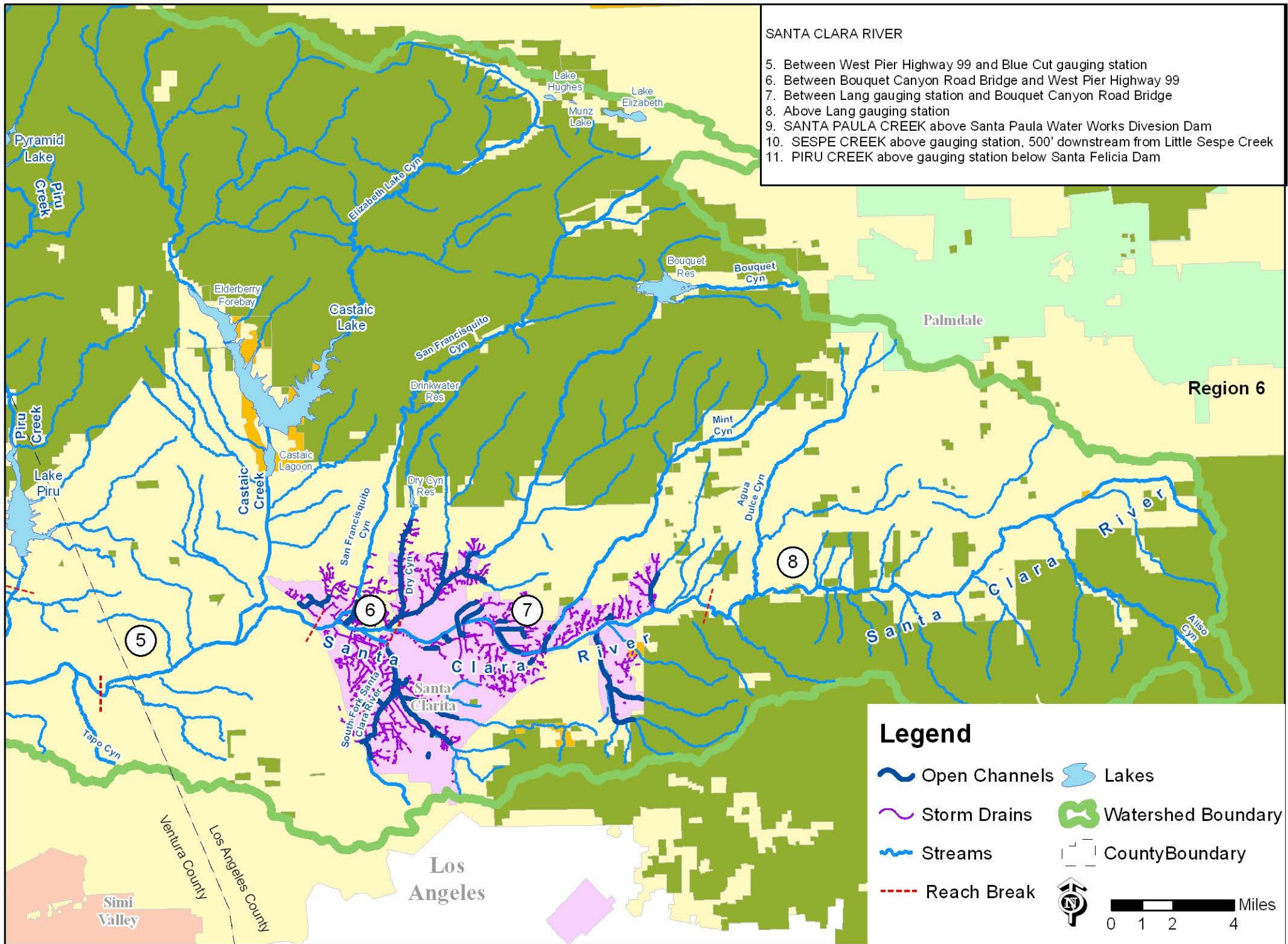


Figure C-1: Upper Santa Clara River Watershed Management Area Flow Schematic.

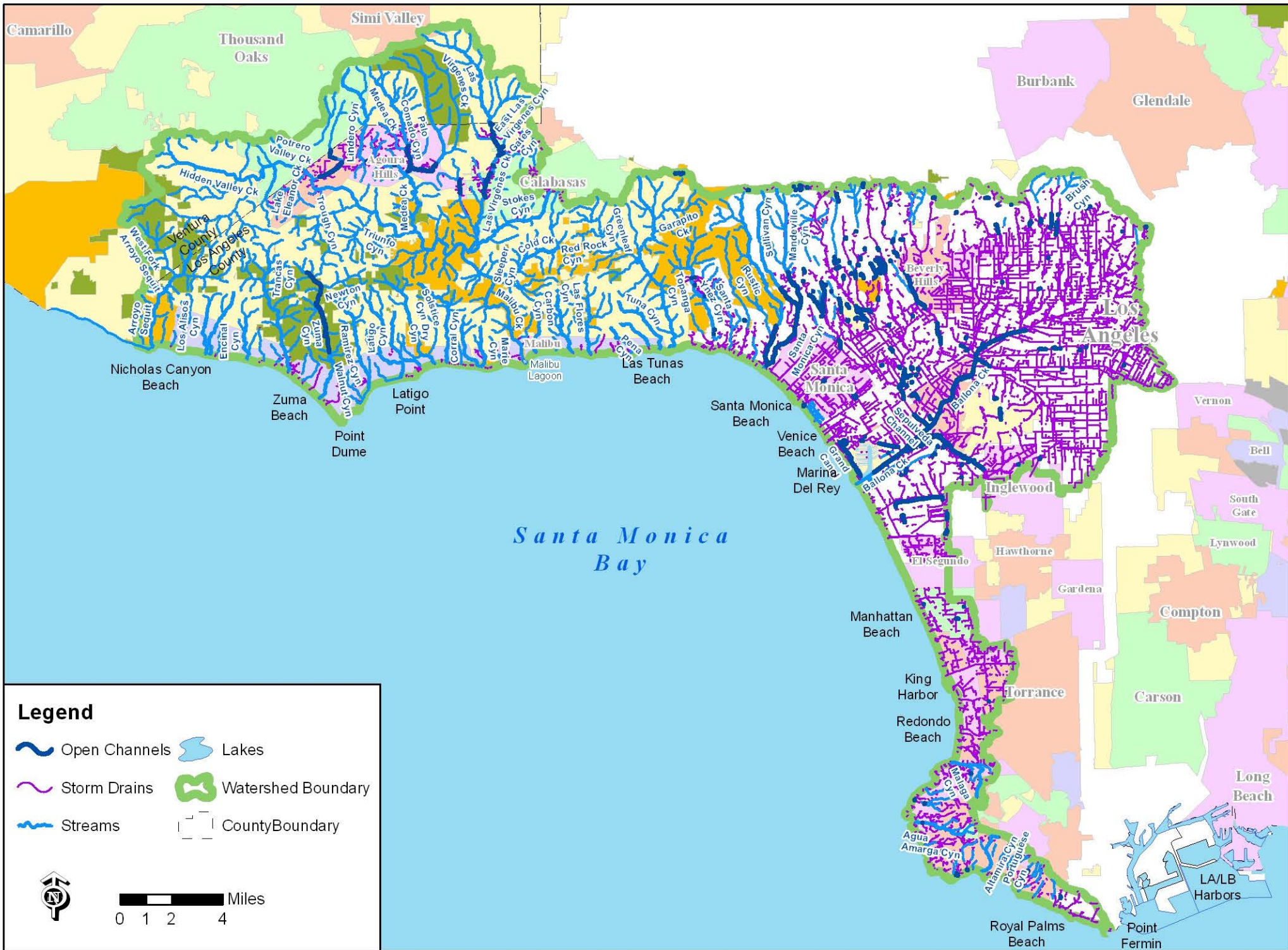


Figure C-2: Santa Monica Bay Watershed Management Area Flow Schematic.

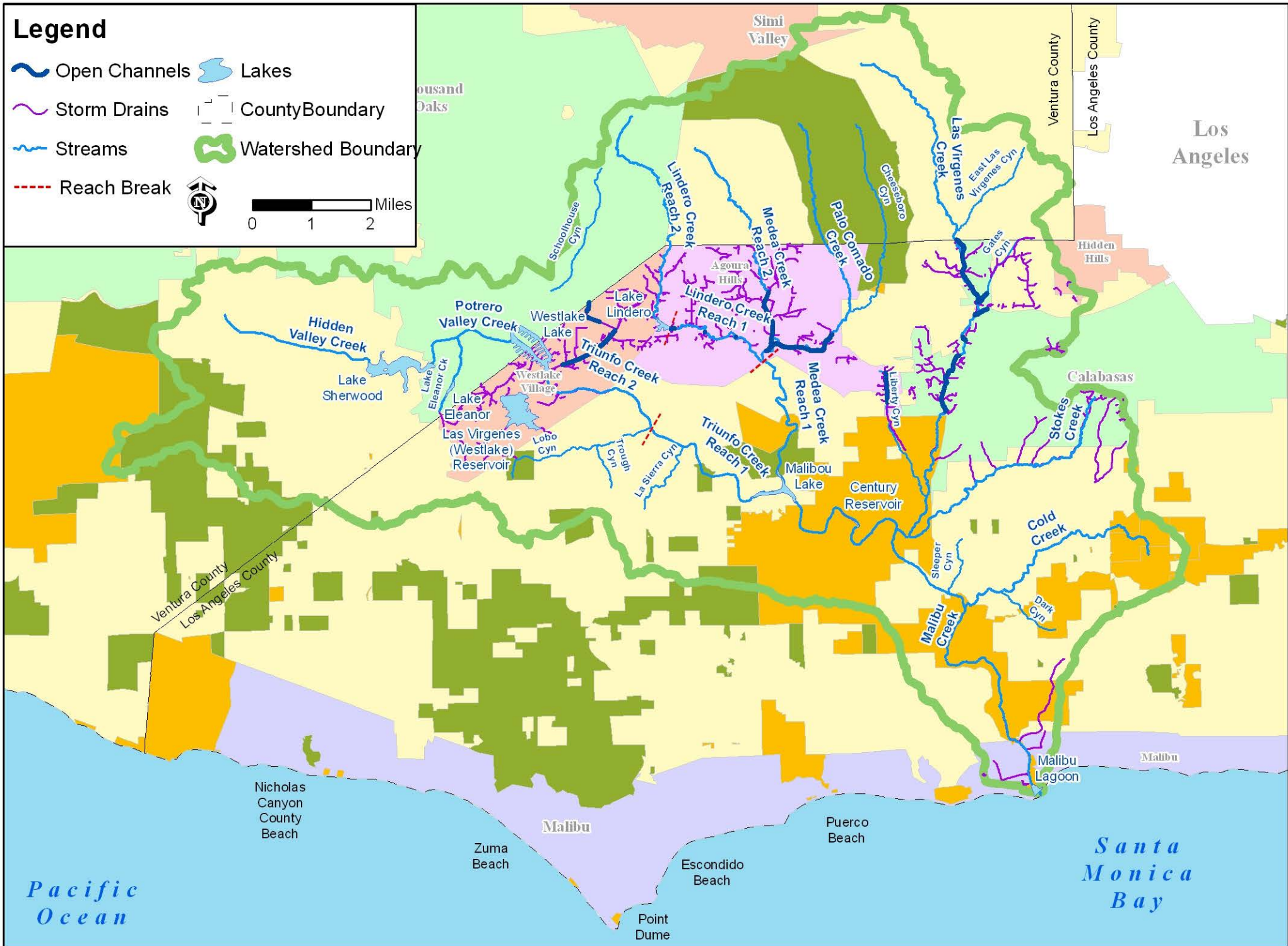


Figure C-2a: Malibu Creek Watershed Flow Schematic (Santa Monica Bay WMA).

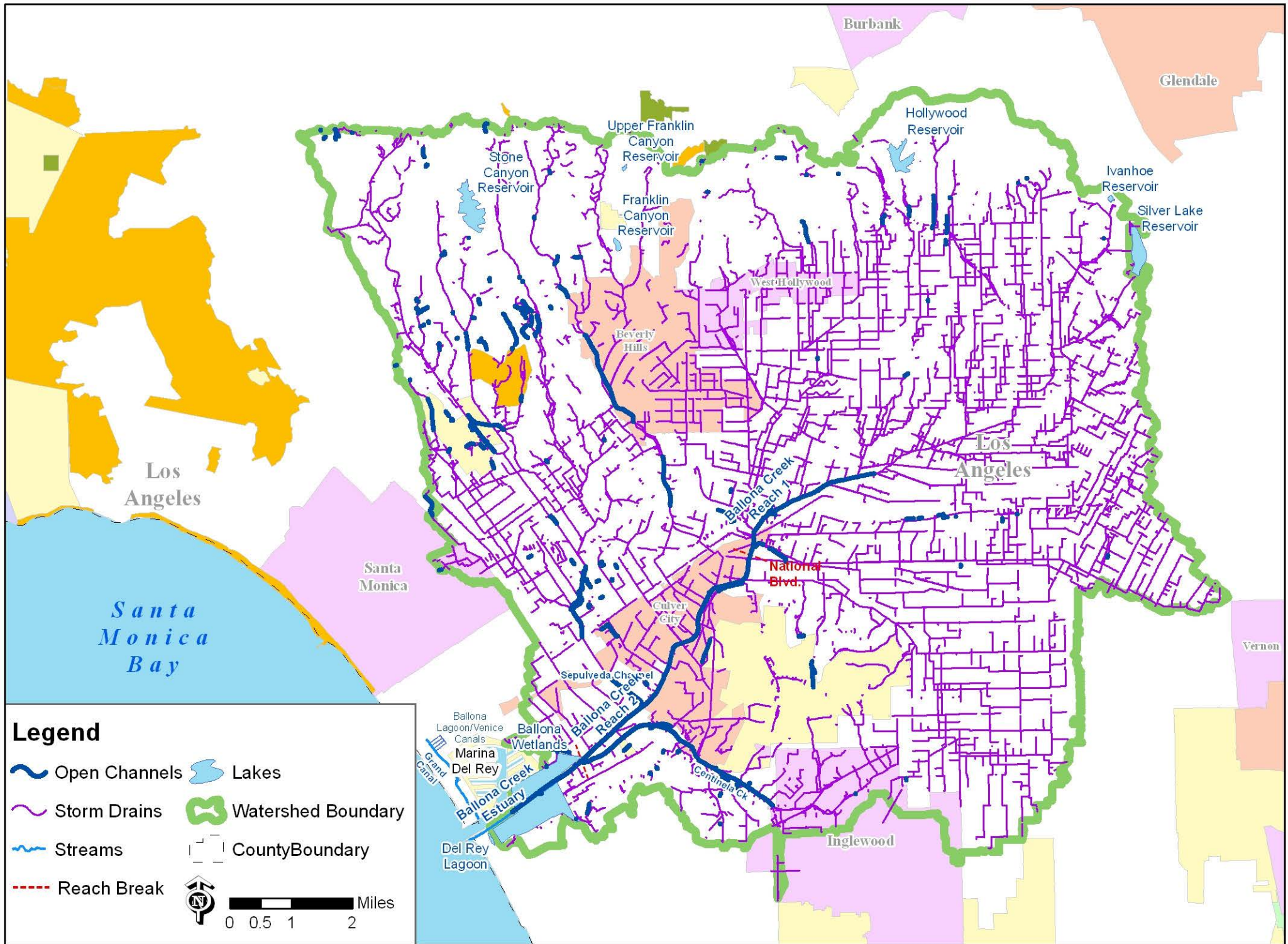


Figure C-2b: Ballona Creek Watershed Flow Schematic (Santa Monica Bay WMA).



Figure C-2c: Marina Del Rey Watershed Flow Schematic (Santa Monica Bay WMA).

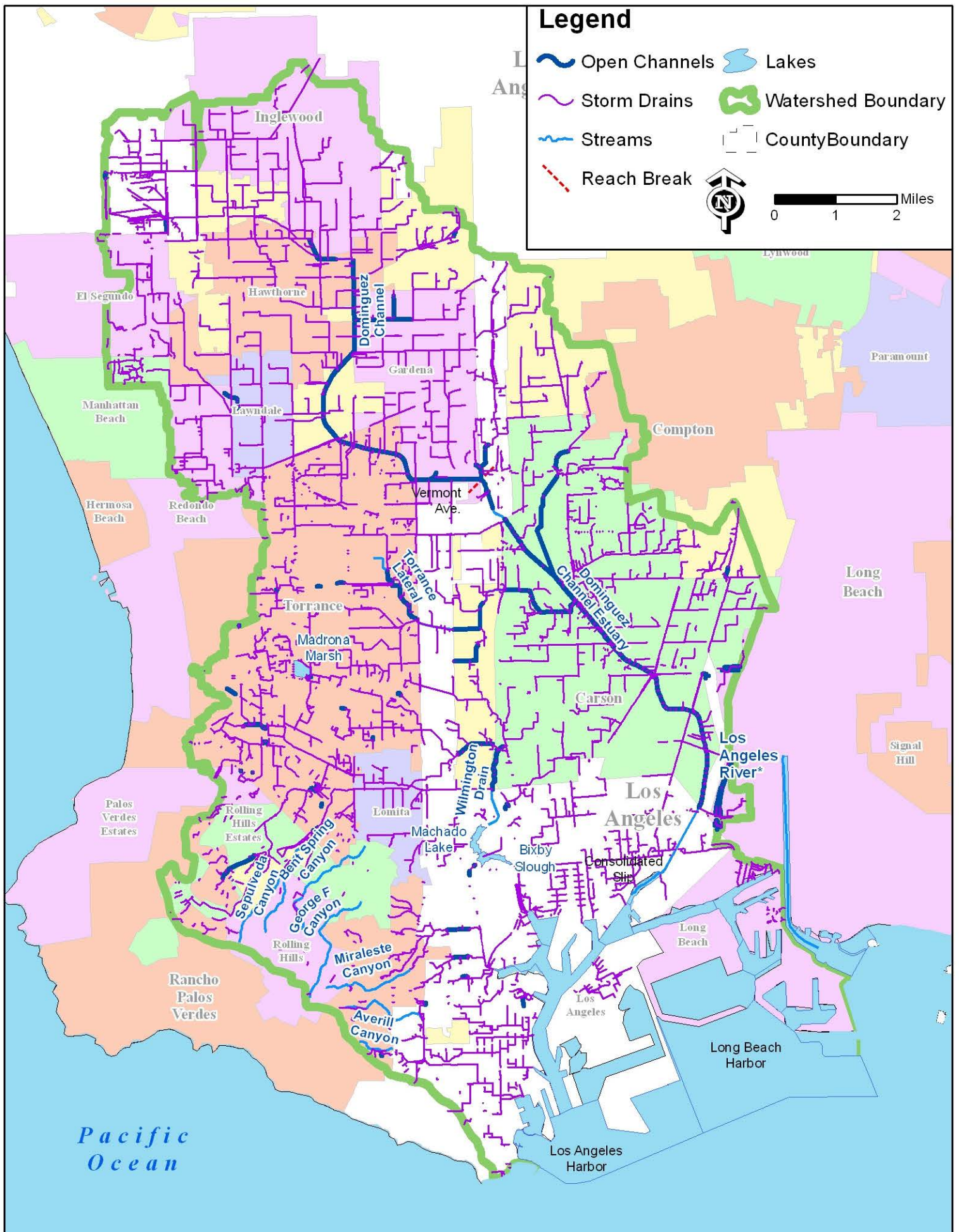


Figure C-3: Dominguez Channel and Los Angeles/Long Beach Harbors Watershed Management Area Flow Schematic.

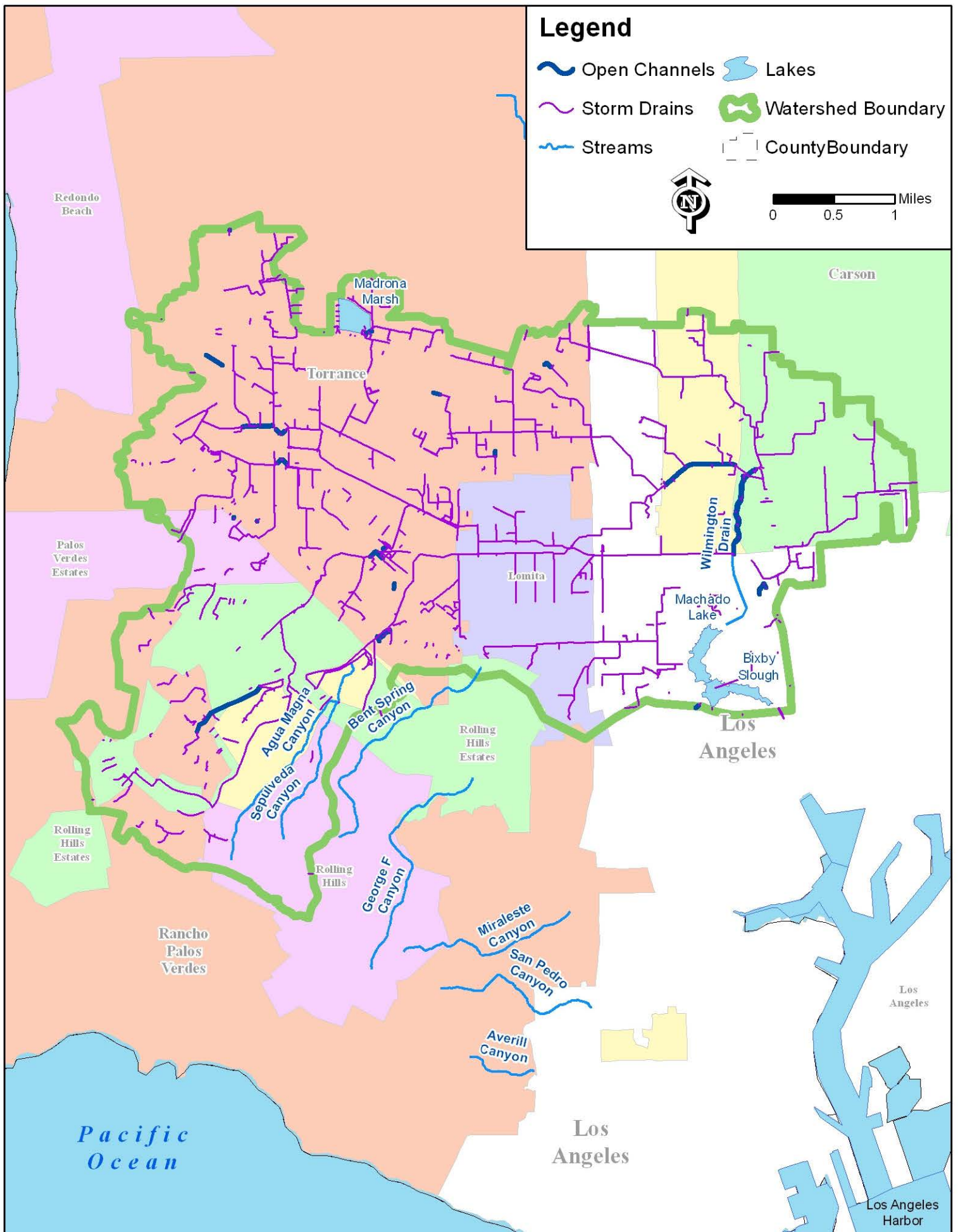


Figure C-3a: Machado Lake Watershed Flow Schematic (Dominguez Channel & LA/LB Harbors WMA).

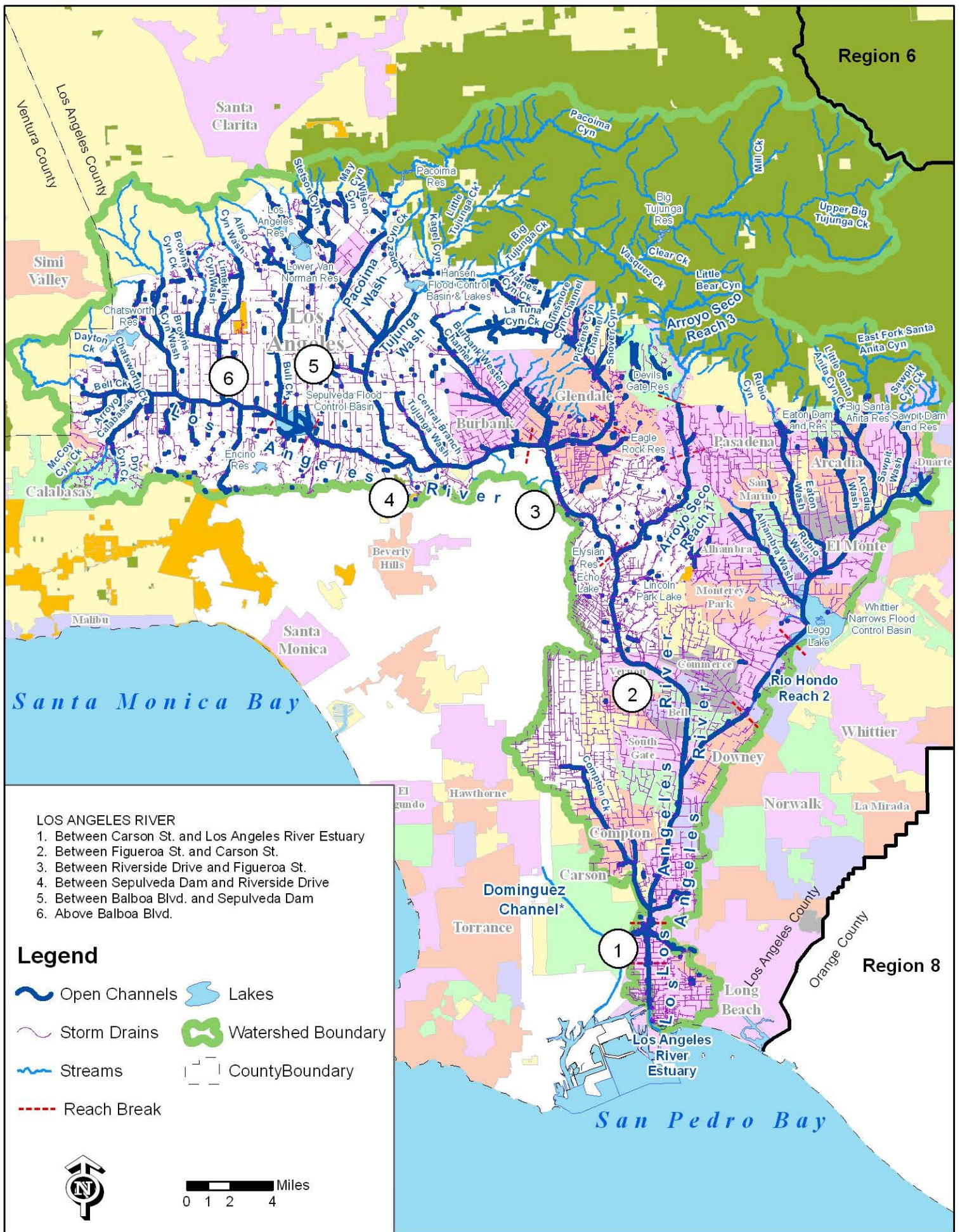


Figure C-4: Los Angeles River Watershed Management Area Flow Schematic.

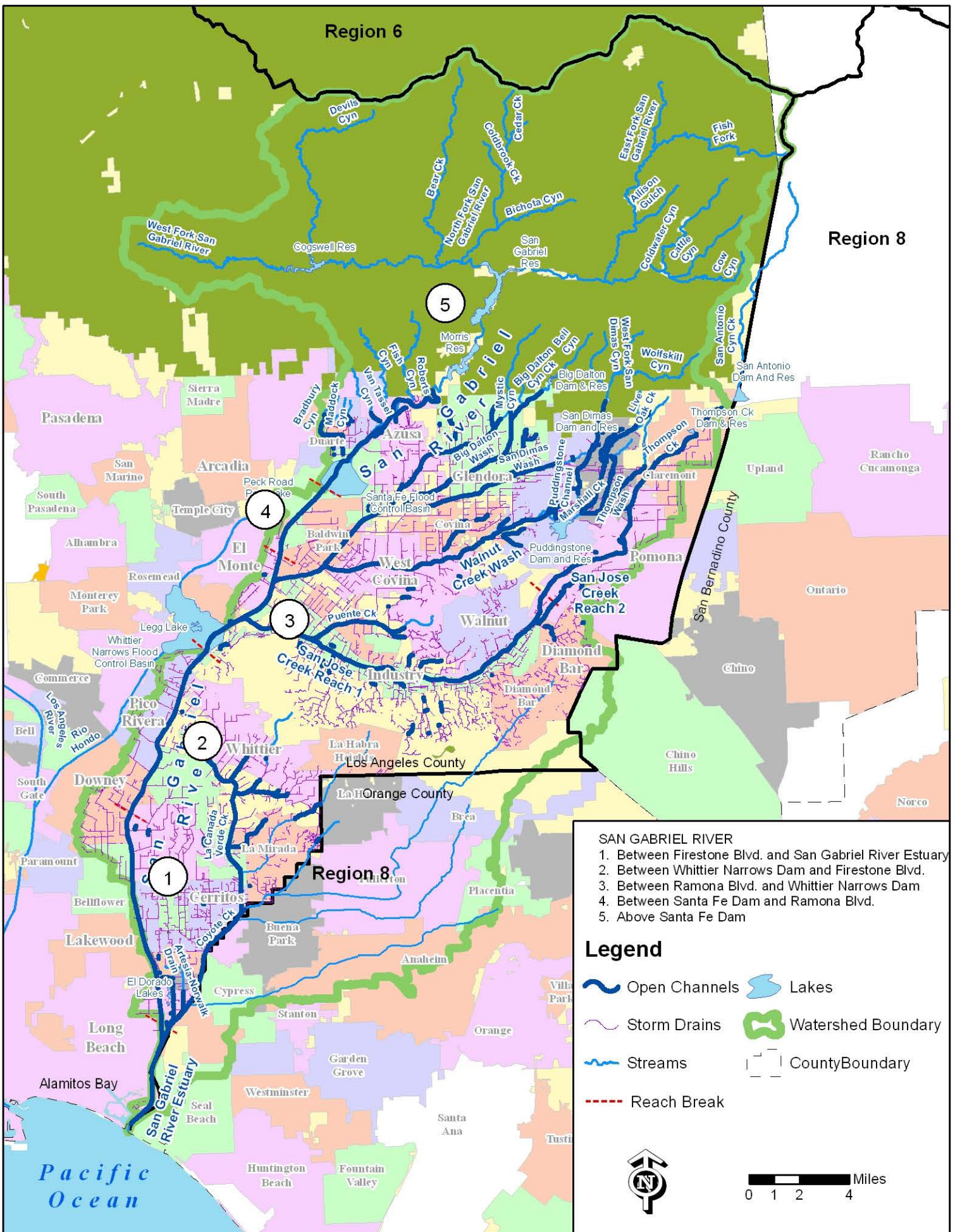


Figure C-5: San Gabriel River Watershed Management Area Flow Schematic.

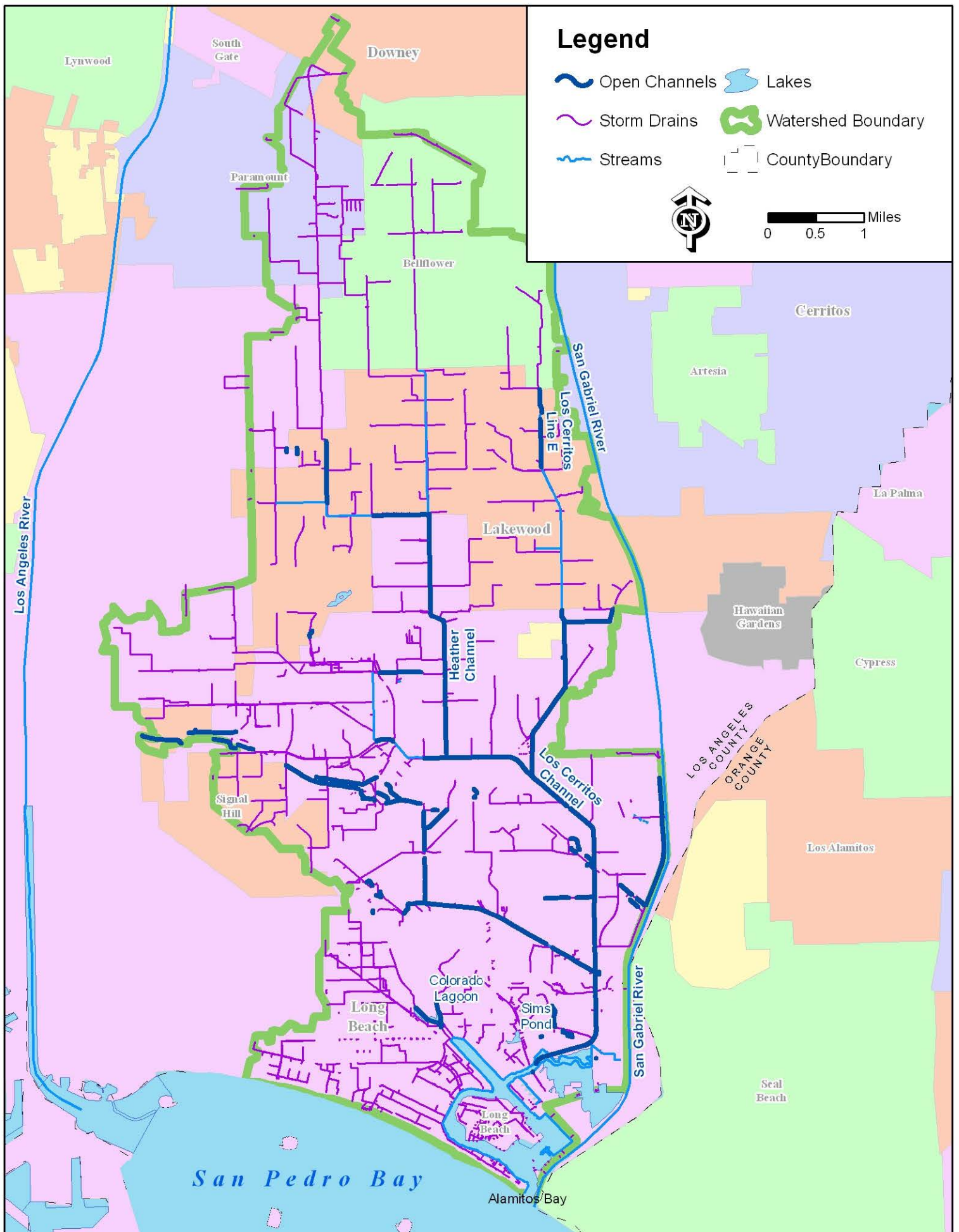


Figure C-6: Los Cerritos Channel and Alamitos Bay Watershed Management Area Flow Schematic.

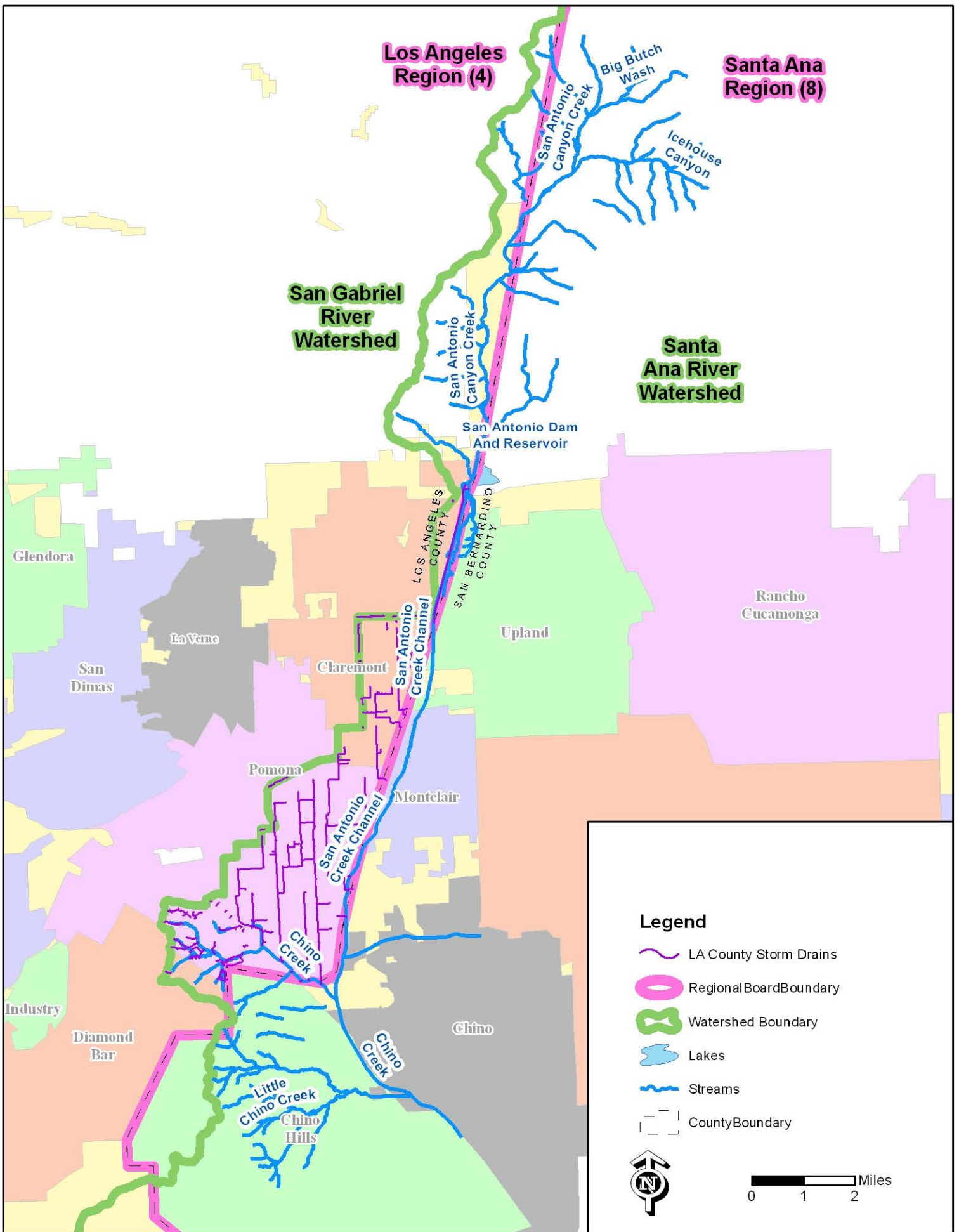


Figure C-7: Middle San Antonio Creek Subwatershed Flow Schematic.

ATTACHMENT D – STANDARD PROVISIONS

I. STANDARD PROVISIONS – PERMIT COMPLIANCE

A. Duty to Comply

1. Dischargers must comply with all of the terms, requirements, and conditions of this Order. Any noncompliance constitutes a violation of the Clean Water Act, its regulations, and the California Water Code and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification; denial of a permit renewal application; or a combination thereof [40 CFR section 122.41(a); California Water Code sections 13261, 13263, 13263, 13265, 13268, 13300, 13301, 13304, 13340, 13350, 13385].
2. Dischargers must comply with effluent standards or prohibitions established under section 307(a) of the CWA 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, even if this Order has not yet been modified to incorporate the requirement [40 CFR section 122.41(a)(1)].

B. 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 Order [40 CFR section 122.41(c)].

C. Duty to Mitigate

Dischargers shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this Order that has a reasonable likelihood of adversely affecting human health or the environment [40 CFR section 122.41(d)].

D. Proper Operation and Maintenance

Dischargers 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 Order. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems that are installed by a Permittee only when necessary to achieve compliance with the conditions of this Order [40 CFR section 122.41(e)].

E. Property Rights

1. This Order does not convey any property rights of any sort, or any exclusive privileges [40 CFR section 122.41(g)].

2. The issuance of this Order does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations [40 CFR section 122.5(c)].

F. Inspection and Entry

Dischargers shall allow the Regional Water Board, State Water Board, USEPA, and/or their authorized representatives (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents, as may be required by law, to [33 U.S.C. section 1318(a)(4)(B); 40 CFR section 122.41(i); California Water Code sections 13267 and 13383]:

1. Enter upon the Permittee's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this Order [33 U.S.C. section 1318(a)(4)(B)(i); 40 CFR section 122.41(i)(1); California Water Code sections 13267 and 13383];
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order [33 U.S.C. section 1318(a)(4)(B)(ii); 40 CFR section 122.41(i)(2); California Water Code sections 13267 and 13383];
3. Inspect and photograph, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order [33 U.S.C. section 1318(a)(4)(B)(ii); 40 CFR section 122.41(i)(3); California Water Code sections 13267 and 13383; and
4. Sample or monitor, at reasonable times, for the purposes of assuring Order compliance or as otherwise authorized by the CWA or the California Water Code, any substances or parameters at any location [33 U.S.C. section 1318(a)(4)(B)(ii); 40 CFR section 122.41(i)(4); California Water Code sections 13267 and 13383].

G. Bypass

1. Definitions
 - a. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility [40 CFR section 122.41(m)(1)(i)].
 - b. "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 that 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 [40 CFR section 122.41(m)(1)(ii)].
2. *Bypass not exceeding limitations.* Dischargers may allow any bypass to occur which does not cause exceedances of effluent limitations, but only if it is also for essential maintenance to assure efficient operation. These bypasses are not subject to the

provisions listed in Standard Provisions – Permit Compliance I.G.3, I.G.4, and I.G.5 below [40 CFR section 122.41(m)(2)].

3. *Prohibition of bypass.* Bypass is prohibited, and the Regional Water Board may take enforcement action against a Permittee for bypass, unless [40 CFR section 122.41(m)(4)(i)]:
 - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage [40 CFR section 122.41(m)(4)(i)(A)];
 - 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 that occurred during normal periods of equipment downtime or preventive maintenance [40 CFR section 122.41(m)(4)(i)(B)]; and
 - c. The Permittee submitted notices to the Regional Water Board as required under Standard Provisions – Permit Compliance I.G.5 below [40 CFR section 122.41(m)(4)(i)(C)].
4. The Regional Water Board may approve an anticipated bypass, after considering its adverse effects, if the Regional Water Board determines that it will meet the three conditions listed in Standard Provisions – Permit Compliance I.G.3 above [40 CFR section 122.41(m)(4)(ii)].
5. Notice
 - a. *Anticipated bypass.* If a Permittee knows in advance of the need for a bypass, it shall submit a notice, if possible at least 10 days before the date of the bypass [40 CFR section 122.41(m)(3)(i)].
 - b. *Unanticipated bypass.* Dischargers shall submit notice of an unanticipated bypass as required in Standard Provisions - Reporting V.E below (24-hour notice) [40 CFR section 122.41(m)(3)(ii)].

H. Upset

“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 [40 CFR section 122.41(n)(1)].

1. *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 Standard Provisions – Permit Compliance I.H.2 below 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 [40 CFR section 122.41(n)(2)].

2. *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 [40 CFR section 122.41(n)(3)]:
 - a. An upset occurred and that the Permittee can identify the cause(s) of the upset [40 CFR section 122.41(n)(3)(i)];
 - b. The permitted facility was, at the time, being properly operated [40 CFR section 122.41(n)(3)(ii)];
 - c. The Permittee submitted notice of the upset as required in Standard Provisions – Reporting V.E.2.b below (24-hour notice) [40 CFR section 122.41(n)(3)(iii)]; and
 - d. The Permittee complied with any remedial measures required under Standard Provisions – Permit Compliance I.C above [40 CFR section 122.41(n)(3)(iv)].
3. *Burden of proof.* In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof [40 CFR section 122.41(n)(4)].

II. STANDARD PROVISIONS – PERMIT ACTION

A. General

This Order may be modified, revoked and reissued, or terminated for cause. The filing of a request by a Permittee for modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any Order condition [40 CFR section 122.41(f)].

B. Duty to Reapply

If a Permittee wishes to continue an activity regulated by this Order after the expiration date of this Order, the Permittee must apply for and obtain a new permit [40 CFR section 122.41(b)].

C. Transfers

This Order is not transferable to any person except after notice to the Regional Water Board. The Regional Water Board may require modification or revocation and reissuance of the Order to change the name of the Permittee and incorporate such other requirements as may be necessary under the CWA and the California Water Code [40 CFR sections 122.41(l)(3) and 122.61].

III. STANDARD PROVISIONS – MONITORING

- A.** Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity [40 CFR section 122.41(j)(1)].
- B.** Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 for the analysis of pollutants unless another test procedure is required under 40 CFR subchapters N or O or is otherwise specified in this Order for such pollutants [40 CFR sections 122.41(j)(4) and 122.44(i)(1)(iv)].

IV. STANDARD PROVISIONS – RECORDS

- A.** Except for records of monitoring information required by this Order 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 Order, and records of all data used to complete the application for this Order, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Regional Water Board Executive Officer at any time [40 CFR section 122.41(j)(2)].
- B.** Records of monitoring information shall include:
 - 1. The date, exact place, and time of sampling or measurements [40 CFR section 122.41(j)(3)(i)];
 - 2. The individual(s) who performed the sampling or measurements [40 CFR section 122.41(j)(3)(ii)];
 - 3. The date(s) analyses were performed [40 CFR section 122.41(j)(3)(iii)];
 - 4. The individual(s) who performed the analyses [40 CFR section 122.41(j)(3)(iv)];
 - 5. The analytical techniques or methods used [40 CFR section 122.41(j)(3)(v)]; and
 - 6. The results of such analyses [40 CFR section 122.41(j)(3)(vi)].
- C.** Claims of confidentiality for the following information will be denied [40 CFR section 122.7(b)]:
 - 1. The name and address of any permit applicant or Permittee [40 CFR section 122.7(b)(1)]; and
 - 2. Permit applications and attachments, permits, and effluent data [40 CFR section 122.7(b)(2)].

V. STANDARD PROVISIONS – REPORTING

A. Duty to Provide Information

Dischargers shall furnish to the Regional Water Board, State Water Board, or USEPA within a reasonable time, any information which the Regional Water Board, State Water Board, or USEPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order or to determine compliance with this Order. Upon request, Dischargers shall also furnish to the Regional Water Board, State Water Board, or USEPA copies of records required to be kept by this Order [40 CFR section 122.41(h); California Water Code section 13383].

B. Signatory and Certification Requirements

1. All applications, reports, or information submitted to the Regional Water Board, State Water Board, and/or USEPA shall be signed and certified in accordance with Standard Provisions – Reporting V.B.2, V.B.3, V.B.4, and V.B.5 below [40 CFR section 122.41(k)(1)].
2. All applications submitted to the Regional Water Board shall be signed by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer includes: (i) the chief executive officer of the agency (e.g., Mayor), or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., City Manager, Director of Public Works, City Engineer, etc.).[40 CFR section 122.22(a)(3)].
3. All reports required by this Order and other information requested by the Regional Water Board, State Water Board, or USEPA shall be signed by a person described in Standard Provisions – Reporting V.B.2 above, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - a. The authorization is made in writing by a person described in Standard Provisions – Reporting V.B.2 above [40 CFR section 122.22(b)(1)];
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) [40 CFR section 122.22(b)(2)]; and
 - c. The written authorization is submitted to the Regional Water Board [40 CFR section 122.22(b)(3)].
4. If an authorization under Standard Provisions – Reporting V.B.3 above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Standard

Provisions – Reporting V.B.3 above must be submitted to the Regional Water Board prior to or together with any reports, information, or applications, to be signed by an authorized representative [40 CFR section 122.22(c)].

5. Any person signing a document under Standard Provisions – Reporting V.B.2 or V.B.3 above shall make 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.” [40 CFR section 122.22(d)].

C. Monitoring Reports

1. Monitoring results shall be reported at the intervals specified in the Monitoring and Reporting Program (Attachment E) in this Order [40 CFR section 122.41(l)(4)].
2. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Regional Water Board or State Water Board for reporting results of monitoring of sludge use or disposal practices [40 CFR section 122.41(l)(4)(i)].
3. If a Permittee monitors any pollutant more frequently than required by this Order 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 Regional Water Board [40 CFR section 122.41(l)(4)(ii)].
4. Calculations for all limitations, which require averaging of measurements, shall utilize an arithmetic mean unless otherwise specified by the Regional Water Board in this Order [40 CFR section 122.41(l)(4)(iii)].

D. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this Order, shall be submitted no later than 14 days following each schedule date [40 CFR section 122.41(l)(5)].

E. Twenty-Four Hour Reporting

1. Dischargers shall report any noncompliance that 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 written submission shall also be provided within five (5) days of the time the Permittee becomes aware of the circumstances. The written submission 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 [40 CFR section 122.41(l)(6)(i)].
2. The following shall be included as information that must be reported within 24 hours under this paragraph [40 CFR section 122.41(l)(6)(ii)]:
 - a. Any unanticipated bypass that exceeds any effluent limitation in this Order [40 CFR sections 122.41(l)(6)(ii)(A) and 122.41(g)].
 - b. Any upset that exceeds any effluent limitation in this Order [40 CFR section 122.41(l)(6)(ii)(B)].
 - c. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Regional Water Board in this Order to be reported within 24 hours [40 CFR section (l)(6)(ii)(C) and 122.44(g)].
3. The Regional Water Board may waive the above-required written report under this provision on a case-by-case basis if an oral report has been received within 24 hours [40 CFR section 122.41(l)(6)(iii)].

F. Planned Changes

Dischargers shall give notice to the Regional Water Board as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required under this provision only when [40 CFR section 122.41(l)(1)]:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR section 122.29(b) [40 CFR section 122.41(l)(1)(i)]; or
2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this Order [40 CFR section 122.41(l)(1)(ii)].

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 [40 CFR section 122.41(l)(1)(iii)].

G. Anticipated Noncompliance

Dischargers shall give advance notice to the Regional Water Board of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements [40 CFR section 122.41(l)(2)].

H. Other Noncompliance

Dischargers shall report all instances of noncompliance not reported under Standard Provisions – Reporting V.C, V.D, and V.E above at the time monitoring reports are submitted. The reports shall contain the information listed in Standard Provision – Reporting V.E above [40 CFR section 122.41(l)(7)].

I. Other Information

When a 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 Regional Water Board, State Water Board, or USEPA, the Permittee shall promptly submit such facts or information [40 CFR section 122.41(l)(8)].

VI. STANDARD PROVISIONS – ENFORCEMENT

- A.** The Regional Water Board and State Water Board is authorized to enforce the terms of this Order under several provisions of the California Water Code, including, but not limited to, sections 13268, 13385, 13386, and 13387.
- B.** The CWA provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the CWA, 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 CWA is subject to a civil penalty not to exceed \$25,000 per day for each violation. The CWA provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the CWA, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the CWA, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the CWA, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than one (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 two (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 three (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 six (6) years, or both. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318

or 405 of the CWA, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the CWA, 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 [40 CFR section 122.41(a)(2)] [California Water Code sections 13385 and 13387].

- C. Any person may be assessed an administrative penalty by the Regional Water Board for violating section 301, 302, 306, 307, 308, 318 or 405 of the CWA, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the CWA. 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 [40 CFR section 122.41(a)(3)].
- D. 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 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 [40 CFR section 122.41(j)(5)].
- E. 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 Order, including monitoring reports or reports of compliance or noncompliance 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 section 122.41(k)(2)].

VII. ADDITIONAL STANDARD CONDITIONS APPLICABLE TO SPECIFIC CATEGORIES OF NPDES PERMITS [40 CFR SECTION 122.42]

- A. *Municipal separate storm sewer systems.* The operator of a large or medium MS4 or a municipal separate storm sewer that has been designated by the Regional Water Board or USEPA under 40 CFR section 122.26(a)(1)(v) must submit an annual report by the anniversary of the date of the issuance of the permit for such MS4. The report shall include [40 CFR section 122.42(c)]:
 - 1. The status of implementing the components of the storm water management program that are established as permit conditions [40 CFR section 122.42(c)(1)];

2. Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with 40 CFR section 122.26(d)(2)(iii) [40 CFR section 122.42(c)(2)]; and
 3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under 40 CFR section 122.26(d)(2)(iv) and (d)(2)(v) [40 CFR section 122.42(c)(3)];
 4. A summary of data, including monitoring data, that is accumulated throughout the reporting year [40 CFR section 122.42(c)(4)];
 5. Annual expenditures and budget for year following each annual report [40 CFR section 122.42(c)(5)];
 6. A summary describing the number and nature of enforcement actions, inspections, and public education programs [40 CFR section 122.42(c)(6)];
 7. Identification of water quality improvements or degradation [40 CFR section 122.42(c)(7)];
- B. Storm water discharges.** The initial permits for discharges composed entirely of storm water issued pursuant to 40 CFR section 122.26(e)(7) shall require compliance with the conditions of the permit as expeditiously as practicable, but in no event later than three years after the date of issuance of the permit. [40 CFR section 122.42(d)].

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

LOS ANGELES REGION

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576 - 6600 • Fax (213) 576 - 6640
<http://www.waterboards.ca.gov/losangeles>

MONITORING AND REPORTING PROGRAM - No. CI-6948

FOR

ORDER R4-2012-0175
(as amended by Order R4-2012-0175-A01)
NPDES PERMIT NO. CAS004001

**WASTE DISCHARGE REQUIREMENTS FOR
MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) DISCHARGES
WITHIN THE COASTAL WATERSHEDS OF LOS ANGELES COUNTY, EXCEPT
THOSE DISCHARGES ORIGINATING FROM THE CITY OF LONG BEACH MS4**

November 8, 2012

(amended on September 8, 2016)

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I. MONITORING AND REPORTING PROGRAM (MRP)

Section 308(a) of the federal Clean Water Act and sections 122.41(h), (j)-(l), 122.44(i), and 122.48 of Title 40 of the Code of Federal Regulations require that all National Pollutant Discharge Elimination System (NPDES) permits specify monitoring and reporting requirements. Federal regulations applicable to large and medium MS4s also specify additional monitoring and reporting requirements. (40 C.F.R. §§ 122.26(d)(2)(i)(F) & (d)(2)(iii)(D), 122.42(c).) California Water Code section 13383 further authorizes the California Regional Water Quality Control Board, Los Angeles Region (Regional Water Board) to establish monitoring, inspection, entry, reporting, and recordkeeping requirements. This MRP establishes monitoring, reporting, and recordkeeping requirements that implement the federal and California laws and/or regulations.

II. PURPOSE AND SCOPE

A. Primary Objectives

The primary objectives of the Monitoring Program are to:

1. Assess the chemical, physical, and biological impacts of discharges from the municipal storm water sewer system (MS4) on receiving waters.
2. Assess compliance with receiving water limitations and water quality-based effluent limitations (WQBELs) established to implement Total Maximum Daily Load (TMDL) wet weather and dry weather wasteload allocations (WLAs).
3. Characterize pollutant loads in MS4 discharges.
4. Identify sources of pollutants in MS4 discharges.
5. Measure and improve the effectiveness of pollutant controls implemented under this Order.

B. Purpose

The results of the monitoring requirements outlined below shall be used to refine control measures for the reduction of pollutant loading and the protection and enhancement of the beneficial uses of the receiving waters in Los Angeles County.

C. Provision for Integrated Approach

The Monitoring Program provides flexibility to allow Permittees to develop an integrated monitoring program to address all of the monitoring requirements of this Order and other monitoring obligations or requirements in a cost efficient and effective manner.

D. Provision for a Coordinated Integrated Approach

The Monitoring Program provides flexibility to allow Permittees to coordinate monitoring efforts on a watershed or subwatershed basis to leverage monitoring resources in an effort to increase cost-efficiency and effectiveness and to closely

align monitoring with TMDL monitoring requirements and Watershed Management Programs.

E. Monitoring Program Elements

The Monitoring Program shall include the following elements:

- 1. Receiving water monitoring** shall be performed at previously designated mass emission stations, TMDL receiving water compliance points, as designated in Regional Water Board Executive Officer approved TMDL Monitoring Plans (see Table E-1 for a list of approved TMDL Monitoring Plans), and additional receiving water locations representative of the impacts from MS4 discharges. The objectives of the receiving water monitoring include the following:
 - a. Determine whether the receiving water limitations are being achieved,
 - b. Assess trends in pollutant concentrations over time, or during specified conditions,
 - c. Determine whether the designated beneficial uses are fully supported as determined by water chemistry, as well as aquatic toxicity and bioassessment monitoring.
- 2. Storm water outfall based monitoring;** including TMDL monitoring requirements specified in approved TMDL Monitoring Plans (see Table E-1). Outfall monitoring locations shall be representative of the land uses within the Permittee's jurisdiction. The objectives of the storm water outfall based monitoring program include the following:
 - a. Determine the quality of a Permittee's discharge relative to municipal action levels, as described in Attachment G of this Order,
 - b. Determine whether a Permittee's discharge is in compliance with applicable storm water WQBELs derived from TMDL WLAs,
 - c. Determine whether a Permittee's discharge causes or contributes to an exceedance of receiving water limitations.
- 3. Non-storm water outfall based monitoring;** including TMDL monitoring requirements specified in approved TMDL Monitoring Plans (see Table E-1). Outfalls with significant non-storm water discharges that remain unaddressed after source identification shall be monitored. The objectives of the non-storm water outfall based monitoring program include the following:
 - a. Determine whether a Permittee's discharge is in compliance with applicable non-storm water WQBELs derived from TMDL WLAs,
 - b. Determine whether a Permittee's discharge exceeds non-storm water action levels, as described in Attachment G of this Order,
 - c. Determine whether a Permittee's discharge contributes to or causes an exceedance of receiving water limitations,

- d. Assist a Permittee in identifying illicit discharges as described in Part VI.D.10 of this Order.
- 4. New Development/Re-development effectiveness tracking.** The objectives of best management practices (BMP) effectiveness tracking is to track whether the conditions in the building permit issued by the Permittee are implemented to ensure the volume of storm water associated with the design storm is retained on-site as required by Part VI.D.7.c.i. of this Order.
- 5. Regional studies** are required to further characterize the impact of the MS4 discharges on the beneficial uses of the receiving waters. Regional studies shall include the Southern California Stormwater Monitoring Coalition (SMC) Regional Watershed Monitoring Program (bioassessment) and special studies as specified in approved TMDLs (see Section XIX TMDL Reporting, below).

III. GENERAL MONITORING AND REPORTING REQUIREMENTS

- A. Monitoring shall be conducted in accordance with the requirements specified in Attachment D to this Order (Part III, Standard Provisions - Monitoring).
- B. Records of monitoring information shall include information required under Attachment D to this Order (Part IV, Standard Provisions - Records).
- C. All applications, reports, plans, or other information submitted to the Regional Water Board, State Water Board, and/or USEPA shall be signed and certified in accordance with Attachment D to this Order (Part V.B, Standard Provisions - Reporting, Signatory and Certification Requirements).
- D. Monitoring results shall be reported in accordance with the requirements specified in Attachment D to this Order (Part V.C, Standard Provisions - Reporting, Monitoring Reports).
- E. All monitoring and reporting shall be conducted in accordance with the Standard Monitoring Provisions specified in Part XIV of this MRP.
- F. Sampling Methods**
 1. Sampling methods shall be fully described in each Permittee's Integrated Monitoring Program (IMP) or Coordinated Integrated Monitoring Program (CIMP) and according to the provisions of the Standard Provisions for Monitoring described in Attachment D to this Order and Part XIV of this MRP.
 2. Grab samples shall be taken for constituents that are required to be collected as such (e.g., pathogen indicator bacteria, oil and grease, cyanides, and volatile organics); in instances where grab samples are generally expected to be sufficient to characterize water quality conditions (primarily dry weather); and where the sample location limits Permittees' ability to install an automated sampler, as provided for in an approved IMP or CIMP.

3. At a minimum, a sufficient volume of sample must be collected to perform all of the required biological and chemical tests, including TIEs where aquatic toxicity is observed during the sample event.
4. Sampling and monitoring methods for trash shall be conducted in accordance with the applicable requirements specified in Part VI.E.5 of this Order.
5. Flow may be estimated using USEPA methods at receiving water monitoring stations where flow measuring equipment is not in place.
6. Flow may be estimated for storm water outfall monitoring based on drainage area, impervious cover, and precipitation data as approved in an IMP or CIMP.

G. Analytical Procedures

1. Suspended-Sediment Concentration (SSC) shall be analyzed per American Society for Testing and Materials (ASTM) Standard Test Method D-3977-97.
2. Monitoring methods for trash shall be conducted in accordance with the applicable requirements specified in Part VI.E.5 of this Order.
3. Aquatic toxicity shall be monitored in accordance with Part XI of this MRP.
4. All other parameters shall be analyzed according to the provisions of the Standard Provisions for Monitoring described in Attachment D to this Order and Part XIV of this MRP.

H. Reporting

1. Reporting requirements related to the monitoring of trash shall be conducted in accordance with Part VI.E.5.c of this Order.
2. Monitoring results submitted to the Regional Water Board shall be consistent with the requirements identified in Part XVIII.A.5 and Part XVIII.A.7 of this MRP.

IV. INTEGRATED MONITORING PROGRAMS

A. Integrated Monitoring Program (IMP)

1. Each Permittee may develop an Integrated Monitoring Program designed to satisfy the monitoring requirements of this Order.
2. The monitoring requirements contained in TMDL Monitoring Plans approved by the Executive Officer of the Regional Water Board are incorporated by reference into this MRP (See Table E-1 for a list of approved TMDL Monitoring Plans).

3. The Integrated Monitoring Program may leverage monitoring resources by selecting monitoring locations, parameters, or monitoring techniques that will satisfy multiple monitoring requirements.
4. Where appropriate, the Integrated Monitoring Program may develop and utilize alternative approaches to meet the Primary Objectives (Part II.A). Sufficient justification shall be provided in the IMP for the alternative approach(es). Such alternative approaches shall be subject to public review and final approval by the Regional Water Board Executive Officer.
5. The requirements of an approved TMDL Monitoring Plan may be modified by an IMP that is subsequently approved by the Executive Officer of the Regional Water Board.
6. At a minimum, the IMP must address all TMDL and Non-TMDL monitoring requirements of this Order, including receiving water monitoring, storm water outfall based monitoring, non-storm water outfall based monitoring, and regional water monitoring studies, except as provided in Parts IV.B.2 and 3 of this MRP.

B. Coordinated Integrated Monitoring Program (CIMP)

1. Benefits of the CIMP Approach

- a. The CIMP provides Permittees opportunities to increase the cost efficiency and effectiveness of the monitoring program. The greatest efficiency may be achieved when a CIMP is designed and implemented on a watershed basis.
 - b. A CIMP may be employed to implement regional studies, where a single Permittee takes the lead in directing the study, and the other Permittees provide funding or in lieu services.
2. Permittees are encouraged to coordinate their monitoring programs with other Permittees to develop and implement a CIMP. A CIMP may be developed to address one or more of the required monitoring elements (i.e., receiving water monitoring, outfall based monitoring, regional monitoring or special studies) and may be county-wide or limited to a single watershed, sub-watershed or defined jurisdictional boundary.
 3. The requirements of an approved TMDL Monitoring Plan may be modified by an IMP or CIMP that is subsequently approved by the Executive Officer of the Regional Water Board.
 4. A Permittee shall not be required to submit an IMP if all of the applicable monitoring requirements in this Order are addressed in a CIMP, to which the Permittee is a participant.
 5. If the CIMP addresses some but not all of the applicable monitoring requirements required under this Order, then each Permittee shall submit an IMP that references the CIMP. The Permittees must describe how together, the IMP and CIMP, fulfill all of the applicable monitoring requirements contained in this Order.

6. Where appropriate, the CIMP may develop and utilize alternative approaches to meet the Primary Objectives (Part II.A). Sufficient justification shall be provided in the CIMP for the alternative approach(es). Such alternative approaches shall be subject to public review and final approval by the Regional Water Board Executive Officer.

C. Schedule for Submitting the Monitoring Plan to the Regional Water Board and Conducting Outfall Screening

1. Within six (6) months after the effective date of this Order, each Permittee shall submit a letter of intent to the Executive Officer of the Regional Water Board describing whether it intends to follow an IMP or CIMP approach for each of the required monitoring plan elements.
2. Each Permittee not electing to develop a Watershed Management Program (WMP) or Enhanced Watershed Management Program (EWMP) shall submit an IMP plan addressing monitoring requirements that the Permittee intends to implement individually to the Executive Officer of the Regional Water Board within twelve (12) months after the effective date of this Order.
3. Permittees electing to develop a WMP or EWMP shall submit an IMP or CIMP plan, to the Executive Officer of the Regional Water Board concurrently with their draft WMP.
4. Permittees electing to develop an enhanced WMP shall submit an IMP or CIMP plan to the Executive Officer of the Regional Water Board within 18 months after the effective date of this Order.
5. If upon finalization of the CIMP plan, a Permittee that has developed an IMP determines that its IMP plan must be revised to include monitoring requirements not covered under the final CIMP, the revised IMP plan shall be submitted to the Executive Officer of the Regional Water Board within 60 days after approval of the CIMP plan by the Executive Officer of the Regional Water Board.
6. Monitoring shall commence within 30 days after approval of the IMP, or within 90 days after approval of the CIMP, by the Executive Officer of the Regional Water Board.
7. If a Permittee elects not to develop or participate in an IMP or CIMP, monitoring shall be conducted on a jurisdictional basis per the requirements of this MRP, beginning six (6) months after the effective date of this Order.
8. Monitoring requirements pursuant to Order No. 01-182 and Monitoring and Reporting Program CI 6948, and pursuant to approval TMDL monitoring plans identified in Table E-1, shall remain in effect until the Executive Officer of the Regional Water Board approves a Permittee(s) IMP and/or CIMP plan(s).

V. TMDL MONITORING PLANS

Table E-1. Approved TMDL Monitoring Plans by Watershed Management Area

| TMDL | Comment | Date of Final Plan | Regional Water Board Approval Date |
|--|---|---------------------------|---|
| Santa Clara River Watershed Management Area | | | |
| Santa Clara River Nitrogen Compounds TMDL | Monitoring Plan was due March 23, 2005. | March 2006 | Has not been approved. |
| Upper Santa Clara River Chloride TMDL | Monitoring Plan was not required. | N/A | N/A |
| Lake Elizabeth, Munz Lake, and Lake Hughes Trash TMDL (Lake Elizabeth only) | The County of Los Angeles Trash TMDL Monitoring and Reporting Plan for Lake Elizabeth, Munz Lake, and Lake Hughes | June 25, 2009 | March 25, 2009 |
| Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL | Monitoring Plan is due on March 21, 2013. | --- | --- |
| Santa Monica Bay Watershed Management Area | | | |
| Santa Monica Bay Beaches Bacteria TMDL (Wet and Dry) | Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan | April 7, 2004 | January 8, 2004 |
| Santa Monica Bay Nearshore and Offshore Debris TMDL | Monitoring Plan is due on September 20, 2012. | --- | --- |
| Santa Monica Bay TMDL for DDTs and PCBs | USEPA Established TMDL | N/A | N/A |
| Malibu Creek Subwatershed | | | |
| Malibu Creek and Lagoon Bacteria TMDL | Malibu Creek and Lagoon Bacteria TMDL Compliance Monitoring Plan | February 25, 2008 | April 8, 2008 |
| Malibu Creek Watershed Trash TMDL | Malibu Creek Watershed Trash Monitoring and Reporting Plan (TMRP) | April 28, 2010 | Has not been approved. |

| TMDL | Comment | Date of Final Plan | Regional Water Board Approval Date |
|---|---|---------------------------|---|
| Malibu Creek Watershed Nutrients TMDL | USEPA Established TMDL | N/A | N/A |
| Ballona Creek Subwatershed | | | |
| Ballona Creek Trash TMDL | TMRP is due December 30, 2016 | --- | --- |
| Ballona Creek Estuary Toxic Pollutants TMDL | Ballona Creek Metals TMDL and Ballona Creek Estuary Toxic Pollutants TMDL Coordinated Monitoring Plan | May 4, 2009 | June 25, 2009 |
| Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL | Ballona Creek, Ballona Estuary, & Sepulveda Channel Bacteria TMDL Coordinated Monitoring Plan | January 29, 2009 | December 16, 2008 |
| Ballona Creek Metals TMDL | Ballona Creek Metals TMDL and Ballona Creek Estuary Toxic Pollutants TMDL Coordinated Monitoring Plan | May 4, 2009 | June 25, 2009 |
| Ballona Creek Wetlands TMDL for Sediment and Invasive Exotic Vegetation | USEPA Established TMDL | N/A | N/A |
| Marina del Rey Subwatershed | | | |
| Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL | Marina Del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan | June 25, 2007 | February 1, 2007 |
| Marina del Rey Harbor Toxic Pollutants TMDL | Marina Del Rey Harbor Toxic Pollutants Total Maximum Daily Load Coordinated Monitoring Plan | March 31, 2008 | March 3, 2009 |
| Dominguez Channel and Greater Harbors Waters Watershed Management Area | | | |

| TMDL | Comment | Date of Final Plan | Regional Water Board Approval Date |
|---|--|---------------------------|---|
| Los Angeles Harbor Bacteria TMDL (Inner Cabrillo Beach and Main Ship Channel) | Monitoring Plan was not required. | N/A | N/A |
| Machado Lake Trash TMDL | Trash Monitoring & Reporting Plan: Machado Lake Trash TMDL | September 5, 2008 | December 9, 2008 |
| | City of Rolling Hills Trash Monitoring and Reporting Plan Machado Lake Trash TMDL | September 5, 2008 | December 9, 2008 |
| Machado Lake Nutrient TMDL | Palos Verdes Peninsula Coordinated Monitoring Plan In Compliance with the Machado Lake Nutrient Total Maximum Daily Load | February 1, 2011 | December 14, 2010 |
| | Machado Lake Nutrients TMDL Lake Water Quality Management Plan for City of Los Angeles | August 18, 2010 | February 14, 2011 |
| | Machado Lake Nutrient TMDL Monitoring and Reporting Program Plan for the City of Carson | March 27, 2012 | March 7, 2012 |
| | Machado Lake Multipollutant TMDL Monitoring and Reporting Program for the Unincorporated Areas of Los Angeles County within the Machado Lake Watershed | September 12, 2011 | April 25, 2012 |

| TMDL | Comment | Date of Final Plan | Regional Water Board Approval Date |
|--|---|--------------------|------------------------------------|
| | Monitoring Plans were due from the City of Lomita on April 25, 2011, City of Redondo Beach on March 11, 2010, and City of Torrance on May 16, 2012. | --- | --- |
| Machado Lake Pesticides and PCBs TMDL | Monitoring Plan is due on September 20, 2012 ¹ . | --- | --- |
| Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL | Monitoring Plan is due on November 23, 2013. | --- | --- |
| Los Angeles River Watershed Management Area | | | |
| Los Angeles River Watershed Trash TMDL | TMRP is due December 30, 2016. PMRP is due December 28, 2017 or as part of its first adaptive management process if the Permittee is participating in an approved WMP or EWMP. | --- | --- |
| Los Angeles River Nitrogen Compounds and Related Effects TMDL | Monitoring Plan was due on March 23, 2005. | March 23, 2005 | Has not been approved. |
| Los Angeles River and Tributaries Metals TMDL | Los Angeles River Metals TMDL Coordinated Monitoring Plan | March 25, 2008 | April 11, 2008 |
| Los Angeles River Watershed Bacteria TMDL | Monitoring Plan is due on March 23, 2013. | --- | --- |

¹ The deadline for Permittees assigned both WLAs and LAs to submit one document to address both WLA and LA monitoring requirements and implementation activities shall be September 20, 2013.

| TMDL | Comment | Date of Final Plan | Regional Water Board Approval Date |
|--|---|---------------------------|---|
| Legg Lake Trash TMDL | Legg Lake Trash Monitoring & Reporting Plan: Legg Lake Trash TMDL | September 5, 2008 | March 25, 2009 |
| Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDL | USEPA Established TMDL | N/A | N/A |
| Los Angeles Area Lakes TMDLs (Lake Calabasas, Echo Park Lake, Legg Lake and Peck Road Park Lake) | USEPA Established TMDL | N/A | N/A |
| San Gabriel River Watershed Management Area | | | |
| San Gabriel River and Impaired Tributaries Metals and Selenium TMDL | USEPA Established TMDL | N/A | N/A |
| Los Angeles Area Lakes TMDLs (Puddingstone Reservoir) | USEPA Established TMDL | N/A | N/A |
| Los Cerritos Channel and Alamitos Bay Watershed Management Area | | | |
| Los Cerritos Channel Metals TMDL | USEPA Established TMDL | N/A | N/A |
| Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals TMDL | Colorado Lagoon TMDL Monitoring Plan (CLTMP) | June 15, 2012 | August 23, 2012 |
| Middle Santa Ana River Watershed Management Area | | | |
| Middle Santa Ana River Watershed Bacteria Indicator TMDL | Monitoring Plan was due on November 16, 2007. | --- | --- |

VI. RECEIVING WATER MONITORING

A. IMP Receiving Water Monitoring Requirements

1. All IMP plans must contain the following information for receiving water monitoring:
 - a. Declaration of whether receiving water monitoring is conducted under an IMP, CIMP or both.
 - b. If receiving water monitoring is performed under the IMP, the plan must contain the following information:
 - i. A map (preferably GIS) identifying the proposed receiving water monitoring stations for both dry weather and wet weather monitoring.
 - ii. An explanation of how and why monitoring at the proposed locations will provide representative measurement of the effects of the Permittee's MS4 discharges on the receiving water.
 - iii. Identification of applicable TMDLs and TMDL compliance points, based on approved TMDL Monitoring Plans and/or as identified in the Basin Plan for the applicable TMDLs.
 - iv. A description of how the Permittee is fulfilling its obligations for TMDL receiving water monitoring under this IMP, CIMP or other monitoring plans.
 - v. A description of how the Permittee is contributing to the monitoring of mass emission stations or a discussion of why monitoring at mass emission stations is not being supported.

B. CIMP Receiving Water Monitoring Requirements

1. The CIMP plan must contain the following information for receiving water monitoring:
 - a. A list of the participating Permittees.
 - b. A map (preferably GIS) delineating the geographic boundaries of the monitoring plan including the receiving waters, the MS4 catchment drainages and outfalls, subwatershed boundaries (i.e., HUC 12), political boundaries, land use, and the proposed receiving water monitoring stations for both dry weather and wet weather receiving water monitoring.
 - c. An explanation of how and why monitoring at the proposed locations will provide representative measurement of the effects of the MS4 discharges on the receiving water.
2. TMDLs
 - a. A list of applicable TMDLs and TMDL compliance points, based on approved TMDL Monitoring Plans and/or as identified in the Basin Plan for the applicable TMDLs.

- b. Identification of the proposed receiving water monitoring stations that fulfill the TMDL Monitoring Plan(s) requirements.
 - c. Shoreline Monitoring Stations monitored pursuant to a bacteria TMDL. Sampling for bacterial indicators (total coliform, fecal coliform (or *E. coli*), and enterococcus) at shoreline monitoring locations addressed by a TMDL shall be conducted 5 times per week at sites subject to the reference system criterion for allowable exceedance days, and weekly at sites subject to the antidegradation criterion for allowable exceedance days.
3. Mass Emission Stations
- a. Location of mass emission stations,
 - b. Description of monitoring at mass emission stations or justification of why monitoring at the mass emission stations will be discontinued.

C. Minimum Wet Weather Receiving Water Monitoring Requirements

1. The IMP or CIMP shall incorporate the following minimum requirements for monitoring the receiving water during wet weather conditions:
- a. The receiving water shall be monitored a minimum of three times per year for all parameters except aquatic toxicity, which must be monitored at least twice per year, or more frequently if required by applicable TMDL Monitoring Plans.
 - b. Monitoring shall be performed in the receiving water during wet weather conditions, defined for the purposes of this monitoring program as follows:
 - i. When the receiving water is the Santa Monica Bay or other ocean or estuarine water body, wet weather occurs during a storm event of greater than or equal to 0.1 inch of precipitation, as measured from at least 50 percent of the Los Angeles County controlled rain gauges within the watershed, or based on an alternative precipitation threshold as provided for in an approved IMP or CIMP.
 - ii. When the receiving water body is a river, stream or creek, wet weather shall be defined as when the flow within the receiving water is at least 20 percent greater than the base flow or an alternative threshold as provided for in an approved IMP or CIMP, or as defined by effective TMDLs within the watershed.
 - iii. Monitoring shall occur during wet weather conditions, including targeting the first significant rain event of the storm year following the criteria below, and at least two additional wet weather events within the same wet weather season. Permittees shall target the first storm event of the storm year with a predicted rainfall of at least 0.25 inch at a seventy percent probability of rainfall at least 24 hours prior to the event start time. Permittees shall target subsequent storm events that forecast sufficient rainfall and runoff to meet program objectives and site specific study needs. Sampling events shall be separated by a

minimum of three days of dry conditions (less than 0.1 inch of rain each day).

- c. Receiving water monitoring shall begin as soon as possible after storm water outfall-based monitoring, in order to be reflective of potential impacts from MS4 discharges.
- d. At a minimum, the following parameters shall be monitored unless a surrogate pollutant has been approved by the Executive Officer of the Regional Water Board.
 - i. Flow
 - ii. Pollutants assigned a receiving water limitation derived from TMDL WLAs (See Attachments L-R of this Order),
 - iii. Other pollutants identified on the CWA section 303(d) List for the receiving water or downstream receiving waters,
 - iv. Total Suspended Solids (TSS) and Suspended-Sediment Concentration (SSC) if the receiving water is listed on the CWA section 303(d) list for sedimentation, siltation or turbidity,²
 - v. Field measurements applicable to inland freshwater bodies only: hardness, pH, dissolved oxygen, temperature, and specific conductivity,
 - vi. Aquatic Toxicity (twice per year, once during first storm event of the storm year as specified above).
- e. Additionally, the screening parameters in Table E-2 shall be monitored in the first year of monitoring during the first significant rain event of the storm year. If a parameter is not detected at the Method Detection Limit (MDL) for its respective test method or the result is below the lowest applicable water quality objective, and is not otherwise identified in subparts d.i.-d.vi. above, it need not be further analyzed. If a parameter is detected exceeding the lowest applicable water quality objective then the parameter shall be analyzed for the remainder of the Order during wet weather at the receiving water monitoring station where it was detected.

D. Minimum Dry Weather Receiving Water Monitoring

- 1. The IMP and/or CIMP plan shall incorporate the following minimum requirements for monitoring the receiving water during dry weather conditions:
 - a. The receiving water shall be monitored a minimum of two times per year for all parameters, or more frequently if required by applicable TMDL Monitoring Plans. One of the monitoring events shall be during the month

² Gray, John, R., G. Douglas Glysson, Lisa M. Turcios, and Gregory E. Schwarz. 2000. *Comparability of Suspended-Sediment Concentration and Total Suspended Solids Data*. United States Geological Survey. Water Resources Investigations Report 00-4191. August 2000.

with the historically lowest instream flows, or where instream flow data are not available, during the historically driest month.

- b.** Monitoring shall be performed in the receiving water during dry weather conditions, defined as follows:
 - i.** When the receiving water is the Santa Monica Bay or other ocean or estuary water body, dry weather occurs on days with less than 0.1 inch of rain and those days not less than three days after a rain event of 0.1 inch or greater within the watershed, as measured from at least 50 percent of Los Angeles County controlled rain gauges within the watershed, or an alternative criterion as provided for in an approved IMP or CIMP.
 - ii.** When the receiving water body is a river, stream or creek, dry weather shall be defined as when the flow is less than 20 percent greater than the base flow or as defined by effective TMDLs within the watershed, or an alternative criterion as provided for in an approved IMP or CIMP.
- c.** At a minimum the following parameters shall be monitored during dry weather conditions, unless a surrogate pollutant has been approved by the Executive Officer of the Regional Water Board:
 - i.** Flow
 - ii.** Pollutants assigned receiving water limitations derived from TMDL dry weather WLAs,
 - iii.** Other pollutants identified on the CWA section 303(d) List for the receiving water or downstream receiving waters,
 - iv.** TSS and hardness, when metals are monitored,
 - v.** Field measurements for monitoring of inland freshwater bodies: dissolved oxygen, pH, temperature, and specific conductivity,
 - vi.** Aquatic Toxicity (once per year, during the month with the historically lowest flows).
- d.** Additionally, the parameters in Table E-2 shall be monitored in the first year of monitoring during the critical dry weather event. If a parameter is not detected at the Method Detection Limit (MDL) for its respective test method or the result is below the lowest applicable water quality objective, and is not otherwise identified in subparts c.i.-c.iii. or c.v.-c.vii. above, it need not be further analyzed. If a parameter is detected exceeding the lowest applicable water quality objective then the parameter shall be analyzed for the remainder of the Order during dry weather at the receiving water monitoring station where it was detected.

Table E-2. Storm Water Monitoring Program’s Constituents with Associated Minimum Levels (MLs)³

| CONSTITUENTS | MLs |
|--|-----------------------|
| CONVENTIONAL POLLUTANTS | mg/L |
| Oil and Grease | 5 |
| Total Phenols | 0.1 |
| Cyanide | 0.005 |
| pH | 0 - 14 |
| Temperature | N/A |
| Dissolved Oxygen | Sensitivity to 5 mg/L |
| BACTERIA (single sample limits) | MPN/100ml |
| Total coliform (marine waters) | 10,000 |
| Enterococcus (marine waters) | 104 |
| Fecal coliform (marine & fresh waters) | 400 |
| E. coli (fresh waters) | 235 |
| GENERAL | mg/L |
| Dissolved Phosphorus | 0.05 |
| Total Phosphorus | 0.05 |
| Turbidity | 0.1 NTU |
| Total Suspended Solids | 2 |
| Total Dissolved Solids | 2 |
| Volatile Suspended Solids | 2 |
| Total Organic Carbon | 1 |
| Total Petroleum Hydrocarbon | 5 |
| Biochemical Oxygen Demand | 2 |
| Chemical Oxygen Demand | 20-900 |
| Total Ammonia-Nitrogen | 0.1 |
| Total Kjeldahl Nitrogen | 0.1 |
| Nitrate-Nitrite | 0.1 |
| Alkalinity | 2 |
| Specific Conductance | 1 umho/cm |
| Total Hardness | 2 |
| MBAS | 0.5 |
| Chloride | 2 |
| Fluoride | 0.1 |
| Methyl tertiary butyl ether (MTBE) | 1 |
| Perchlorate | 4 µg/L |
| METALS (Dissolved & Total) | µg/L |
| Aluminum | 100 |
| Antimony | 0.5 |
| Arsenic | 1 |
| Beryllium | 0.5 |
| Cadmium | 0.25 |
| Chromium (total) | 0.5 |
| Chromium (Hexavalent) | 5 |
| Copper | 0.5 |
| Iron | 100 |
| Lead | 0.5 |

³ For priority pollutants, 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. Method Detection Levels (MDLs) must be lower than or equal to the ML value, unless otherwise approved by the Regional Board.

| CONSTITUENTS | MLs |
|---------------------------------------|-------------|
| Mercury | 0.5 |
| Nickel | 1 |
| Selenium | 1 |
| Silver | 0.25 |
| Thallium | 1 |
| Zinc | 1 |
| SEMIVOLATILE ORGANIC COMPOUNDS | |
| ACIDS | µg/L |
| 2-Chlorophenol | 2 |
| 4-Chloro-3-methylphenol | 1 |
| 2,4-Dichlorophenol | 1 |
| 2,4-Dimethylphenol | 2 |
| 2,4-Dinitrophenol | 5 |
| 2-Nitrophenol | 10 |
| ACIDS | µg/L |
| 4-Nitrophenol | 5 |
| Pentachlorophenol | 2 |
| Phenol | 1 |
| 2,4,6-Trichlorophenol | 10 |
| BASE/NEUTRAL | µg/L |
| Acenaphthene | 1 |
| Acenaphthylene | 2 |
| Anthracene | 2 |
| Benzidine | 5 |
| 1,2 Benzanthracene | 5 |
| Benzo(a)pyrene | 2 |
| Benzo(g,h,i)perylene | 5 |
| 3,4 Benzoflouranthene | 10 |
| Benzo(k)flouranthene | 2 |
| Bis(2-Chloroethoxy) methane | 5 |
| Bis(2-Chloroisopropyl) ether | 2 |
| Bis(2-Chloroethyl) ether | 1 |
| Bis(2-Ethylhexl) phthalate | 5 |
| 4-Bromophenyl phenyl ether | 5 |
| Butyl benzyl phthalate | 10 |
| 2-Chloroethyl vinyl ether | 1 |
| 2-Chloronaphthalene | 10 |
| 4-Chlorophenyl phenyl ether | 5 |
| Chrysene | 5 |
| Dibenzo(a,h)anthracene | 0.1 |
| 1,3-Dichlorobenzene | 1 |
| 1,4-Dichlorobenzene | 1 |
| 1,2-Dichlorobenzene | 1 |
| 3,3-Dichlorobenzidine | 5 |
| Diethyl phthalate | 2 |
| Dimethyl phthalate | 2 |
| di-n-Butyl phthalate | 10 |
| 2,4-Dinitrotoluene | 5 |
| 2,6-Dinitrotoluene | 5 |
| 4,6 Dinitro-2-methylphenol | 5 |
| 1,2-Diphenylhydrazine | 1 |
| di-n-Octyl phthalate | 10 |

| CONSTITUENTS | MLs |
|-----------------------------------|-------------|
| Fluoranthene | 0.05 |
| Fluorene | 0.1 |
| Hexachlorobenzene | 1 |
| Hexachlorobutadiene | 1 |
| Hexachloro-cyclopentadiene | 5 |
| Hexachloroethane | 1 |
| Indeno(1,2,3-cd)pyrene | 0.05 |
| Isophorone | 1 |
| Naphthalene | 0.2 |
| Nitrobenzene | 1 |
| N-Nitroso-dimethyl amine | 5 |
| N-Nitroso-diphenyl amine | 1 |
| N-Nitroso-di-n-propyl amine | 5 |
| Phenanthrene | 0.05 |
| BASE/NEUTRAL | µg/L |
| Pyrene | 0.05 |
| 1,2,4-Trichlorobenzene | 1 |
| CHLORINATED PESTICIDES | µg/L |
| Aldrin | 0.005 |
| alpha-BHC | 0.01 |
| beta-BHC | 0.005 |
| delta-BHC | 0.005 |
| gamma-BHC (lindane) | 0.02 |
| alpha-chlordane | 0.1 |
| gamma-chlordane | 0.1 |
| 4,4'-DDD | 0.05 |
| 4,4'-DDE | 0.05 |
| 4,4'-DDT | 0.01 |
| Dieldrin | 0.01 |
| alpha-Endosulfan | 0.02 |
| beta-Endosulfan | 0.01 |
| Endosulfan sulfate | 0.05 |
| Endrin | 0.01 |
| Endrin aldehyde | 0.01 |
| Heptachlor | 0.01 |
| Heptachlor Epoxide | 0.01 |
| Toxaphene | 0.5 |
| POLYCHLORINATED BIPHENYLS | µg/L |
| Aroclor-1016 | 0.5 |
| Aroclor-1221 | 0.5 |
| Aroclor-1232 | 0.5 |
| Aroclor-1242 | 0.5 |
| Aroclor-1248 | 0.5 |
| Aroclor-1254 | 0.5 |
| Aroclor-1260 | 0.5 |
| ORGANOPHOSPHATE PESTICIDES | µg/L |
| Atrazine | 2 |
| Chlorpyrifos | 0.05 |
| Cyanazine | 2 |
| Diazinon | 0.01 |
| Malathion | 1 |
| Prometryn | 2 |

| CONSTITUENTS | MLs |
|-----------------|------|
| Simazine | 2 |
| HERBICIDES | µg/L |
| 2,4-D | 10 |
| Glyphosate | 5 |
| 2,4,5-TP-SILVEX | 0.5 |

VII. OUTFALL BASED MONITORING

A. Storm Drains, Channels and Outfalls Map(s) and/or Database. The IMP and/or CIMP plan(s) shall include a map(s) and/or database of the MS4 to include the following information:

1. Surface water bodies within the Permittee(s) jurisdiction
2. Sub-watershed (HUC 12) boundaries
3. Land use overlay
4. Effective Impervious Area (EIA) overlay (if available)
5. Jurisdictional boundaries
6. The location and length of all open channel and underground pipes 18 inches in diameter or greater (with the exception of catch basin connector pipes)
7. The location of all dry weather diversions
8. The location of all major MS4 outfalls within the Permittee's jurisdictional boundary. Each major outfall shall be assigned an alphanumeric identifier, which must be noted on the map
9. Notation of outfalls with significant non-storm water discharges (to be updated annually)
10. Storm drain outfall catchment areas for each major outfall within the Permittee(s) jurisdiction
11. Each mapped MS4 outfall shall be linked to a database containing descriptive and monitoring data associated with the outfall. The data shall include:
 - a. Ownership
 - b. Coordinates
 - c. Physical description
 - d. Photographs of the outfall, where possible, to provide baseline information to track operation and maintenance needs over time
 - e. Determination of whether the outfall conveys significant non-storm water discharges
 - f. Storm water and non-storm water monitoring data

VIII. STORM WATER OUTFALL BASED MONITORING

A. Storm Water Outfall Based Monitoring

1. Storm water discharges from the MS4 shall be monitored at outfalls and/or alternative access points such as manholes or in channels at the Permittee's jurisdictional boundary.
2. The Permittee shall consider the following criteria when selecting outfalls for storm water discharge monitoring:
 - a. The storm water outfall based monitoring program should ensure representative data by monitoring at least one major outfall per subwatershed (HUC 12) drainage area, within the Permittee's jurisdiction, or alternate approaches as approved in an IMP or CIMP.
 - b. The drainage(s) to the selected outfall(s) shall be representative of the land uses within the Permittee's jurisdiction.
 - c. If a Permittee is implementing an IMP, to the extent possible, the selected outfalls shall not receive drainage from another jurisdiction. If this is not possible, and a Permittee is pursuing an individual outfall based IMP program, the Permittee shall conduct "upstream" and "downstream" monitoring as the system enters and exits the Permittee's jurisdiction.
 - d. The Permittee shall select outfalls with configurations that facilitate accurate flow measurement and in consideration of safety of monitoring personnel.
 - e. The specific location of sample collection may be within the MS4 upstream of the actual outfall to the receiving water if field safety or accurate flow measurement require it.

B. Minimum Storm Water Outfall Based Monitoring Requirements

1. The IMP and/or CIMP shall incorporate the following minimum requirements for monitoring storm water:
 - a. Storm water discharges shall be monitored a minimum of three times per year for all parameters except aquatic toxicity.
 - b. Monitoring shall be performed at the selected outfalls during wet weather conditions, defined for the purposes of this monitoring program as follows:
 - i. When the receiving water is the Santa Monica Bay or other ocean or estuary water body, wet weather occurs during a storm event equal to or greater than 0.1 inch of precipitation, as determined by the closest Los Angeles County rain gauge to the catchment area draining to the outfall, or based on an alternative precipitation threshold as provided for in an approved IMP or CIMP.
 - ii. When the receiving water body is a river, stream or creek, wet weather shall be defined as when the flow within the receiving water is at least 20 percent greater than the base flow or an alternative threshold as

provided for in an approved IMP or CIMP, or as defined by effective TMDLs within the watershed.

- iii. Monitoring of storm water discharges shall occur during wet weather conditions resulting from the first rain event of the year, and at least two additional wet weather events within the same wet weather season. Permittees shall target the first storm event of the storm year with a predicted rainfall of at least 0.25 inch at a seventy percent probability of rainfall at least 24 hours prior to the event start time. Permittees shall target subsequent storm events that forecast sufficient rainfall and runoff to meet program objectives and site specific study needs. Sampling events shall be separated by a minimum of three days of dry conditions (less than 0.1 inch of rain each day).
- c. At a minimum, the following parameters shall be monitored unless a surrogate pollutant has been approved by the Executive Officer of the Regional Water Board:
 - i. Flow
 - ii. Pollutants assigned a WQBEL derived from TMDL WLAs (See Attachments L-R of this Order),
 - iii. Other pollutants identified on the CWA section 303(d) List for the receiving water or downstream receiving waters,
 - iv. Total Suspended Solids (TSS) and Suspended-Sediment Concentration (SSC) if the receiving water is listed on the CWA Section 303(d) list for sedimentation, siltation or turbidity,
 - v. Field measurements applicable to inland freshwater bodies only: hardness, pH, dissolved oxygen, temperature, and specific conductivity,
 - vi. Pollutants identified in a TIE conducted at the downstream receiving water monitoring station during the most recent sample event, or where the TIE conducted on the receiving water sample was inconclusive, aquatic toxicity. If the discharge exhibits aquatic toxicity, then a TIE shall be conducted.
- d. Other parameters in Table E-2 identified as exceeding the lowest applicable water quality objective in the nearest downstream receiving water monitoring station per Part VI.C.1.e.

C. Sampling Methods

1. Samples shall be collected during the first 24 hours of the storm water discharge or for the entire storm water discharge if it is less than 24 hours.
2. If a Permittee is not participating in a IMP or CIMP, the flow-weighted composite sample for a storm water discharge shall be taken with a continuous sampler, or it shall be taken as a combination of a minimum of 3 sample aliquots, taken in each hour of discharge for the first 24 hours of the

discharge or for the entire discharge if the storm event is less than 24 hours, with each aliquot being separated by a minimum of 15 minutes within each hour of discharge, unless the Regional Water Board Executive Officer approves an alternate protocol.

IX. NON-STORM WATER OUTFALL BASED SCREENING AND MONITORING

A. Objectives of the Non-Storm Water Outfall Screening and Monitoring Program

The outfall screening and monitoring process is intended to meet the following objectives.

1. Develop criteria or other means to ensure that all outfalls with significant non-storm water discharges are identified and assessed during the term of this Order.
2. For outfalls determined to have significant non-storm water flow, determine whether flows are the result of illicit connections/illicit discharges (IC/IDs), authorized or conditionally exempt non-storm water flows, natural flows, or from unknown sources.
3. Refer information related to identified IC/IDs to the IC/ID Elimination Program (Part VI.D.10 of this Order) for appropriate action.
4. Based on existing screening or monitoring data or other institutional knowledge, assess the impact of non-storm water discharges (other than identified IC/IDs) on the receiving water.
5. Prioritize monitoring of outfalls considering the potential threat to the receiving water and applicable TMDL compliance schedules.
6. Conduct monitoring or assess existing monitoring data to determine the impact of non-storm water discharges on the receiving water.
7. Conduct monitoring or other investigations to identify the source of pollutants in non-storm water discharges.
8. Use results of the screening process to evaluate the conditionally exempt non-storm water discharges identified in Parts III.A.2 and III.A.3 of this Order and take appropriate actions pursuant to Part III.A.4.d of this Order for those discharges that have been found to be a source of pollutants. Any future reclassification shall occur per the conditions in Parts III.A.2 or III.A.6 of this Order.
9. Maximize the use of Permittee resources by integrating the screening and monitoring process into existing or planned IMP and/or CIMP efforts.

B. Outfall Screening and Monitoring Plan

1. Concurrent with the development of an IMP or CIMP, or within one (1) year of the effective date of this Order, each Permittee shall submit a non-storm water outfall-based screening and monitoring program plan that documents

with written procedures an explanation of how the program is to be implemented. The procedures must be updated as needed to reflect the Permittee's program. The plan may be a separate stand-alone document or may be part of an IMP or CIMP.

2. Each Permittee shall conduct at least one re-assessment of its non-storm water outfall-based screening and monitoring program during the term of this Order to determine whether changes or updates are needed. Where changes are needed, the Permittee shall make the changes in its written program documents, implement these changes in practice, and describe the changes within the next annual report.

C. Identification of Outfalls with Significant with Non-Storm Water Discharge

1. Based on the inventory of MS4 outfalls required under Part VII of this MRP, each Permittee shall identify MS4 outfalls with significant non-storm water discharges. Significant non-storm water discharges may be determined by one or more of the following characteristics:
 - a. Discharges from major outfalls subject to dry weather TMDLs.
 - b. Discharges for which existing monitoring data exceeds non-storm water Action Levels identified in Attachment G of this Order.
 - c. Non-storm water discharges that have caused or have the potential to cause overtopping of downstream diversions.
 - d. Discharges exceeding a proposed threshold discharge rate as determined by the Permittee.
 - e. Other characteristics as determined by the Permittee and incorporated within their screening program plan.

D. Inventory of MS4 Outfalls with Non-Storm Water Discharges

1. Each Permittee shall develop and maintain an inventory of MS4 outfalls and identify those with known significant non-storm water discharges and those requiring no further assessment. If the MS4 outfall requires no further assessment, the inventory must include the rationale for the determination of no further action required. This inventory shall be recorded in a database with outfall locations linked to the Storm Drains, Channels and Outfalls map required in Part VII.A of this MRP. GIS is preferred.
2. As a component of the inventory, each Permittee shall record existing data from past outfall screening and monitoring and initiate data collection efforts as warranted. The data shall include the physical attributes of those MS4 outfalls or alternative monitoring locations determined to have significant non-storm water discharges. Attributes to be obtained shall, at a minimum, include:
 - a. Date and time of last visual observation or inspection
 - b. Outfall alpha-numeric identifier

- c. Description of outfall structure including size (e.g., diameter and shape)
 - d. Description of receiving water at the point of discharge (e.g., natural, soft-bottom with armored sides, trapezoidal, concrete channel)
 - e. Latitude/longitude coordinates
 - f. Nearest street address
 - g. Parking, access, and safety considerations
 - h. Photographs of outfall condition
 - i. Photographs of significant non-storm water discharge (or indicators of discharge) unless safety considerations preclude obtaining photographs
 - j. Estimation of discharge rate
 - k. All diversions either upstream or downstream of the outfall
 - l. Observations regarding discharge characteristics such as turbidity, odor, color, presence of debris, floatables, or characteristics that could aid in pollutant source identification.
4. Each year, the Storm Drains, Channels and Outfalls map and associated outfall database required in Part VII.A of the MRP shall be updated to incorporate the most recent characterization data for outfalls with significant non-storm water discharge.

E. Prioritized Source Identification

1. Outfalls within the inventory shall be prioritized in the following order (a= highest priority, etc.) for source identification activities:
 - a. Outfalls discharging directly to receiving waters with WQBELs or receiving water limitations in the TMDL provisions for which final compliance deadlines have passed.
 - b. All major outfalls and other outfalls that discharge to a receiving water subject to a TMDL shall be prioritized according to TMDL compliance schedules.
 - c. Outfalls for which monitoring data exist and indicate recurring exceedances of one or more of the Action Levels identified in Attachment G of this Order.
 - d. All other major outfalls identified to have significant non-storm water discharges.
2. Each Permittee shall develop a source identification schedule based on the prioritized list of outfalls exhibiting significant non-storm water discharges. The schedule shall ensure that source investigations are conducted for no less than 25% of the outfalls in the inventory within three years of the effective date of this Order and 100% of the outfalls in the inventory within 5 years of the effective date of this Order.

3. Alternatively, a Permittee may request an alternative prioritization and schedule from the Regional Water Board if it can demonstrate an equivalent level of source investigation and abatement through an approved IMP or CIMP.

F. Identify Source(s) of Significant Non-Storm Water Discharge

1. If the source is determined to be an illicit discharge, each Permittee shall implement procedures to eliminate the discharge consistent with IC/ID requirements and document the actions in the next annual report.
2. If the source is determined to be an NPDES permitted discharge, a discharge subject to a Record of Decision approved by USEPA pursuant to section 121 of CERCLA, a conditionally exempt essential non-storm water discharge, or entirely comprised of natural flows as defined at Part III.A.d of this Order, document the source and report to the Regional Water Board in the next annual report.
3. If the source is either unknown or a conditionally exempt, but non-essential, non-storm water discharge, each Permittee shall conduct monitoring required in Part IX.G of this MRP.
4. If the discharge is comprised of more than one source, the Permittee shall attempt to quantify the relative contribution from the individual or group of similar sources (e.g., irrigation overspray) and classify the contributions as authorized, conditionally exempt essential, natural, illicit discharge, conditionally exempt non-essential, or unknown.
5. If the source of non-storm water discharge is unknown, the Permittee shall describe the efforts undertaken to identify the source. Methods for identifying the source of non-storm water discharge may include inspection and/or surveillance, discharge monitoring and data loggers, video or physical inspection, monitoring for indicator parameters (e.g., surfactants, chlorine, Pyrethroids), or other means.
6. If a source originates within an upstream jurisdiction, the Permittee shall inform in writing both the upstream jurisdiction and the Regional Water Board within 30 days of determination of the presence of the discharge, all available characterization data, contribution determination efforts, and efforts taken to identify its source.
7. MS4 outfalls requiring no further action shall be maintained in the Storm Drains, Channels and Outfalls map and associated database (see Part VII.A. of this MRP).

G. Monitor Non-Storm Water Discharges Exceeding Criteria

1. Within 90 days after completing the source identification or after the Executive Officer of the Regional Water Board approves the IMP or CIMP, whichever is later, each Permittee shall monitor outfalls that have been determined to convey significant discharges comprised of either unknown or conditionally

exempt non-storm water discharges, or continuing discharges attributed to illicit discharges. The following parameters shall be monitored:

- a. Flow,
 - b. Pollutants assigned a WQBEL or receiving water limitation to implement TMDL Provisions for the respective receiving water, as identified in Attachments L - R of this Order,
 - c. Other pollutants identified on the CWA section 303(d) List for the receiving water or downstream receiving waters,
 - d. Pollutants identified in a TIE conducted in response to observed aquatic toxicity during dry weather at the nearest downstream receiving water monitoring station during the last sample event or, where the TIE conducted on the receiving water sample was inconclusive, aquatic toxicity. If the discharge exhibits aquatic toxicity, then a TIE shall be conducted.
 - e. Other parameters in Table E-2 identified as exceeding the lowest applicable water quality objective in the nearest downstream receiving water monitoring station per Part VI.D.1.d.
2. For outfalls subject to a dry weather TMDL, monitoring frequency shall be per the approved TMDL Monitoring Plan or as otherwise specified in the TMDL, or as specified in an IMP or CIMP approved by the Executive Officer of the Regional Water Board.
 3. For outfalls not subject to dry weather TMDLs, monitoring frequency shall be four times during the first year following source identification, distributed approximately quarterly, during dry weather conditions or as specified in an IMP or CIMP approved by the Executive Officer of the Regional Water Board.
 4. Except as required by an applicable TMDL Monitoring Plan, IMP, or CIMP approved by the Executive Officer of the Regional Water Board, monitoring frequency may be reduced to twice per year, beginning in the second year of monitoring, if pollutant concentrations measured during the first year do not exceed WQBELs, non-storm water Action Levels or water quality standards for other pollutants identified on the CWA section 303(d) List for the receiving water or downstream receiving waters.
 5. Following one year of monitoring, the Permittee may submit a written request to the Executive Officer of the Regional Water Board to reduce or eliminate monitoring of specified pollutants, based on an evaluation of the monitoring data.

H. Sampling Methods

1. For the purposes of this monitoring program, non-storm water discharges shall be monitored during days when precipitation is < 0.1 inch and those days not less than 3 days after a rain day unless an alternative criterion is provided for in an approved IMP or CIMP. A rain day is defined as those with ≥ 0.1 inch of rain.

2. Flow-weighted composite samples shall be taken for a non-storm water discharge using a continuous sampler, or it shall be taken as a combination of a minimum of 3 sample aliquots, taken in each hour during a 24-hour period, unless the Regional Water Board Executive Officer approves an alternate protocol.

X. NEW DEVELOPMENT/RE-DEVELOPMENT EFFECTIVENESS TRACKING

- A. Each Permittee shall maintain a database providing the following information for each new development/re-development subject to the requirements of Part VI.D.6 of this Order that is approved by the Permittee on or after the effective date of this Order:
 1. Name of the Project and Developer,
 2. Project location and map (preferably linked to the GIS storm drain map),
 3. Date of Certificate of Occupancy,
 4. 85th percentile storm event for the project design (inches per 24 hours),
 5. 95th percentile storm event for projects draining to natural water bodies (inches per 24 hours),
 6. Other design criteria required to meet hydromodification requirements for drainages to natural water bodies,
 7. Project design storm (inches per 24-hours),
 8. Project design storm volume (gallons or MGD),
 9. Percent of design storm volume to be retained on site,
 10. Design volume for water quality mitigation treatment BMPs, if any.
 11. If flow through, water quality treatment BMPs are approved, provide the one-year, one-hour storm intensity as depicted on the most recently issued isohyetal map published by the Los Angeles County Hydrologist,
 12. Percent of design storm volume to be infiltrated at an off-site mitigation or groundwater replenishment project site,
 13. Percent of design storm volume to be retained or treated with biofiltration at an off-site retrofit project,
 14. Location and maps (preferably linked to the GIS storm drain map required in Part VII.A of this MRP) of off-site mitigation, groundwater replenishment, or retrofit sites,
 15. Documentation of issuance of requirements to the developer.

XI. REGIONAL STUDIES

A. Southern California Stormwater Monitoring Coalition Watershed Monitoring Program

1. The Southern California Stormwater Monitoring Coalition (SMC) Regional Watershed Monitoring Program was initiated in 2008. This program is conducted in collaboration with the Southern California Coastal Water Research Project (SCCWRP), State Water Board's Surface Water Ambient Monitoring Program, three Southern California Regional Water Quality Control Boards (Los Angeles, Santa Ana, and San Diego) and several county storm water agencies (Los Angeles, Ventura, Orange, Riverside, San Bernardino and San Diego). SCCWRP acts as the facilitator to organize the program and completes data analysis and report preparation.
2. The SMC monitoring program seeks to coordinate and leverage existing monitoring efforts to produce regional estimates of condition, improve data comparability and quality assurance, and maximize data availability, while conserving monitoring expenditures. The primary goal of this program is to implement an ongoing, large-scale regional monitoring program for southern California's coastal streams and rivers. The monitoring program addresses three main questions:
 - a. What is the condition of streams in southern California?
 - b. What are the stressors that affect stream condition?; and
 - c. Are conditions getting better or worse?
3. A comprehensive program was designed by the SMC, in which each participating group assesses its local watersheds and then contributes their portion to the overall regional assessment. The program utilizes the following indicators: benthic macroinvertebrate community bioassessment, benthic algal community bioassessment (soft algae and diatoms), riparian wetland evaluation (using California Rapid Assessment Methodology), water chemistry (nutrients and certain pesticides), water toxicity (using *Ceriodaphnia*), and physical habitat. Sampling occurs in 15 coastal southern California watersheds from Ventura to the US-Mexico border, and sites are sampled randomly across three land use types (open space, urban and agriculture). Six sites are sampled per year per watershed, resulting in monitoring of 90 sites per year and 450 sites overall over a five-year period (reaching the statistically desirable target of 30 data points per watershed).
4. To continue to implement the SMC design, each Permittee shall be responsible for supporting the monitoring described at the sites within the watershed management area(s) that overlap with the Permittee's jurisdictional area. These include six random sites annually in the Santa Monica Bay Watershed Management area and at three random sites annually in the Santa Clara River Watershed (the other three sites are funded by the Ventura County MS4 Permittees). Permittees shall continue to contribute monitoring resources to the San Gabriel River and Los Angeles River Regional

Watershed Monitoring Programs (overall, both of these programs fund six sites per year to contribute to the SMC Program).

XII. AQUATIC TOXICITY MONITORING METHODS

- A.** Aquatic Toxicity Monitoring as required in Parts VI (Receiving Water Monitoring), VIII (Storm Water Outfall Based Monitoring), and IX (Non-storm Water Outfall Based Monitoring) of this MRP, shall be conducted according to the procedures described in this Part. When the State Water Board's *Policy for Toxicity Assessment and Control* is fully approved and in effect, the Regional Water Board Executive Officer may direct the Permittee(s) to replace current toxicity program elements with standardized procedures in the policy.
- B.** The Permittee(s) shall collect and analyze samples taken from receiving water monitoring locations to evaluate the extent and causes of toxicity in receiving waters.
- C.** Toxicity samples may be flow-weighted composite samples, or grab samples, for wet and dry event sampling.
- D.** The total sample volume shall be determined both by the specific toxicity test method used and the additional volume necessary for TIE studies. Sufficient sample volume shall be collected to perform both the required toxicity tests and TIE studies.
- E.** Holding Times. All toxicity tests shall be conducted as soon as possible following sample collection. The 36-hour sample holding time for test initiation shall be targeted. However, no more than 72 hours shall elapse before the conclusion of sample collection and test initiation.
- F.** Definition of Chronic Toxicity. Chronic toxicity measures a sublethal effect (e.g., reduced growth, reproduction) to experimental test organisms exposed to an effluent or receiving waters compared to that of the control organisms.
- G. Chronic Toxicity Monitoring Programs.**

1. Freshwater Test Species and Methods.

If samples are collected in receiving waters with salinity <1 ppt, or from outfalls discharging to receiving waters with salinity <1 ppt, then the Permittee(s) shall conduct the following critical life stage chronic toxicity tests on undiluted samples in accordance with species and short-term test methods in *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms* (EPA/821/R-02/013, 2002; Table IA, 40 CFR Part 136). In no case shall the following test species be substituted with another organism unless written authorization from the Regional Water Board Executive Officer is received.

- i. A static renewal toxicity test with the fathead minnow, *Pimephales promelas* (Larval Survival and Growth Test Method 1000.0⁴).
 - ii. A static renewal toxicity test with the daphnid, *Ceriodaphnia dubia* (Survival and Reproduction Test Method 1002.0⁵).
 - iii. A static renewal toxicity test with the green alga, *Selenastrum capricornutum* (also named *Raphidocelis subcapitata*) (Growth Test Method 1003.0).
2. Marine and Estuarine Test Species and Methods.

If samples are collected in receiving waters with salinity ≥ 1 ppt, or from outfalls discharging to receiving waters with salinity ≥ 1 ppt, then the Permittee(s) shall conduct the following critical life stage chronic toxicity tests on undiluted samples in accordance with species and short-term test methods in *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms* (EPA/600/R-95/136, 1995). Artificial sea salts shall be used to increase sample salinity. In no case shall the following test species be substituted with another organism unless written authorization from the Regional Water Board Executive Officer is received.

- a. A static renewal toxicity test with the topsmelt, *Atherinops affinis* (Larval Survival and Growth Test Method 1006.01⁵);
 - b. A static non-renewal toxicity test with the purple sea urchin, *Strongylocentrotus purpuratus* (Fertilization Test Method 1008.0); and
 - c. A static non-renewal toxicity test with the giant kelp, *Macrocystis pyrifera* (Germination and Growth Test Method 1009.0).
3. Test Species Sensitivity Screening.

To determine the most sensitive test species, the Permittee(s) shall conduct two wet weather and two dry weather toxicity tests with a vertebrate, an invertebrate, and a plant. After this screening period, subsequent monitoring shall be conducted using the most sensitive test species. Alternatively, if a sensitive test species has already been determined, or if there is prior knowledge of potential toxicant(s) and a test species is sensitive to such toxicant(s), then monitoring shall be conducted using only that test species. Sensitive test species determinations shall also consider the most sensitive test species used for proximal receiving water monitoring. After the screening period, subsequent monitoring shall be conducted using the most sensitive test species. Rescreening shall occur in the fourth year of the permit term.

4. Chronic toxicity test biological endpoint data shall be analyzed using the Test of Significant Toxicity t-test approach specified in *National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation*

⁴ Daily observations for mortality make it possible to calculate acute toxicity for desired exposure periods (e.g., a 7-day acute endpoint).

Document (U.S. Environmental Protection Agency, Office of Wastewater Management, Washington, D.C. EPA 833-R-10-003, 2010). For this monitoring program, the critical chronic instream waste concentration (IWC) is set at 100% receiving water for receiving water samples and 100% effluent for wet- and dry-weather outfall samples. A 100% receiving water/outfall effluent sample and a control shall be tested.

H. Quality Assurance.

1. If the receiving water or outfall effluent test does not meet all test acceptability criteria (TAC) specified in the test methods manuals (*Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms* (EPA/821/R-02/013, 2002) and *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms* (EPA/600/R-95/136, 1995)), then the Permittee(s) must re-sample and re-test at the earliest time possible.
2. Control water, including brine controls, shall be laboratory water prepared and used as specified in the test methods manuals.
3. If organisms are not cultured in-house, then concurrent testing with a reference toxicant shall be conducted. If organisms are cultured in-house, then monthly reference toxicant testing is sufficient. Reference toxicant tests and effluent toxicity tests shall be conducted using the same test conditions (e.g., same test duration, etc.).

I. Toxicity Identification Evaluation (TIE).

1. A toxicity test sample is immediately subject to TIE procedures to identify the toxic chemical(s), if either the survival or sublethal endpoint demonstrates a Percent Effect value equal to or greater than 50% at the IWC. Percent Effect is defined as the effect value—denoted as the difference between the mean control response and the mean IWC response, divided by the mean control response—multiplied by 100.
2. A TIE shall be performed to identify the causes of toxicity using the same species and test method and, as guidance, U.S. EPA manuals: *Toxicity Identification Evaluation: Characterization of Chronically Toxic Effluents, Phase I* (EPA/600/6-91/005F, 1992); *Methods for Aquatic Toxicity Identification Evaluations, Phase II Toxicity Identification Procedures for Samples Exhibiting Acute and Chronic Toxicity* (EPA/600/R-92/080, 1993); *Methods for Aquatic Toxicity Identification Evaluations, Phase III Toxicity Confirmation Procedures for Samples Exhibiting Acute and Chronic Toxicity* (EPA/600/R-92/081, 1993); and *Marine Toxicity Identification Evaluation (TIE): Phase I Guidance Document* (EPA/600/R-96-054, 1996).
3. The TIE should be conducted on the test species demonstrating the most sensitive toxicity response at a sampling station. A TIE may be conducted on a different test species demonstrating a toxicity response with the caveat that once the toxicant(s) are identified, the most sensitive test species triggering

the TIE shall be further tested to verify that the toxicant has been identified and addressed.

4. A TIE Prioritization Metric (see Appendix 5 in SMC Model Monitoring Program) may be utilized to rank sites for TIEs.

J. Toxicity Reduction Evaluation (TRE).

1. When a toxicant or class of toxicants is identified through a TIE conducted at a receiving water monitoring station, Permittees shall analyze for the toxicant(s) during the next scheduled sampling event in the discharge from the outfall(s) upstream of the receiving water location.
2. If the toxicant is present in the discharge from the outfall at levels above the applicable receiving water limitation, a TRE shall be performed for that toxicant.
3. The TRE shall include all reasonable steps to identify the source(s) of toxicity and discuss appropriate BMPs to eliminate the causes of toxicity. No later than 30 days after the source of toxicity and appropriate BMPs are identified, the Permittee(s) shall submit a TRE Corrective Action Plan to the Regional Water Board Executive Officer for approval. At minimum, the plan shall include a discussion of the following:
 - a. The potential sources of pollutant(s) causing toxicity.
 - b. A list of municipalities and agencies that may have jurisdiction over sources of pollutant(s) causing toxicity.
 - c. Recommended BMPs to reduce the pollutant(s) causing toxicity.
 - d. Proposed post-construction control measures to reduce the pollutant(s) causing toxicity.
 - e. Follow-up monitoring to demonstrate that the toxicants have been reduced or eliminated.
4. The TRE process shall be coordinated with TMDL development and implementation (i.e., if a TMDL for 4,4'-DDD is being implemented when a TRE for 4,4'-DDD is required, then efforts shall be coordinated to avoid overlap).

K. Chronic Toxicity Reporting

1. Aquatic toxicity monitoring results submitted to the Regional Water Board shall be consistent with the requirements identified in Part XIV.L and M and Part XVIII.A.5 and A.7 of the MRP.
2. The Annual Report in Part XVIII of the MRP shall include:
 - a. A full laboratory report for each chronic toxicity test prepared according to the appropriate test methods manual chapter on Report Preparation, including:

- i. The chronic toxicity test results for the t-test, reported as “Pass” or “Fail”, and the “Percent Effect”.
 - ii. The dates of sample collection and initiation of each toxicity test.
 - iii. Test species with biological endpoint values for each concentration tested.
 - iv. Reference toxicant test results.
 - v. Water quality measurements for each toxicity test (e.g., pH, dissolved oxygen, temperature, conductivity, hardness, salinity, chlorine, ammonia).
 - vi. TRE/TIE testing results.
 - vii. A printout of CETIS (Comprehensive Environmental Toxicity Information System) program results.
- b. All results for receiving water or outfall effluent parameters monitored concurrently with the toxicity test.
 - c. TIEs (Phases I, II, and III) that have been completed or are being conducted, by monitoring station.
 - d. The development, implementation, and results for each TRE Corrective Action Plan, beginning the year following the identification of each pollutant or pollutant class causing chronic toxicity.

XIII. SPECIAL STUDIES

- A. Each Permittee shall be responsible for conducting special studies required in an effective TMDL or an approved TMDL Monitoring Plan applicable to a watershed that transects its political boundary.

XIV. STANDARD MONITORING AND REPORTING PROVISIONS

- A. All monitoring and reporting activities shall meet the following requirements.
 1. Monitoring and Records [40 CFR section 122.41(j)(1)]
 - a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
 - b. Monitoring and Records [40 CFR section 122.41(j)(2)] [California Water Code § 13383(a)]
 - i. Permittees 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 Order, and records of all data used to complete the Report of Waste Discharge (ROWD) and application for this Order, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by

request of the Regional Water Board Executive Officer or USEPA at any time.

c. Monitoring and Records [40 CFR section 122.41(j)(3)]

i. Records of monitoring information shall include:

1. The date, time of sampling or measurements, exact place, weather conditions, and rain fall amount.
2. The individual(s) who performed the sampling or measurements.
3. The date(s) analyses were performed.
4. The individual(s) who performed the analyses.
5. The analytical techniques or methods used.
6. The results of such analyses.
7. The data sheets showing toxicity test results.

d. Monitoring and Records [40 CFR section 122.41(j)(4)]. All monitoring, sampling, sample preservation, and analyses must be conducted according to test procedures approved under 40 CFR Part 136 for the analysis of pollutants, unless another test procedure is required under 40 CFR subchapter N or O or is otherwise specified in this Order for such pollutants. If a particular Minimum Level (ML) is not attainable in accordance with procedures set forth in 40 CFR Part 136, the lowest quantifiable concentration of the lowest calibration standard analyzed by a specific analytical procedure may be used instead.

e. Monitoring and Records [40 CFR section 122.41(j)(5)]. 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 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 four years, or both.

B. All chemical, bacteriological, and toxicity analyses shall be conducted at a laboratory:

1. Certified for such analyses by an appropriate governmental regulatory agency.
2. Participated in "Intercalibration Studies" for storm water pollutant analysis conducted by the SMC.⁵

⁵ The 'Intercalibration Studies' are conducted periodically by the SMC to establish a consensus based approach for achieving minimal levels of comparability among different testing laboratories for storm water samples to minimize analytical procedure bias. Stormwater Monitoring Coalition Laboratory Document, Technical Report 420 (2004) and subsequent revisions and augmentations.

3. Which performs laboratory analyses consistent with the storm water monitoring guidelines as specified in, the *Stormwater Monitoring Coalition Laboratory Guidance Document*, 2nd Edition R. Gossettt and K. Schiff (2007), and its revisions.
- C. For priority toxic pollutants that are identified in the CTR (40 CFR §131.38), the 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.
 - D. The Monitoring Report shall specify the analytical method used, the Method Detection Level (MDL) and the ML for each pollutant. For the purpose of reporting compliance with numerical limitations, performance goals, and receiving water limitations, analytical data shall be reported with one of the following methods, as appropriate:
 1. An actual numerical value for sample results greater than or equal to the ML.
 2. "Not-detected (ND)" for sample results less than the laboratory's MDL with the MDL indicated for the analytical method used.
 3. "Detected, but Not Quantified (DNQ)" if results are greater than or equal to the laboratory's MDL but less than the ML. The estimated chemical concentration of the sample shall also be reported. This is the concentration that results from the confirmed detection of the substance by the analytical method below the ML value.
 - E. For priority toxic pollutants, if the Permittee can demonstrate that a particular ML is not attainable, in accordance with procedures set forth in 40 CFR Part 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 Permittee must submit documentation from the laboratory to the Regional Water Board Executive Officer for approval prior to raising the ML for any constituent.
 - F. Monitoring Reports [40 CFR § 122.41(I)(4)(ii)].**
 1. If a Permittee monitors any pollutant more frequently than required by this Order using test procedures approved under 40 CFR Part 136, or another method specified in this Order, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the Annual Monitoring Reports.
 - G. Monitoring Reports [40 CFR § 122.41(I)(4)(iii)]**
 1. Calculations for all limitations, which require averaging of measurements, shall utilize an arithmetic mean unless otherwise specified in this Order.
 - H. If no flow occurred during the reporting period, then the Monitoring Report shall so state.

- I. The Regional Water Board or its Executive Officer, consistent with 40 CFR section 122.41, may approve changes to the Monitoring and Reporting Program, after providing the opportunity for public comment, either:
 1. By request of a Permittee or by an interested person after submittal of the Monitoring Report. Such request shall be in writing and filed not later than 60 days after the Monitoring Report submittal date, or
 2. As deemed necessary by the Regional Water Board Executive Officer, following notice to the Permittees.
- J. Permittees must provide a copy of the Standard Operation Procedures (SOPs) for the Monitoring and Reporting Program No. CI 6948 to the Regional Water Board upon request. The SOP will consist of five elements: Title page, Table of Contents, Procedures, Quality Assurance/ Quality Control (QA/ QC), and References. Briefly describe the purpose of the work or process, including any regulatory information or standards that are appropriate to the SOP process, and the scope to indicate what is covered. Denote what sequential procedures should be followed, divided into significant sections; e.g., possible interferences, equipment needed, equipment/instrument maintenance and calibration, personnel qualifications, and safety considerations. Describe QA/ QC activities, and list any cited or significant references.
- K. When monitoring cannot be performed to comply with the requirements of this Order due to circumstances beyond a Permittee's control, then within two working days, the following shall be submitted to the Regional Water Board Executive Officer:
 1. Statement of situation.
 2. Explanation of circumstance(s) with documentation.
 3. Statement of corrective action for the future.
- L. Results of monitoring from each receiving water or outfall based monitoring station conducted in accordance with the Standard Operating Procedure submitted under Standard Provision 14 of this MRP shall be sent electronically to the Regional Water Board's Storm Water site at MS4stormwaterRB4@waterboards.ca.gov, semi-annually, highlighting exceedances of applicable WQBELs, receiving water limitations, action levels, or aquatic toxicity thresholds for all test results, with corresponding sampling dates per receiving water monitoring station. The sample data transmitted shall be in the most recent update of the Southern California Municipal Storm Water Monitoring Coalition's (SMC) Standardized Data Transfer Formats (SDTFs).

XV. ANNUAL REPORT SUBMITTAL TIMELINES

- A.** Each Permittee or group of Permittees shall submit by December 15th of each year beginning in 2013, an Annual Report to the Regional Water Board Executive Officer in the form of three compact disks (CD) (or equivalent electronic format).

XVI. ANNUAL REPORTING REQUIREMENT OBJECTIVES

- A.** The annual reporting process is intended to meet the following objectives.
- 1.** Present summary information that allows the Regional Water Board to assess:
 - a.** Each Permittee's participation in one or more Watershed Management Programs.
 - b.** The impact of each Permittee(s) storm water and non-storm water discharges on the receiving water.
 - c.** Each Permittee's compliance with receiving water limitations, numeric water quality-based effluent limitations, and non-storm water action levels.
 - d.** The effectiveness of each Permittee(s) control measures in reducing discharges of pollutants from the MS4 to receiving waters.
 - e.** Whether the quality of MS4 discharges and the health of receiving waters is improving, staying the same, or declining as a result watershed management program efforts, and/or TMDL implementation measures, or other Minimum Control Measures.
 - f.** Whether changes in water quality can be attributed to pollutant controls imposed on new development, re-development, or retrofit projects.
 - 2.** Present detailed data and information in an accessible format to allow the Regional Water Board to verify conclusions presented in a Permittee's summary information.
 - 3.** Provide the Permittee(s) a forum to discuss the effectiveness of its past and ongoing control measure efforts and to convey its plans for future control measures.
 - 4.** Present data and conclusions in a transparent manner so as to allow review and understanding by the general public.
 - 5.** Focus each Permittee's reporting efforts on watershed condition, water quality assessment, and an evaluation of the effectiveness of control measures.

XVII. WATERSHED SUMMARY INFORMATION, ORGANIZATION AND CONTENT

- B.** Each Permittee shall include the information requested in A.1 through A.3 below in its odd year Annual Report (e.g., Year 1, 3, 5). The requested information shall be provided for each watershed within the Permittee's jurisdiction. Alternatively, Permittees participating in a Watershed Management Program may provide the requested information through the development and submission of a Watershed Management Program plan and any updates thereto.

- 1. Watershed Management Area.** Where a Permittee has individually or collaboratively developed a Watershed Management Program Plan (WMPP) as described in Part VI.C of this Order, reference to the Watershed Management Program plan and any revisions thereto may suffice for baseline information regarding the Watershed Management Area.
 - a. The following information shall be included for each Watershed Management Area within the Permittee(s) jurisdiction, where not included in a WMPP:
 - i. A description of effective TMDLs, applicable WQBELs and receiving water limitations, and implementation and reporting requirements, and compliance dates
 - ii. CWA section 303(d) listings of impaired waters not addressed by TMDLs
 - iii. Results of regional bioassessment monitoring
 - iv. A description of known hydromodifications to receiving waters and a description, including locations, of natural drainage systems
 - v. Description of groundwater recharge areas including number and acres
 - vi. Maps and/or aerial photographs identifying the location of ESAs, ASBS, natural drainage systems, and groundwater recharge areas
- 2. Subwatershed (HUC-12) Description.** The following information shall be included for each Subwatershed (HUC-12) within the Permittee(s) jurisdiction. Where a Permittee has individually or collaboratively developed a WMPP as described in Part VI.C of this Order, reference to the WMPP and any revisions thereto may suffice for baseline information regarding the subwatershed (HUC-12) descriptions, where the required information is already included in the WMPP. The summary information describing the subwatershed shall include the following information:
 - a. Description including HUC-12 number, name and a list of all tributaries named in the Basin Plan
 - b. Land Use map of the HUC-12 subwatershed
 - c. 85th percentile, 24-hour rainfall isohyetal map for the subwatershed
 - d. One-year, one-hour storm intensity isohyetal map for the subwatershed
 - e. MS4 map for the subwatershed, including major MS4 outfalls and all low-flow diversions
- 3. Description of the Permittee(s) Drainage Area within the Subwatershed.** Where a Permittee has individually or collaboratively developed a WMPP as described in Part VI.C of this Order, reference to the WMPP and any revisions thereto may suffice for baseline information regarding the Permittee's Drainage Area within the subwatershed (HUC-12), where the

required information is already included in the Watershed Management Program. The following information shall be included for each jurisdiction within the Subwatershed (HUC-12):

- a. A subwatershed map depicting the Permittee(s) jurisdictional area and the MS4, including major outfalls (with identification numbers), and low flow diversions (with identifying names or numbers) located, within the Permittee's jurisdiction.
- b. Provide the estimated baseline percent of effective impervious area (EIA) within the Permittee(s) jurisdictional area as existed at the time that this Order became effective.

XVIII. ANNUAL ASSESSMENT AND REPORTING

- A. Each Permittee or group of Watershed Permittees shall include the information requested in A.1 through A.7 below in its Annual Report. The requested information shall be provided for each watershed within the Permittee's jurisdiction. Each Permittee shall format its Annual Report to align with the reporting requirements identified in Parts A.1 through A.7 below.

Annual Reports submitted on behalf of a group of Watershed Permittees shall clearly identify all data collected and strategies, control measures, and assessments implemented by each Permittee within its jurisdiction as well as those implemented by multiple Permittees on a watershed scale.

1. **Storm Water Control Measures.** Each Permittee shall make all reasonable efforts to determine, compile, analyze, and summarize the following information.
 - a. Estimated cumulative change in percent EIA since the effective date of this Order and, if possible, the estimated change in the storm water runoff volume during the 85th percentile storm event.
 - b. Summary of New Development/Re-development Projects constructed within the Permittee(s) jurisdictional area during the reporting year.
 - c. Summary of Retrofit Projects that reduced or disconnected impervious area from the MS4 during the reporting year.
 - d. Summary of other projects designed to intercept storm water runoff prior to discharge to the MS4 during the reporting year.
 - e. For the projects summarized above in 1.b through 1.d, estimate the total runoff volume retained on site by the implemented projects.
 - f. Summary of actions taken in compliance with TMDL implementation plans or approved Watershed Management Programs to implement TMDL provisions in Part VI.E and Attachments L-R of this Order.
 - g. Summary of riparian buffer/wetland restoration projects completed during the reporting year. For riparian buffers include width, length and vegetation type; for wetland include acres restored, enhanced or created.

- h. Summary of other Minimum Control Measures implemented during the reporting year, as the Permittee deems relevant.
- i. Status of all multi-year efforts that were not completed in the current year and will therefore continue into the subsequent year(s). Additionally, if any of the requested information cannot be obtained, the Permittee shall provide a discussion of the factor(s) limiting its acquisition and steps that will be taken to improve future data collection efforts.

2. Effectiveness Assessment of Storm Water Control Measures

- a. Rainfall summary for the reporting year. Summarize the number of storm events, highest volume event (inches/24 hours), highest number of consecutive days with measureable rainfall, total rainfall during the reporting year compared to average annual rainfall for the subwatershed. Precipitation data may be obtained from Los Angeles County Department of Public Works rain gauge stations available at <http://www.ladpw.org/wrd/precip/>.
- b. Provide a summary table describing rainfall during storm water outfall and wet-weather receiving water monitoring events. The summary description shall include the date, time that the storm commenced and the storm duration in hours, the highest 15-minute recorded storm intensity (converted to inches/hour), the total storm volume (inches), and the time between the storm event sampled and the end of the previous storm event.
- c. Where control measures were designed to reduce impervious cover or storm water peak flow and flow duration, provide hydrographs or flow data of pre- and post-control activity for the 85th percentile, 24-hour rain event, if available.
- d. For natural drainage systems, develop a reference watershed flow duration curve and compare it to a flow duration curve for the subwatershed under current conditions.
- e. Provide an assessment as to whether the quality of storm water discharges as measured at designed outfalls is improving, staying the same or declining. The Permittee may compare water quality data from the reporting year to previous years with similar rainfall patterns, conduct trends analysis, or use other means to develop and support its conclusions (e.g., use of non-storm water action levels or municipal action levels as provided in Attachment G of this Order).
- f. Provide an assessment as to whether wet-weather receiving water quality within the jurisdiction of the Permittee is improving, staying the same or declining, when normalized for variations in rainfall patterns. The Permittee may compare water quality data from the reporting year to previous years with similar rainfall patterns, conduct trends analysis, draw from regional bioassessment studies, or use other means to develop and support its conclusions.

- g. Status of all multi-year efforts, including TMDL implementation, that were not completed in the current year and will continue into the subsequent year(s). Additionally, if any of the requested information cannot be obtained, the Permittee shall provide a discussion of the factor(s) limiting its acquisition and steps that will be taken to improve future data collection efforts.

3. Non-Storm Water Control Measures

- a. Estimate the number of major outfalls within the Permittee's jurisdiction in the subwatershed.
- b. Provide the number of outfalls that were screened for significant non-storm water discharges during the reporting year.
- c. Provide the cumulative number of outfalls that have been screened for significant non-storm water discharges since the date this Order was adopted through the reporting year.
- d. Provide the number of outfalls with confirmed significant non-storm water discharge.
- e. Provide the number of outfalls where significant non-storm water discharge was attributed to other NPDES permitted discharges; other authorized non-storm water discharges; or conditionally exempt discharges pursuant to Part III.A of this Order.
- f. Provide the number of outfalls where significant non-storm water discharges were abated as a result of the Permittee's actions.
- g. Provide the number of outfalls where non-storm water discharges was monitored.
- h. Provide the status of all multi-year efforts, including TMDL implementation, that were not completed in the current year and will continue into the subsequent year(s). Additionally, if any of the requested information cannot be obtained, the Permittee shall provide a discussion of the factor(s) limiting its acquisition and steps that will be taken to improve future data collection efforts.

4. Effectiveness Assessment of Non-Storm Water Control Measures

- a. Provide an assessment as to whether receiving water quality within the jurisdiction of the Permittee is impaired, improving, staying the same or declining during dry-weather conditions. Each Permittee may compare water quality data from the reporting year to previous years with similar dry-weather flows, conduct trends analysis, draw from regional bioassessment studies, or use other means to develop and support its conclusions.
- b. Provide an assessment of the effectiveness of the Permittee(s) control measures in effectively prohibiting non-storm water discharges through the MS4 to the receiving water.

- c. Provide the status of all multi-year efforts that were not completed in the current year and will continue into the subsequent year(s).

5. Integrated Monitoring Compliance Report

- a. Provide an Integrated Monitoring Report that summarizes all identified exceedances of (1) outfall-based storm water monitoring data, (2) wet weather receiving water monitoring data, (3) dry weather receiving water data, and (4) non-storm water outfall monitoring data against all applicable receiving water limitations, water quality-based effluent limitations, non-storm water action levels, and aquatic toxicity thresholds as defined in Sections XII.F and G of this MRP. All sample results that exceeded one or more applicable thresholds shall be readily identified.
- b. If aquatic toxicity was confirmed and a TIE was conducted, identify the toxic chemicals as determined by the TIE. Include all relevant data to allow the Regional Water Board to review the adequacy and findings of the TIE. This shall include, but not be limited to, the sample(s) date, sample(s) start and end time, sample type(s) (flow-weighted composite, grab, or field measurement), sample location(s) as depicted on the map, the parameters, the analytical results, and the applicable limitation.
- c. Provide a description of efforts that were taken to mitigate and/or eliminate all non-storm water discharges that exceeded one or more applicable water quality based effluent limitations, non-storm water action levels, or caused or contributed to Aquatic Toxicity.
- d. Provide a description of efforts that were taken to address storm water discharges that exceeded one or more applicable water quality based effluent limitations, or caused or contributed to Aquatic Toxicity.
- e. Where Receiving Water Limitations were exceeded, provide a description of efforts that were taken to determine whether discharges from the MS4 caused or contributed to the exceedances and all efforts that were taken to control the discharge of pollutants from the MS4 to those receiving waters in response to the exceedances.

6. Adaptive Management Strategies

- a. Identify the most effective control measures and describe why the measures were effective and how other control measures will be optimized based on past experiences.
- b. Identify the least effective control measures and describe why the measures were deemed ineffective and how the control measures will be modified or terminated.
- c. Identify significant changes to control measures during the prior year and the rationale for the changes.
- d. Describe all significant changes to control measures anticipated to be made in the next year and the rationale for the changes. Those changes

requiring approval of the Regional Water Board or its Executive Officer shall be clearly identified at the beginning of the Annual Report.

- e. Include a detailed description of control measures to be applied to New Development or Re-development projects disturbing more than 50 acres.
- f. Provide the status of all multi-year efforts that were not completed in the current year and will continue into the subsequent year(s).

7. Supporting Data and Information

- a. All monitoring data and associated meta data used to prepare the Annual Report shall be summarized in an Excel spreadsheet and sorted by watershed, subwatershed and monitoring station/outfall identifier linked to the subwatershed map. The data summary must include the date, sample type (flow-weighted composite, grab, field measurement), sample start and stop times, parameter, analytical method, value, and units. The date field must be linked to a database summarizing the weather data for the sampling date including 24-hour rainfall, rainfall intensity, and days since the previous rain event.
- b. Optional. The Permittee may at its option, provide an additional detailed summary table describing control measures that are not otherwise described in the reporting requirements.

XIX. TMDL REPORTING

Permittees shall report on the progress of TMDL implementation per the schedules identified below in Sections A – G.

A. Reporting Requirements for Santa Clara River WMA TMDLs

| Deliverable | Description | Due Date(s) |
|---|---|---|
| Santa Clara River Nitrogen Compounds TMDL | | |
| Progress Reports | Annual progress reports on the Implementation Plan must be submitted to the Regional Water Board. | December 15, 2013, and annually thereafter |
| Upper Santa Clara River Chloride TMDL | | |
| Monitoring Results | Permittees shall conduct chloride, TDS, and sulfate monitoring to ensure that water quality objectives are being met. | December 15, 2013, and annually thereafter |
| Lake Elizabeth, Munz Lake, and Lake Hughes Trash | | |
| Progress Reports | Report compliance with the installation of full capture systems. | December 15, 2013, and annually thereafter |
| Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL | | |
| Receiving Water Monitoring Plan and Outfall Monitoring Plan | Permittees must submit a comprehensive in-stream bacteria water quality monitoring plan for the Santa Clara River Watershed. The monitoring plan should include all applicable bacteria water quality objectives and the sampling frequency must be adequate to assess compliance with the geometric mean objectives. At a minimum, at least one sampling station shall be located in each impaired reach. The outfall monitoring plan shall propose an adequate number of representative outfalls to be sampled, a sampling frequency, and protocol for enhanced outfall monitoring as a result of an in-stream exceedance. The Monitoring Plans must be approved by the Regional Water Board Executive Officer before the monitoring data can be considered during the implementation of the TMDL. Once the monitoring plan is approved by the Executive Officer, monitoring shall commence within 30 days. | March 21, 2013, or Submit an IMP or CIMP plan concurrently with the Permittee’s draft WMP. |
| Draft Implementation Plan | Permittees must submit a draft Implementation Plan outlining how each intends to cooperatively or individually achieve compliance with the water quality-based effluent limitations and the receiving water limitations. The Implementation Plan shall include implementation methods, an implementation schedule and proposed milestones. | March 21, 2015 |
| Final Implementation Plan | Permittees must submit a final Implementation Plan. | Six months after receipt of Regional Water Board comments on the draft Implementation Plan. |
| Board Briefing | Permittees shall provide a verbal update to the Regional Water Board on the progress of TMDL implementation. | March 21, 2017 |

B. Reporting Requirements for Santa Monica Bay WMA TMDLs

| Deliverable | Description | Due Date(s) |
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| Santa Monica Bay Beaches Bacteria TMDL | | |
| Monitoring Results | Monthly data summary reports shall be submitted to the Regional Water Board by the last day of each month for data collected during the previous month. Two agencies will submit the monthly reports on behalf of all Permittees: City of Los Angeles, Department of Public Works, Bureau of Sanitation, Environmental Monitoring Division (on behalf of Jurisdictional Groups 1 through 6, 8, and 9); and Los Angeles County Sanitation Districts (on behalf of Jurisdictional Group 7). | Monthly on the last day of the month. |
| Santa Monica Bay Nearshore and Offshore Debris TMDL | | |
| Trash Monitoring and Reporting Plan (TMRP) | Permittees shall develop a Trash Monitoring and Reporting Plan (TMRP) for Regional Water Board Executive Officer approval that describes the methodologies that will be used to assess and monitor trash in their responsible areas within the Santa Monica Bay WMA or along Santa Monica Bay. The TMRP shall include a plan to establish a site specific trash baseline water quality-based effluent limitation if Permittees elect to not use the default baseline effluent limitation. Requirements for the TMRP shall include, but are not limited to, assessment and quantification of trash collected from source areas in the Santa Monica Bay WMA, and shoreline of the Santa Monica Bay. The monitoring plan shall provide details on the frequency, location, and reporting format. Permittees shall propose a metric (e.g., weight, volume, pieces of trash) to measure the amount of trash discharged from their jurisdictional areas. | Submit an IMP or CIMP plan concurrently with the Permittee’s draft WMP, or If a WMP or IMP or CIMP will not be developed then submitted the TMRP 12 months after the effective date of this Order. |
| Implement TMRP | Implement TMRP | If TMRP is submitted by September 20, 2012, then implement the TMRP 6 months from receipt of letter of approval from Regional Water Board Executive Officer, or the date a plan is established by the Executive Officer; or If an IMP or CIMP is submitted, then monitoring shall commence within 30 days after approval of the IMP or CIMP plan by the Executive Officer. |
| Plastic Pellets Monitoring and Reporting Plan | Permittees identified as responsible jurisdictions and agencies for point sources of trash in the Santa Monica Bay Debris TMDL and in the existing Malibu Creek and Ballona Creek Trash TMDLs, including the Los Angeles County Flood Control District, shall either prepare a Plastic | September 20, 2013, or Submit an IMP or CIMP plan concurrently with the Permittee’s draft WMP. |

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| | <p>Pellet Monitoring and Reporting Plan (PMRP) or demonstrate that a PMRP is not required.</p> <p>The PMRP shall include protocols for a timely and appropriate response to possible plastic pellets spills within a Permittees' jurisdictional area, and a comprehensive plan to ensure that plastic pellets are contained.</p> | |
| Implement PMRP | Implement PMRP | March 20, 2016 |
| Submit results of implementing TMRP and PMRP | Submit results of implementing TMRP and PMRP, recommend trash baseline water quality-based effluent limitations, and propose prioritization of Full Capture System installation or implementation of other measures to attain the required trash and plastic pellet reduction. | December 15, 2013, and annually thereafter |
| Santa Monica Bay TMDL for DDTs and PCBs (USEPA established) | | |
| Monitoring and Reporting Plan | <p>Permittees shall develop a Monitoring and Reporting Plan for Regional Water Board Executive Officer approval that describes the methodologies that will be used to monitor and assess sediment for DDT and PCBs. The monitoring design and assessment framework should be designed to provide credible estimates of the total mass loadings to the Santa Monica Bay. Monitoring should be conducted on a coordinated watershed-wide basis using sufficiently sensitive analytical methods for DDT and PCBs. Monitoring sediments in catch basins designed for pollutant prevention may be a way for Permittees to quantify load reductions to the Santa Monica Bay.</p> | <p>Submit an IMP or CIMP plan concurrently with the Permittee's draft WMP, or</p> <p>If a WMP or IMP or CIMP will not be developed then submitted the Monitoring and Reporting Plan 12 months after the effective date of this Order.</p> |
| Malibu Creek and Lagoon Bacteria TMDL | | |
| Monitoring Results | Monthly data summary reports shall be submitted to the Regional Water Board by the last day of each month for data collected during the previous month. | Monthly on the last day of the month. |
| Malibu Creek Watershed Trash TMDL | | |
| Submit results of TMRP | Submit results of Trash Monitoring and Reporting Plan (TMRP), recommend trash baseline water quality-based effluent limitations, and propose prioritization of Full Capture System installation or implementation of other measures to attain the required trash. | December 15, 2013, and annually thereafter |
| Malibu Creek Watershed Nutrients TMDL (USEPA established) | | |
| Monitoring and Reporting Plan | <p>Permittees shall develop a Monitoring and Reporting Plan for Regional Water Board Executive Officer approval that demonstrates compliance with the water quality-based effluent limitations for total nitrogen and total phosphorus.</p> | <p>Submit an IMP or CIMP plan concurrently with the Permittee's draft WMP, or</p> <p>If a WMP or IMP or CIMP will not be developed then submitted the Monitoring and Reporting Plan 12 months after the effective date of this Order.</p> |

| Ballona Creek Trash TMDL | | |
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| Annual Progress Reports | Report compliance with the required percent reduction of trash discharged to Ballona Creek. | December 15, 2013, and annually thereafter. |
| Trash Monitoring and Reporting Plan / Update CIMP or IMP | <p>Permittees shall propose and implement a Trash Monitoring and Reporting Plan (TMRP) for Executive Officer approval. The Regional Board's Executive Officer will have full authority to review, to modify, to select alternate monitoring sites, and to approve or disapprove the monitoring plans. Permittees may report receiving water monitoring through a separate TMRP annual report, if approved by the Executive Officer, or in conjunction with annual reporting under MS4 permits.</p> <p>Receiving water monitoring shall be consistent with prescribed elements listed in the Surface Water Ambient Monitoring Program's Rapid Trash Assessment or shall be an alternative protocol proposed by the Permittees and approved by the Executive Officer.</p> <p>Monitoring Plan: Permittees will submit a TMRP with the proposed receiving monitoring sites and at least two additional alternate monitoring locations. The TMRP must include maps of the proposed monitoring locations and rationale for their selection. Trash monitoring shall focus on visible trash at representative and critical locations.</p> <p>Sampling Site and Frequency: The TMRP shall detail the monitoring frequency and number and location of sites, including at least one monitoring station per reach and tributary. Each sampling evaluation should consider trash levels over time and under different seasonal conditions. Sampling assessment shall be repeated at the same site where trash was collected during the previous assessment(s) unless an alternate location has been approved.</p> <p>Permittees shall either submit a revised Integrated Monitoring Program or Coordinated Integrated Monitoring Program incorporating the TMRP requirements or a stand-alone TMRP (if the Permittee does not have an approved IMP or CIMP) for Executive Officer approval by December 30, 2016.</p> | December 30, 2016 |
| Ballona Creek Estuary Toxic Pollutants TMDL | | |
| Annual Monitoring Report | Permittees shall submit annual monitoring reports, which include compliance summary tables, to the Regional Water Board. | December 15, 2013, and annually thereafter. |
| Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL | | |
| Monitoring Results | Monthly data summary reports shall be submitted to the Regional Water | Monthly on the last day of the month. |

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| | Board by the last day of each month for data collected during the previous month. | |
| Ballona Creek Metals TMDL | | |
| Annual Monitoring Report | Permittees shall submit annual monitoring reports, which include compliance summary tables, to the Regional Water Board. | December 15, 2013, and annually thereafter. |
| Ballona Creek Wetlands TMDL for Sediment and Invasive Exotic Vegetation (USEPA established) | | |
| Monitoring and Reporting Plan | Permittees shall develop a Sediment Monitoring and Reporting Plan for Regional Water Board Executive Officer approval to quantify the annual loading of sediment from the Ballona Creek Watershed and the impact of the sediment loading into the Ballona Creek Wetlands. | Submit an IMP or CIMP plan concurrently with the Permittee's draft WMP, or If a WMP or IMP or CIMP will not be developed then submitted the Monitoring and Reporting Plan 12 months after the effective date of this Order. |
| Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL | | |
| Monitoring Results | Monthly data summary reports shall be submitted to the Regional Water Board by the last day of each month for data collected during the previous month. | Monthly on the last day of the month. |
| Marina del Rey Harbor Toxic Pollutants TMDL | | |
| Annual Monitoring Report | Permittees shall submit annual monitoring reports, which include compliance summary tables, to the Regional Water Board. | December 15, 2013, and annually thereafter. |

C. Reporting Requirements for Dominguez Channel and Greater Harbors Waters WMA TMDLs

| Deliverable | Description | Due Date(s) |
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| Los Angeles Harbor Bacteria TMDL | | |
| Monitoring Results | Monthly data summary reports shall be submitted to the Regional Water Board by the last day of each month for data collected during the previous month. | Monthly on the last day of the month. |
| Machado Lake Trash TMDL | | |
| Progress Reports | Report compliance with the required percent reduction of trash discharged to Machado Lake. | December 15, 2013, and annually thereafter. |
| Machado Lake Nutrient TMDL | | |
| Annual Monitoring Report | The Cities of Palos Verdes Estates, Ranch Palos Verdes, Rolling Hills and Rolling Hills Estates shall submit annual monitoring reports that demonstrate compliance with the concentration-based water quality-based effluent limitations. | December 15, 2013, and annually thereafter. |
| Annual Monitoring Report | The City of Los Angeles shall submit annual monitoring reports that demonstrate compliance with the Lake Water Quality Management Plan and reduces the external nutrient loading to attain the receiving water limitations for Machado Lake. | December 15, 2013, and annually thereafter. |
| Annual Monitoring Report | The City of Carson shall submit annual monitoring reports that demonstrate compliance with the concentration-based water quality-based effluent limitations. | December 15, 2013, and annually thereafter. |
| Annual Monitoring Report | The County of Los Angeles shall submit annual monitoring reports that demonstrate compliance with the mass-based water quality-based effluent limitations. | December 15, 2013, and annually thereafter. |
| Annual Monitoring Report | The City of Torrance shall submit annual monitoring reports that demonstrate compliance with the mass-based water quality-based effluent limitations. | December 15, 2013, and annually thereafter. |
| Annual Monitoring Report | The Cities of Lomita and Redondo Beach shall submit annual monitoring reports that demonstrate compliance with the concentration-based water quality-based effluent limitations. | December 15, 2013, and annually thereafter. |
| Machado Lake Pesticides and PCBs TMDL | | |
| Monitoring and Reporting Plan and Quality Assurance Project Plan | Permittees shall develop a Monitoring and Reporting Plan (MRP) and Quality Assurance Project Plan (QAPP) for Regional Water Board Executive Officer approval. The MRP shall demonstrate compliance and non-compliance with the water quality-based effluent limitations as part of reports submitted to the Regional Water Board. The QAPP shall include protocols for sample collection, standard analytical procedures, and | The deadline for Permittees assigned both WLAs and LAs to submit one document to address both the WLA and LA monitoring requirements and implementation activities shall be September 20, 2013. |

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| | laboratory certification. All samples shall be collected in accordance with applicable SWAMP protocols. | Submit an IMP or CIMP plan concurrently with the Permittee's draft WMP, or If a WMP or IMP or CIMP will not be developed then submitted the work plan 12 months after the effective date of this Order. |
| Begin Phase 1 Monitoring | Begin Phase 1 Monitoring as outlined in the approved MRP and QAPP. | 30 days from date of Executive Officer approval of MRP and QAPP |
| Phase 1 Monitoring | Conduct Phase 1 Monitoring for 2 years. | 2 year monitoring period |
| Draft Implementation Plan | Based on the results of Phase 1 Monitoring, Permittees shall submit an Implementation Plan to attain water quality-based effluent limitations or document that water quality-based effluent limitations are attained. | 6 months from completion of Phase 1 Monitoring |
| Final Implementation Plan | Permittees shall submit Final Implementation Plan. | 1 year from completion of Phase 1 Monitoring |
| Implementation | Permittees shall begin implementation actions to attain water quality-based effluent limitation, as necessary. | 30 days from date of Implementation Plan approval |
| Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL | | |
| Monitoring and Reporting Plan and Quality Assurance Project Plan | Permittees shall develop Monitoring and Reporting Plans (MRPs) and Quality Assurance Project Plans (QAPPs) for Regional Water Board Executive Officer approval in accordance with the TMDL. The MRPs shall include a requirement that the responsible parties report compliance and non-compliance with water quality-based effluent limitations as part of annual reports submitted to the Regional Water Board. The QAPPs shall include protocols for sample collection, standard analytical procedures, and laboratory certification. All samples shall be collected in accordance with applicable SWAMP protocols. | November 23, 2013, or Submit an IMP or CIMP plan concurrently with the Permittee's draft WMP. |
| Monitoring Plan | Permittees shall implement monitoring as outlined in the approved MRP and QAPP. | 30 days after MRP and QAPP is approved by Regional Water Board Executive Officer. |
| Annual Monitoring Reports | Permittees shall submit annual monitoring reports to the Regional Water Board. | December 15, 2013, and annually thereafter. |
| Implementation Plan and Contaminated Sediment Management Plan (CSMP) | Permittees in the Dominguez Channel and Greater Harbors Waters Watershed Management Area shall develop and submit an Implementation Plan and Contaminated Sediment Management Plan (CSMP). The CSMP shall include concrete milestones with numeric estimates of load reductions or removal, including milestones for remediating hot spots, including but not limited to Dominguez Channel Estuary, Consolidated Slip and Fish Harbor, for Regional Water Board Executive Officer approval. | Submit an IMP or CIMP plan concurrently with the Permittee's draft WMP, or If a WMP or IMP or CIMP will not be developed then submitted the Implementation Plan and CSMP 12 months after the effective date of this Order. |
| Report of Implementation | Permittees in the Los Angeles River and San Gabriel River Watersheds shall submit a Report of Implementation to the Regional Water Board. | December 15, 2013, and annually thereafter |
| Implementation Reports | Permittees shall submit annual implementation reports to the Regional | December 15, 2014, and annually thereafter |

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| | Water Board. Report on implementation progress and demonstrate progress toward meeting the water quality-based effluent limitations. | |
| Updated Implementation Plan and CSMP | Permittees in the Dominguez Channel and Greater Harbors Waters Watershed Management Area shall submit an updated Implementation Plan and Contaminated Sediment Management Plan (CSMP). | March 23, 2017 |

D. Reporting Requirements for the Los Angeles River WMA TMDLs

| Deliverable | Description | Due Date(s) |
|--|--|---|
| Los Angeles River Watershed Trash TMDL | | |
| Reporting | Report compliance with the installation of full capture systems and/or installation/implementation of partial capture devices and institutional controls. | December 15, 2013, and annually thereafter. |
| Trash Monitoring and Reporting Plan / Update CIMP or IMP | <p>Permittees shall propose and implement a Trash Monitoring and Reporting Plan (TMRP) for Executive Officer approval. The Regional Board's Executive Officer will have full authority to review, to modify, to select alternate monitoring sites, and to approve or disapprove the monitoring plans. Permittees may report receiving water monitoring through a separate TMRP annual report, if approved by the Executive Officer, or in conjunction with annual reporting under MS4 permits.</p> <p>Receiving water monitoring shall be consistent with prescribed elements listed in the Surface Water Ambient Monitoring Program’s Rapid Trash Assessment or shall be an alternative protocol proposed by the Permittees and approved by the Executive Officer.</p> <p>Monitoring Plan: Permittees will submit a TMRP with the proposed receiving monitoring sites and at least two additional alternate monitoring locations. The TMRP must include maps of the proposed monitoring locations and rationale for their selection. Trash monitoring shall focus on visible trash at representative and critical locations.</p> <p>Sampling Site and Frequency: The TMRP shall detail the monitoring frequency and number and location of sites, including at least one monitoring station per reach and tributary. Each sampling evaluation should consider trash levels over time and under different seasonal conditions. Sampling assessment shall be repeated at the same site where trash was collected during the previous assessment(s) unless an alternate location has been approved.</p> <p>Permittees shall either submit a revised Integrated Monitoring Program or Coordinated Integrated Monitoring Program incorporating the TMRP requirements or a stand-alone TMRP (if the Permittee does not have an approved IMP or CIMP) for Executive Officer approval by December 30, 2016.</p> | December 30, 2016 |
| Plastic Pellet Monitoring and Reporting Plan | Permittees shall prepare a Plastic Pellet Monitoring and Reporting Plan (PMRP) to (i) monitor the amount of plastic pellets being discharged from the MS4; (ii) establish | By December 28, 2017 or as part of its first adaptive management process if |

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| | <p>triggers for increased industrial facility inspections and enforcement of SWPPP requirements for industrial facilities identified as responsible for the plastic pellet WLA herein; and (iii) address possible plastic pellet spills. The PMRP shall include protocols for a timely and appropriate response to possible plastic pellets spills within their jurisdictional area, including notification to the Regional Water Board, and a comprehensive plan to ensure that plastic pellets are contained.</p> <p>Permittees will fall into one of the following three categories for requirements of a PMRP:</p> <ol style="list-style-type: none"> 1. Permittees that have industrial facilities or activities related to the manufacturing, handling, or transportation of plastic pellets within their jurisdiction must prepare a PMRP. 2. Permittees that have no industrial facilities or activities related to the manufacturing, handling, or transportation of plastic pellets may not be required to conduct monitoring at MS4 outfalls, but must have a response plan in place to address plastic pellet spills. If satisfactory documentation is provided that shows there are no industrial facilities or activities related to plastic pellets within the jurisdiction, the Permittee may be excused of the requirement to monitor MS4 outfalls. LACFCD will be in this category. <p>Permittees that only have residential areas within their respective jurisdictions, and have limited commercial or industrial transportation corridors (including railways and roadways), may be exempted from the requirements of preparing a PMRP. In order for a responsible jurisdiction to be exempted from this requirement, sufficient documentation including municipal zoning plans must be submitted to the Regional Water Board and approved by the Executive Officer.</p> | <p>the Permittee is participating in an approved WMP or EWMP</p> |
| Los Angeles River Nitrogen Compounds and Related Effects TMDL | | |
| Reporting | Annual reporting of monitoring results to the Regional Water Board. | December 15, 2013, and annually thereafter. |
| Los Angeles River and Tributaries Metals TMDL | | |
| Annual Monitoring Report | Permittees shall submit annual monitoring reports as detailed in the approved coordinated monitoring plan to the Regional Water Board. | December 15, 2013, and annually thereafter. |
| Los Angeles River Watershed Bacteria TMDL | | |

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| <p>Bacteria Coordinated Monitoring Plan</p> | <p>Permittees shall submit a Bacteria Coordinated Monitoring Plan (CMP), which shall be submitted for Regional Water Board Executive Officer approval. The CMP shall detail: the number and location of sites, including at least one monitoring station per each river segment, reach and tributary addressed under this TMDL; measurements and sample collection methods; and monitoring frequencies. Permittees may also include in the CMP, for Executive Officer consideration, other meteorological stations which may be more representative of the existing hydrology and climate.</p> <p>Each segment, reach, and tributary addressed under this TMDL shall be monitored at least monthly until the subject segment, reach or tributary is at the end of the execution part of its first implementation phase (i.e. 7 years after beginning the segment or tributary-specific phase), to determine compliance with the interim water quality based effluent limitations. Each segment, reach and tributary addressed under this TMDL shall be monitored at least weekly to determine compliance with the instream targets after the first implementation phase.</p> <p>For parties pursuing a Load Reduction Strategy (LRS), intensive outfall monitoring will be conducted before and after implementation of the LRS. Pre-LRS monitoring will be used to estimate the <i>E. coli</i> loading from MS4 outfalls to the segment or tributary, and identify the outfalls and types of implementation actions that are expected to be necessary to attain the water quality based limits. Post-LRS monitoring will be used to evaluate compliance with the interim water quality based limits and to plan for additional implementation actions to meet the final water quality based limits, in a second implementation phase, if necessary.</p> <p>When applicable, outfall monitoring shall including <i>E. coli</i> by USEPA- approved methods and flow rate at <i>all</i> MS4 outfalls (“snapshots”) that are discharging to a segment or tributary or across jurisdictional boundaries during a given monitoring event. For each LRS, at least six (6) snapshots shall be conducted for pre-LRS monitoring, and at least three (3) snapshots shall be conducted for post- LRS monitoring. For MS4s that choose to follow a non-LRS implementation approach, but choose to demonstrate compliance with Equivalent Conditions, at least six (6) snapshots shall be conducted.</p> | <p>March 23, 2013, or</p> <p>Submit an IMP or CIMP plan concurrently with the Permittee’s draft WMP.</p> |
| <p>Implement CMP</p> | <p>Permittees shall begin implementation actions to attain water quality-based effluent limitation, as necessary.</p> | <p>30 days after approval of the CMP</p> |
| <p>Annual Monitoring Report</p> | <p>Annual reporting of monitoring results to the Regional Water Board.</p> | <p>December 15, 2013, and annually thereafter.</p> |
| <p>Implementation Plan</p> | <p>Permittees shall submit an Implementation Plan for wet weather with interim milestones for approval of the Regional Water Board Executive Officer.</p> | <p>March 23, 2022</p> |

| Legg Lake Trash TMDL | | |
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| TMRP Reports MFAC | Report compliance with the approved MFAC program. | December 15, 2013, and annually thereafter |
| Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDL | | |
| Compliance Monitoring | <p>To evaluate compliance with numeric targets, monitoring shall take place at existing monitoring sites as well as any new monitoring locations in the ambient water. For beach monitoring locations, daily or systematic weekly sampling in the wave wash at all major drains and creeks, existing monitoring stations at beaches without storm drains, and freshwater outlets is recommended to evaluate compliance. At all beach locations, samples should be taken at ankle depth and on an incoming wave, consistent with section 7961(b) of title 17 of the California Code of Regulations. At locations where there is a freshwater outlet, during wet weather, samples should be taken as close as possible to the wave wash, and no further away than 10 meters down current of the storm drain or outlet.</p> <p>A robust monitoring program shall be developed for the LAR Estuary. Available data includes bi-weekly monitoring from May through September of 2009, and 2010. Monitoring shall be expanded to include year round monitoring requirements, and at least three monitoring locations within the Estuary. We understand that adequate data to establish a reference estuary approach is currently not available. If in the future, adequate data from reference estuary studies become available, it may be appropriate to consider a reference estuary approach to evaluate compliance with these TMDLs.</p> | <p>Submit an IMP or CIMP plan concurrently with the Permittee's draft WMP, or</p> <p>If a WMP or IMP or CIMP will not be developed then submitted the Monitoring Plan 12 months after the effective date of this Order.</p> |
| Annual Monitoring Report | Annual reporting of monitoring results to the Regional Water Board. | December 15, 2013, and annually thereafter. |
| Los Angeles Area Lakes TMDLs | | |
| Lake Calabasas Nutrient TMDL | | |
| Compliance Monitoring | <p>At a minimum, compliance monitoring should measure the following in-lake water quality parameters: ammonia, TKN or organic nitrogen, nitrate plus nitrite, orthophosphate, total phosphorus, total suspended solids, total dissolved solids and chlorophyll a. Measurements of the temperature, DO, pH and electrical conductivity should also be taken throughout the water column with a water quality probe along with Secchi depth measurement. All parameters must meet target levels at half the Secchi depth. DO and pH must meet target levels from the surface of the water to 0.3 meters above the lake bottom. Additionally, in order to accurately calculate compliance with water quality based limits to the lake expressed in yearly loads, monitoring should include flow estimation or monitoring as well as the water quality</p> | <p>At a minimum twice during summer months and once during winter.</p> |

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| | concentration measurements. | |
| Supplemental Water Monitoring | At Lake Calabasas, water quality based limits are assigned to supplemental water additions. This source should be monitoring for at minimum; ammonia, TKN or organic nitrogen, nitrate plus nitrite, orthophosphate, total phosphorus, total suspended solids and total dissolved solids. | Once a year during the summer months (critical conditions). |
| Stormwater Monitoring | Stormwater sources should be measured near the point where they enter the lakes for at minimum: ammonia, TKN or organic nitrogen, nitrate plus nitrite, orthophosphate, total phosphorus, total suspended solids and total dissolved solids. | Twice a year. |
| Reporting | Annual reporting of monitoring results to the Regional Water Board. | December 15, 2013, and annually thereafter. |
| Echo Park Lake Nutrient TMDL | | |
| Compliance Monitoring | At a minimum, compliance monitoring should measure the following in-lake water quality parameters: ammonia, TKN or organic nitrogen, nitrate plus nitrite, orthophosphate, total phosphorus, total suspended solids, total dissolved solids and chlorophyll a. Measurements of the temperature, dissolved oxygen, pH and electrical conductivity should also be taken throughout the water column with a water quality probe along with Secchi depth measurement. All parameters must meet target levels at half the Secchi depth. DO and pH must meet target levels from the surface of the water to 0.3 meters above the lake bottom. Additionally, in order to accurately calculate compliance with water quality based limits to the lake expressed in yearly loads, monitoring should include flow estimation or monitoring as well as the water quality concentration measurements. | At a minimum twice during summer months and once during winter. |
| Stormwater Monitoring | Stormwater sources should be measured near the point where they enter the lakes for at minimum: ammonia, TKN or organic nitrogen, nitrate plus nitrite, orthophosphate, total phosphorus, total suspended solids and total dissolved solids. | Twice a year. |
| Reporting | Annual reporting of monitoring results to the Regional Water Board. | December 15, 2013, and annually thereafter. |
| Echo Park Lake PCBs and Organochlorine Pesticide TMDLs | | |
| Compliance Monitoring | At a minimum, compliance monitoring should measure the following in-lake water quality parameters: total suspended sediments, total PCBs, total chlordane, and dieldrin; as well as the following in-lake sediment parameters: total organic carbon, total PCBs, total chlordane, and dieldrin. Environmentally relevant detection limits should be used (i.e., detection limits lower than applicable target), if available at a commercial laboratory. Measurements of the temperature, dissolved oxygen, pH and electrical conductivity should also be taken throughout the water column with a water quality probe along with Secchi depth measurement. | December 15, 2013, and annually thereafter. |
| Fish Tissue Monitoring | Monitoring of fish tissue. For the OC pesticides and PCBs TMDLs, a demonstration that fish tissue targets have been met in any given year must at minimum include a composite sample of skin off fillets from at least five largemouth bass each measuring at least 350mm in length. | At least every three years. |

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| Stormwater Monitoring | Stormwater sources should be measured near the point where they enter the lakes. Sampling should be designed to collect sufficient volumes of suspended solids to allow for the analysis of at minimum: total organic carbon, total suspended solids, total PCBs, total chlordane, and dieldrin. Measurements of the temperature, dissolved oxygen, pH and electrical conductivity should also be taken. | Once a year during a wet weather event. |
| Reporting | Annual reporting of monitoring results to the Regional Water Board. | December 15, 2013, and annually thereafter. |
| Echo Park Lake Trash TMDL | | |
| Compliance Monitoring | Responsible jurisdictions should monitor the trash quantity deposited in the vicinity of Echo Park Lake as well as on the waterbody to comply with the TMDL target and to understand the effectiveness of various implementation efforts. The Rapid Trash Assessment Method is recommended. | Quarterly. |
| Reporting | Annual reporting of monitoring results to the Regional Water Board. | December 15, 2013, and annually thereafter. |
| Legg Lake System Nutrient TMDL | | |
| Compliance Monitoring | At a minimum, compliance monitoring should measure the following in-lake water quality parameters: ammonia, TKN or organic nitrogen, nitrate plus nitrite, orthophosphate, total phosphorus, total suspended solids, total dissolved solids and chlorophyll <i>a</i> . Measurements of the temperature, dissolved oxygen, pH and electrical conductivity should also be taken throughout the water column with a water quality probe along with Secchi depth measurement. All parameters must meet target levels at half the Secchi depth. DO and pH must meet target levels from the surface of the water to 0.3 meters above the lake bottom. Additionally, in order to accurately calculate compliance with water quality based limits to the lake expressed in yearly loads, monitoring should include flow estimation or monitoring as well as the water quality concentration measurements. | At a minimum twice during summer months and once during winter. |
| Stormwater Monitoring | Stormwater sources should be measured near the point where they enter the lakes for at minimum: ammonia, TKN or organic nitrogen, nitrate plus nitrite, orthophosphate, total phosphorus, total suspended solids and total dissolved solids. | Twice a year. |
| Reporting | Annual reporting of monitoring results to the Regional Water Board. | December 15, 2013, and annually thereafter. |
| Peck Road Park Lake Nutrient TMDL | | |
| Compliance Monitoring | At a minimum, compliance monitoring should measure the following in-lake water quality parameters: ammonia, TKN or organic nitrogen, nitrate plus nitrite, orthophosphate, total phosphorus, total suspended solids, total dissolved solids and chlorophyll <i>a</i> . Measurements of the temperature, DO, pH and electrical conductivity should also be taken throughout the water column with a water quality probe along with Secchi depth measurement. All parameters must meet target levels at half the Secchi depth. Deep lakes, such as Peck Road Park Lake, must meet the DO and pH targets in the water column from the surface to 0.3 meters above the bottom of the lake | At a minimum twice during summer months and once during winter. |

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| | when the lake is not stratified. However, when stratification occurs (i.e., a thermocline is present) then the DO and pH targets must be met in the epilimnion, the portion of the water column above the thermocline. Additionally, in order to accurately calculate compliance with water quality based limits to the lake expressed in yearly loads, monitoring should include flow estimation or monitoring as well as the water quality concentration measurements. | |
| Stormwater Monitoring | Stormwater sources should be measured near the point where they enter the lakes for at minimum: ammonia, TKN or organic nitrogen, nitrate plus nitrite, orthophosphate, total phosphorus, total suspended solids and total dissolved solids. | Twice a year. |
| Reporting | Annual reporting of monitoring results to the Regional Water Board. | December 15, 2013, and annually thereafter. |
| Peck Road Park Lake PCBs and Organochlorine Pesticide TMDLs | | |
| Compliance Monitoring | At a minimum, compliance monitoring should measure the following in-lake water quality parameters: total suspended sediments, total PCBs, total chlordane, total DDTs, and dieldrin; as well as the following in-lake sediment parameters: total organic carbon, total PCBs, total chlordane, total DDTs, and dieldrin. Environmentally relevant detection limits should be used (i.e., detection limits lower than applicable target), if available at a commercial laboratory. Measurements of the temperature, dissolved oxygen, pH and electrical conductivity should also be taken throughout the water column with a water quality probe along with Secchi depth measurement. | December 15, 2013, and annually thereafter. |
| Fish Tissue Monitoring | Monitoring of fish tissue. For the OC pesticides and PCBs TMDLs, a demonstration that fish tissue targets have been met in any given year must at minimum include a composite sample of skin off filets from at least five common carp each measuring at least 350mm in length. | At least every three years. |
| Stormwater Monitoring | Stormwater sources should be measured near the point where they enter the lakes. Sampling should be designed to collect sufficient volumes of suspended solids to allow for the analysis of at minimum: total organic carbon, total suspended solids, total PCBs, total chlordane, total DDTs, and dieldrin. Measurements of the temperature, dissolved oxygen, pH and electrical conductivity should also be taken. | Once a year during a wet weather event. |
| Reporting | Annual reporting of monitoring results to the Regional Water Board. | December 15, 2013, and annually thereafter. |
| Peck Road Park Lake Trash TMDL | | |
| Compliance Monitoring | Responsible jurisdictions should monitor the trash quantity deposited in the vicinity of Peck Road Park Lake as well as in the waterbody to comply with the TMDL target and to understand the effectiveness of various implementation efforts. The Rapid Trash Assessment Method is recommended. | Quarterly. |
| Reporting | Annual reporting of monitoring results to the Regional Water Board. | December 15, 2013, and annually thereafter. |

E. Reporting Requirements for San Gabriel River WMA TMDLs

| Deliverable | Description | Due Date(s) |
|--|---|---|
| San Gabriel River and Impaired Tributaries Metals and Selenium TMDL | | |
| Coordinated Monitoring Plan | <p>Permittees shall develop a Coordinated Monitoring Plan, to be approved by the Regional Water Board Executive Officer, which includes both TMDL effectiveness monitoring and ambient monitoring. The ambient monitoring program shall contain monitoring in all reaches and major tributaries of the San Gabriel River, including but not limited to additional dry- and wet-weather monitoring in the San Gabriel River Reaches 4 and 5 and Walnut Creek, additional dry-weather monitoring in San Gabriel River Reach 2, and additional wet-weather monitoring in San Jose Creek, San Gabriel River Reaches 1 and 3, and the Estuary. Sediment samples shall be collected semi-annually in the Estuary and analyzed for sediment toxicity resulting from copper, lead, selenium, and zinc.</p> <p>The TMDL effectiveness monitoring shall demonstrate the effectiveness of the phased implementation schedule for reducing pollutant loads to achieve the dry- and wet-weather water quality based effluent limitations. Monitoring stations specified for the ambient monitoring program may be used for the TMDL effectiveness monitoring. The final dry-weather monitoring stations shall be located in San Jose Creek Reach 1 and the Estuary. The final wet-weather TMDL effectiveness monitoring stations may be located at the existing Los Angeles County Department of Public Works mass emission sites in San Gabriel River Reach 2 and Coyote Creek.</p> <p>Permittees shall sample once per month, during dry-weather conditions, at each proposed TMDL effectiveness monitoring location. Permittees shall sample at least 4 wet-weather events where flow meets wet-weather conditions (260 cfs in San Gabriel River Reach 2 and 156 cfs in Coyote Creek) in a given storm season (November to March), unless there are fewer than 4 wet-weather events, at each proposed TMDL effectiveness monitoring location. Permittees are encouraged to coordinate with the San Gabriel watershed-wide monitoring program to avoid duplication and leverage resources.</p> | <p>Submit an IMP or CIMP plan concurrently with the Permittee's draft WMP, or</p> <p>If a WMP or IMP or CIMP will not be developed then submitted the Coordinated Monitoring Plan 12 months after the effective date of this Order.</p> |
| Annual Monitoring Report | Annual reporting of monitoring results to the Regional Water Board. | December 15, 2013, and annually thereafter. |
| Implementation Plan | Permittees shall submit an Implementation Plan outlining how to achieve compliance with the water quality based effluent limitations, for approval of the Regional Water Board Executive Officer. The Plan shall include implementation methods, an implementation schedule, and proposed milestones. | 1 year after the effective date of this Order |
| Los Angeles Area Lakes TMDLs | | |
| Puddingstone Reservoir Nutrient TMDL | | |

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| Compliance Monitoring | At a minimum, compliance monitoring should measure the following in-lake water quality parameters: ammonia, TKN or organic nitrogen, nitrate plus nitrite, orthophosphate, total phosphorus, total suspended solids, total dissolved solids and chlorophyll a. Measurements of the temperature, dissolved oxygen, pH and electrical conductivity should also be taken throughout the water column with a water quality probe along with Secchi depth measurement. All parameters must meet target levels at half the Secchi depth. DO and pH must meet target levels from the surface of the water to 0.3 meters above the lake bottom when the lake is not stratified. However, when stratification occurs (i.e., a thermocline is present) then the DO and pH targets must be met in the epilimnion, the portion of the water column above the thermocline. Additionally, in order to accurately calculate compliance with water quality based limits to the lake expressed in yearly loads, monitoring should include flow estimation or monitoring as well as the water quality concentration measurements. | At a minimum twice during summer months and once during winter. |
| Stormwater Monitoring | Stormwater sources should be measured near the point where they enter the lakes for at minimum: ammonia, TKN or organic nitrogen, nitrate plus nitrite, orthophosphate, total phosphorus, total suspended solids and total dissolved solids. | Twice a year. |
| Reporting | Annual reporting of monitoring results to the Regional Water Board. | December 15, 2013, and annually thereafter. |
| Puddingstone Reservoir Mercury TMDL | | |
| Compliance Monitoring | At a minimum, compliance monitoring should measure the following in-lake water quality parameters: total mercury, methylmercury, chloride, sulfate, total organic carbon, alkalinity, total suspended solids, and total dissolved solids; as well as the following in-lake sediment parameters: total mercury, dissolved methylmercury, total organic carbon, total solids and sulfate. Measurements of the temperature, dissolved oxygen, pH and electrical conductivity should also be taken throughout the water column with a water quality probe along with Secchi depth measurement. Additionally, in order to accurately calculate compliance with allocations expressed in yearly loads, monitoring should include flow estimation or monitoring as well as water quality concentration measurements. | Twice a year. |
| Fish Tissue Monitoring | Monitoring should include monitoring of largemouth bass (325-375mm in length) fish tissue (skin-off fillets) for mercury concentration. | At least every three years. |
| Stormwater Monitoring | Stormwater sources should be measured near the point where they enter the lakes for at minimum: total mercury, methyl mercury, chloride, sulfate, total organic carbon, alkalinity, total suspended solids, and total dissolved solids. | Twice a year. |
| Reporting | Annual reporting of monitoring results to the Regional Water Board. | December 15, 2013, and annually thereafter. |
| Puddingstone Reservoir PCBs and Organochlorine Pesticide TMDLs | | |
| Compliance Monitoring | At a minimum, compliance monitoring should measure the following in-lake water quality parameters: total suspended sediments, total PCBs, total chlordane, dieldrin, and total DDTs; as well as the following in-lake sediment parameters: total organic carbon, total PCBs, total chlordane, dieldrin, and total DDTs. Environmentally relevant detection limits should be used (i.e., detection limits lower than applicable target), if available at a commercial laboratory. | Annually. |

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| | Measurements of the temperature, dissolved oxygen, pH and electrical conductivity should also be taken throughout the water column with a water quality probe along with Secchi depth measurement. | |
| Fish Tissue Monitoring | Monitoring of fish tissue. For the OC pesticides and PCBs TMDLs a demonstration that fish tissue targets have been met in any given year must at minimum include a composite sample of skin off fillets from at least five common carp each measuring at least 350mm in length. | At least every three years. |
| Stormwater Monitoring | Stormwater sources should be measured near the point where they enter the lakes. Sampling should be designed to collect sufficient volumes of suspended solids to allow for the analysis of at minimum: total organic carbon, total suspended solids, total PCBs, total chlordane, dieldrin, and total DDTs. Measurements of the temperature, dissolved oxygen, pH and electrical conductivity should also be taken. | Once a year during a wet weather event. |
| Reporting | Annual reporting of monitoring results to the Regional Water Board. | December 15, 2013, and annually thereafter. |

F. Reporting Requirements for Los Cerritos Channel WMA TMDLs

| Deliverable | Description | Due Date(s) |
|--|---|---|
| Los Cerritos Channel Metals TMDL | | |
| Coordinated Monitoring Plan | <p>Permittees shall develop a Coordinated Monitoring Plan, to be approved by the Regional Water Board Executive Officer, which includes both TMDL effectiveness monitoring and ambient monitoring. The ambient monitoring program shall be developed to track trends in water quality improvements in Los Cerritos Channel; to provide background information on hardness values; and the partitioning of metals between the total recoverable and dissolved fraction.</p> <p>TMDL effectiveness monitoring shall demonstrate the effectiveness of the phased implementation schedule for reducing pollutant loads to achieve the water quality based effluent limitations. Monitoring stations specified for the ambient monitoring program may be used for the TMDL effectiveness monitoring. Permittees shall sample at least 4 wet-weather events where flow meets wet-weather conditions (>23 cfs in Los Cerritos Channel above the tidal prism) in a given storm season.</p> | <p>Submit an IMP or CIMP plan concurrently with the Permittee's draft WMP, or</p> <p>If a WMP or IMP or CIMP will not be developed then submitted the Coordinated Monitoring Plan 12 months after the effective date of this Order.</p> |
| Annual Monitoring Report | Annual reporting of monitoring results to the Regional Water Board. | December 15, 2013, and annually thereafter. |
| Implementation Plan | Permittees shall submit an Implementation Plan outlining how to achieve compliance with the water quality based effluent limitations, for approval of the Regional Water Board Executive Officer. The Plan shall include implementation methods, an implementation schedule, and proposed milestones. | 1 year after the effective date of this Order |
| Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals TMDL | | |
| Monitoring | Water column and sediment samples will be collected at the outlet of the storm drains discharging to the lagoon, while water column, sediment, and fish tissue samples will be collected in the West Arm, Central Arm, North Arm, at the outlet of the lagoon to Marine Stadium during an incoming tide, and at the outfall of Termino Avenue Drain to Marine Stadium as specified in the Colorado Lagoon TMDL Monitoring Plan (CLTMP). | February 1, 2013 |
| Annual Monitoring Reports | Permittees shall submit annual monitoring reports to the Regional Water Board. All compliance monitoring must be conducted in conjunction with a Regional Water Board approved Quality Assurance Project Plan. | December 15, 2013, and annually thereafter. |
| Implementation Progress | Permittees shall submit annual progress reports on the status of implementation actions performed under the TMDL. The plan shall contain mechanisms for demonstration progress toward meeting the water quality based effluent limitations. | December 15, 2013, and annually thereafter. |

G. Reporting Requirements for Middle Santa Ana River WMA TMDL

| Deliverable | Description | Due Date(s) |
|---|--|--|
| Middle Santa Ana River Watershed Bacteria Indicator TMDL | | |
| Bacterial Indicator Water Quality Monitoring Plan | Permittees shall develop and submit for approval by the Executive Officer of the Regional Water Board a Bacterial Indicator Water Quality Monitoring Plan in accordance with the TMDL. | Submit an IMP or CIMP plan concurrently with the Permittee’s draft WMP, or If a WMP or IMP or CIMP will not be developed then submitted the Monitoring Plan 12 months after the effective date of this Order. |
| Bacterial Indicator Urban Source Evaluation Plan | Permittees shall develop and submit for approval by the Regional Water Board a Bacterial Indicator Urban Source Evaluation Plan. This plan shall include steps needed to identify specific activities, operations, and processes in urban areas that contribute bacterial indicators to San Antonio Channel. The plan shall also include a proposed schedule for completion of each of the steps identified. | 1 year after the effective date of this Order |
| Progress Reports | Annual progress reports on implementation shall be submitted to the Regional Water Board. | December 15, 2013, and annually thereafter. |

I, Samuel Unger, Executive Officer, do hereby certify that this Monitoring and Reporting Program is a full, true, and correct copy of the MRP adopted by the California Regional Water Quality Control Board, Los Angeles Region, on November 8, 2012 and amended by the California Regional Water Quality Control Board, Los Angeles Region, on September 8, 2016.



Samuel Unger, P.E.
Executive Officer

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

LOS ANGELES REGION

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576 - 6600 • Fax (213) 576 - 6640
<http://www.waterboards.ca.gov/losangeles>

ATTACHMENT F – FACT SHEET

FOR

ORDER R4-2012-0175

(as amended by Order WQ 2015-0075 and Order R4-2012-0175-A01)

NPDES PERMIT NO. CAS004001

**WASTE DISCHARGE REQUIREMENTS FOR
MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) DISCHARGES
WITHIN THE COASTAL WATERSHEDS OF LOS ANGELES COUNTY, EXCEPT
THOSE DISCHARGES ORIGINATING FROM THE CITY OF LONG BEACH MS4**

November 8, 2012

(amended on June 16, 2015 and September 8, 2016)

ATTACHMENT F – FACT SHEET

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ATTACHMENT F – FACT SHEET

As described in Part II of this Order, this Fact Sheet sets forth the significant factual, legal, methodological, and policy rationale that serve as the basis for the requirements of this Order.

This Order has been prepared under a standardized format to accommodate a broad range of discharge requirements for dischargers in California.

I. PERMIT INFORMATION

The following table summarizes administrative information related to the facility and the Dischargers.

Table F-1. Facility and Discharger Information

| | |
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| WDID | Various (See Table 4 of Order) |
| Dischargers | The Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities within the coastal watersheds of Los Angeles County with the exception of the City of Long Beach (See Table 4 of Order) |
| Name of Facility | Municipal Separate Storm Sewer Systems (MS4s) within the Coastal Watersheds of Los Angeles County with the exception of the City of Long Beach MS4 |
| Facility Address | Various |
| Facility Contact, Title and Phone | Various (See Table 4 of Order) |
| Mailing Address | Various (See Table 4 of Order) |
| Billing Address | Same as above |
| Type of Facility | Large Municipal Separate Storm Sewer System (MS4) ¹ |
| Major or Minor Facility | Major |
| Watersheds | (1) Santa Clara River Watershed; (2) Santa Monica Bay Watershed Management Area, including Malibu Creek Watershed and Ballona Creek Watershed; (3) Los Angeles River Watershed; (4) Dominguez Channel and Greater Los Angeles/Long Beach Harbors Watershed Management Area; (5) Los Cerritos Channel and Alamitos Bay Watershed Management Area; (6) San Gabriel River Watershed; and (7) Santa Ana River Watershed |

¹ According to 40 CFR § 122.26(b)(8), “[a] municipal separate storm sewer system (MS4) means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, 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, 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 a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;
 (ii) Designed or used for collecting or conveying storm water;
 (iii) Which is not a combined sewer; and
 (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.”

| | |
|------------------------------------|--|
| <p>Receiving Water</p> | <p>Surface waters identified in Tables 2-1, 2-1a, 2-3, and 2-4, and Appendix 1, Table 1 of the Water Quality Control Plan - Los Angeles Region (Basin Plan), and other unidentified tributaries to these surface waters within the following Watershed Management Areas:</p> <p>(1) Santa Clara River Watershed;</p> <p>(2) Santa Monica Bay Watershed Management Area, including Malibu Creek Watershed and Ballona Creek Watershed;</p> <p>(3) Los Angeles River Watershed;</p> <p>(4) Dominguez Channel and Greater Los Angeles/Long Beach Harbors Watershed Management Area;</p> <p>(5) Los Cerritos Channel and Alamitos Bay Watershed Management Area;</p> <p>(6) San Gabriel River Watershed; and</p> <p>(7) Santa Ana River Watershed².</p> |
| <p>Receiving Water Type</p> | <p>Inland surface waters, estuarine waters, and marine waters, including wetlands, lakes, rivers, estuaries, lagoons, harbors, bays, and beaches</p> |

The Los Angeles County Flood Control District, Los Angeles County, and the 84 municipalities listed in Table F-2 above are the owners and/or operators³ of Municipal Separate Storm Sewer Systems within the Coastal Watersheds of Los Angeles County (hereinafter Facility).

For the purposes of this Order, the entities listed in Table 4 of the Order are hereinafter referred to separately as “Permittees” and jointly as the “Dischargers.” References to “discharger” or “permittee” or “co-permittee” or “municipality” in applicable federal and state laws, regulations, plans, or policy are held to be equivalent to references to the Dischargers or Permittees herein.

II. FACILITY DESCRIPTION

A. Description of the Permittees’ MS4s

The Permittees’ MS4s, like many MS4s in the nation, are based on regional floodwater management systems that use both natural and altered water bodies to achieve flood management goals. The Permittees’ MS4s comprise a large interconnected system, controlled in large part by the Los Angeles County Flood Control District (LACFCD), among others, and used by multiple cities along with Los Angeles County. This extensive system conveys storm water and non-storm water across municipal boundaries where it is commingled within the MS4 and then discharged to receiving water bodies.

² Note that the Santa Ana River Watershed lies primarily within the boundaries of the Santa Ana Regional Water Quality Control Board. However, a portion of the Chino Basin subwatershed lies within the jurisdictions of Pomona and Claremont in Los Angeles County. The primary receiving water within the Los Angeles County portion of the Chino Basin subwatershed are San Antonio Creek and Chino Creek.

³ Owner or operator means the owner or operator of any facility or activity subject to regulation under the NPDES program (40 CFR § 122.2).

In 1915, the California Legislature enacted the Los Angeles County Flood Control Act, establishing the Los Angeles County Flood Control District (LACFCD). The objects and purposes of the Act are to provide for the control and conservation of the flood, storm and other waste waters within the flood control district. Among its other powers, the LACFCD also has the power to preserve, enhance, and add recreational features to lands or interests in lands contiguous to its properties for the protection, preservation, and use of the scenic beauty and natural environment for the properties or the lands. The LACFCD is governed, as a separate entity, by the County of Los Angeles Board of Supervisors.

The area covered under this Order encompasses more than 3,000 square miles. This area contains a vast drainage network that serves incorporated and unincorporated areas in every Watershed Management Area within the Los Angeles Region. Maps depicting the major drainage infrastructure within the area covered under this Order are included in Attachment C of this Order.

The total length of the Permittees' MS4s, and the locations of all storm drain connections, are not known exactly, as a comprehensive map for the MS4 does not exist. Rough estimates, based on information from the LACFCD and large municipalities (population > 100,000), indicate that the length exceeds 4,300 miles, as shown below. The LACFCD's system includes the majority of drainage infrastructure within incorporated and unincorporated areas in every watershed, including approximately 500 miles of open channel, 3,500 miles of underground drains, and an estimated 88,000 catch basins, and several dams. Portions of the LACFCD's current system were originally unmodified natural rivers and water courses.

Table F-2. Extent of Select Permittees' MS4s

| Permittee | Area (Square Miles) | Catch Basins | Storm Drain Length | Open Channel Length |
|----------------------|--------------------------------|------------------------|-------------------------------|----------------------------|
| LACFCD/ LA County | 3,100 | 88,000 | 3,500 miles | 500 miles |
| City of LA | 469 | 30,000 | 1,600 miles | 31 miles |
| El Monte | 10 | 316 | 11 miles | 0.4 mile |
| Glendale | 30.6 | 1,100 | Unknown | Unknown |
| Inglewood | 9 | 1,157 | 12 miles | Unknown |
| Pasadena | 26 | 1,050 | 30 | Unknown |
| Santa Monica | 8.3 | 850 | Unknown | Unknown |
| Torrance | 20 | 2,000 | 20 miles | 3 miles |
| TOTAL | approx. 3,672.9 | approx. 109,473 | approx. 4,323 | approx. 484.4 |

Unlike other Permittees, the LACFCD does not own or operate any municipal sanitary sewer systems, public streets, roads, or highways, and has no planning, zoning, development permitting or other land use authority over industrial or commercial facilities, new developments or re-development projects, or development construction sites located in any incorporated or unincorporated areas within its service area. Nonetheless, as an owner and operator of MS4s, the LACFCD is required by federal regulations to control pollutant discharges into and from its MS4, including the ability to control through interagency agreements among co-permittees and other owners of a MS4 the contribution of pollutants from one portion of the MS4 to another portion of the MS4. Additionally, the Los Angeles County Flood Control District does own the County of Los Angeles Department of Public Works headquarters building and Los Angeles County Flood Control District maintenance yards to support its field operations.

Storm water and non-storm water are conveyed through the MS4s and ultimately discharged into receiving waters of the Los Angeles Region. MS4s subject to this Order receive storm water and non-storm water flows from various sources. These flows come from MS4s owned by the Permittees covered by this Order and other public agencies, NPDES permitted discharges, discharges authorized by the USEPA (including discharges subject to a decision document approved pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)), groundwater, and natural flows.

The requirements contained in this Order apply to the Los Angeles County Flood Control District, 84 cities within the coastal watersheds of Los Angeles County, and the unincorporated areas of Los Angeles County under County jurisdiction, with the exception of the City of Long Beach. Under the previous Order, Order No. 01-182, the Los Angeles County Flood Control District was designated the Principal Permittee, and the County of Los Angeles and the 84 incorporated cities were designated co-Permittees. However, in this Order, the role of Principal Permittee has been eliminated. This Order divides Los Angeles County into seven Watershed Management Areas (WMAs).

B. The Need to Regulate Discharges from MS4s

The quality of storm water and non-storm water discharges from MS4s is fundamentally important to the health of the environment and the quality of life in Southern California. Polluted storm water and non-storm water discharges from MS4s are a leading cause of water quality impairment in the Los Angeles Region. Storm water and non-storm water discharges are often contaminated with pesticides, fertilizers, fecal indicator bacteria and associated pathogens, trash, automotive byproducts, and many other toxic substances generated by activities in the urban environment. Water that flows over streets, parking lots, construction sites, and industrial, commercial, residential, and municipal areas carries these untreated pollutants through the MS4 directly into the receiving waters of the Region. The water quality impacts, ecosystem impacts, and increased public health risks from MS4 discharges that affect receiving waters nationwide and throughout Los Angeles County, including its coastline, are well documented.

The National Urban Runoff Program (NURP) Study (USEPA 1983) showed that MS4 discharges draining from residential, commercial, and light industrial areas contain significant loadings of total suspended solids and other pollutants. Many studies continue to support the conclusions of the NURP Study. The NURP Study also found that pollutant levels from illicit discharges were high enough to significantly degrade receiving water quality, and threaten aquatic life, wildlife, and human health. The general findings and conclusions of the NURP Study are reiterated in the more recent 2008 National Research Council report "Urban Runoff Management in the United States" as well as in a regional study, "Sources, Patterns and Mechanisms of storm Water Pollutant Loading from Watersheds and Land Uses of the Greater Los Angeles Area, California," SCCWRP Technical Report 510 (2007), funded in large part by the Regional Water Board.

Some of the conclusions of the 2007 regional study were as follows.

Storm water runoff from watershed and land use based sources is a significant contributor of pollutant loading and often exceeds water quality standards. High pollutant concentrations were observed throughout the study at both mass emission (ME) and land use (LU) sites. Pollutant concentrations frequently exceeded water quality standards.

Storm water Event Mean Concentrations (EMCs), fluxes and loads were substantially lower from undeveloped open space areas when compared to developed urbanized watersheds. Storms sampled from less developed watersheds produced pollutant EMCs and fluxes that were one to two orders of magnitude lower than comparably sized storms in urbanized watersheds. Furthermore, the higher fluxes from developed watersheds were generated by substantially less rainfall than the lower fluxes from the undeveloped watersheds, presumably due to increased impervious surface area in developed watersheds.

The Los Angeles region contributed a similar range of storm water runoff pollutant loads as that of other regions of the United States. Comparison of constituent concentrations in storm water runoff from land use sites from this study reveal median EMCs that are comparable to U.S. averages reported in the National Storm water Quality Database (NSQD; Pitt et al., 2003). Comparison to the NSQD data set provides insight to spatial and temporal patterns in constituent concentrations in urban systems. Similarities between levels reported in the NSQD and this study suggest that land-based concentrations in southern California storm water are generally comparable to those in other parts of the country.

Peak concentrations for all constituents were observed during the early part of the storm. Constituent concentrations varied with time over the course of storm events. For all storms sampled, the highest constituent concentrations occurred during the early phases of storm water runoff with peak concentrations usually preceding peak flow. Although the pattern of an early peak in concentration was comparable in both large and small developed watersheds, the peak concentration tended to occur later in the storm and persist for a longer duration in the smaller developed watersheds. Therefore monitoring programs must capture the early portion of storms and account for intra-

storm variability in concentration in order to generate accurate estimates of EMC and contaminant loading. Programs that do not initiate sampling until a flow threshold has been surpassed may severely underestimate storm EMCs.

Highest constituent loading was observed early in the storm season with intra-annual variability driven more by antecedent dry period than amount of rainfall. Seasonal differences in constituent EMCs and loads were consistently observed at both ME and LU sites. In general, early season storms (October – December) produce significantly higher constituent EMCs and loads than late season storms (April-May), even when rainfall quantity was similar. This suggests that the magnitude of constituent load associated with storm water runoff depends, at least in part, on the amount of time available for pollutant build-up on land surfaces. The extended dry period that typically occurs in arid climates such as southern California maximizes the time for constituents to build-up on land surfaces, resulting in proportionally higher concentrations and loads during initial storms of the season.

The 1992, 1994, and 1996 National Water Quality Inventory Reports to Congress prepared by USEPA showed a trend of impairment in the Nation's waters from contaminated storm water and dry weather urban runoff. The 2004 National Water Quality Inventory (305(b) Report) showed that urban runoff/storm water discharges contribute to the impairment of 22,559 miles of streams, the impairment of 701,024 acres of lakes, and the impairment of 867 square miles of estuaries in the United States. The Natural Resources Defense Council (NRDC) 1999 Report, "Stormwater Strategies, Community Responses to Runoff Pollution" identifies two main causes of the storm water pollution problem in urban areas. Both causes are directly related to development in urban and urbanizing areas:

Increased volume and velocity of surface runoff. There are three types of human-made impervious covers that increase the volume and velocity of runoff: (i) rooftop, (ii) transportation imperviousness, and (iii) non-porous (impervious) surfaces. As these impervious surfaces increase, infiltration will decrease, forcing more water to run off the surface, picking up speed and pollutants.

The concentration of pollutants in the runoff. Certain activities, such as those from industrial sites, are large contributors of pollutant concentrations to the MS4.

The report also identified several activities causing storm water pollution from urban areas, including practices of homeowners, businesses, and government agencies.

Studies conducted by the United States Geological Survey (USGS) confirm the link between urbanization and water quality impairments in urban watersheds due to contaminated storm water runoff.

Furthermore, the water quality impacts of urbanization and urban storm water discharges have been summarized by several other recent USEPA reports. Urbanization causes changes in hydrology and increases pollutant loads which adversely impact water quality and impair the beneficial uses of receiving waters.

Increases in population density and imperviousness result in changes to stream hydrology including:

- increased peak discharges compared to predevelopment levels;
- increased volume of storm water runoff with each storm compared to pre-development levels;
- decreased travel time to reach receiving water;
- increased frequency and severity of floods;
- reduced stream flow during prolonged periods of dry weather due to reduced levels of infiltration;
- increased runoff velocity during storms due to a combination of effects of higher discharge peaks, rapid time of concentration, and smoother hydraulic surfaces from channelization; and
- decreased infiltration and diminished groundwater recharge.

The Los Angeles County MS4 program has conducted monitoring to:

- quantify mass emissions for pollutants;
- identify critical sources for pollutants of concern in storm water;
- evaluate BMP effectiveness; and
- evaluate receiving water impacts, including impacts to tributaries.

The monitoring indicates that instream concentrations of pathogen indicators (fecal coliform and streptococcus), heavy metals (such as Pb, Cu, Zn) and pesticides (such as diazinon) exceed water quality standards. The mass emissions of pollutants to the ocean are significant from the urban WMAs such as the Los Angeles River WMA, Ballona Creek WMA, and Coyote Creek WMA, with the Los Angeles River WMA providing more than seventy percent of the loadings. Critical source data for facilities (such as auto-salvage yards, primary metal facilities, and automotive repair shops) show that total and dissolved heavy metals (Pb, Cu, Zn, and Cd), and total suspended solids (TSS) exceeded water quality standards by as much as two orders of magnitude. The results are consistent with a limited term study conducted by the Regional Water Board to characterize storm water runoff in the Los Angeles region in 1988 before the issuance of first MS4 permit. Storm water runoff data from predominant land uses in Los Angeles County showed similar patterns. Light industrial, commercial and transportation land uses showed the highest range of exceedances. A pesticide (diazinon) was detected in higher concentrations from residential land use. The data for polycyclic aromatic hydrocarbons (PAHs), a known pollutant of concern in urban storm water runoff, is inconclusive but improved analytical methods may yield more definitive results in the future. Receiving water impacts studies found that storm water discharges from urban watersheds exhibit toxicity attributable to heavy metals. Bioassessments of the benthic communities showed bioaccumulation of toxicants. Sediment analysis showed higher concentrations of pollutants, such as Pb and PAHs, in urban watersheds than in rural watersheds (2 to 4 times higher). In addition, toxicity of dry weather flows was observed with the cause of toxicity undetermined. Other studies have documented concentrations of pollutants that exceed water quality standards in storm drains flowing to the ocean during dry weather, and adverse health impacts from swimming near flowing storm drains.

Trash is also a serious and pervasive water quality problem in Los Angeles County. The Regional Water Board has determined that current levels of trash exceed the existing water quality objectives contained in the Basin Plan that are necessary to protect the beneficial uses of many surface waters. Regional Water Board staff regularly observes trash in surface waters throughout the Los Angeles region. Non-profit organizations such as Heal the Bay, Friends of the Los Angeles River (FoLAR) and others organize volunteer clean-ups periodically, and document the amount of trash collected. Trash in waterways causes significant water quality problems. Small and large floatables inhibit the growth of aquatic vegetation, decreasing habitat and spawning areas for fish and other living organisms. Wildlife living in rivers and in riparian areas can be harmed by ingesting or becoming entangled in floating trash. Except for large items, settleables are not always obvious to the eye. They include glass, cigarette butts, rubber, and construction debris, among other things. Settleables can be a problem for bottom feeders and can contribute to sediment contamination. Some debris (e.g. diapers, medical and household waste, and chemicals) are a source of bacteria and toxic substances. Floating debris that is not trapped and removed will eventually end up on the beaches or in the open ocean, keeping visitors away from our beaches and degrading coastal waters. Significant strides have been made by a number of Permittees in addressing this problem through the implementation of control measures to achieve wasteload allocations established in trash TMDLs.

C. Summary of Existing Requirements and Self-Monitoring Report (SMR) Data

The Los Angeles County MS4 Permit was last reissued in 2001 as Order No.01-182. Order No. 01-182 expired in 2006, but has been administratively extended pursuant to federal regulations. Order No. 01-182 was reopened by the Regional Water Board in 2006, 2007 and 2009 to incorporate provisions to implement three TMDLs. It was further amended in 2010 and 2011 pursuant to a peremptory writ of mandate issued by the Los Angeles County Superior Court.

Order No. 01-182 is organized under the following seven parts and includes several attachments. The description below summarizes key permit parts and attachments in Order No. 01-182:

Part 1 – Discharge Prohibitions

As required by section 402(p)(3)(B)(ii) of the Clean Water Act, Part 1 requires permittees to “effectively prohibit non-storm water discharges into the MS4 and watercourses, except where such discharges” are covered by a separate NPDES permit or fall within one of thirteen categories of flows that are conditionally exempted from the discharge prohibition. These exempted flows fall under the general categories of natural flows, fire fighting flows, and flows incidental to urban activities (i.e. landscape irrigation, sidewalk rinsing). These non-storm water flows may be exempted so long as: (i) they are not a source of pollutants, (ii) their effective prohibition is not necessary to comply with TMDL provisions, and (iii) they do not violate antidegradation policies. Part 1 also authorizes the Regional Water Board Executive Officer to impose conditions on these types of discharges and to add or remove categories of conditionally exempted non-storm water discharges based on their potential to contribute pollutants to receiving waters.

Part 2 – Receiving Water Limitations

Part 2 prohibits discharges from the MS4 that cause or contribute to the violation of water quality standards. In addition, discharges from the MS4 of storm water or non-storm water, for which a Permittee is responsible, may not cause or contribute to a condition of nuisance. Part 2.3 states that permittees shall comply with these prohibitions “through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with [the Los Angeles Stormwater Quality Management Program (SQMP)] and its components and other requirements of [the LA County MS4 Permit].” Part 2.3 establishes an “iterative process” whereby certain actions are required when exceedances of water quality standards or objectives occur. This iterative process includes submitting a Receiving Water Limitations Compliance Report; revising the SQMP and its components to include modified BMPs, an implementation schedule and additional monitoring to address the exceedances; and implementing the revised SQMP. These provisions are consistent with the receiving water limitations language required by State Water Board Order WQ 99-05.

Part 2 also includes provisions implementing the Marina del Rey Harbor Mothers’ Beach and Back Basins Bacteria TMDL (summer dry weather provisions only). During summer dry weather, Part 2.6 prohibits discharges of bacteria from MS4s into Marina del Rey Harbor Basins D, E, or F, including Mothers’ Beach that cause or contribute to exceedance of the applicable bacteria water quality objectives.

Part 2 also included similar TMDL provisions relating to the Santa Monica Bay summer dry weather bacteria TMDL. However, as a result of a legal challenge by Los Angeles County and the LACFCD, the Regional Water Board was required to void and set aside those provisions, which the Regional Water Board did in 2011.

Part 3 – Stormwater Quality Management Program (SQMP) Implementation

Under Part 3, each Permittee shall, at a minimum, implement the SQMP, which is an enforceable element of the Los Angeles County MS4 Permit. The SQMP, at a minimum, shall also comply with the applicable storm water program requirements of 40 CFR section 122.26(d)(2). The SQMP and its components shall be implemented so as to reduce the discharges of pollutants in storm water to the maximum extent practicable (MEP) and effectively prohibit non-storm water discharges to the MS4. Each Permittee shall also implement additional controls, where necessary, to reduce the discharge of pollutants from the MS4.

Part 3 also sets forth specific responsibilities of the Principal Permittee, which under Order No. 01-182 is the LACFCD, and co-permittees. In addition, Part 3 sets forth requirements for Watershed Management Committees (WMCs) which, among other tasks, prioritize pollution control efforts and evaluate the effectiveness of and recommend changes to the SQMP and its components. Each Permittee must also have the necessary legal authority to prohibit non-storm water discharges to the MS4, as well as possess adequate legal authority to develop and enforce storm water and non-storm water ordinances for its jurisdiction.

Part 4 – Special Provisions

Part 4 sets forth provisions for public information and participation, industrial/commercial facilities control program, development planning, development construction, public agency activities, and illicit connections and illicit discharges elimination. These programs are termed “minimum control measures” and have been in place since the inception of the MS4 NPDES permitting program, as required by federal regulations.

Part 5 – Definitions

Part 5 includes definitions for terms used within Order No. 01-182.

Part 6 – Standard Provisions

Part 6 includes standard provisions relating to implementation of the programs required by the permit. Such provisions include, but are not limited to, the duty to comply, the duty to mitigate, inspection and entry requirements, proper operation and maintenance requirements, monitoring and reporting requirements, and the duty to provide information. Most of these provisions are required by 40 CFR sections 122.41 or 122.42 and apply to all NPDES permits.

Part 7 – TMDL Provisions

In 2009, Order No. 01-182 was amended to include provisions that are consistent with the assumptions and requirements of waste load allocations from the Los Angeles River Trash TMDL. Appendix 7-1 identifies the permittees subject to the Los Angeles River Trash TMDL and sets forth the interim and final numeric effluent limitations for trash that the permittees must comply with. Part 7 also sets forth how permittees can demonstrate compliance with the numeric effluent limitations. Permittees have the option to employ three general compliance strategies to achieve the numeric effluent limitations. Depending on the strategy selected, the Permittee may demonstrate compliance either by documenting the percentage of its area addressed by full capture systems (“action-based” demonstration) or by calculating its annual trash discharge to the MS4 and comparing that to its effluent limitation. This approach allows the Permittee the flexibility to comply with the numeric effluent limitations using any lawful means, and establishes appropriate and enforceable compliance metrics depending on the method of compliance and level of assurance provided by the Permittee that the selected method will achieve the numeric effluent limitations derived from the TMDL WLAs.

Attachment U – Monitoring and Reporting Program

Order No. 01-182 has both self-monitoring and public reporting requirements, which include: (1) monitoring of “mass emissions” at seven mass emission monitoring stations; (2) Water Column Toxicity Monitoring; (3) Tributary Monitoring; (4) Shoreline Monitoring; (5) Trash Monitoring; (6) Estuary Sampling; (7) Bioassessment; and (8) Special Studies. The purpose of mass emissions monitoring is to: (1) estimate the mass emissions from the MS4; (2) assess trends in the mass emissions over time; and (3) determine if the MS4 is contributing to exceedances of water quality standards by comparing results to the applicable standards in the Basin Plan. Order No. 01-182 established that the Principal Permittee shall monitor the mass emissions stations. The permit required mass emission sampling five times per year.

III. APPLICABLE STATUTES, REGULATIONS, PLANS, AND POLICIES

The provisions contained in this Order are based on the requirements and authorities described below.

A. Legal Authorities – Federal Clean Water Act and California Water Code

This Order is issued pursuant to section 402 of the federal Clean Water Act (CWA) and implementing regulations adopted by the USEPA and chapter 5.5, division 7 of the California Water Code (commencing with section 13370). It serves as an NPDES permit for point source discharges from this facility to surface waters. This Order also serves as Waste Discharge Requirements (WDRs) pursuant to article 4, chapter 4, division 7 of the California Water Code (commencing with section 13260).

B. Federal and California Endangered Species Acts

This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code, §§ 2050 to 2115.5) or the Federal Endangered Species Act (16 U.S.C.A., §§ 1531 to 1544). This Order requires compliance with requirements to protect the beneficial uses of waters of the United States. Permittees are responsible for meeting all requirements of the applicable Endangered Species Act.

C. California Environmental Quality Act (CEQA)

This action to adopt an NPDES Permit is exempt from the provisions of Chapter 3 of the California Environmental Quality Act (CEQA) (Public Resources Code, § 21100, et seq.) pursuant to California Water Code section 13389. (*County of Los Angeles v. Cal. Water Boards* (2006) 143 Cal.App.4th 985.)

D. State and Federal Regulations, Policies, and Plans

1. Water Quality Control Plans. The CWA requires the Regional Water Board to establish water quality standards for each water body in its region. Water quality standards include beneficial uses, water quality objectives and criteria that are established at levels sufficient to protect those beneficial uses, and an antidegradation policy to prevent degrading waters. On June 13, 1994, the Regional Water Board adopted a *Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties* (hereinafter Basin Plan). 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 Los Angeles Region. The Regional Water Board has amended the Basin Plan on multiple occasions since 1994. 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 supply. Beneficial uses applicable to the surface water bodies that receive discharges from the Los Angeles County MS4 generally include those listed below:

Table F-3. Basin Plan Beneficial Uses

| Discharge Point | Receiving Water Name | Beneficial Use(s) |
|--|---|---|
| All Municipal Separate Storm Sewer Systems (MS4s) discharge points within the coastal watersheds of Los Angeles County with the exception of those originating in the City of Long Beach | Multiple surface water bodies of the Los Angeles Region | Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Industrial Process Supply (PROC); Ground Water Recharge (GWR); Freshwater Replenishment (FRSH); Navigation (NAV); Hydropower Generation (POW); Water Contact Recreation (REC-1); Limited Contact Recreation (LREC-1); Non-Contact Water Recreation (REC-2); Commercial and Sport Fishing (COMM); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Preservation of Areas of Special Biological Significance (BIOL); Wildlife Habitat (WILD); Preservation of Rare and Endangered Species (RARE); Marine Habitat (MAR); Wetland Habitat (WET); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN); Shellfish Harvesting (SHELL) |

Pursuant to California Water Code sections 13263(a) and 13377, the requirements of this Order implement the Basin Plan.

a. Permit Structure: Watershed Management Approach and Total Maximum Daily Load (TMDL) Implementation

One of the fundamental issues for this Order was a reconsideration of the basic permit structure. The previous Order, Order No. 01-182, was structured as a single permit whereby all 86 Permittees were assigned uniform requirements, with additional requirements for the Principal Permittee. Through Order No. 01-182, the Regional Water Board began to implement a Watershed Management Approach to address water quality protection in the region. The Watershed Management Approach intended to provide a comprehensive and integrated strategy toward water resource protection, enhancement, and restoration while considering economic and environmental impacts within a hydrologically defined drainage basin or watershed.

On June 12, 2006, prior to the expiration date of Order No. 01-182, all of the Permittees filed Reports of Waste Discharge (ROWD) applying for renewal of their waste discharge requirements. Specifically, the Los Angeles County Flood Control District submitted an ROWD application on behalf of itself, the County of Los Angeles, and 78 other Permittees. Several Permittees under Order No. 01-182 elected to not be included as part of the Los Angeles County Flood Control District’s ROWD. On June 12, 2006, the cities of Downey and Signal Hill each submitted an individual ROWD application requesting an individual MS4 permit; and the Upper San Gabriel River Watershed Coalition (comprised of the cities of Azusa, Claremont, Glendora, Irwindale, and Whittier) also submitted an individual ROWD application requesting a separate MS4 permit for these cities. In 2010, the LACFCD withdrew from its 2006 ROWD and submitted a new ROWD also

requesting an individual MS4 permit. The LACFCD also requested that it no longer be designated as the Principal Permittee and that it is relieved of Principal Permittee responsibilities.

The Regional Water Board evaluated each of the 2006 ROWDs and notified all of the Permittees that their ROWDs did not satisfy federal storm water regulations contained in the USEPA Interpretive Policy Memorandum on Reapplication Requirements for Municipal Separate Storm Sewer Systems; Final Rule, August 9, 1996 (61 *Fed Reg.* 41697). The Regional Water Board also found that the information presented in the ROWDs did not reflect the current status of program elements for MS4 permits developed over the past decade or the new information specific to this MS4. Because each ROWD did not satisfy federal requirements, the Regional Water Board deemed all four 2006 ROWDs incomplete. The Regional Water Board also evaluated the LACFCD's 2010 ROWD and found that it too did not satisfy federal requirements nor reflect the current status for MS4s.

Though five separate ROWDs were submitted, the Regional Water Board retains the discretion as the permitting authority to determine whether to issue permits for discharges from MS4s on a system-wide or jurisdiction-wide basis. Clean Water Act section 402(p)(3)(B)(i) and implementing regulations at 40 CFR section 122.26, subdivisions (a)(1)(v), (a)(3)(ii), and (a)(3)(iv) allow the permitting authority to issue permits for MS4 discharges on a system-wide or jurisdiction-wide basis taking into consideration a variety of factors. Such factors include the location of the discharge with respect to waters of the United States, the size of the discharge, the quantity and nature of the pollutants discharged to waters of the United States, and other relevant factors. Federal regulations at 40 CFR section 122.26(a)(3)(ii) identify a variety of possible permitting structures, including one system-wide permit covering all MS4 discharges or distinct permits for appropriate categories of MS4 discharges including, but not limited to, all discharges owned or operated by the same municipality, located within the same jurisdiction, all discharges within a system that discharge to the same watershed, discharges within a MS4 that are similar in nature, or for individual discharges from MS4s.

In evaluating the five separate ROWDs and the structure for this Order, the Regional Water Board considered a number of factors:

- i. The nature of the Permittees' MS4s, which comprise a large interconnected system, controlled in large part by the Los Angeles County Flood Control District, among others, and used by multiple cities along with Los Angeles County. The discharges from these entities frequently commingle in the MS4 prior to discharge to receiving waters.
- ii. The requirement to implement 33 largely watershed-based TMDLs in this Order. A number of Permittees have already established jurisdictional groups on a watershed or subwatershed basis for TMDL implementation. (See Attachment K of this Order for a matrix of these TMDLs and Permittees by

Watershed Management Area (WMA)). Many of the TMDLs apply to multiple watersheds and the jurisdictional areas of multiple Permittees. Having separate permits would make implementation of the TMDLs more cumbersome.

- iii. The passage of Assembly Bill 2554 in 2010, which amended the Los Angeles County Flood Control Act. This statute allows the LACFCD to assess a property-related fee or charge for storm water and clean water programs. Funding is subject to voter approval in accordance with Proposition 218. Fifty percent of funding is allocated to nine “watershed authority groups” to implement collaborative water quality improvement plans. (See Attachments B and C of this Order for maps of WMAs.)
- iv. Results of the on-line survey administered to Permittees by Regional Water Board staff regarding permit structure. The results indicated that a majority of Permittees support a single MS4 permit for Los Angeles County. A significant minority support multiple watershed-based permits. Overall, 85 percent of the permittees that responded to the on-line survey support either a single MS4 permit or several individual watershed-based permits. A small number of permittees support alternative groupings of adjacent municipalities instead of watershed-based groupings. Only four permittees expressed a preference for individual MS4 permits.
- v. The 2006 and 2010 ROWDs. Eight Permittees submitted individual or small group ROWDs, including the cities of Signal Hill and Downey; five cities in the upper San Gabriel River watershed; and the Los Angeles County Flood Control District. The LACFCD has also requested that it is no longer designated as Principal Permittee and relieved of Principal Permittee responsibilities.

Based on an evaluation of these factors, the Regional Water Board again determined that, because of the complexity and networking of the MS4 within Los Angeles County, that one system-wide permit is appropriate. In order to provide individual Permittees with more specific requirements, this Order regulates the MS4 discharges of 86 Permittees with some sections devoted to universal requirements for all Permittees and others devoted to requirements specific to each Watershed Management Area (WMA), including TMDL implementation provisions. This structure is supported by section 402(p) of the Clean Water Act and 40 CFR sections 122.26, subdivisions (a)(1)(v), (a)(3)(ii), and (a)(3)(iv). A single permit will ensure consistency and equitability in regulatory requirements within Los Angeles County, while watershed-based sections within the single permit will provide flexibility to tailor permit provisions to address distinct watershed characteristics and water quality issues. Additionally, an internal watershed-based structure comports with the Regional Water Board’s Watershed Management Initiative, its watershed-based TMDL requirements, and the LACFCD’s funding initiative passed in Assembly Bill 2554. Watershed-based sections will help promote watershed-wide solutions to address water quality problems, which in many cases are the most efficient and cost-effective means to address storm water and urban runoff pollution. Further, watershed-based

sections may encourage collaboration among permittees to implement regional integrated water resources approaches such as storm water capture and re-use to achieve multiple benefits.

The Regional Water Board determined that the cities of Signal Hill and Downey, the five upper San Gabriel River cities, and the LACFCD are included as Permittees in this Order. In making that determination, the Regional Water Board distinguished between the permitting status of those cities and the permitting status of the City of Long Beach at this time because the City of Long Beach has a proven track record in implementing an individual permit and developing a robust monitoring program under that individual permit, as well as in cooperation with other MS4 dischargers on watershed based implementation. While all other incorporated cities with discharges within the coastal watersheds of Los Angeles County, as well as Los Angeles County and the Los Angeles County Flood Control District, are permitted under this Order, individually tailored permittee requirements are provided in this Order, where appropriate.

The Regional Water Board also determined that because the LACFCD owns and operates large portions of the MS4 infrastructure, including but not limited to catch basins, storm drains, outfalls and open channels, in each coastal watershed management area within Los Angeles County, the LACFCD should remain a Permittee in the single-system wide permit; however, this Order relieves LACFCD of its role and responsibilities as Principal Permittee. Additionally, given the LACFCD's limited land use authority, it is appropriate for the LACFCD to have a separate and uniquely-tailored storm water management program. Accordingly, the storm water management program minimum control measures imposed on the LACFCD in Part VI.D of this Order differ in some ways from the minimum control measures imposed on other Permittees. Namely, aside from its own properties and facilities, the LACFCD is not subject to the Industrial/Commercial Facilities Program, the Planning and Land Development Program, and the Development Construction Program. However, as a discharger of storm and non-storm water, the LACFCD remains subject to the Public Information and Participation Program and the Illicit Connections and Illicit Discharges Elimination Program. Further, as the owner and operator of certain properties, facilities and infrastructure, the LACFCD remains subject to requirements of a Public Agency Activities Program.

- 2. Ocean Plan.** In 1972, the State Water Board adopted the Water Quality Control Plan for Ocean Waters of California, California Ocean Plan (hereinafter Ocean Plan). The State Water Board adopted the most recent amended Ocean Plan on September 15, 2009. The Office of Administration Law approved it on March 10, 2010. On October 8, 2010, USEPA approved the 2009 Ocean Plan. The Ocean Plan is applicable, in its entirety, to ocean waters of the State. In order to protect beneficial uses, the Ocean Plan establishes water quality objectives and a program of implementation. Pursuant to California Water Code sections 13263(a) and 13377, the requirements of this Order implement the Ocean Plan. The Ocean Plan identifies beneficial uses of ocean waters of the State to be protected as summarized below:

Table F-3B. Ocean Plan Beneficial Uses

| Discharge Point | Receiving Water Name | Beneficial Use(s) |
|--|----------------------|--|
| All Municipal Separate Storm Sewer Systems (MS4s) discharge points within the coastal watersheds of Los Angeles County with the exception of those originating within the City of Long Beach | Pacific Ocean | Industrial Water Supply (IND); Water Contact (REC-1) and Non-Contact Recreation (REC-2), including aesthetic enjoyment; Navigation (NAV); Commercial and Sport Fishing (COMM); Mariculture; Preservation and Enhancement of Designated Areas of Special Biological Significance (ASBS); Rare and Endangered Species (RARE); Marine Habitat (MAR); Fish Migration (MIGR); Fish Spawning (SPWN) and Shellfish Harvesting (SHELL) |

3. Antidegradation Policy. 40 CFR section 131.12⁴ requires that the state water quality standards include an antidegradation policy consistent with the federal antidegradation policy. The State Water Board established California’s antidegradation policy in State Water Board Resolution No. 68-16 (“Statement of Policy with Respect to Maintaining the Quality of the Waters of the State”). Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. The Regional Water Board’s Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. Resolution No. 68-16 and 40 CFR section 131.12 require the Regional Water Board to maintain high quality waters of the State unless degradation is justified based on specific findings. First, the Board must ensure that “existing instream uses and the level of water quality necessary to protect the existing uses” are maintained and protected. Second, if the baseline quality of a water body for a given constituent exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected through the requirements of the Order unless the Board makes findings that (1) any lowering of the water quality is necessary to accommodate important economic or social development in the area in which the waters are located; (2) water quality adequate to protect existing uses fully is assured; and (3) the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control are achieved. The Board must also comply with any requirements of State Water Board Resolution No. 68-16 beyond those imposed through incorporation of the federal antidegradation policy. In particular, the Board must find that not only present, but also anticipated future uses of water are protected, and must ensure best practicable treatment or control of the discharges. The baseline quality considered in making the appropriate findings is the best quality of the water since 1968, the year of the adoption of Resolution No. 68-16, or a lower

⁴ All further statutory references are to title 40 of the Code of Federal Regulations unless otherwise indicated.

level if that lower level was allowed through a permitting action that was consistent with the federal and state antidegradation policies.

The discharges permitted in this Order are consistent with the antidegradation provisions of 40 CFR section 131.12 and Resolution 68-16 as set out in the Findings below:

- a. Many of the waters within the area covered by this Order are impaired for multiple pollutants discharged through MS4s and are not high quality waters with regard to these pollutants. In most cases, there is insufficient data to determine whether these water bodies were impaired as early as 1968, but the limited available data shows impairment dating back for more than two decades. Many such water bodies are listed on the State's CWA Section 303(d) List and either the Regional Water Board or USEPA has established TMDLs to address the impairments. This Order ensures that existing instream (beneficial) water uses and the level of water quality necessary to protect the existing uses is maintained and protected. This Order requires the Permittees to comply with permit provisions to implement the WLAs set forth in the TMDLs in order to restore the beneficial uses of the impaired water bodies consistent with the assumptions and requirements of the TMDLs. This Order further requires compliance with receiving water limitations to meet water quality standards in the receiving water either by demonstrating compliance pursuant to Part V.A and the Permittee's monitoring and reporting program pursuant to Part VI.B or by implementing Watershed Management Programs/EWMPs with a compliance schedule. This Order includes requirements to develop and implement storm water management programs, achieve water quality-based effluent limitations, and effectively prohibit non-storm water discharges through the MS4.
- b. To the extent that some of the water bodies within the jurisdiction are high quality waters with regard to some constituents, this Order finds as follows:
 - i. Allowing limited degradation of high quality water bodies through MS4 discharges is necessary to accommodate important economic or social development in the area and is consistent with the maximum benefit to the people of the state. The discharge of storm water in certain circumstances is to the maximum benefit to the people of the state because it can assist with maintaining instream flows that support beneficial uses, may spur the development of multiple-benefit projects, and may be necessary for flood control, and public safety as well as to accommodate development in the area. The alternative – capturing all storm water from all storm events – would be an enormous opportunity cost that would preclude MS4 permittees from spending substantial funds on other important social needs. The Order ensures that any limited degradation does not affect existing and anticipated future uses of the water and does not result in water quality less than established standards. The Order requires compliance with receiving water limitations that act as a floor to any limited degradation.

- ii. The Order requires the highest statutory and regulatory requirements and requires that the Permittees meet best practicable treatment or control. The Order prohibits all non-storm water discharges, with a few enumerated exceptions, through the MS4 to the receiving waters. As required by 40 CFR section 122.44(a), the Permittees must comply with the “maximum extent practicable” technology-based standard set forth in CWA section 402(p), and implement extensive minimum control measures in a storm water management program. Recognizing that best practicable treatment or control may evolve over time, the Order includes new and more specific requirements as compared to Order No. 01-182. The Order incorporates options to implement Watershed Management Programs or EWMPs that must specify concrete and detailed structural and non-structural storm water controls that must be implemented in accordance with an approved time schedule. The Order contains provisions to encourage, wherever feasible, retention of the storm water from the 85th percentile 24-hour storm event.

4. Anti-Backsliding Requirements. Sections 402(o)(2) and 303(d)(4) of the CWA and federal regulations at 40 CFR section 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. While this Order allows implementation of Watershed Management Plans/EWMPs to constitute compliance with receiving water limitations under certain circumstances, the availability of that alternative and the corresponding availability of additional time to come into compliance with receiving water limitations, does not violate the anti-backsliding provisions. The receiving water limitations provisions of this Order are imposed under section 402(p)(3)(B) of the Clean Water Act rather than based on best professional judgment, or based on section 301(b)(1)(C) or sections 303(d) or (e), and are accordingly not subject to the anti-backsliding requirements of section 402(o). Although the non-applicability is less clear with respect to the regulatory anti-backsliding provisions in 40 Code of Federal Regulations section 122.44(l), the regulatory history suggests that USEPA’s intent was to establish the anti-backsliding regulations with respect to evolving technology standards for traditional point sources. (See, e.g., 44 Fed.Reg. 32854, 32864 (Jun. 7, 1979)). It is unnecessary, however, to resolve the ultimate applicability of the regulatory anti-backsliding provisions, because the WMP/EWMP provisions qualify for an exception to backsliding as based on new information. The Watershed Management Plan/EWMP provisions of this Order were informed by new information available to the Board from experience and knowledge gained through the process of developing 33 watershed-based TMDLs and implementing several of the TMDLs since the adoption of the previous permit. In particular, the Board recognized the significance of allowing time to plan, design, fund, operate and maintain watershed-based BMPs necessary to attain water quality improvements and additionally recognized the potential for municipal storm water to benefit water supply. Thus, even if the

receiving water limitations are subject to anti-backsliding requirements, they were revised based on new information that would support an exception to the anti-backsliding provisions. (33 U.S.C. § 1342(o)(2)(B)(i); 40 C.F.R. § 122.44(l)(1); 40 C.F.R. §122.44(l)(2)(i)(B)(1)).

E. Impaired Water Bodies on CWA section 303(d) List

Section 303(d)(1) of the CWA requires each state to identify specific water bodies within its boundaries where water quality standards are not being met or are not expected to be met after implementation of technology-based effluent limitations on point sources. Water bodies that do not meet water quality standards are considered impaired and are placed on the state's "303(d) List". Periodically, USEPA approves the State's 303(d) List. Most recently, USEPA approved the State's 2010 303(d) List of impaired water bodies on October 11, 2011, which includes certain receiving waters in the Los Angeles region. For each listed water body, the state or USEPA is required to establish a total maximum daily load (TMDL) of each pollutant impairing the water quality standards in that water body. A TMDL is a tool for implementing water quality standards and is based on the relationship between pollution sources and in-stream water quality conditions. The TMDL establishes the allowable pollutant loadings for a water body and thereby provides the basis to establish water quality-based controls. These controls should provide the pollution reduction necessary for a water body to meet water quality standards. A TMDL is the sum of the allowable pollutant loads of a single pollutant from all contributing point sources (the waste load allocations or WLAs) and non-point sources (load allocations or LAs), plus the contribution from background sources and a margin of safety. (40 CFR section 130.2(i).) MS4 discharges are considered point source discharges. For 303(d)-listed water bodies and pollutants in the Los Angeles Region, the Regional Water Board or USEPA develops and adopts TMDLs that specify these requirements.

Over the last decade, the Regional Water Board and USEPA have established 33 TMDLs to remedy water quality impairments in various water bodies within Los Angeles County. (See Attachment K of this Order for a list of TMDLs by Watershed Management Area for Los Angeles County.) These TMDLs identify MS4 discharges as a source of pollutants to these water bodies and, as required, establish WLAs for MS4 discharges to reduce the amount of pollutants discharged to receiving waters. Section 402(p)(3)(B)(iii) of the Clean Water Act requires the Regional Water Board to impose permit conditions, including: "management practices, control techniques and system, design and engineering methods, and *such other provisions as the Administrator of the State determines appropriate for the control of such pollutants.*" (emphasis added.) Section 402(a)(1) of the Clean Water Act also requires states to issue permits with conditions necessary to carry out the provisions of the Clean Water Act. Federal regulations also require that NPDES permits contain effluent limits consistent with the assumptions and requirements of all available WLAs (40 CFR § 122.44(d)(1)(vii)(B)). California Water Code section 13377 also requires that NPDES permits include limitations necessary to implement water quality control plans. Therefore, this Order includes effluent limitations and other provisions to implement the TMDL WLAs assigned to permittees regulated by the LA County MS4 Permit.

The Regional Water Board has previously established numeric effluent limitations to implement TMDL WLAs when it reopened Order No. 01-182 in 2009 to incorporate permit provisions to implement the Los Angeles River Watershed Trash TMDL WLAs. In that case, Permittees have the option to employ three general compliance strategies to achieve the numeric effluent limitations. Depending on the strategy selected, the Permittee may demonstrate compliance either by documenting the percentage of its area addressed by full capture systems (“action-based” demonstration) or by calculating its annual trash discharge to the MS4 and comparing that to its effluent limitation. This approach allows the Permittee the flexibility to comply with the numeric effluent limitations using any lawful means, and establishes appropriate and enforceable compliance metrics depending on the method of compliance and level of assurance provided by the Permittee that the selected method will achieve the numeric effluent limitations derived from the TMDL WLAs. A similar approach is used for the 32 other TMDLs incorporated into this Order, where appropriate.

F. Other Plans, Policies and Regulations

This Order implements all other applicable federal regulations and State plans, policies and regulations, including the California Toxics Rule at 40 CFR section 131.38.

IV. RATIONALE FOR DISCHARGE SPECIFICATIONS

A. Discharge Prohibitions – Non-Storm Water Discharges

1. Regulatory Background

The CWA employs the strategy of prohibiting the discharge of any pollutant from a point source into waters of the United States unless the discharger of the pollutant(s) obtains an NPDES permit pursuant to CWA section 402. The 1987 amendment to the CWA included section 402(p) that specifically addresses NPDES permitting requirements for municipal discharges from MS4s. Section 402(p) prohibits the discharge of pollutants from specified MS4s to waters of the United States except as authorized by an NPDES permit and identifies the substantive standards for MS4 permits. MS4 permits (1) “shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers[]” and (2) “shall require [i] controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and [ii] such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.” (CWA § 402(p)(3)(B)(ii-iii).)

On November 16, 1990, USEPA published regulations to implement the 1987 amendments to the CWA. (55 Fed.Reg. 47990 et seq. (Nov. 16, 1990)). The regulations establish minimum requirements for MS4 permits. The regulations address both storm water and non-storm water discharges from MS4s; however, the minimum requirements for each are significantly different. This is evident from USEPA’s preamble to the storm water regulations, which states that “Section 402(p)(B)(3) [of the CWA] requires that permits for discharges from municipal separate storm sewers require the municipality to “effectively prohibit” non-storm water discharges from the municipal storm sewer ... Ultimately, such non-storm

water discharges through a municipal separate storm sewer system must either be removed from the system or become subject to an NPDES permit.” (55 Fed.Reg. 47990, 47995 (Nov. 16, 1990)).⁵ USEPA states that MS4 Permittees are to begin to fulfill the “effective prohibition of non-storm water discharges” requirement by: (1) conducting a screening analysis of the MS4 to provide information to develop priorities for a program to detect and remove illicit discharges, (2) implementing a program to detect and remove illicit discharges, or ensure they are covered by a separate NPDES permit, and (3) to control improper disposal into the storm sewer. (40 CFR § 122.26(d)(2)(iv)(B).) These non-storm water discharges therefore are not subject to the MEP standard.

“Illicit discharges” defined in the regulations is the most closely applicable definition of “non-storm water” contained in federal law and the terms are often used interchangeably. In fact, “illicit discharge” is defined by USEPA in its 1990 rulemaking, as “any discharge through a municipal separate storm sewer that is not composed entirely of storm water and that is not covered by an NPDES permit [other than the permit for the discharge from the MS4].” (55 Fed.Reg. 47990, 47995).

2. Definition of Storm Water and Non-Storm Water

Federal regulations define “storm water” as “storm water runoff, snow melt runoff, and surface runoff and drainage.” (40 C.F.R. § 122.26(b)(13).) While “surface runoff and drainage” is not defined in federal law, USEPA’s preamble to the federal regulations demonstrates that the term is related to precipitation events such as rain and/or snowmelt. (55 Fed.Reg. 47990, 47995-96 (Nov. 16, 1990)). For example, USEPA states:

In response to the comments [on the proposed rule] which requested EPA to define the term ‘storm water’ broadly to include a number of classes of discharges which are not in any way related to precipitation events, EPA believes that this rulemaking is not an appropriate forum for addressing the appropriate regulation under the NPDES program of such non-storm water discharges Consequently, the final definition of storm water has not been expanded from what was proposed.

(*Ibid.*) The storm water regulations themselves identify numerous categories of discharges including landscape irrigation, diverted stream flows, discharges from drinking water supplier sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, and street wash water as “non-storm water.” While these types of discharges may be regulated under storm water permits, they are not considered storm water discharges. (40 CFR § 122.26(d)(2)(iv)(B)). USEPA states that, “in general, municipalities will not be held responsible for prohibiting some specific components of discharges or flows ... through their municipal separate storm sewer system, *even though such components may be considered non-storm water discharges...*” (emphasis added). However, where certain categories of non-storm water discharges are identified by

⁵ USEPA further states that, “[p]ermits for such [non-storm water] discharges must meet applicable technology-based and water-quality based requirements of Sections 402 and 301 of the CWA.” (55 Fed. Reg. 47990, 48037 (Nov. 16, 1990)).

the Permittee (or the Regional Water Board) as needing to be addressed, they are no longer exempt and become subject to the effective prohibition requirement in CWA section 402(p)(3)(B)(ii). This review of the storm water regulations and USEPA's discussion of the definition of storm water in its preamble to these regulations strongly supports the interpretation that storm water includes only precipitation-related discharges. Therefore, non-precipitation related discharges are not storm water discharges and, therefore, are not subject to the MEP standard in CWA section 402(p)(3)(B)(iii). Rather, non-storm water discharges shall be effectively prohibited pursuant to CWA section 402(p)(3)(B)(ii).

3. Non-Storm Water Regulation

Non-storm water discharges from the MS4 that are not authorized by separate NPDES permits, nor specifically exempted, are subject to requirements under the NPDES program, including discharge prohibitions, technology-based effluent limitations and water quality-based effluent limitations (40 CFR § 122.44). USEPA's preamble to the storm water regulations also supports the interpretation that regulation of non-storm water discharges through an MS4 is not limited to the MEP standard in CWA section 402(p)(3)(B)(iii):

"Today's rule defines the term "illicit discharge" to describe any discharge through a municipal separate storm sewer system that is not composed entirely of storm water and that is not covered by an NPDES permit. Such illicit discharges are not authorized under the Clean Water Act. Section 402(p)(3)(B) requires that permits for discharges from municipal separate storm sewers require the municipality to "effectively prohibit" non-storm water discharges from the municipal separate storm sewer...Ultimately, such non-storm water discharges through a municipal separate storm sewer must either be removed from the system or become subject to an NPDES permit." (55 Fed.Reg. 47990, 47995.)

In its 1990 rulemaking, USEPA explained that the illicit discharge detection and elimination program requirement was intended to begin to implement the Clean Water Act's provision requiring permits to "effectively prohibit non-storm water discharges." (55 Fed.Reg. 47990, 47995.)

4. Authorized and Conditionally Exempt Non-Storm Water Discharges

The previous permit, Order No. 01-182, contained provisions exempting several categories of non-storm water discharges from the discharge prohibition, including discharges covered by a separate individual or general NPDES permit for non-storm water discharges, natural flows, flows from emergency fire fighting activity, and flows incidental to urban activities. This Order retains these same categories, but with several enhancements. Natural flows specified in this Order include natural springs and rising ground water; flows from riparian habitats and wetlands; diverted stream flows authorized by the State or Regional Water Board; and uncontaminated ground water infiltration. Flows incidental to urban activities specified in this Order include landscape irrigation; dechlorinated/debrominated swimming pool discharges; dewatering of lakes and decorative fountains; non-commercial car washing by

residents or by non-profit organizations; and street/sidewalk washwater. This Order separately identifies flows from non-emergency fire fighting activities and discharges from drinking water supplier distribution systems as “essential” non-storm water discharges rather than combining them into the same category as the other non-storm water discharges incidental to urban activities. In doing so, the Regional Water Board recognizes that these discharges are essential public service discharge activities and are directly or indirectly required by other state or federal statute and/or regulation. This Order continues to unconditionally exempt emergency fire fighting discharges from the discharge prohibition.

Like Order No. 01-182, this Order contains a provision that the Regional Water Board Executive Officer may add or remove categories of exempt non-storm water discharges. In addition, in the event that any of the categories of non-storm water discharges are determined to be a source of pollutants by the Executive Officer then the discharges will no longer be exempt unless the Permittee implements conditions approved by the Executive Officer to ensure that the discharge is not a source of pollutants. Also the Executive Officer may impose additional prohibitions of non-storm water discharges in consideration of antidegradation policies and TMDLs.

5. BMPs for Non-Storm Water Discharges

In this Order, no changes have been made to the types of non-storm water discharges included in the non-storm water discharge prohibition exemptions, with one exception related to temporary discharges authorized by USEPA pursuant to sections 104(a) or 104(b) of CERCLA. However, the non-storm water discharge provisions in this Order have been reworded to clarify the requirements for addressing authorized and conditionally exempt non-storm water discharges that are not prohibited. In particular, language has been added to explicitly identify State and Regional Water Board permits that are applicable to some of the exempted non-storm water discharges. The State and Regional Water Board general permits referenced in this Order and their applicability to the different types of non-storm water discharges that are routinely discharged through the MS4 is contained in Table F-4 below.

Table F-4. State and Regional Water Board General Permits Referenced in this Permit

| Order/NPDES Permit No. | Applicable Types of Discharges |
|--|--|
| NPDES Permit No. CAG994003 – Discharges of Nonprocess Wastewater to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties | <ul style="list-style-type: none"> • Ground water seepage • Uncontaminated pumped ground water • Gravity flow from foundation drains, footing drains, and crawl space pumps • Air conditioning condensate • Discharges of cleaning wastewater and filter backwash |

| Order/NPDES Permit No. | Applicable Types of Discharges |
|---|---|
| NPDES Permit No. CAG994004 – Discharges of Groundwater from Construction and Project Dewatering to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties | <ul style="list-style-type: none"> • Uncontaminated pumped ground water • Discharges from activities that occur at wellheads, such as well construction, well development (e.g., aquifer pumping tests, well purging), or major well maintenance • Gravity flow from foundation drains, footing drains, and crawl space pumps • Discharges of ground water from construction and project dewatering⁶ |
| NPDES Permit No. CAG990002 – Discharges from Utility Vaults and Underground Structures to Surface Waters | <ul style="list-style-type: none"> • Uncontaminated pumped ground water • Gravity flow from foundation drains, footing drains, and crawl space pumps |
| NPDES Permit No. CAG674001 – Discharges From Hydrostatic Test Water to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties | <ul style="list-style-type: none"> • Discharges of low threat hydrostatic test water⁷ |
| NPDES Permit No. CAG914001 – Discharges of Treated Groundwater from Investigation and/or Cleanup of Volatile Organic Compounds Contaminated-Sites to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties | <ul style="list-style-type: none"> • Discharges of treated ground water from investigation and/or cleanup of volatile organic compound (VOC) contaminated sites |
| NPDES Permit No. CAG994005 – Discharges of Ground Water from Water Supply Wells to Surface Waters in Los Angeles and Ventura Counties | <ul style="list-style-type: none"> • Discharges of ground water from potable water supply wells⁸ |

⁶ Discharges of ground water from construction and project dewatering include treated or untreated wastewater from permanent or temporary construction dewatering operations; ground water pumped as an aid in the containment and/or cleanup of a contaminant plume; ground water extracted during short-term and long-term pumping/aquifer tests; ground water generated from well drilling, construction or development and purging of wells; equipment decontamination water; subterranean seepage dewatering; incidental collected storm water from basements; and other process and non-process wastewater discharges that meet the eligibility criteria and could not be covered under another specific general NPDES permit.

⁷ Low threat hydrostatic test water means discharges resulting from the hydrostatic testing or structural integrity testing of pipes, tanks, or any storage vessels using domestic water or from the repair and maintenance of pipes, tanks, or reservoirs.

⁸ Discharges covered by this permit include ground water from potable water supply wells generated during the following activities: ground water generated during well purging for data collection purposes; ground water extracted from major well rehabilitation and redevelopment activities; and ground water generated from well drilling, construction, and development.

| Order/NPDES Permit No. | Applicable Types of Discharges |
|--|--|
| NPDES Permit No. CAG834001 – Waste Discharge Requirements for Treated Groundwater and Other Wastewaters from Investigation and/or Cleanup of Petroleum Fuel- Contaminated Sites to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties | <ul style="list-style-type: none"> • Discharges of treated ground water and other waste waters from investigation and/or cleanup of petroleum fuel contaminated sites |

This Order explicitly adds another category of authorized non-storm water discharge for discharges authorized by USEPA pursuant to sections 104(a) or 104(b) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). These discharges typically consist of short-term, high volume discharges resulting from the development or redevelopment of groundwater extraction wells, or USEPA or State-required compliance testing of potable water treatment plants, as part of a USEPA authorized groundwater remediation action under CERCLA. These discharges through the MS4 are only authorized if: (i) the discharge will comply with water quality standards identified as applicable or relevant and appropriate requirements (“ARARs”) under section 121(d)(2) of CERCLA; or (ii) the discharge is subject to either (a) a written waiver of ARARs by USEPA pursuant to section 121(d)(4) of CERCLA or (b) a written determination by USEPA that compliance with ARARs is not practicable considering the exigencies of the situation, pursuant to 40 CFR section 300.415(j). Additionally, a decision to authorize a discharge through the MS4 to surface waters will not be made by USEPA without first conducting a comprehensive evaluation of containment, treatment, reinjection, or re-use options for the water generated from the subject wells. If a decision to discharge through the MS4 is made, USEPA’s authorization of the discharge under CERCLA will require that the discharger shall:

- (1) Implement BMPs to minimize the rate and duration of the discharge and remove excessive solids, and implement other on-site physical treatment where feasible.
- (2) Promote infiltration of discharged water in locations that will prevent or minimize degradation of groundwater quality.
- (3) Notify the affected MS4 Permittees, including the LACFCD and the MS4 Permittee with land use authority over the discharge location, and the Regional Water Board at least one week prior to a planned discharge (unless USEPA determines in writing that exigent circumstances require a shorter notice period) and as soon as possible (but no later than 24 hours after the discharge has occurred) for unplanned discharges;

- (4) Monitor any pollutants of concern in the discharge⁹; and
- (5) Maintain records for all discharges greater than 100,000 gallons.¹⁰

In addition to requiring NPDES permit coverage for applicable categories of non-storm water discharges, this Order contains language that specifies certain conditions, including implementation of BMPs, for each category of conditionally exempt non-storm water discharge that must be met in order for the non-storm water discharge to be exempted from the non-storm water prohibition and thus allowed through the MS4.

The California Recycled Water Policy, adopted by the State Water Board in Resolution No. 2009-0011, calls for an increase in the use of recycled water from municipal wastewater sources that meet the definition in California Water Code section 13050(n), in a manner that implements state and federal water quality laws. In support of the California Recycled Water Policy, a provision has been added requiring that alternative means of disposal or opportunities for capture, reclamation, and reuse must be evaluated prior to discharging any of the non-storm water discharge categories to the MS4. In addition, to ensure the protection of receiving water quality all non-storm water discharges must be segregated from potential sources of pollutants to prevent the introduction of pollutants to the discharge.

In establishing provisions specific to different non-storm water discharge types, the Regional Water Board reviewed non-storm water discharge provisions and BMPS included in other area MS4 permits. MS4 permits reviewed included the Ventura County MS4 permit (R4-2009-0057), the Orange County MS4 permit (Order No. R9-2009-0002), the Riverside County MS4 permit (R9-2010-0016), and the San Diego County MS4 permit (R9-2007-0001). Conditions established in this permit for each of the non-storm water discharge categories ensure the protection of receiving water quality and are considered common practices.

Dischargers permitted under NPDES Permit No. CAG990002 are required to contact the appropriate Permittee(s) with jurisdiction over the MS4, including but not limited to the Los Angeles County Flood Control District, within 24 hours, whenever there is a discharge of 50,000 gallons or more from utility vaults and underground structures to the MS4.

The conditions for landscape irrigation have been split into potable and reclaimed landscape irrigation categories. As identified in the Orange County MS4 permit

⁹ Pollutants of concern include, at a minimum, trash and debris, including organic matter, TSS, any pollutant being addressed by the groundwater remediation action under CERCLA, and any pollutant for which there is a Water Quality Based Effluent Limitation in Part VI.E applicable to discharges from the MS4 to the receiving water.

¹⁰ Records shall be maintained, as appropriate, on the: name of CERCLA authorized discharger, date and time of notification (for planned discharges), method of notification, location of discharge, discharge pathway, receiving water, date of discharge, time of the beginning and end of the discharge, duration of the discharge, flow rate or velocity, estimated total number of gallons discharged, type of pollutant removal equipment used, type of dechlorination equipment used if applicable, type of dechlorination chemicals used if applicable, concentration of residual chlorine if applicable, type(s) of sediment controls used, and field and laboratory monitoring data. Records shall be retained for three years, unless the Regional Water Board requests a longer record retention period and shall be made available upon request by the MS4 Permittee or the Regional Water Board.

incidental runoff from landscape irrigation projects including over irrigation and overspray have the potential to contribute landscape derived pollutants such as bacteria, nutrients, and pesticides to receiving waters. In addition, the California Recycled Water Policy identifies the need for control of incidental runoff from landscape irrigation projects, particularly as it relates to recycled water use. The BMPs incorporated into the permit for potable landscape irrigation ensure that water is conserved, overspray and over irrigation causing incidental runoff is minimized, and exposure to landscape related pollutants is minimized.

State Water Board Water Quality Order No. 2009-0006-DWQ, General Waste Discharge Requirements for Landscape Irrigation Uses of Municipal Recycled Water, is a general permit for producers and distributors of recycled water for landscape irrigation uses. As part of this general permit, the producers and distributors of recycled water for landscape irrigation are required to develop an Operations and Maintenance Plan (O&M Plan) that includes an Operations Plan and an Irrigation Management Plan. Therefore, any reclaimed landscape irrigation discharges to the MS4 must comply with the relevant portion of the O&M Plan including the Irrigation Management Plan. By explicitly referencing the O&M requirement in this permit, it centralizes the requirements for reclaimed landscape irrigation and helps to ensure that procedures are in place for conserving water, minimizing incidental runoff, and minimizing exposure to landscape related pollutants.

Non-storm water discharge provisions have been added for the dewatering of lakes to the MS4. The provisions for the dewatering of lakes including removing and legally disposing of all visible trash on the shoreline or on the surface of the lake and the cleaning of the MS4 inlet and outlet where the water will be discharged to the receiving water have been consistently incorporated into Regional Water Board authorizations to discharge non-storm water from lakes, reservoirs, and ponds. In addition provisions for volumetrically and velocity controlling discharges as well as taking measurements to stabilize lake bottom sediments are incorporated into the provisions of this Order to ensure that turbidity in receiving waters are maintained at an acceptable level. The permit provisions for the dewatering of lakes ensure the protection of receiving water quality.

Basin plan requirements for residual chlorine have been explicitly included in the conditions for drinking water supplier distribution system releases, dechlorinated/debrominated swimming pool/spa discharges, and dewatering of decorative fountains. Related to swimming pool discharges, discharges of cleaning wastewater and filter backwash are specifically mentioned as being allowed only if authorized under a separate NPDES permit. The Regional Water Board has a general permit for discharges of nonprocess wastewater to surface waters in coastal watersheds of Los Angeles and Ventura counties (NPDES Permit No. CAG994003) that may address discharges of cleaning wastewater and filter backwash.

Specific BMPs for discharges of swimming pools/spas and the dewatering of decorative fountains have been added to this Order including prohibiting the dewatering of swimming pools/spas or decorative fountains containing copper-based

algaeicides and requiring the implementation of controls to prevent introduction of pollutants prior to discharge. Swimming pool/spa discharges and decorative fountain water must be dechlorinated or debrominated using holding time, aeration, and/or sodium thiosulfate and if necessary shall be pH adjusted to within the range of 6.5 and 8.5. The MS4 inlet and outlet must be inspected and cleaned out immediately prior to discharge to protect receiving water quality. In addition provisions for volumetrically and velocity controlling discharges are incorporated into the provisions of this Order to ensure that turbidity in receiving waters are maintained at an acceptable level.

In addition to the specific inclusion of Basin Plan water quality objectives for residual chlorine, this Order allows discharges of drinking water supplier distribution system releases as long as specified BMPs are implemented. BMPs must be implemented to prevent introduction of pollutants to drinking water supplier distribution system releases prior to discharge to the receiving water. BMPs must be consistent with the American Water Works Association (California – Nevada Section) BMP Manual for Drinking Water System Releases and other applicable guidelines. Similar to discharges of swimming pools/spas and dewatering of decorative fountains, drinking water supplier distribution system releases must be dechlorinated or debrominated using holding time, aeration, and/or sodium thiosulfate and if necessary shall be pH adjusted to within the range of 6.5 and 8.5. The MS4 inlet and outlet must be inspected and cleaned out immediately prior to discharge to protect receiving water quality. BMPs such as sand bags or gravel bags, or other appropriate means shall be utilized to prevent sediment transport and all sediment shall be collected and disposed of in a legal and appropriate manner. In addition provisions for volumetrically and velocity controlling discharges are incorporated into the provisions of this Order to ensure that turbidity in receiving waters are maintained at an acceptable level.

The permit provisions for drinking water supply and distribution system releases, dechlorinated/debrominated swimming pool/spa discharges, and dewatering of decorative fountains ensures the protection of receiving water quality.

The Regional Water Board evaluated and established a list of approved BMPs for various programs and activities through Regional Water Board Resolution 98-08 that serves as appropriate BMPs for inclusion in the Discharger and Permittees' regulatory programs. Requirements for street/sidewalk wash water contained in Resolution 98-08 have also been explicitly incorporated into this Order. The inclusion of the requirements contained in Resolution 98-08 helps to ensure that Permittees are aware of the requirements and ensures the protection of receiving water quality.

Specific BMPs for discharges from non-commercial car washing have been incorporated into this Order to prevent the introduction of pollutants prior to discharge. BMPs that must be implemented for the discharge of non-commercial vehicle wash water include minimizing the amount of water used by turning off nozzles or kinking the hose when not spraying a vehicle and by using a pressure washer; using biodegradable, phosphate free detergents and non-toxic cleaning

products; where possible, washing vehicles on permeable surfaces where wash water can percolate into the ground; creating a temporary berm or block off the storm drains; using pumps or vacuums to direct water to pervious areas; and emptying buckets of soapy water or rinse water into the sanitary sewer system. These BMPs are common practice and ensure the protection of receiving water quality.

The inclusion of conditions for flows related to non-emergency fire-fighting activities is new to this iteration of the permit. Conditions for discharges related to fire fighting activities have been incorporated into other MS4 permits including both Orange County and Riverside County. Flows resulting from emergency fire fighting activities necessary for the protection of life or property do not require implementation of specific BMPs.

The specific BMPs for discharges associated with non-emergency fire fighting activities that have been incorporated into this Order have been incorporated into other California MS4 permits. Both the Riverside County and Orange County MS4 permits require the development and implementation of a program to address pollutants from non-emergency fire fighting flows. Rather than develop a program to address non-emergency fire fighting flows, common BMPs used in association with non-emergency fire fighting discharges have been incorporated into this Order. Guidance on BMPs contained in this Order for non-emergency fire fighting activities is available in the Best Management Practices Plan for Urban Runoff Management for Participating Riverside County Fire Fighting Agencies.

The inclusion of specific conditions for exempted non-storm water discharges in this Order centralizes the requirements for non-storm water discharges. Conditions established in this permit for each of the conditionally exempt non-storm water discharge categories are common practice and have been incorporated into other area MS4 permits.

6. Permittee Requirements for Non-Storm Water Discharges

This Order includes specific requirements for Permittees related to more targeted screening of MS4 outfalls for non-storm water discharges, and monitoring and evaluation of significant non-storm water discharges. Permittees are required to develop and implement procedures to ensure that all conditions required for conditionally exempt non-storm water discharges are being implemented. These requirements also help to clarify the responsibilities of the Permittees versus the responsibilities of the non-MS4 Permittee dischargers to the MS4. The development and implementation of these procedures helps to ensure compliance with the non-storm water discharge prohibition and ensure that the non-storm water discharges are not sources of pollutants.

B. Technology-Based Effluent Limitations

Section 301(b)(1)(A) of the CWA and 40 CFR section 122.44(a) require that NPDES permits include technology based effluent limitations.¹¹ In 1987, the CWA was amended to require that municipal storm water discharges “reduce the discharge of pollutants to the maximum extent practicable.” (CWA § 402(p)(3)(B)(iii).) The “maximum extent practicable” (MEP) standard is the applicable federal technology based standard that MS4 owners and operators must attain to comply with their NPDES permits.¹² The corresponding regulatory provisions that further detail the MEP standard can be found in 40 CFR sections 122.26(d)(2)(iv) and 122.44(k)(2).

Neither Congress nor the USEPA has specifically defined the term “maximum extent practicable.” Rather, the MEP standard is a flexible and evolving standard. Congress established this flexible MEP standard so that administrative bodies would have “the tools to meet the fundamental goals of the Clean Water Act in the context of storm water pollution.”¹³ This standard was designed to allow permit writers flexibility to tailor permits to the site-specific nature of MS4s and to use a combination of pollution controls that may be different in different permits.¹⁴ The MEP standard is also expected to evolve in light of programmatic improvements, new source control initiatives, and technological advances that serve to improve the overall effectiveness of storm water management programs in reducing pollutant loading to receiving waters. This is consistent with USEPA’s interpretation of storm water management programs. As explained by USEPA in its 1990 rulemaking, “EPA anticipates that storm water management programs will evolve and mature over time” (55 Fed.Reg. 47990, 48052 (Nov. 16, 1990)). There is ample evidence of this evolution in storm water management. Two local examples include the development of full capture trash control devices in response to the Los Angeles Region Trash TMDLs, and the development of innovative media filters for use in outfalls at the Boeing Santa Susana Field Laboratory that have potential municipal applications.

To provide clarification to the Regional Water Boards, the State Water Board’s Office of Chief Counsel issued a memorandum dated February 11, 1993 regarding the “Definition of ‘Maximum Extent Practicable’”. In the memorandum, the State Water Board interpreted the MEP standard to entail “a serious attempt to comply,” and that under the MEP standard, “practical solutions may not be lightly rejected.” The memorandum states, “[i]n selecting BMPs which will achieve MEP, it is important to remember that municipalities will be responsible to reduce the discharge of pollutants in storm water to *the maximum extent practicable*. This means choosing effective BMPs, and rejecting applicable BMPs only where other effective BMPs will serve the same purpose, the BMPs would not be technically feasible, or the cost would be prohibitive.” The memorandum further states that, “[a]fter selecting a menu of BMPs, it is of course the responsibility of the discharger to insure that all BMPs are implemented.”

¹¹ A technology based effluent limitation is based on the capability of a model treatment method to reduce a pollutant to a certain concentration (NPDES Permit Writer’s Manual, Appendix A). Technology based requirements represent the minimum level of control that must be imposed in a permit issued under CWA § 402.

¹² Note that the MEP standard only applies to storm water discharges from the MS4. Non-storm water discharges are subject to a different standard – specifically, non-storm water discharges through the MS4 must be effectively prohibited.

¹³ Building Industry Ass’n of San Diego County v. State Water Resources Control Board (2004) 124 Cal.App.4th 866, 884.

¹⁴ In re City of Irving, Texas, Municipal Storm Sewer System, (July 16, 2001), 10 E.A.D. 111 (E.P.A.), *6.

This Order includes programmatic requirements in six areas pursuant to 40 CFR section 122.26(d)(2)(iv) as well as numeric design standards for storm water runoff from new development and redevelopment consistent with the federal MEP standard (see State Water Board Order WQ 2000-11, the “LA SUSMP Order”). This Order also includes protocols for periodically evaluating and modifying or adding control measures, consistent with the concept that MEP is an evolving and flexible standard.

This Order also provides for the use of municipal action levels (“MALs”) derived from the National Stormwater Quality Database (NSQD), as a means of evaluating the overall effectiveness of a Permittee’s storm water management program in reducing pollutant loads from a particular drainage area and in order to assess compliance with the MEP standard. Finally, this Order includes BMP Performance Standards derived from the International BMP Database as a guide for BMP selection and design, and as a tool for evaluating the effectiveness of individual post-construction BMPs in reducing pollutant loads and assessing compliance with the MEP standard. USEPA recommends the use of numeric benchmarks for BMPs to estimate BMP effectiveness and as triggers for taking additional actions such as evaluating the effectiveness of individual BMPs, implementing and/or modifying BMPs, or providing additional measures to protect water quality.¹⁵

C. Water Quality-Based Effluent Limitations (WQBELs)

In addition to requiring that MS4 permits include technology based requirements consistent with the MEP standard, section 402(p)(3)(B)(iii) of the CWA authorizes the inclusion of “such other provisions as the Administrator or the State determines appropriate for the control of [] pollutants.”¹⁶ This requirement gives USEPA or the State permitting authority discretion to determine what permit conditions are necessary to control pollutants. Generally, permit requirements designed to achieve water quality standards are referred to as water quality based effluent limitations (WQBELs). A WQBEL is a restriction on the quantity or concentration of a pollutant that may be discharged from a point source into a receiving water that is necessary to achieve an applicable water quality standard in the receiving water.¹⁷ WQBELs may be expressed narratively or numerically.

In its Phase I Stormwater Regulations, Final Rule, USEPA elaborated on these requirements, stating that, “permits for discharges from municipal separate storm sewer systems must require controls to reduce the discharge of pollutants to the maximum extent practicable, and where necessary water quality-based controls” (see 55 Fed.Reg.

¹⁵ See USEPA November 22, 2002 memorandum, “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLA) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs.”

¹⁶ The first and second iterations of the Los Angeles County MS4 Permit relied solely upon requirements consistent with the MEP standard to work toward achieving water quality standards. Note that the MEP standard is distinct from a water quality based standard; each has a different basis. Therefore, while from a practical point of view, the goal of all MS4 permit conditions is to control pollutants in discharges to ultimately achieve certain water quality outcomes, water quality based standards are directly derived from this desired outcome, while the MEP standard is anticipated to be a way of working toward the desired outcome, but is not directly derived from it.

¹⁷ See 40 CFR § 122.2; NPDES Permit Writer’s Manual, Appendix A. A WQBEL is distinguished from a technology based effluent limitation (TBEL) in that the basis for the WQBEL is the applicable water quality standard for the receiving water, while the basis for the TBEL is generally the performance of the best available technology.

47990, 47994 (Nov. 16, 1990). In December 1999, USEPA reiterated in its Phase II Stormwater Regulations, Final Rule that MS4 “permit conditions must provide for attainment of applicable water quality standards (including designated uses), allocations of pollutant loads established by a TMDL, and timing requirements for implementation of a TMDL.”¹⁸ The State Water Board has affirmed that MS4 permits must include requirements necessary to achieve compliance with the applicable technology based standard of MEP and to achieve water quality standards.¹⁹

WQBELs are required for point source discharges that have the reasonable potential to cause or contribute to an excursion of water quality standards and technology based effluent limitations or standards are not sufficient to achieve water quality standards.²⁰

The State Water Board has previously concluded that sole reliance in MS4 permits on BMP based requirements is not sufficient to ensure attainment of water quality standards. (See State Water Board Order 2001-015). The Regional Water Board concurs with this conclusion. This conclusion is amply supported by Regional Water Board and USEPA established TMDLs for impaired waters in the Los Angeles Region, indicating that MS4 discharges are a continuing source of pollutants to the impaired receiving waters notwithstanding the implementation of storm water management programs that have been driven by the MEP standard by Permittees for the last two decades.

In this Order, WQBELs are included where the Regional Water Board has determined that discharges from the MS4 have the reasonable potential to cause or contribute to an excursion above water quality standards.²¹ Reasonable potential can be demonstrated in several ways, one of which is through the TMDL development process. Where a point source is assigned a WLA in a TMDL, the analysis conducted in the development of the TMDL provides the basis for the Regional Water Board’s determination that the discharge has the reasonable potential to cause or contribute to an exceedance of water quality standards in the receiving water. This approach is affirmed in USEPA’s Permit Writer’s Manual, which states, “[w]here there is a pollutant with a WLA from a TMDL, a permit writer must develop WQBELs.” Therefore, WQBELs are included in this Order for all pollutants for which a WLA is assigned to MS4 discharges.

Federal regulations further require that, “when developing water quality-based effluent limits...the permitting authority shall ensure that effluent limits ... are consistent with the assumptions and requirements of any available wasteload allocation for the discharge...” (40 CFR § 122.44(d)(1)(vii)(B)).

The Regional Water Board interprets this to mean that the final WQBEL must be expressed in similar terms as the underlying WLA; for example, where a TMDL includes WLAs for MS4 discharges that provide numeric pollutant load objectives, the WLA should be translated into numeric WQBELs in the permit, and at a level to achieve the same expected water quality outcome. USEPA also recommends the use of numeric WQBELs to meet water quality standards where MS4 discharges have the reasonable

¹⁸ See, e.g., Phase II Stormwater Regulations, Final Rule, 64 Fed. Reg. 68722, 68737.

¹⁹ See, e.g., State Water Board Orders WQ 99-05 and 2001-15.

²⁰ 40 CFR §§ 122.44(d)(1)(i); 122.44(d)(1)(iii)

²¹ 40 CFR §§ 122.44(d)(1)(i)-(iii); 122.44(d)(1)(vii)(B)

potential to cause or contribute to a water quality standard excursion. Numeric WQBELs will help clarify MS4 permit requirements and improve accountability in this permit term.

While BMPs²² are central to MS4 permits, permit requirements may only rely upon BMP based limitations in lieu of water quality based effluent limitations if: (1) the BMPs are adequate to achieve water quality standards, and (2) numeric effluent limitations are infeasible.²³ As discussed earlier, the State and Regional Water Boards have concluded that sole reliance on MEP based permit requirements is not sufficient to ensure the achievement of water quality standards. Further, there is insufficient data and information available at this time on the prospective implementation of BMPs throughout Los Angeles County to provide the Regional Water Board reasonable assurance that the BMPs would be sufficient to achieve the WQBELs.²⁴

Regarding the feasibility of numeric effluent limitations, the Regional Water Board concludes that numeric WQBELs are feasible. While a lack of data may have hampered the development of numeric effluent limitations for MS4 discharges in earlier permit cycles, in the last decade, 33 TMDLs have been developed for water bodies in Los Angeles County in which WLAs are assigned to MS4 discharges. In each case, part of the development process entailed analyzing pollutant sources and allocating loads using empirical relationships or modeling approaches. As a result, it is possible to use these numeric WLAs to derive numeric WQBELs for MS4 discharges. USEPA has also acknowledged that its expectations regarding the application of numeric WQBELs to municipal storm water discharges have changed as the storm water permit program has continued to mature over the last decade.²⁵

The inclusion of numeric WQBELs is also consistent with the Ninth Circuit Court of Appeal's ruling in *Defenders of Wildlife v. Browner* (191 F.3d 1159, 1166 (1999)) that the permitting authority has discretion regarding the nature and timing of requirements that it includes as MS4 permit conditions to attain water quality standards, and that these requirements may include numeric effluent limitations.

Further, given the variability in implementation of storm water management programs across Permittees, numeric WQBELs create an objective, equitable and accountable means of controlling MS4 discharges, while providing the flexibility for Permittees to comply with the WQBELs in any lawful manner.

²² Note that best management practices and effluent limitations are two different types of permit requirements (see 40 CFR §§ 122.2; 122.44(k), which distinguish the two terms and describe their relationship to each other).

²³ 40 CFR §§ 122.44(d)(1); 122.44(k)(3); see also State Water Board Order 91-03; Memorandum from Elizabeth Miller Jennings, Office of Chief Counsel to Bruce Fujimoto, Division of Water Quality, "Municipal Storm Water Permits: Compliance with Water Quality Objectives," October 3, 1995.

²⁴ USEPA states in its 2002 memorandum, "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs" that, "[w]hen a non-numeric water quality-based effluent limit is imposed, the permit's administrative record, including the fact sheet when one is required, needs to support that the BMPs are expected to be sufficient to implement the WLA in the TMDL," citing 40 CFR §§ 124.8, 124.9, and 124.18. See also USEPA's 2010 memorandum revising the 2002 memorandum.

²⁵ See USEPA 2010 memorandum, "Revisions to the November 22, 2002 Memorandum 'Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs'" in which USEPA states, "where the NPDES permitting authority determines that MS4 discharges...have the reasonable potential to cause or contribute to water quality standards excursions, permit for MS4s...should contain numeric effluent limitations where feasible to do so." USEPA further states, "[w]here the TMDL includes WLAs for stormwater sources that provide numeric pollutant load...objectives, the WLA should, where feasible, be translated into numeric WQBELs in the applicable stormwater permits."

D. Final Effluent Limitations

Final WQBELs are included in this Order based on the final WLAs assigned to discharges from the Los Angeles County MS4 in all available TMDLs.

MS4 permits can include compliance schedules for achieving final WQBELs derived from TMDL WLAs, so long as the compliance schedule is consistent with a TMDL implementation plan adopted by the Regional Water Board and approved through the State's basin plan amendment process. If a compliance schedule exceeds one year, it must include interim requirements pursuant to 40 CFR section 122.47.

Section 402(o) of the CWA and 40 CFR section 122.44(l) require that effluent limitations in reissued orders be at least as stringent as those in the existing order. This Order carries over the final receiving water limitations and WQBELs that were included to implement the Marina del Rey Harbor Back Basins and Mothers' Beach Bacteria TMDL and the Los Angeles River Trash TMDL, respectively, in the 2007 and 2009 amendments to Order No. 01-182.

E. Interim Effluent Limitations

Where there is a TMDL implementation plan adopted by the Regional Water Board and approved through the State's basin plan amendment process, interim WQBELs are included in this Order based on interim WLAs established for MS4 discharges.

V. RATIONALE FOR RECEIVING WATER LIMITATIONS

A. Receiving Water Limitations

Receiving water limitations are included in all NPDES permits issued pursuant to CWA section 402. Section 402(p)(3)(B)(iii) of the CWA authorizes the inclusion of "such other provisions as the Administrator or the State determines appropriate for the control of [] pollutants." This requirement gives USEPA or the State permitting authority discretion to determine what permit conditions are necessary to control pollutants. In its Phase I Stormwater Regulations, Final Rule, USEPA elaborated on these requirements, stating that, "permits for discharges from municipal separate storm sewer systems must require controls to reduce the discharge of pollutants to the maximum extent practicable, and where necessary water quality-based controls" (see 55 Fed. Reg. 47990, 47994 (Nov. 16, 1990)). USEPA reiterated in its Phase II Stormwater Regulations, Final Rule, that MS4 "permit conditions must provide for attainment of applicable water quality standards (including designated uses), allocations of pollutant loads established by a TMDL, and timing requirements for implementation of a TMDL."²⁶ USEPA Region IX has also affirmed the agency's position that MS4 discharges must meet water quality standards in a series of comment letters on MS4 permits issued by various California regional water boards.²⁷ California Water Code section 13377 also requires that NPDES permits include limitations necessary to implement water quality control plans. Both the State Water Board and Regional Water Board have previously concluded that

²⁶ See, e.g., Phase II Stormwater Regulations, Final Rule, 64 Fed. Reg. 68722, 68737.

²⁷ See, e.g., letter from Alexis Strauss, Acting Director, Water Division, USEPA Region IX, to Walt Pettit, Executive Director, State Water Board, re: SWRCB/OCC File A-1041 for Orange County, dated January 21, 1998.

discharges from the MS4 contain pollutants that have the reasonable potential to cause or contribute to excursion above water quality standards. As such, inclusion of receiving water limitations is appropriate to control MS4 discharges.

The inclusion of receiving water limitations is also consistent with the Ninth Circuit Court of Appeal's ruling in *Defenders of Wildlife v. Browner* (191 F.3d 1159, 1166 (1999)) that the permitting authority has discretion regarding the nature and timing of requirements that it includes as MS4 permit conditions to attain water quality standards.

The Ninth Circuit Court of Appeals recently explained that, "[w]ater quality standards are used as a supplementary basis for effluent limitations [guidelines] so that numerous dischargers, despite their individual compliance with technology based effluent limitations, can be regulated to prevent water quality from falling below acceptable levels" (*NRDC v. County of Los Angeles* (2011) 673 F.3d 880, 886). Receiving water limitations are included in this Order to ensure that individual and collective discharges from the MS4 do not cause or contribute to exceedances of water quality standards necessary to protect the beneficial uses of the receiving waters.

The receiving water limitations in this Order consist of all applicable numeric or narrative water quality objectives or criteria, or limitations to implement the applicable water quality objectives or criteria, for receiving waters as contained in Chapters 3 and 7 of the Basin Plan, or in water quality control plans or policies adopted by the State Water Resources Control Board, including Resolution No. 68-16, or in federal regulations, including but not limited to, 40 CFR sections 131.12 and 131.38. The water quality objectives in the Basin Plan and other State Water Board plans and policies have been approved by USEPA and combined with the designated beneficial uses constitute the water quality standards required under federal law.

The receiving water limitations provisions in this Order are the same as those included in the previous Los Angeles County MS4 Permit provisions, and are based on precedential State Water Board Orders WQ 98-01 and WQ 99-05. This Order includes three main provisions related to receiving water limitations. First, consistent with CWA section 402(p)(B)(3)(iii) and 40 CFR section 122.44(d)(1), it includes a provision stating that discharges from the MS4 that cause or contribute to an exceedance of receiving water limitations are prohibited. This is also in accord with the State Water Board's finding in Order WQ 98-01 ("The [State Water Board] agrees that the NPDES permit must prohibit discharges that "cause" or "contribute" to violations of water quality standards."). Second, it includes a provision stating that discharges from the MS4 of stormwater or non-stormwater, for which a Permittee is responsible, shall not cause or contribute to a condition of nuisance.²⁸

Third, it includes a provision that states that Permittees shall achieve these two prohibitions "through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the storm water management program and its components and other requirements of this Order including any

²⁸ Wat. Code, § 13377 ("the state board or the regional boards shall . . . issue waste discharge requirements and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the [CWA], thereto, together with any more stringent effluent standards or limitations necessary to implement waste quality control plans, or for the protection of beneficial uses, or to prevent nuisance").

modifications.” This third provision elucidates the process by which Permittees are expected to achieve the first two provisions and then outlines the so-called “iterative process” whereby certain actions are required when exceedances of receiving water limitations occur and discharges from the MS4 are implicated. This iterative process includes submitting a Receiving Water Limitations Compliance Report; revising the storm water management program and its components to include additional BMPs, an implementation schedule and additional monitoring to address the exceedances; and implementing the revised storm water management program. The inclusion of this protocol for estimating BMP effectiveness and taking additional actions such as implementing additional BMPs and/or modifying BMPs to improve their effectiveness when monitoring demonstrates that they are necessary to protect water quality is consistent with USEPA’s expectations for MS4 permits.²⁹

The State and Regional Water Boards have stated that each of the three provisions are independently applicable, meaning that compliance with one provision does not provide a “safe harbor” where there is non-compliance with another provision (i.e., compliance with the third provision does not shield a Permittee who may have violated the first or second provision from an enforcement action). Rather, the third provision is intended to ensure that the necessary storm water management programs and controls are in place, and that they are modified by Permittees in a timely fashion when necessary, so that the first two provisions are achieved as soon as possible. USEPA expressed the importance of this independent applicability in a series of comment letters on MS4 permits proposed by various regional water boards. At that time, USEPA expressly objected to certain MS4 permits that included language stating, “permittees will not be in violation of this [receiving water limitation] provision ...” (if certain steps are taken to evaluate and improve the effectiveness of the Drainage Area Management Plan (DAMP)), concluding that this phrase would not comply with the CWA.³⁰

The Receiving Water Limitations provisions of Order No. 01-182 have been litigated twice, and in both cases the courts have upheld the language and the State and Regional Water Board’s interpretation of it. Both courts ruled that the first two provisions are independently applicable from the third provision that establishes the “iterative process” requirements and no “safe harbor” exists.

The provisions were first litigated in 2005 where the Los Angeles County Superior Court stated, “In sum, the Regional [Water] Board acted within its authority when it included Parts 2.1 and 2.2 in the Permit without a ‘safe harbor,’ whether or not compliance therewith requires efforts that exceed the ‘MEP’ standard.” (*In re L.A. Cnty. Mun. Storm Water Permit Litig.* (L.A. Super. Ct., No. BS 080548, Mar. 24, 2005) Statement of Decision from Phase I Trial on Petitions for Writ of Mandate, pp. 4-5, 7.).

The provisions were again litigated in 2011. In that case, the Ninth Circuit Court of Appeal in *NRDC v. County of Los Angeles* (673 F.3d 880, 886) affirmed that the iterative process (in Part 2.3 of the 2001 Order) does not “forgive” violations of the discharge prohibitions (in Parts 2.1 and 2.2 of the 2001 Order). The court acknowledged

²⁹ See, e.g., USEPA 2002 memorandum, “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs.”

³⁰ See note 20.

that Part 2.3 clarifies that Parts 2 and 3 interact, but the court concluded that Part 2.3 “offers no textual support for the proposition that compliance with certain provisions shall forgive non-compliance with the discharge prohibitions.” The Ninth Circuit further concluded that, “[a]s opposed to absolving noncompliance or exclusively adopting the MEP standard, the iterative process ensures that if water quality standards ‘persist,’ despite prior abatement efforts, a process will commence whereby a responsible Permittee amends its SQMP. Given that Part 3 of the [2001] Permit states that SQMP implementation is the ‘minimum’ required of each Permittee, the discharge prohibitions serve as additional requirements that operate as enforceable water-quality-based performance standards required by the Regional Board.”

Nonetheless, the Regional Water Board is in a unique position to be able to offer multiple paths to compliance with receiving water limitations in this MS4 permit. The Regional Board has worked closely with the US EPA in implementing the requirements of the 1999 consent decree between EPA and the environmental groups. The requirements of the consent decree are nearly complete and 33 of these TMDLs addressing hundreds of waterbody-pollutant combinations covering every coastal watershed in Los Angeles County will be implemented in this Order. The number of TMDLs, and hundreds of water quality issues that the TMDLs address, is unprecedented anywhere else in California. These extensive and enforceable implementation programs for addressing myriad water quality issues throughout the County, coupled with more robust core provision requirements, and commitments to implement watershed solutions to address all impairments in regional waters, allows this Board to consider the compliance mechanisms described below. These compliance mechanisms provide an incentive and robust framework for Permittees to craft comprehensive pathways to achieve compliance with receiving water limitations – both those addressed by TMDLs and those not addressed by TMDLs. This compliance mechanism is contingent upon participating Permittees being in full compliance with all requirements articulated in the permit and approved Watershed Management Program or EWMP in order to take advantage of these provisions.

This Order includes requirements in Part VI.E of this Order to implement WLAs assigned to MS4 discharges from 33 TMDLs. Those TMDLs adopted through the State’s basin planning process include programs of implementation pursuant to California Water Code section 13242, including implementation schedules, for attaining water quality standards. The TMDL provisions in Part VI.E and attachments include compliance schedules for TMDLs adopted by the Regional Water Board consistent with the TMDL implementation schedule to achieve the final receiving water limitations. The Regional Water Board recognizes that, in the case of impaired waters subject to a TMDL, the permit’s receiving water limitations for the pollutants addressed by the TMDL may be exceeded during the period of TMDL implementation. Therefore, this Order provides, in Part VI.E.2.c, that a Permittee’s full compliance with the applicable TMDL requirements pursuant to the compliance schedules in this Order constitutes a Permittee’s compliance with the receiving water limitations provisions in Part V.A. of this Order for the particular pollutant addressed by the TMDL.

For water body-pollutant combinations not addressed by a TMDL, the Regional Water Board has included provisions in Part VI.C. to allow Permittees to develop a Watershed

Management Program or EWMP to address receiving water limitations not otherwise addressed by a TMDL. The Watershed Management Program must include a Reasonable Assurance Analysis (RAA) that is quantitative and performed using a peer-reviewed model in the public domain. Models to be considered for the RAA, without exclusion, are the Watershed Management Modeling System (WMMS), Hydrologic Simulation Program-FORTRAN (HSPF), and the Structural BMP Prioritization and Analysis Tool (SBPAT). The RAA shall commence with assembly of all available, relevant subwatershed data collected within the last 10 years, including land use and pollutant loading data, establishment of quality assurance/quality control (QA/QC) criteria, QA/QC checks of the data, and identification of the data set meeting the criteria for use in the analysis. Data on performance of watershed control measures needed as model input shall be drawn only from peer-reviewed sources. These data shall be statistically analyzed to determine the best estimate of performance and the confidence limits on that estimate for the pollutants to be evaluated. The objective of the RAA shall be to demonstrate the ability of Watershed Management Programs and enhanced Watershed Management Programs (where retention of the 85th percentile, 24-hour event is not technically feasible) to ensure that Permittees' MS4 discharges achieve applicable water quality based effluent limitations and do not cause or contribute to exceedances of receiving water limitations.

A Permittee's full compliance with all requirements and dates for their achievement in an approved Watershed Management Program or enhanced Watershed Management Program constitutes compliance with the receiving water limitations provisions in Part V.A. of the Order for the specific water body-pollutant combinations addressed by an approved Watershed Management Program or enhanced Watershed Management Program. However, if a Permittee fails to meet any requirement or date for its achievement beginning with notification of a Permittee's intent to develop a Watershed Management Program or EWMP, and continuing with implementation of an approved Watershed Management Program or enhanced Watershed Management Program, the Permittee is subject to the provisions of Part V.A. for the waterbody-pollutant combination(s) that were to be addressed by the requirement. Permittees that do not elect to develop a Watershed Management Program or EWMP are required to demonstrate compliance with receiving water limitations pursuant to Part V.A. For water body-pollutant combinations that are not addressed by a TMDL, final compliance with receiving water limitations is determined by verification through monitoring that the receiving water limitation provisions in Part V.A.1 and 2 have been achieved.

VI. RATIONALE FOR PROVISIONS

A. Standard Provisions

Standard Provisions, which apply to all NPDES permits in accordance with 40 CFR section 122.41, and additional conditions applicable to specified categories of permits in accordance with 40 CFR section 122.42, are provided in Attachment D. Dischargers must comply with all standard provisions and with those additional conditions that are applicable under 40 CFR section 122.42.

B. Watershed Management Programs

The purpose of the Watershed Management Programs is to provide a framework for Permittees to implement the requirements of this Order in an integrated and collaborative fashion to address water quality priorities on a watershed scale, including complying with the requirements of Part V.A. (Receiving Water Limitations), Part VI.E (Total Maximum Daily Load Provisions) and Attachments L through R, by customizing the control measures in Parts III.A.4 (Prohibitions – Non-Storm Water Discharges) and VI.D (Minimum Control Measures). This watershed management paradigm is consistent with federal regulations that support the development of permit conditions, as well as the implementation of storm water management programs, at a watershed scale (40 CFR §§ 122.26(a)(3)(ii), 122.26(a)(3)(v), and 122.26(d)(2)(iv)). USEPA later issued a Watershed-Based NPDES Permitting Policy Statement (USEPA, 2003) that defines watershed-based permitting as an approach that produces NPDES permits that are issued to point sources on a geographic or watershed basis. In this policy statement, USEPA explains that, “[t]he utility of this tool relies heavily on a detailed, integrated, and inclusive watershed planning process.” USEPA identifies a number of important benefits of watershed permitting, including more environmentally effective results; the ability to emphasize measuring the effectiveness of targeted actions on improvements in water quality; reduced cost of improving the quality of the nation’s waters; and more effective implementation of watershed plans, including TMDLs, among others.

There are several reasons for this shift in emphasis from Order No. 01-182. A watershed based structure for permit implementation is consistent with TMDLs developed by the Los Angeles Water Board and USEPA, which are established at a watershed or subwatershed scale and are a prominent new part of this Order. Many of the Permittees regulated by this Order have already begun collaborating on a watershed scale to develop monitoring and implementation plans required by TMDLs. Additionally, a watershed based structure comports with the recent amendment to the Los Angeles County Flood Control Act (Assembly Bill 2554 in 2010), which allows the LACFCD to assess a parcel tax for storm water and clean water programs. Funding is subject to voter approval in accordance with Proposition 218. Fifty percent of funding is allocated to nine “watershed authority groups” to implement collaborative water quality improvement plans.

An emphasis on watersheds is appropriate at this stage in the region’s MS4 program to shift the focus of the Permittees from rote program development and implementation to more targeted, water quality driven planning and implementation. Addressing MS4 discharges on a watershed scale focuses on water quality results by emphasizing the receiving waters within the watershed. The conditions of the receiving waters drive management actions, which in turn focus on the measures to address pollutant contributions from MS4 discharges.

The ultimate goal of the Watershed Management Programs is to ensure that discharges from the Los Angeles County MS4: (i) achieve applicable WQBELs that implement TMDLs, (ii) do not cause or contribute to exceedances of receiving water limitations, and (iii) for non-storm water discharges from the MS4, are not a source of pollutants to receiving waters.

After more than 20 years of program implementation, it is critical that the Permittees design and implement their programs based on their improved knowledge of storm water and its impacts on local receiving waters and by employing BMPs and other control measures that have been developed and refined over the past two decades. The Watershed Management Programs are driven by strategic planning and implementation, which will ultimately result in more cost effective implementation. The Watershed Management Programs will provide permittees with the flexibility to prioritize and customize control measures to address the water quality issues specific to the watershed management area (WMA), consistent with federal regulations (40 CFR § 122.26(d)(2)(iv)).

Focusing on watershed implementation does not mean that the Permittees must expend funds outside of their jurisdictions. Rather, the Permittees within each watershed are expected to collaborate to develop a watershed strategy to address the high priority water quality problems within each watershed. They have the option of implementing the strategy in the manner they find to be most effective. Each Permittee can implement the strategy individually within its jurisdiction, or the Permittees can group together to implement the strategy throughout the watershed.

While this Order includes a new emphasis on addressing MS4 discharges on a watershed basis, this Order includes recognition of the importance of continued program implementation on jurisdictional levels. This Order also acknowledges that jurisdictional and watershed efforts may be integrated to achieve water quality outcomes.

In this Order, the watershed requirements serve as the mechanism for this program integration. Since jurisdictional activities also serve watershed purposes, such activities can be integrated into the Permittees' watershed management programs. Such opportunities for program integration inherently provide flexibility to the Permittees in implementing their programs. Program integration can be expanded or minimized as the Permittees see fit. Some Permittees may opt to continue jurisdiction-specific implementation for certain programs, while for other program areas more collaborative watershed scale implementation may be more effective. Permittees identify individual roles and responsibilities as part of the Watershed Management Program Plan.

Permittees can customize the BMPs to be implemented, or required to be implemented, for development, construction, and existing development areas. Flexibility to determine which industrial or commercial sites are to be inspected is also provided to the Permittees. Educational approaches are also to be determined by the Permittees under this Order. Significant leeway is also provided to the Permittees in using methods to assess the effectiveness of their various runoff management programs. This flexibility is further extended to the monitoring program requirements, which allow the Permittees to develop monitoring approaches to several aspects of the monitoring program.

The challenge in drafting this Order is to provide the flexibility described above, while ensuring that this Order provides baseline requirements and is still enforceable. To achieve this, this Order frequently prescribes baseline or default requirements, such as

for each of the six “minimum control measures” within a Permittee’s baseline storm water management program, while providing the Permittees with flexibility to propose customized actions as part of their watershed management program.

Permittees that elect to develop a Watershed Management Program must submit a “Notice of Intent” to the Regional Water Board no later than six months after the effective date of this Order. The Notice of Intent must be signed by all Permittees electing to participate in the Watershed Management Program for the Watershed Management Area. Permittees that do not elect to develop a Watershed Management Program are subject to the baseline storm water management program requirements in this Order and must demonstrate compliance with applicable WQBELs through monitoring data collected from the Permittee’s outfall(s).

Permittees electing to develop a Watershed Management Program must submit a draft plan for approval by the Regional Water Board or by the Executive Officer on behalf of the Regional Water Board no later than one year after the effective date of the Order, or if certain conditions are met, no later than 18 months or 30 months after the effective date of the Order. To encourage stakeholder involvement in the development of the Watershed Management Programs, the Order requires that the Permittees form a permit-wide technical advisory committee (TAC) that will advise and participate in the development of the Watershed Management Programs. The TAC must include at least one public representative from a non-governmental organization with public membership. Additionally, the Order requires that the draft Watershed Management Programs are made available for public review prior to approval by the Regional Water Board or Executive Officer on behalf of the Regional Water Board.

Permittees may request an extension of the deadlines for notification of intent to develop a Watershed Management Program or EWMP, submission of a draft plan, and submission of a final plan. The extension is subject to approval by the Regional Water Board or the Executive Officer. Permittees that are granted an extension for any deadlines for development of the WMP/EWMP shall be subject to the baseline requirements in Part VI.D and shall demonstrate compliance with receiving water limitations pursuant to Part V.A. and with applicable interim water quality-based effluent limitations in Part VI.E pursuant to subparts VI.E.2.d.i.(1)-(3) until the Permittee has an approved WMP/EWMP in place.

Each Watershed Management Program must:

1. Prioritize water quality issues resulting from storm water and non-storm water discharges to the MS4 and from the MS4 to receiving waters within each Watershed Management Area,
2. Identify and implement strategies, control measures, and BMPs to achieve applicable water quality based effluent limitations and/or receiving water limitations, consistent with applicable compliance schedules in this Order,
3. Execute an integrated monitoring and assessment program to determine progress towards achieving applicable limitations, and
4. Modify strategies, control measures, and BMPs as necessary based on analysis of monitoring data collected pursuant to the MRP to ensure that applicable water

quality-based effluent limitations and receiving water limitations and other milestones set forth in the Watershed Management Program will be achieved.

Watershed Management Programs must be developed using the Regional Water Board's Watershed Management Areas (see Attachments B and C of this Order). Where appropriate, Watershed Management Areas may be separated into subwatersheds to focus water quality prioritization and implementation efforts by receiving water, or to align Permittee groups with "watershed authority groups" designated in the Los Angeles County Flood Control Act, so long as the Permittees implement all TMDL provisions for which they are identified as a responsible Permittee.

Permittees must identify the water quality priorities within each Watershed Management Area that will be addressed by the Watershed Management Program consistent with 40 CFR section 122.26(d)(2)(iv). At a minimum, these priorities must include achieving applicable water quality based effluent limitations and/or receiving water limitations established pursuant to TMDLs and included in this Order.

Each plan must include an evaluation of existing water quality conditions, including characterization of storm water and non-storm water discharges from the MS4 and receiving water quality, consistent with 40 CFR §§ 122.26(d)(1)(iv) and 122.26(d)(2)(iii), to support identification and prioritization/sequencing of management actions.

On the basis of the evaluation of existing water quality conditions, water body-pollutant combinations must be classified into one of the following three categories:

- Category 1 (Highest Priority): Water body-pollutant combinations for which water quality based effluent limitations and/or receiving water limitations are included in this Order to implement TMDLs.
- Category 2 (High Priority): Pollutants for which data indicate water quality impairment in the receiving water according to the State's Listing Policy and for which MS4 discharges may be causing or contributing to the impairment.
- Category 3 (Medium Priority): Pollutants for which there are insufficient data to indicate water quality impairment in the receiving water according to the State's Listing Policy, but which exceed applicable receiving water limitations contained in this Order and for which MS4 discharges may be causing or contributing to the exceedance.

Utilizing existing information, potential sources within the watershed for the pollutants in Categories 1 and 2 must be identified, consistent with 40 CFR sections 122.26(d)(1)(iii) and 122.26(d)(2)(ii). Permittees must identify known and suspected storm water and non-storm water pollutant sources in discharges to the MS4 and from the MS4 to receiving waters and any other stressors related to MS4 discharges causing or contributing to the highest water quality priorities (Categories 1 and 2).

Based on the findings of the source assessment, the issues within each watershed must be prioritized and sequenced. Factors that must be considered in establishing watershed priorities include:

1. Pollutants for which there are water quality based effluent limitations and/or receiving water limitations with interim or final compliance deadlines within the permit term.
2. Pollutants for which there are water quality based effluent limitations and/or receiving water limitations with interim or final compliance deadlines between October 26, 2012 and October 25, 2017.
3. Pollutants for which data indicate impairment in the receiving water and the findings from the source assessment implicates discharges from the MS4, but no TMDL has been developed.

Permittees must identify strategies, control measures, and BMPs to implement through their jurisdictional storm water management programs, or collectively on a watershed scale, with the goal of creating an efficient program to focus individual and collective resources on watershed priorities.

The following provisions of this Order may be part of the Watershed Control Measures within a Watershed Management Program:

1. **Minimum Control Measures.** Permittees may assess the minimum control measures (MCMs) as defined in this Order to identify opportunities for focusing resources on the high priority issues in each watershed. For each of the following minimum control measures, Permittees may propose modifications that will achieve equivalent pollutant control given watershed priorities:
 - a. Development Construction Program
 - b. Industrial/Commercial Program
 - c. Illicit Connection/Illicit Discharge Detection and Elimination Program
 - d. Public Agency Activities Program
 - e. Public Information and Participation Program
2. **Non-Storm Water Discharge Measures.** Where Permittees identify non-storm water discharges from the MS4 as a source of pollutants in the source assessment, the Watershed Control Measures must include strategies, control measures, and/or BMPs that will be implemented to effectively eliminate the source of pollutants. These may include measures to prohibit the non-storm water discharge to the MS4, additional BMPs to reduce pollutants in the non-storm water discharge or conveyed by the non-storm water discharge, or strategies to require the non-storm water discharge to be separately regulated under a general NPDES permit.
3. **TMDL Control Measures.** Permittees must compile control measures that have been identified in TMDLs and corresponding implementation plans. If not sufficiently identified in previous documents, or if implementation plans have not yet been developed (e.g., EPA promulgated TMDLs), the Permittees must evaluate and identify control measures to achieve water quality based effluent limitations and/or receiving water limitations established in this Order pursuant to these TMDLs.
 - a. TMDL control measures must include, where necessary, control measures to address both storm water and non-storm water discharges from the MS4.

- b. TMDL control measures may include activities covered under the MCMs as well as BMPs and other control measures covered under the non-stormwater discharge provisions of this Order.
- c. TMDL control measures must include, at a minimum, those actions that will be implemented during the permit term to achieve interim and/or final water quality based effluent limitations and/or receiving water limitations with compliance deadlines within the permit term.

Pursuant to 40 CFR sections 124.8, 124.9, and 124.18, as part of the Watershed Management Program plan, Permittees must conduct a Reasonable Assurance Analysis for each TMDL that consists of an assessment (through quantitative analysis or modeling) to demonstrate that the activities and control measures (i.e. BMPs) identified in the Watershed Control Measures will achieve applicable water quality based effluent limitations and/or receiving water limitations with compliance deadlines during the permit term.

Permittees must incorporate and, where necessary develop, numeric milestones and compliance schedules into the plan consistent with 40 CFR section 122.47(a). Numeric milestones and schedules shall be used to measure progress towards addressing the highest water quality priorities and achieving applicable water quality based effluent limitations and/or receiving water limitations. Where the TMDL Provisions do not include interim or final water quality based effluent limitations and/or receiving water limitations with compliance deadlines during the permit term, Permittees must identify interim numeric milestones and compliance schedules to ensure significant progress toward achieving interim and final water quality based effluent limitations and/or receiving water limitations with deadlines beyond the permit term (40 CFR § 122.47(a)(3)).

Schedules must be developed for both the strategies, control measures and BMPs to be implemented by each individual Permittee within its jurisdiction and for those that will be implemented by multiple Permittees on a watershed scale. Schedules must be adequate for measuring progress at least twice during the permit term. Schedules must incorporate the following:

1. Compliance deadlines occurring within the permit term for all applicable interim and/or final water quality based effluent limitations and/or receiving water limitations to implement TMDLs,
2. Interim deadlines and numeric milestones within the permit term for any applicable final water quality based effluent limitation and/or receiving water limitation to implement TMDLs, where deadlines within the permit term are not otherwise specified,
3. For watershed priorities related to addressing exceedances of receiving water limitations in Part V.A and not otherwise addressed by Part VI.E:
 - a. Numeric milestones based on measureable criteria or indicators, to be achieved in the receiving waters and/or MS4 discharges,

- b.** A schedule with interim and final dates for achieving the numeric milestones, and
- c.** Final dates for achieving the receiving water limitations as soon as possible, consistent with Parts VI.C.2.a.ii.(4) & VI.C.2.a.iii.(2)(c).

Each Permittee must implement the Watershed Management Program immediately after determination by the Regional Water Board Executive Officer that the Watershed Management Program meets the requirements of this Order.

Permittees may request an extension of deadlines for achievement of interim milestones and final compliance deadlines established pursuant to Part VI.C.45.c.iii.(3) only, with the exception of those final compliance deadlines established in a TMDL. Permittees shall provide requests in writing at least 90 days prior to the deadline and shall include in the request the justification for the extension. Extensions shall be subject to approval by must be affirmatively approved by the Regional Water Board Executive Officer, notwithstanding Part VI.C.8.a.iii.

Where a Permittee believes that additional time to comply with a final receiving water limitation compliance deadline set within a WMP/EWMP is necessary, and the Permittee fails to timely request or is not granted an extension by the Executive Officer, a Permittee may, no less than 90 days prior to the final compliance deadline, request a time schedule order pursuant to California Water Code section 13300 for the Regional Water Board's consideration.

Clean Water Act section 402(a)(2) requires the permitting authority to prescribe conditions for MS4 permits to assure compliance, including conditions on data and information collection, reporting, and such other requirements as appropriate. Consistent with this requirement, Permittees in each Watershed Management Area must develop an integrated program to assess the progress toward achieving the water quality based effluent limitations and/or receiving water limitations per the compliance schedules, and the progress toward addressing the highest water quality priorities for each Watershed Management Area. The integrated watershed monitoring and assessment program may be customized, but must contain the basic elements (receiving water monitoring, storm water outfall monitoring, non-storm water outfall monitoring, new development/re-development effectiveness tracking and regional studies), and achieve the objectives of, the Monitoring and Reporting Program (MRP) (Attachment E of this Order).

Permittees in each Watershed Management Area must implement an adaptive management process, at least twice during the permit term, adapting the Watershed Management Program to become more effective, based on, but not limited to the following:

- 1.** Progress toward achieving the outcome of improved water quality in MS4 discharges and receiving waters through implementation of the watershed control measures;
- 2.** Progress toward achieving interim and/or final water quality based effluent limitations and/or receiving water limitations, or other numeric milestones where specified, according to established compliance schedules;

3. Re-evaluation of the highest water quality priorities identified for the Watershed Management Area based on more recent water quality data for discharges from the MS4 and the receiving water(s) and a reassessment of sources of pollutants in MS4 discharges;
4. Availability of new information and data from sources other than the Permittees' monitoring program(s) within the Watershed Management Area that informs the effectiveness of the actions implemented by the Permittees;
5. Regional Water Board recommendations; and
6. Recommendations for modifications to the Watershed Management Program solicited through a public participation process, consistent with 40 CFR section 122.26(d)(2)(iv).

Based on the results of the iterative process, Permittees are required to report any modifications necessary to improve the effectiveness of the Watershed Management Program in the Annual Report, and as part of the Report of Waste Discharge (ROWD). Permittees must implement any modifications to the Watershed Management Program upon acceptance by the Regional Water Board Executive Officer.

Permittees shall report the following information to the Regional Water Board concurrently with the reporting for the adaptive management process:

- a. On-the-ground structural control measures completed;
- b. Non-structural control measures completed;
- c. Monitoring data that evaluates the effectiveness of implemented control measures in improving water quality;
- d. Comparison of the effectiveness of the control measures to the results projected by the RAA;
- e. Comparison of control measures completed to date with control measures projected to be completed to date pursuant to the Watershed Management Program or EWMP;
- f. Control measures proposed to be completed in the next two years pursuant to the Watershed Management Program or EWMP and the schedule for completion of those control measures;
- g. Status of funding and implementation for control measures proposed to be completed in the next two years.

Watershed Management Program Resubmittal Process

In addition to adapting the Watershed Management Program or EWMP every two years as described in Part VI.C.8.a., Permittees must submit an updated Watershed Management Program or EWMP with an updated Reasonable Assurance Analysis by June 30, 2021, or sooner as directed by the Regional Water Board Executive Officer or as deemed necessary by Permittees through the Adaptive Management Process, for review and approval by the Regional Water Board Executive Officer.

The updated Reasonable Assurance Analysis must incorporate both water quality data and control measure performance data, and any other information informing the two-year adaptive management process, gathered through December 31, 2020. As appropriate, the Permittees must consider any new numeric analyses or other methods developed for the reasonable assurance analysis. The updated Watershed Management Program or EWMP must comply with all provisions in Part VI.C. The Regional Water Board Executive Officer will allow a 60-day public review and comment period with an option to request a hearing. The Regional Water Board Executive Officer must approve or disapprove the updated Watershed Management Program or EWMP by June 30, 2022. The Executive Officer may waive the requirement of this provision, following a 60-day public review and comment period, if a Permittee demonstrates through water quality monitoring data that the approved Watershed Management Program or EWMP is meeting appropriate water quality targets in accordance with established deadlines.

C. Storm Water Management Program Minimum Control Measures (MCMs)

1. General Requirements

a. Basis for MCMs. 40 CFR section 122.26(d)(2)(iv) establishes required elements of the Permittees' storm water management program. The previous permit, Order No. 01-182, included six categories of minimum control measures that are considered to be baseline or default requirements for meeting the requirements of 40 CFR section 122.26(d)(2)(iv). These requirements were determined appropriate within Order No. 01-182 and again appropriate for this Order. The minimum control measures require Permittees to implement BMPs that are considered necessary to reduce pollutants in storm water to the MEP and to effectively prohibit non-storm water discharges. In lieu of implementing the MCMs as described in Part VI of this Order, this Order allows for Permittees to develop alternative BMPs to comply with 40 CFR section 122.26(d)(2)(iv), when implemented through a Watershed Management Program approved by the Executive Officer of the Regional Water Board.

b. Timelines for Implementation

The timelines for implementation of most MCMs contained in Part VI.D of this Order is provided in Table F-5 below. Where implementation dates for minimum control measures are not provided in the Table, Part VI.D.1.b requires implementation within 6 months of the effective date this Order. Unless otherwise noted in Part VI.D of the Order, each Permittee that does not elect to develop a Watershed Management Program or enhanced Watershed Management Program per Part VI.C must implement the requirements contained in Part VI.D within 6 months after the effective date of this Order. In the interim, a Permittee shall continue to implement its existing storm water management program, including actions within each of the six categories of minimum control measures consistent with 40 CFR section 122.26(d)(2)(iv).

Permittees that elect to develop a Watershed Management Program or enhanced Watershed Management Program shall continue to implement their existing storm water management programs, including actions within each of the six categories of minimum control measures consistent with 40 CFR section 122.26(d)(2)(iv) until the Watershed Management Program or enhanced Watershed Management Program is approved by the Regional Water Board Executive Officer. The Table below denotes the timeframe for requirements as well as the basis of those timeframes. The majority of the timeframes are consistent with Order No. 01-182 as well as other area permits including the Ventura County MS4 Permit and the State Water Board’s Construction General NPDES Permit. The timeframe for notifications, submittals, and attaining compliance with permit requirements are determined to be the earliest practicable periods and ensure timely measures for protection of water quality.

Table F-5. Timeline for the Implementation of Permit Requirements

| Part Number | Requirement Summary | Timeframe | Basis for Timeframe |
|-------------------------------|---|--|---|
| Discharge Prohibitions | | | |
| III.A.2.a.ii | Drinking water suppliers must notify MS4 Permittee if intend to discharge to the Permittee’s MS4. | At least 72 hours prior to a planned discharge and as soon as possible after an unplanned discharge. | Allows for advanced notice and sampling, if warranted. |
| III.A.4.e | If the Permittee determines that any of the authorized or conditionally exempt essential non-storm water discharges identified in Parts III.A.1.a through III.A.1.c, III.A.2.a or III.A.3 is a source of pollutants, notify the Regional Water Board if the non-storm water discharge has coverage under a separate NPDES permit or subject to a Record of Decision (ROD) approved under section 121 of CERCLA, or a conditionally exempt essential non-storm water discharge or emergency non-storm water discharge. | Within 30 days of determination. | The language in the previous LA MS4 permit, Order No. 01-182, states “promptly.” The specification of a 30 day deadline is considered reasonable and the earliest practicable deadline to ensure the protection of water quality. |
| Table III.A | <u>Dewatering of Lakes</u> – Ensure procedures for advanced notification by the lake owner/operator to the Permittee(s). | At least 72 hours in advance of discharge. | Allows for advanced notice and sampling, if warranted. |
| Table III.A | <u>Dechlorinated/debrominated swimming pool/spa discharges</u> – Ensure procedures for advanced notification by the pool owner to the Permittee(s) prior to planned discharges of 100,000 gallons or more. | At least 72 hours in advance of discharge. | Allows for advanced notice and sampling, if warranted. |
| Table III.A | <u>Dewatering of decorative fountains</u> – Ensure procedures for advanced notification by the fountain owner to the Permittee(s) prior to planned discharges of 100,000 gallons or more. | At least 72 hours in advance of discharge. | Allows for advanced notice and sampling, if warranted. |

| Part Number | Requirement Summary | Timeframe | Basis for Timeframe |
|--|--|---|--|
| Receiving Water Limitations | | | |
| V.A.3.a | Upon determination by either the Permittee or the Regional Water Board that discharges from the MS4 are causing or contributing to an exceedance of an applicable Receiving Water Limitation, the Permittee shall notify the Regional Water Board within 30 days of analytical results and thereafter submit an Integrated Monitoring Compliance Report within the next Annual Report. | Within 30 days of receipt of analytical results from the sampling event. | The language in the current LA MS4 permit reads "promptly." The specification of a 30 day deadline is considered reasonable and the earliest practicable deadline to ensure the protection of water quality. |
| V.A.3.b | Submit any modifications to the Integrated Monitoring Compliance Report required by the Regional Water Board | Within 30 days notification from the Regional Water Board. | This is consistent with Order No. 01-182 |
| V.A.3.c | Permittee shall revise its control measures and monitoring program to incorporate the improved modified BMPs that will be implemented, an implementation schedule, and any additional monitoring required. | Within 30 days following Regional Water Board Executive Officer's approval of the Integrated Monitoring Report. | Allows for adequate time to make modifications. |
| Provisions | | | |
| VI.A.2.j | Discharger shall file with the Regional Water Board a report of waste discharge before making any material change or proposed change in the character, location, or volume of the discharge. | At least 120 days prior to any change. | Standard language. |
| Special Provisions: Watershed Management Programs | | | |
| VI.C.2.b | Permittees that elect to develop a Watershed Management Program must notify the Regional Water Board. | No later than 6 months after the date this Order is adopted. | This provides a reasonable amount of time to determine participation in a WMP, but also ensure adequate time for implementation of watershed scale control measures during the term of this Order. |
| VI.C.2.c | Permittees that elect to develop a Watershed Management Program shall submit a draft plan to the Regional Water Board Executive Officer. | No later than 18 months after the date this Order is adopted. | This provides a reasonable amount of time to complete the plan but also ensure effective monitoring during the term of this Order. |
| VI.C.6.a.i | Permittees in each Watershed Management Area shall implement an adaptive management process adapting the Watershed Management Program to become more effective. | At least twice during the permit term. | This encourages application of the iterative approach. |
| VI.C.6.b.i | Permittees in the Watershed Management Area shall implement the adaptive management process | At least annually. | This encourages application of the iterative approach. |

| Part Number | Requirement Summary | Timeframe | Basis for Timeframe |
|---|--|--|--|
| | with regard to its jurisdictional storm water management program to improve its effectiveness. | | |
| Special Provisions: Minimum Control Measures | | | |
| VI.D.2.a.i | <u>Progressive Enforcement and Interagency Coordination</u> – In the event that a Permittee determines that a facility or site operator has failed to adequately implement all necessary BMPs, that Permittee shall take progressive enforcement which shall include a follow-up inspection. | Follow-up inspection within 4 weeks from the date of the initial inspection and/or investigation. | This is consistent with the current LA MS4 permit. |
| VI.D.2.b | <u>Progressive Enforcement and Interagency Coordination</u> – Each Permittee shall initiate investigation of complaints from facilities within its jurisdiction. | Initiate investigation within one business day of complaint. | This is consistent with Order No. 01-182. |
| VI.D.5.b.ii | <u>Public Information and Participation Program</u> – If participating in a County-wide or Watershed Group PIPP, provide contact information for their appropriate staff responsible for storm water public education activities to the designated PIPP coordinator and contact information changes. | No later than 30 days after a change occurs. | This is consistent with Order No. 01-182 for contact changes, which directs contact changes be sent to Los Angeles County by May 1, 2002. However, with the elimination of the Principal Permittee in this Order, it is more appropriate to direct any contact information changes directly to the PIPP coordinator. |
| VI.D.6.b.iii | <u>Industrial/Commercial Business Program</u> – Each Permittee shall update its inventory of critical sources. | Update at least annually. | Business turn-over can be significant thus an active inventory is required. |
| VI.D.6.c.i | <u>Industrial/Commercial Business Program</u> – Each Permittee shall notify the owner/operator of each of its inventoried commercial and industrial sites identified in Part VI.D.5.b of this Order of the BMP requirements applicable. | Notify at least once during the five-year period of this Order. | This is required so that the owner/operator remains informed and vigilant about BMP implementation. |
| VI.D.6.d.i | <u>Industrial/Commercial Business Program</u> – Each Permittee shall inspect all commercial facilities identified in Part VI.D.5.b of this Order twice during the 5-year term of this Order with a minimum interval of 6 months between the first and second mandatory compliance inspection required. | Provided that the first mandatory compliance inspection occurs no later than 2 years after the date this Order is adopted. | Order No. 01-182 required initial implementation by August 2004 (or a little over 2.5 years), however the 2 year requirement contained in this Order is considered reasonable and the earliest practicable deadline to ensure the protection of water quality. |
| VI.D.6.e.i.(1) | <u>Industrial/Commercial Business Program</u> – Each Permittee shall perform an initial compliance inspection of all industrial facilities | No later than 2 years after the date this Order is adopted. | Order No. 01-182 required initial implementation by August 2004 (or a little over 2.5 years). However, |

| Part Number | Requirement Summary | Timeframe | Basis for Timeframe |
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| | identified in Part VI.D.5.b.of this Order | | the 2 year requirement contained in this Order is considered reasonable and the earliest practicable deadline to ensure the protection of water quality. |
| VI.D.6.e.i.(2) | <u>Industrial/Commercial Business Program</u> – Each Permittee shall review the State Water Board’s Storm Water Multiple Application and Report Tracking System (SMARTS) database at defined intervals to determine if an industrial facility has been recently inspected by the Regional Water Board. The Permittee does not need to inspect the facility if it is determined that the Regional Water Board conducted an inspection of the facility within the prior 24 month period. | The first interval shall occur approximately 2 years after the date this Order is adopted. The second interval shall occur approximately 4 years after the date this Order is adopted. | This specific requirement for inspecting facilities within certain intervals is a new requirement, but is considered consistent with Order No. 01-182. |
| VI.D.6.e.i.(3) | <u>Industrial/Commercial Business Program</u> – Each Permittee shall evaluate its inventory of industrial facilities and perform a second mandatory compliance inspection at a minimum of 25% of the facilities identified to have filed a No Exposure Certification. | Approximately 3 to 4 years after the date this Order is adopted. | This is consistent Order No. 01-182. |
| VI.D.7.c.iii.(5).(f) | <u>Planning and Land Development Program</u> – Each Permittee shall develop a schedule for the completion of offsite projects, including milestone dates to identify, fund, design, and construct the projects. | Offsite projects shall be completed as soon as possible, and at the latest within 4 years of the certificate of occupancy for the first project that contributed funds toward the construction of the offsite project. | This requirement is consistent with the provisions contained in the Ventura County Redevelopment Project Area Master Plan (RPAMP). |
| VI.D.7.d.iv.(1).(c) | <u>Planning and Land Development Program</u> – Each Permittee shall maintain a database providing key information for each new development/re-development subject to the requirements of Part VI.D.6 of this Order. | Each Permittee shall implement a tracking system and an inspection and enforcement program for new development and redevelopment post-construction storm water no later than 60 days after Order adoption date. | Effectiveness tracking of the treatment system is warranted and will also help to ensure adequate maintenance. |
| VI.D.7.d.i | <u>Planning and Land Development Program</u> – A local LID ordinance that fully incorporated the applicable requirements of this Order shall be submitted to the Executive Officer of the Regional Water Board for approval. | Within 180 days after the date this Order is adopted. | The requirement is deemed acceptable due to the large number of existing LID ordinances within the Permittees and the varied number of templates available nationally. |
| VI.D.7.d.iii.(1).(a) (ii) | <u>Planning and Land Development Program</u> – Written conditions in the | At least once a year. | This is consistent with the current Ventura County |

| Part Number | Requirement Summary | Timeframe | Basis for Timeframe |
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| | sales or lease agreement, which require the property owner or tenant to assume responsibility for BMP maintenance and conduct a maintenance inspection. | | MS4 permit. |
| VI.D.7.d.iv | <u>Planning and Land Development Program</u> – Each Permittee shall implement a tracking system and an inspection and enforcement program from new development and redevelopment post-construction storm water BMPs. | No later than 60 days after the date this Order is adopted. | A tracking system is deemed critical to the success of this MCM. Additionally, a tracking system need not be complex and can, and has, been developed using spreadsheets or equivalent. |
| VI.D.7.d.iv.(1).(c). (ii) | <u>Planning and Land Development Program</u> – Inspection of post-construction BMPs to assess operation conditions with particular attention to criteria and procedures for post-construction treatment control and hydromodification control BMP repair, replacement, or re-vegetation. | Inspection at least once every 2 years after project completion. | This is consistent with the current Ventura County MS4 permit. |
| VI.D.8.j.ii.(1) | <u>Development Construction Program</u> – Inspect public and private construction sites 1 acre or larger that discharge to a tributary listed by the state as an impaired water for sediment or turbidity under CWA § 303(d). | When two or more consecutive days with greater than 50% chance of rainfall are predicted by NOAA, within 48 hours of a ½-inch rain event, and at least once every two weeks. | This requirement is consistent with the current State Water Board's General NPDES Construction Permit Requirements. |
| VI.D.8.j.ii.(1) | <u>Development Construction Program</u> – Inspect public and private construction sites 1 acre or larger determined to be a significant threat to water quality. | When two or more consecutive days with greater than 50% chance of rainfall are predicted by NOAA, within 48 hours of a ½-inch rain event, and at least once every two weeks. | This requirement is consistent with the current State Water Board's General NPDES Construction Permit Requirements. |
| VI.D.8.j.ii.(1) | <u>Development Construction Program</u> – Inspect public and private construction sites 1 acre or larger that do not meet other criteria in Part VI.D.7.j.ii.(1) of this Order. | At least monthly. | This requirement is consistent with the current General Construction Permit Requirements. |
| VI.D.9.c.iii | <u>Public Agency Activities Program</u> – Each Permittee shall update its facility inventory. | At least once during the term of this Order. | This requirement is deemed reasonable because site conditions can change at existing facilities. |
| VI.D.9.h.iii.(2) | <u>Public Agency Activities Program</u> – In areas that are not subject to a trash TMDL, each Permittee shall inspect Priority A catch basins. | A minimum of 3 times during the wet season (October 1 through April 15) and once during the dry season every year. | This is consistent with Order No. 01-182. |
| VI.D.9.h.iii.(2) | <u>Public Agency Activities Program</u> – In areas that are not subject to a | A minimum of once during the wet season | This is consistent with Order No. 01-182. |

| Part Number | Requirement Summary | Timeframe | Basis for Timeframe |
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| | trash TMDL, each Permittee shall inspect Priority B catch basins. | and once during the dry season every year. | |
| VI.D.9.h.iii.(2) | <u>Public Agency Activities Program</u> – In areas that are not subject to a trash TMDL, each Permittee shall inspect Priority C catch basins. | A minimum of once per year. | This is consistent with Order No. 01-182. |
| VI.D.9.h.iv.(1).(c) | <u>Public Agency Activities Program</u> – Provide clean out of catch basins, trash receptacles, and grounds in the event area. | Within one business day subsequent to the event. | This is consistent with the current Ventura County MS4 permit. |
| VI.D.8.h.vi.(2) | <u>Public Agency Activities Program</u> – Each Permittee shall inspect the legibility of the stencil or label nearest each inlet. | Prior to the wet season every year. | This is consistent with Order No. 01-182. |
| VI.D.9.h.vi.(3) | <u>Public Agency Activities Program</u> – Each Permittee shall record all catch basins with illegible stencils and re-stencil or re-label. | Within 180 days of inspection. | This is consistent with Order No. 01-182. |
| VI.D.9.h.vii.(1) | <u>Public Agency Activities Program</u> – In areas that are not subject to a trash TMDL, each Permittee shall install trash excluders, or equivalent devices, on or in catch basins or outfalls, except at sites where the application of such BMPs alone will cause flooding. | No later than 4 years after the date this Order is adopted in areas specified as Priority A. | This is based on the current Ventura County MS4 permit, but due to the significant number of catch basins in Los Angeles County compared to Ventura County the time frame was lengthened. |
| VI.D.9.h.viii.(1) | <u>Public Agency Activities Program</u> – Visual monitoring of Permittee-owned open channels and other drainage structures, including debris basins, for debris. | At least annually. | This is consistent with Order No. 01-182. |
| VI.D.9.h.viii.(2) | <u>Public Agency Activities Program</u> – Removal of trash and debris from open channels. | A minimum of once per year before the wet season. | This is consistent with Order No. 01-182. |
| VI.D.9.i.ii | <u>Public Agency Activities Program</u> – Each Permittee shall perform street sweeping of curbed streets for Priority A areas. | Swept at least two times per month. | This is consistent with Order No. 01-182. |
| VI.D.9.i.ii | <u>Public Agency Activities Program</u> – Each Permittee shall perform street sweeping of curbed streets for Priority B areas. | Swept at least once per month. | This is consistent with Order No. 01-182. |
| VI.D.9.i.ii | <u>Public Agency Activities Program</u> – Each Permittee shall perform street sweeping of curbed streets for Priority C areas. | Swept as necessary but in no case less than once per year. | This is consistent with Order No. 01-182. |
| VI.D.9.i.iv.(1) | <u>Public Agency Activities Program</u> – Permittee-owned parking lots exposed to storm water shall be kept clear of debris and excessive oil buildup and cleaned. | No less than 2 times per month and/or inspected no less than 2 times per month to determine if cleaning is necessary. In no case shall a Permittee-owned parking lot be cleaned less than once a month. | This is consistent with Order No. 01-182. |
| VI.D.9.j.i.(2) | <u>Public Agency Activities Program</u> – | No later than 30 business | This is consistent with the |

| Part Number | Requirement Summary | Timeframe | Basis for Timeframe |
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| | Where the self-waiver has been invoked, the Permittee shall submit to the Regional Water Board Executive Officer a statement of the occurrence of the emergency, an explanation of the circumstances, and the measures that were implemented to reduce the threat to water quality. | days after the situation of emergency has passed. | current Ventura County MS4 permit. |
| VI.D.9.k.i | <u>Public Agency Activities Program</u> – Each Permittee shall train or ensure training of all of their employees and contractors in targeted positions on the requirements of the overall storm water management program. | No later than 1 year after the date this Order is adopted and annually thereafter before June 30. | Order No. 01-182 allowed for this to be initially completed by August 2002. However, since this implementation of this requirement is continuing from the previous LA MS4 permit, implementation within a year is considered reasonable and the earliest practicable period for implementation. This is consistent with Order No. 01-182 and the current Ventura County MS4 permit. |
| VI.D.9.k.ii | <u>Public Agency Activities Program</u> – Each Permittee shall train all of their employees and contractors or ensure training for all who use or have the potential to use pesticides or fertilizers. | No later than 1 year after the date this Order is adopted and annually thereafter before June 30. | This is consistent with the current Ventura County MS4 permit. |
| VI.D.10.b.ii | <u>Illicit Connections and Illicit Discharges Elimination Program</u> – Each Permittee shall initiate investigation(s) to identify and locate the source of an illicit discharge. | Within 72 hours of becoming aware of the illicit discharge. | Order No. 01-182 and the current Ventura County MS4 permit require illicit discharge investigations be initiated within 1 business day. However, the 72 hour requirement takes into account the possibility of weekend spills. |
| VI.D.10.b.iv.(2) | <u>Illicit Connections and Illicit Discharges Elimination Program</u> – If the source of the illicit discharge has been determined to originate within an upstream jurisdiction, the Permittee shall notify the upstream jurisdiction and the Regional Water Board. | Within 30 days of such determination. | This ensures the ID is addressed in a reasonable period of time by the upstream jurisdiction. |
| VI.D.10.b.v | <u>Illicit Connections and Illicit Discharges Elimination Program</u> – In the event the Permittee is unable to eliminate an ongoing illicit discharge following full execution of its legal authority and in accordance with its Progressive Enforcement | Notify the Regional Water Board within 30 days of such determination and provide a written plan for review and comment. | This ensures the Regional Water Board is effectively engaged in the ultimate disposition of ongoing illicit discharges. |

| Part Number | Requirement Summary | Timeframe | Basis for Timeframe |
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| | Policy, or other circumstances prevent the full elimination of an ongoing illicit discharge, the Permittee shall work with the Regional Water Board to provide a diversion of the entire flow to the sanitary sewer or provide treatment. | | |
| VI.D.10.c.ii | <u>Illicit Connections and Illicit Discharges Elimination Program</u> – Each Permittee, upon discovery or upon receiving a report of a suspected illicit connection, shall initiate an investigation. | Initiate investigation within 21 days of discovery. | This is consistent with Order No. 01-182 and the current Ventura County MS4 permit. |
| VI.D.10.c.iii.(2) | <u>Illicit Connections and Illicit Discharges Elimination Program</u> – Each Permittee, upon confirmation of an illicit MS4 connection, shall ensure that the connection is eliminated. | Within 180 days of completion of the investigation. | This is consistent with Order No. 01-182 and the current Ventura County MS4 permit. |
| VI.D.10.e.i.(2) | <u>Illicit Connections and Illicit Discharges Elimination Program</u> – Initiate investigation of all public and employee illicit discharge and spill complaints. | Within 1 business day of receiving the complaint. | This is consistent with Order No. 01-182 and the current Ventura County MS4 permit. |
| VI.D.10.e.i.(3) | <u>Illicit Connections and Illicit Discharges Elimination Program</u> – Response to spills for containment. | Within 4 hours of becoming aware of the spill, except where such spills occur on private property, in which case should be within 2 hours of gaining legal access to the property. | The requirement that spills be responded to within 4 hours of becoming aware of the spill, except where such spills occur on private property, in which case should be within 2 hours of gaining legal access to the property is the earliest practicable period for implementation and ensures the protection of water quality. |
| VI.D.10.f.iv | <u>Illicit Connections and Illicit Discharges Elimination Program</u> – Each Permittee must create a list of applicable staff and contractors which require IC/ID training and ensure that training is provided. | At least twice during the term of this Order. | This requirement is new and twice during the term of this Order is considered reasonable and the earliest practicable period for implementation. |
| VI.D.10.f.v | <u>Illicit Connections and Illicit Discharges Elimination Program</u> – New Permittee staff members must be provided with IC/ID training. | Within 180 days of starting employment. | The current Ventura MS4 permit specifies that within 1 year all employees must be trained. However, the requirement that employees be trained within 180 days of starting employment is the earliest practicable period for implementation and ensures the protection of water quality. |

2. Progressive Enforcement

Progressive enforcement is a series of defined and reproducible enforcement actions whereby consequences of non-compliance increase with each incremental enforcement steps. Progressive enforcement includes procedures to coordinate enforcement between the Regional Water Board and Permittees. As the Regional Water Board is the agency responsible for implementing the NPDES program, it has the authority to step in when enforcement actions of Permittee are unsuccessful in bringing dischargers into compliance with the permit. As such, progressive enforcement is an effective strategy to achieve timely compliance with permit requirements. Order No. 01-182 included requirements for a progressive enforcement strategy that are carried over to this Order, with some modifications. This Order includes supplemental documentation requirements for site acreage and Risk Factor rating, when making a referral to the Regional Water Board for MS4 permit non-compliance of a discharger under the construction general permit. This requirement is necessary information for the Regional Water Board consideration. Moreover, this Order eliminates the provision within Order No. 01-182 that allows the Regional Water Board and Permittees to form a storm water task force. This provision was removed because the ability for coordinated enforcement between the Regional Water Board and Permittees is adequately established through remaining provisions within Part VI.D.2 of this Order.

3. Modifications/Revisions

This Order requires each Permittee to modify its storm water management programs, protocols, practices, and municipal codes to be consistent with this Order. This provision is necessary to ensure that each Permittee takes all the steps necessary to update the core and ancillary programs that are required to ensure compliance with this Order. A significant change from Order No. 01-182 is that this obligation now rests with each individual Permittee rather than the Principal Permittee.

4. Public Information and Participation Program

a. Legal Authority

NPDES regulation 40 CFR section 122.26(d)(2)(iv)(A)(6) provides that the proposed management program include "A description of a program to reduce to the maximum extent practicable, pollutants in discharges from MS4s associated with the application of pesticides, herbicides, and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications, and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities."

NPDES regulation 40 CFR section 122.26(d)(2)(iv)(B)(6) provides that the proposed management program include " A description of education activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials."

To satisfy the Public Education and Outreach minimum control measure, the Permittees need to implement a Public Information and Participation Program (PIPP) that has the following objectives: (1) measurably increase the knowledge of the target audiences about the MS4, the adverse impacts of storm water pollution of receiving waters and potential solutions to mitigate the impacts, (2) measurably change the waste disposal and storm water pollution generation behavior of target audiences by developing and encouraging implementation of appropriate activities, and (3) involve and engage a diversity of socio-economic groups and ethnic communities in Los Angeles County to participate in mitigating the impacts of storm water pollution.

b. Background

Implementation of a PIPP is a critical BMP and a necessary component of a storm water management program. The State Water Board Technical Advisory Committee "recognizes that education with an emphasis on pollution prevention is the fundamental basis for solving nonpoint source pollution problems." The USEPA Phase II Fact Sheet 2.3 (Fact Sheet 2.3) finds that "An informed and knowledgeable community is critical to the success of a storm water management program since it helps insure the following: (i) greater support for the program as the public gains a greater understanding of the reasons why it is necessary and important, and (ii) greater compliance with the program as the public becomes aware of the personal responsibilities expected of them and others in the community, including the individual actions they can take to protect or improve the quality of area waters."³¹

Furthermore, the public can provide valuable input and assistance to a municipal storm water management program and, therefore, should play an active role in the development and implementation of the program. An active and involved community is essential to the success of a storm water management program because it allows for:

- Broader public support since residents who participate in the development and decision making process are partially responsible for the program and, therefore, are more likely to take an active role in its implementation;
- Shorter implementation schedules due to fewer obstacles in the form of public and legal challenges and increased sources in the form of residents volunteers;
- A broader base of expertise and economic benefits since the community can be a valuable, and free, intellectual resource; and
- A conduit to other programs as residents involved in the storm water program development process make important cross-connections and relationships with other community and government programs. This benefit is particularly valuable when trying to implement a storm water program on a watershed basis.

³¹ Storm Water Phase II Final Rule - Public Education and Outreach Minimum Control Measure. USEPA Fact Sheet 2.3, January 2000.

c. PIPP Implementation

It is generally more cost-effective to have numerous operators coordinate to use an existing program than each developing its own local programs. Therefore, Permittees are encouraged to participate in a County-wide PIPP or in one or more Watershed Group sponsored PIPPs supplemented with additional information specific to local needs.

Permittees are required to: (a) conduct storm water pollution prevention public service announcements and advertising campaigns; (b) provide public education materials on the proper handling or potential storm water pollutants; (c) distribute activity specific storm water pollution prevention public education materials to points of purchase; (d) maintain storm water websites or provide links to storm water websites via the Permittees website, which contain educational material and opportunities for the public to participate in storm water pollution prevention and clean-up activities; and (e) provide independent, parochial, and public schools within each Permittee's jurisdiction with materials, including, but not limited to videos, live presentations, and other information. Permittees are required to use effective strategies to educate and involve ethnic communities using culturally effective methods.

The intent of these changes is to provide an increase in public knowledge of storm water pollution prevention practices in an effective and cost efficient manner, while still providing flexibility for the Permittees to implement the requirements on a watershed group basis.

The Order requires outreach to ethnically diverse communities using culturally effective strategies. The USEPA, Tailoring Outreach Programs to Minority and Disadvantaged Communities and Children Fact Sheet finds that, "many residents of ethnically and culturally diverse communities don't speak English. English messages contained in public education outreach materials may not be effectively reaching a significant portion of some communities. The intent of this provision is to encourage behavior changes that reduce pollutants in storm water to a portion of the population who might otherwise be overlooked.

5. Industrial/Commercial Business Program

a. Legal Authority

The Phase I regulations require, in part, that the applicant: (i) develop adequate legal authority, (ii) perform a source identification, and (iii) develop a management program to reduce the discharge of pollutants to the MEP using management practices, control techniques and system design and engineering methods, and such other provisions which are appropriate. Specifically, with regards to industrial controls, the management plan shall include the following.

“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. The program shall:

- i. Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges.
- ii. Describe a monitoring program for storm water discharges associated with industrial facilities [...].”

(40 CFR section 122.26(d)(2)(iv)(C))

The provisions contained in this Order pertaining to the inspection and facility control program requirements for industrial and commercial facilities, as well as construction sites (as discussed below in Part VI.7.b.) are also based on the requirements found in the previous permit, Order No. 01-182. Those requirements, among others, were the subject of litigation between several permittees and the Regional Water Board. In that case, the Los Angeles County Superior Court upheld the inspection and facility control program requirements for industrial/commercial facilities and construction sites in Order No. 01-182. The Court determined that “[t]he Permit contains reasonable inspection requirements for these types of facilities. [Citation.] The Permit requires each permittees to confirm that operators of these facilities have a current waste discharge identification number and is effectively implementing Best Management Practices (BMPs) in compliance with County and municipal ordinances, Regional Board Resolution 90-08 and the Stormwater Quality Management Plans (SQMPs). [Citation.] Addressing pollution after it has entered the storm sewer system is not working to meet legislative goals. More work is required at the source of pollution, and that is partially the basis on which this Court finds that the Permit’s inspection requirements are reasonable, and not onerous and burdensome.” (*In re L.A. Cnty. Mun. Storm Water Permit Litig.* (L.A. Super. Ct., No. BS 080548, Mar. 24, 2005), Statement of Decision from Phase II Trial on Petitions for Writ of Mandate, p. 17.)

The Court also addressed the permittees’ claims that the requirements in Order No. 01-182 shifted the Regional Water Board’s inspection responsibility under State Water Board issued general NPDES permits for these types of facilities onto the local agencies. The Court disagreed, stating: “The Court agrees with [the Regional Water Board] and Intervenors that the United States EPA considered obligations under state-issued general permits to be separate and distinct. Despite the similarity between the general permits and the local storm water ordinances, both must be enforced. [Citations.] EPA requires permittees to conduct inspections of commercial and industrial facilities, as well as of construction sites. [Citation.].....This Court finds that the state-issued general permits do not preempt local enforcement of local storm water ordinances. (See

State Board Order No. 99-08, [citation].) [¶] Therefore, this Court finds that requiring permittees to inspect commercial and industrial facilities and construction sites is authorized under the Clean Water Act, and both the Regional Board and the municipal permittees or the local government entities have concurrent roles in enforcing the industrial, construction and municipal permits. The Court finds that the Regional Board did not shift its inspection responsibilities to Petitioners. [¶] ... The Court further notes that the Permit issued to local entities, who are Petitioners here, does not refer to any inspection obligations related to state-issued permits. [Citation.] There is no duplication of efforts and no shifting of inspection responsibility in derogation of the Regional Board's responsibility here. The Regional Board is not giving up its won responsibilities, and there is nothing arbitrary or capricious about the Permit's inspection provisions." (*Id.* at 17-18.)

It is also important to note that similar controls for industrial/commercial facilities and construction sites, including inspection activities, required by this Order were also required in the 2002 San Bernardino County MS4 permit issued by the Santa Ana Regional Water Quality Control Board (Santa Ana Regional Water Board). Like Order No. 01-182, that permit was also subject to litigation. In that case, the City of Rancho Cucamonga claimed that the Santa Ana Regional Water Board improperly delegated to it and other permittees the inspection duties of the State and Regional Water Boards and that it was being required to conduct inspections for facilities covered by other state-issued general NPDES permits. (*City of Rancho Cucamonga v. Regional Water Quality Control Board- Santa Ana Region* (2006) 135 Cal.App.4th 1377, 1389.) Like the Los Angeles County Superior Court, the California Court of Appeal rejected this argument. The Court of Appeal upheld the Santa Ana Regional Water Board's requirements, finding that "Rancho Cucamonga and the other permittees are responsible for inspecting construction and industrial sites and commercial facilities within their jurisdiction for compliance with and enforcement of local municipal ordinances and permits. But the Regional Board continues to be responsible under the 2002 NPDES permit for inspections under the general permits. The Regional Board may conduct its own inspections but permittees must still enforce their own laws at these sites. (40 C.F.R. § 122.26, subd. (d)(2) (2005).)" (*Id.* at 1390.)

b. Background

Municipalities are required to control the storm water discharges associated with industrial activities and other commercial facilities identified as significant contributors of pollutants through the implementation of a mandatory baseline minimum set of source control BMPs; performance of an inspection program to verify the adequacy of BMPs implementation in the field and compliance with the municipal ordinances; and assist the Regional Water Board in ensuring that industrial activities subject to regulations are covered by the general industrial stormwater permit. Regional Water Board will also assist the municipalities in case of instances of egregious non-compliance with the municipal ordinances and state and federal laws and regulations.

The municipality is ultimately responsible for discharges from the MS4. Because industrial awareness of the program may not be complete, there may be facilities within the MS4 area that should be permitted under an industrial storm water permit but are not (non-filers). In addition, the Phase I regulations that require industries to obtain permit coverage for storm water discharges is largely based on Standard Industry Classification (SIC) Code. This has been shown to be incomplete in identifying industries that may be significant sources of storm water pollution ("industries" includes commercial businesses). The word "industries" is used in a broad sense. Another concern is that the permitting authority may not have adequate resources to provide the necessary oversight of permitted facilities. Therefore, it is in the municipality's best interest to assess the specific situation and implement an industrial/commercial inspection/site visit and enforcement program to control the contribution of pollutants to the MS4 from all high risk sources.

In the preamble to the 1990 regulations, USEPA clearly states the intended strategy for discharges of storm water associated with industrial activity:

"...Municipal operators of large and medium municipal separate storm sewer systems are responsible for obtaining system-wide or area permits for their system's discharges. These permits are expected to require that controls be placed on storm water discharges associated with industrial activity which discharge through the municipal system." The USEPA also notes in the preamble that "... municipalities will be required to meet the terms of their permits related to industrial dischargers."

Similarly, in the USEPA's Guidance Manual (Chapter 3.0), USEPA specified that MS4 applicants must demonstrate that they possess adequate legal authority to:

- i. Control construction site and other industrial discharges to MS4s;
- ii. Prohibit illicit discharges and control spills and dumping;
- iii. Carry out inspection, surveillance, and monitoring procedures.

The document goes on to explain that "control," in this context means not only to require disclosure of information, but also to limit, discourage, or terminate a storm water discharge to the MS4. Further, to satisfy its permit conditions, a municipality may need to impose additional requirements on discharges from permitted industrial facilities, as well as discharges from industrial facilities and construction sites not required to obtain permits.

In the same Guidance Manual (Chapter 6.3.3), USEPA states that the municipality is ultimately responsible for discharges from their MS4. Consequently, the MS4 applicant must describe how the municipality will help the USEPA and authorized NPDES States to:

- i. Identify priority industries discharging to their systems;

- ii. Review and evaluate storm water pollution prevention plans (SWPPPs) and other procedures that industrial facilities must develop under general or individual permits;
- iii. Establish and implement BMPs to reduce pollutants from these industrial facilities (or require industry to implement them); and
- iv. Inspect and monitor industrial facilities discharging storm water to the municipal systems to ensure these facilities are in compliance with their NPDES storm water permit, if required.

c. Industrial/Commercial Business Program Implementation

The requirements in this Order clarify the scope and frequency of inspections. For commercial facilities, in general, frequencies have been modified to require inspections of a facility twice during the five year permit term provided that the first mandatory compliance inspection takes place no later than two years after the date this Order is adopted with a minimum interval of six months between the first and second inspection. The scope of the inspections for each of the facility types was clarified by specifying in tables what BMPs should be implemented at that facility to ensure that pollutant generating activity does not occur. The tables include a range of BMPs that are anticipated to be needed at select industrial and commercial facilities. The BMP categories are based on BMPs identified in the 2003 California Stormwater BMP Handbook, Industrial and Commercial as well as BMPs identified in Regional Water Board Resolution No. 98-08.

For industrial facilities, an initial mandatory compliance inspection must be completed at all industrial facilities no later than 2 years after the date this Order is adopted. If after the initial inspection, the facility was determined to as having exposure of industrial activities to storm water then the permit requires a second mandatory compliance inspection with a minimum interval of 6 months between the first and second mandatory compliance inspection. For facilities determined not to have exposure of industrial activities to storm water during the initial inspection, Permittees must conduct second compliance inspections yearly at a minimum of 20% of the facilities.

A provision was added to the Order relieving Permittees of the responsibility to inspect industrial facilities that the Regional Water Board has inspected within the previous 24 months.

In regards to the level of inspection, this Order clarifies that the Permittees are expected to check during inspections for a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a SWPPP is available on site or that the owner/operator of the facility has applied for and has a current No Exposure Certification (and WDID number). In addition Permittees are expected to check during inspections for compliance with the implementation of minimum BMPs, as previously approved by Board Order 98-08, and compliance with the local storm water ordinances.

The inspection requirements in this Order provide greater clarification concerning the scope of enforcement. A progressive enforcement procedure was outlined including minimum steps that Permittees must take in their program to enforce their municipalities' storm water requirements. In recognition of some of the Permittees concerns regarding the resource intensive efforts needed to elevate enforcement actions, a mechanism was provided through which Permittees can refer cases to the Regional Water Board, and for violations of the State Water Board's General Industrial Activities Storm Water NPDES permit, the referral can be expedited, referral can occur after a single inspection and one written notice rather than referral after two inspections and two written notices.

6. Planning and Land Development Program

a. Legal Authority

The permit application requirements described in 40 CFR section 122.26(d) have formed the basis for MS4 permits and remain applicable as elements in a storm water management program. Section 122.26(d)(2)(iv) requires in part, that the large and medium MS4 applicant develop a management program. Specifically, with regards to planning and land development and post-construction controls, the management program shall include the following:

“(A) 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. At a minimum, the description shall include:

(1) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

(2) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed.

(3) 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

(4) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.”

b. Background

Land development and urbanization have been linked to the impairment of aquatic life beneficial uses in numerous studies. Poorly planned new developments and re-development have the potential to impact the hydrology of the watershed and the water quality of the surface waters. Development without proper controls, often result in increased soil compaction, changes in vegetation and increased impervious surfaces. These conditions may lead to a reduction in groundwater recharge and changes in the flow regime of the surface water drainages. Historically, urban development has resulted in increased peak stream flows and flow duration, reduced base flows, and increased water temperatures. Pollutant loading in storm water runoff often increases due to post-construction use and because the storm water runoff is directly connected to the storm drain system or to the surface water body, without the benefit of filtration through soil and vegetation.

In a natural water body (i.e., a water body that has not been armored for flood control or channel stability), increased peak flows and flow duration can cause stream bank erosion, changes in channel geomorphology and bed sediment composition and stability.

When development infringes upon natural riparian buffers, the additional impacts may include further stream bank instability, increased nitrogen loadings to the water body—which would have been intercepted by native riparian vegetation, loss of shading resulting in further increase in water temperature, and a loss of woody debris and leaf litter, which provide food and habitat for some aquatic species.

Low Impact Development (LID) strategies are designed to retain storm water runoff on-site by minimizing soil compaction and impervious surfaces, and by disconnecting storm water runoff from conveyances to the storm drain system. This Order establishes criteria for the volume of storm water to be retained on-site as required to meet water quality goals and to preserve pre-development hydrology in natural drainage systems.

Monitoring studies conducted by the California Department of Public Health (CDPH) have documented that mosquitoes opportunistically breed in structural storm water Best Management Practices (BMPs), particularly those that hold standing water for over 96 hours. Certain Low Impact Development (LID) site design measures that hold standing water such as rainwater capture systems may similarly produce mosquitoes. BMPs and LID design features should incorporate design, construction, and maintenance principles to promote drainage within 96 hours to minimize standing water available to mosquitoes. This Order requires regulated MS4 Permittees to coordinate with other agencies necessary to successfully implement the provisions of this Order. These agencies may include CDPH and local mosquito and vector control agencies on vector-related issues surrounding implementation of post-construction BMPs.

This Order is not intended to prohibit the inspection for or abatement of vectors by the State Department of Public Health or local vector agencies in accordance with CA Health and Safety Code, § 116110 et seq. and Water Quality Order No. 2012-0003-DWQ.

In California, hydromodification studies have focused on the erosive effects of storm water runoff flows and the resulting changes in geomorphology and bed sediment. As described in Hawley (2011), southern California streams may be especially susceptible to geomorphic changes due to steep topography, flashy flow regimes, high sediment loads and largely non-resistant stream bed material.³² This recent study assessed the impact of urbanization on peak flow and the duration of lower flows capable of moving bed sediment. The results of the study showed that, urbanization resulted in proportionally-longer durations of all geomorphically-effective flows, with a more pronounced effect on the durations of low to moderate flows.

A study performed by United States Geological Survey (USGS) researchers at nine different metropolitan areas within the United States, found that adverse impacts to macroinvertebrate benthic communities were observed in drainages with 5 percent impervious area.³³ The authors concluded that there appears to be no percent impervious area threshold below which benthic communities are not adversely impacted

The Grand River (lower) Surrogate Flow Regime Total Maximum Daily Load (TMDL), prepared for the Ohio Environmental Protection Agency (OEPA), examined the impacts of impervious cover and flow regime changes on aquatic life beneficial uses.³⁴ The TMDL was approved by USEPA on April 12, 2012. The TMDL analysis showed that aquatic community health (as measured by biological indices) decreased as impervious cover increased. Flow alteration and impervious cover were determined to be the stressors impairing aquatic life. Riparian buffers were identified as a mitigating factor. Peak flow, runoff volume, and flashiness were considered as surrogates. However, for this watershed, flow regime was selected because it addresses the full spectrum of flow conditions (i.e., peak flow and flow duration and base flow). In this watershed, low flow and increased water temperature presented a threat to cold-water fish species. Increased peak flow and flow duration were linked to impairment of aquatic life beneficial uses due to increased pollutant loading and the impact of channel scouring. A flow duration curve was developed for a reference watershed, based on unit area to allow for comparison of varying-sized streams. The criteria for selecting the reference watershed were: (1) the water body was fully supporting aquatic life beneficial uses, (2) location (ecoregion), (3) size (4) land cover (5) riparian buffer and (6) soils. The flow regime TMDL compares flow duration curves for the impaired stream and the reference stream. The TMDL is expressed as the difference between the impaired stream's flow and the

³² Hawley, Robert J. 2011. The effects of urbanization on the hydrologic stability of small streams in southern California.

³³ Cuffney, T.F., Brightbill, R.A., May, J.T., and Waite, I.R. 2010. Responses of benthic macroinvertebrates to environmental changes associated with urbanization in nine metropolitan areas. *Ecological Applications* 20(5):1384-1401.

³⁴ Ohio Environmental Protection Agency. Total Maximum Daily Loads for the Grand River (lower) Watershed. Draft Report. October 12, 2011.

reference stream's flow during all flow conditions. The TMDL report recommends protection strategy numeric targets of no more than 6 percent EIA with a forested (70 percent coverage) riparian buffer of 100 feet from the top of each stream bank (200 feet total).

In Los Angeles County, development has infringed upon or eliminated natural riparian buffers and existing development exceeds recommended percent impervious area in many watersheds. In addition, many water bodies have been armored or converted to engineered channels to manage flood hazards. Because of the hydrologic differences between engineered channels and natural water bodies, the Regional Water Board approaches each situation differently. Where development occurs in drainages to water bodies that have been converted to engineered channels, the Regional Water Board's regulatory approach is designed to reduce storm water runoff -- the most effective method for reducing pollutant loading. Alternatively, where development occurs in drainages to natural water bodies, the Regional Water Board regulatory approach aims to reduce pollutant loading conveyed by storm water runoff and to preserve or restore the pre-development hydrology. As a result of past development, it is likely that retrofitting of existing development will be necessary to restore watershed hydrology to pre-development conditions.

c. Applicability

New development and re-development projects subject to these requirements are described in Part VI.D.7.b. of this Order. Although not defined for large and medium MS4s, 40 CFR section 122.34 requires programs for small MS4s to include all projects that disturb an area equal to or greater than 1 acre of land and add more than 10,000 square feet of impervious surface area. The list of new development projects subject to requirements, specified in this Order in Parts VI.D.1.c.i(1)(a) through (k) were either carried over from Order No. 01-182 or were developed for the Ventura County MS4 and are appropriate for defining new developments and redevelopments in this Order. Clarification is provided for developments in progress during formulation of this Order (Part VI.D.c.i(1)(4)).

New development/re-development projects are subject to either the Water Quality/Flow Reduction Resource Management Criteria in Part VI.D.7.c.i or potentially more stringent Hydromodification (Flow/ Volume/ Duration) Control Criteria. Note that hydromodification controls apply only to projects that drain to a natural water body that is a stream, creek or a river. Hydromodification controls do not apply to discharges to lakes, estuaries, or to the ocean, which are not susceptible to channel erosion.

- i. Integrated Water Quality/ Flow Reduction /Resources Management Criteria (Part VI.D.7.c.i).** Projects located in drainages to water bodies that are now engineered channels are subject to Integrated Water Quality/Flow Reduction/Resources Management Criteria. These projects must be designed to minimize the footprint of the impervious area and to use low impact development (LID) strategies to disconnect the runoff from impervious area. The project must be designed to retain on-site the storm water runoff equal to

the storm water quality design volume (SWQDv), unless it is determined that it is technically infeasible or there is an opportunity to contribute to an off-site regional ground water replenishment project.

The SWQDv is defined as the storm water runoff resulting from either:

- the 0.75 inch per 24 hour storm or
- the 85th percentile storm as defined in the Los Angeles County 85th percentile, 24-hour storm isohyetal map, whichever is greater.

This Order establishes a minimum design volume based on the 0.75 inch, 24-hour storm event as defined in the previous Los Angeles County MS4 permit (Order No. 01-182). This requirement is to prevent backsliding from the previous Order. The 85th percentile storm is the design storm used throughout most of the State of California for storm water treatment and LID BMPs designed for water quality protection.

Using detailed local rainfall data, the County of Los Angeles Hydrologist has developed the 85th percentile storm event isohyetal map, which exhibits the size of the 85th percentile storm event throughout Los Angeles County. Since this map uses detailed local rainfall data, it is more accurate for calculating the 85th percentile storm event than other methods which were included in Order No. 01-182. The other methods found in Order No. 01-182 were included as options to be used in the event that detailed accurate rainfall data did not exist for various locations within Los Angeles County. Therefore, they have not been carried over into this Order.

Storm water runoff may be retained on-site by methods designed to intercept rain water via infiltration, bioretention, and harvest and use. Examples of LID Best Management Practices (BMPs) that may be employed to meet the storm water retention requirements include rain gardens, bioswales, pervious pavement, green roofs, and rainwater harvesting for use in landscape irrigation.

ii. Alternative Compliance for Technical Infeasibility or Opportunity for Regional Ground Water Replenishment (Part VI.D.7.c.ii). This Order defines conditions that may make on-site retention of the SWQDv technically infeasible. These conditions include measures to:

- Ensure that on-site soils (*in-situ* or amended) have adequate infiltration rates for successful operation of infiltration BMPs,
- Protect groundwater and drinking water wells from contamination,
- Prevent infiltration that might exacerbate potential geotechnical hazards,
- Accommodate smart growth and infill or redevelopment.

A determination that compliance with the Integrated Water Quality/Flow Reduction/Resources Management Criteria is technically infeasible at the

New Development/Re-development project site must be based on a site-specific hydrologic assessment or design analysis conducted and endorsed by a registered professional engineer, geologist, architect or landscape architect. This requirement is the same as contained in the Ventura County MS4 permit, and is necessary to ensure that a competent determination is conducted.

The criteria for technical infeasibility contained in Part VI.D.7.c.ii(2)(a) is necessary to ensure that the *in-situ* soil has adequate permeability to accommodate infiltration, and to ensure against premature failure of infiltration BMPs. A minimum infiltration rate of 0.3 inches per hour under saturated conditions is specified for infiltration BMPs (e.g., dry well, pervious pavement). Infiltration BMPs are restricted to Hydrologic Soil Groups A and B, by other California storm water regulatory agencies. For example, the Contra Costa County Program's Stormwater LID Design Guidebook prohibits routing storm water runoff to a dry (infiltration) well, developed in Hydrologic Soil Groups C and D³⁵. Infiltration rates for the lower permeability B soil group ranges between 0.30 and 0.15 inches per hour (USEPA, 2009, Appendix A)³⁶. This criterion is specified to ensure the viability of infiltration systems, which may be depended upon to meet the storm water design volume criteria.

Infiltration BMPs are distinguished from bioretention BMPs, which may be implemented in all soils types. Bioretention BMPs are constructed using a manufactured/imported media that must meet strict specifications. The media specification for bioretention facilities is the same as specified for biofiltration systems. The difference between bioretention and biofiltration is that biofiltration systems are designed with an underdrain, which may allow for the discharge of a significant portion of the design storm volume, as described below under Alternative Compliance Measures. Bioretention BMPs may not include an underdrain.

The criteria for determining Technical Infeasibility described in Part VI.D.7.c.ii.(2)(b)-(f) are the same as contained in the Ventura County MS4 permit , except that (2)(b) "locations where seasonal high ground water is *within 5 feet of the surface*", was expanded to "5 to 10 feet" of the surface, to be consistent with local LID Manuals developed by the City of Santa Monica and the City of Los Angeles.

iii. Alternative Compliance Measures (Part VI.D.7.c.iii.). This Order provides equally weighted alternatives to on-site retention of the SWQDv. One alternative is to employ infiltration at off-site locations, including regional groundwater replenishment projects. The Regional Water Board has included the alternative for regional ground water replenishment in

³⁵ Contra Costa County Clean Water Program. 2010. Stormwater C.3 Guidebook, Stormwater Quality Requirements for Development Applications. Fifth Ed. October 20, 2010. p. 18. < www.cccleanwater.org >.

³⁶ USEPA. 2009. (United States Environmental Protection Agency). Technical Guidance on Implementing the Stormwater Runoff Requirements for Federal Projects under Section 438 of the Energy and Independence and Security Act. Office of Water. December 2009.

recognition of the multiple benefits it can provide. In addition to providing similar water quality benefits as compared to on-site retention, analysis by NRDC and UCSB found that implementing low impact development practices that emphasize retention at new and redeveloped residential and commercial properties in the urbanized areas of southern California and limited portions of the San Francisco Bay area has the potential to increase local water supplies by up to 405,000 acre-feet of water per year by 2030. This volume represents roughly two-thirds of the volume of water used by the entire City of Los Angeles each year. In addition, the same study notes potential energy savings and reductions in CO₂ emissions.³⁷

In an effort to promote retrofitting of existing development, alternative compliance measures may include the use of infiltration, bioretention, rainfall harvest and/or biofiltration at an existing development with similar land uses and where storm water runoff is expected to exhibit pollutant event mean concentrations (EMCs) that are comparable to or higher than the proposed new development re-development project. As another alternative the project proponent may comply with the Integrated Water Quality/Flow Reduction/Resources Management Criteria using biofiltration on the project site. The volume of storm water to be treated with biofiltration is 1.5 times the difference between the SWQDv and the volume of storm water runoff that can be reliably retained on the project site. The 1.5 multiplier is based on the finding in the *Ventura County Technical Guidance Manual* that biofiltration of 1.5 times the design volume will provide approximately the same pollutant removal as retention of the design volume on an annual basis.³⁸

The volume of storm water runoff to be intercepted at an off-site mitigation project is equal to the difference between the SWQDv and the volume of storm water runoff that can be *reliably retained* on the project site. The estimate of the volume that can be reliably retained on-site shall be based on conservative assumptions including permeability of soils under saturated conditions. When rainfall harvest and use is linked to irrigation demand, the demand shall be estimated based on conditions that exist during the wet weather, winter season.

Mitigation at off-site projects shall be designed to provide equal or greater water quality protection to the surface waters within the same subwatershed as the proposed project. Preferably, the mitigation site will be located within the same Hydrologic Unit Code (HUC)-12 drainage area as the proposed new development or re-development. However, the mitigation project may be located within the expanded HUC-10 drainage area, if approved by the Executive Officer of the Regional Water Board.

³⁷ NRDC Technical Report. A Clear Blue Future: How Greening California Cities Can Address Water Resources and Climate Change in the 21st Century. August 2009.

³⁸ Ventura Countywide Stormwater Management Program. 2011. Ventura Technical Guidance Manual, Manual Update, 2011. Appendix D. July 13, 2011.

As described in the *Ventura County Technical Guidance Manual*, a biofiltration system as defined in this Order, including Attachment H, allows for incidental interception of approximately 40 percent of the treatment volume and treatment of the remaining volume through filtration, and aerobic and anaerobic degradation. The effectiveness of the biofiltration system is greatly impacted by the volume of storm water runoff that is intercepted through incidental infiltration. For this reason, biofiltration as defined in this Order, does not include flow-through planter box or vault type systems with impervious bottom layers, unless Executive Officer approval is obtained. In addition, biofiltration systems as defined in this Order, must meet the specifications for drain placement and planting media provided in Attachment L if they are to be credited as meeting the water quality/flow reduction requirements of the Alternative Compliance Measures of this Order, unless Executive Officer approval is obtained. Attachment H provides a compilation of recent information contained in the Contra Costa County C3 Guidebook and Order R2-2011-083, adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on November 28, 2011. These specifications are based on experiences in the San Francisco Bay Region and are designed to ensure optimum pollutant removal and to prevent premature failure of infiltration components of the biofiltration system.

- iv. Water Quality Mitigation Criteria (Part VI.D.7.c.iii.(7).)** When off-site mitigation is performed, the storm water runoff from the project site must be treated prior to discharge. Volume-based treatment BMPs are to be sized to treat the runoff from the 85th percentile, 24-hour storm event, as described above for storm water retention BMPs. Flow through treatment BMPs are to be sized based on a rainfall intensity of 0.2 inches per hour or the one year, one-hour rainfall intensity as determined from the Los Angeles County isohyetal map, whichever is greater. A minimum flow design of 0.2 inches per hour is consistent with Order No. 01-182 and is included to prevent back sliding. The one year, one-hour rainfall intensity is the flow requirement specified in the Los Angeles River Trash Total Maximum Daily Loads (TMDL) and other Trash TMDLs established in the Region. The Los Angeles County isohyetal map of the one-year, one-hour storm intensity provides an accurate measure of variable storm intensity throughout the County. The one-year, one-hour rain intensity within the County ranges from approximately 0.2 inch/hour to 1.1 inches per hour.
- v. Hydromodification (Flow/ Volume/ Duration Control Criteria (Part VI.D.7.iv.).)** New development/re-development projects located in a drainage to a natural stream/creek/river water body shall be required to meet the water quality/flow reduction criteria and/or hydromodification control criteria, whichever are more stringent. (Hydromodification controls do not apply to discharges to lakes, estuaries or to the Pacific Ocean as these types of water bodies are not susceptible to hydromodification

impacts.) This Order provides Hydromodification Control Criteria to be employed. The purpose of the hydromodification controls is to preserve or restore pre-development hydrology.

Part VI.D.7.iv.(b) of this Order describes New Development/Re-development projects that are exempted from hydromodification controls. These projects include maintenance and replacement activities and other projects that do not increase EIA within the subwatershed and therefore are not expected to add to the hydromodification effects. Also exempted are projects located within drainages to waterbodies that are not susceptible to channel erosion or other hydromodification effects.

This Order offers four options for meeting the hydromodification controls for projects that will disturb greater than 1 acre but less than 50 acres:

- The project is designed to retain the storm water runoff from the 95th percentile, 24-hour storm. This criterion is based on the recommendations from the USEPA's *Technical Guidance on Implementing the Stormwater Runoff Requirements for Federal Projects under Section 438 of the Energy Independence and Security Act* (USEPA, 2009).
- The runoff flow rate, volume, velocity and duration does not exceed the pre-development condition for the 2-year, 24-hour rainfall event. Research has determined that the maximum point of the effective work curve occurs in the 1 to 2-year frequency (Leopold, 1964, as cited in the South Orange County Hydromodification Plan, 2011)³⁹. Furthermore, the effects of development are greatest during smaller storm events. Under natural conditions, the storm water runoff from smaller storms would have been largely intercepted by vegetation, canopy, infiltration and/or evapotranspiration. During large storms, the soils become saturated and runoff occurs even under natural conditions.
- The Erosion Potential (Ep) in the receiving water channel will approximate 1, as determined by the Hydromodification Analysis Study and the Equation presented in Attachment J. This provision is the same as the requirement in the Ventura County MS4 permit (Order No. R4-2010-0108). By maintaining an Ep of approximately 1, the bed sediment of the channel is in an equilibrium state. Alternatively, Permittees can opt to use other work equations to calculate Erosion Potential with Executive Officer approval.
 - Permittees may also satisfy the requirement for Hydromodification Controls by implementing the hydromodification requirements in the

³⁹ South Orange County. 2011. South Orange County Hydromodification Management Plan. < http://www.waterboards.ca.gov/sandiego/water_issues/programs/stormwater/docs/oc_permit/updates_031212/South_Orange_County%20HMP.pdf > Accessed April 25, 2012.

County of Los Angeles Low Impact Development Manual (2009) for all projects disturbing an area greater than 1 acre within natural drainage systems.

For projects disturbing more than 50 acres, compliance with the controls may be achieved by similar means. However, the plans must be supported by more comprehensive hydrologic modeling. The final Subwatershed Hydromodification Plan must be completed within one year after the effective date of the Order.

The elements of the Subwatershed Hydromodification Plan are:

- Screening to assess which subwatersheds exhibit changes in geomorphology.
- Identify natural drainage systems within the subwatershed that are susceptible to hydromodification impacts,
- Identify areas critical to the hydrology (e.g., groundwater recharge areas, riparian buffers and wetlands) of the subwatershed and identify potential protection strategies for such areas,
- Conduct or access bioassessment monitoring data to assess whether aquatic life uses are being fully supported,
- Prepare preliminary protection strategies for subwatersheds that are fully supporting aquatic life beneficial uses,
- Prepare preliminary retrofit strategies for subwatersheds that exhibit the effects of hydromodification and are not fully supporting aquatic life beneficial uses,
- Identify candidate reference sub-watersheds that are supporting aquatic life beneficial uses and develop a flow duration curve that may serve as a standard for flow duration controls in water bodies that have aquatic life impairments linked to changes in the flow regime. This approach is as described in the recently approved OEPA, Grand River (lower) Flow Regime TMDL.

7. Development and Construction Program

a. Introduction

Soil disturbing activities during construction and demolition exacerbate sediment losses. Sediment is a primary pollutant impacting beneficial uses of watercourses. Sediments, and other construction activity pollutants must be properly controlled to reduce or eliminate adverse impacts.

b. Legal Authority

40 CFR section 122.34(b)(4) states that with respect to construction site storm water runoff control for small MS4s, which is analogous to that for large MS4s:

“(i) [the permittee] must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the NPDES permitting authority waives requirements for storm water discharges associated with small construction activity in accordance with § 122.26(b)(15)(i), you are not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites. (ii) Your program must include the development and implementation of, at a minimum: (A) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State, Tribal, or local law; (B) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices; (C) 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; (D) Procedures for site plan review which incorporate consideration of potential water quality impacts; (E) Procedures for receipt and consideration of information submitted by the public, and (F) Procedures for site inspection and enforcement of control measures.”

The inspection requirements for construction sites contained in this Order are also based on the requirements found in Order No. 01-182. As noted above in Part VI.C.5.a, the inspection requirements contained in Order No. 01-182 for construction sites were the subject of litigation between several permittees and the Regional Water Board. As provided in more detail above, the Los Angeles County Superior Court upheld the inspection requirements for industrial/commercial facilities and construction sites in Order No. 01-182, finding that the “[t]he Permit contains reasonable inspection requirements for these types of facilities.” (*In re L.A. Cnty. Mun. Storm Water Permit Litig.* (L.A. Super. Ct., No. BS 080548, Mar. 24, 2005), Statement of Decision from Phase II Trial on Petitions for Writ of Mandate, p. 17.) As also noted above, the Superior Court also rejected the permittees’ claims that the requirements in Order No. 01-182 shifted the Regional Water Board’s inspection responsibility under State Water Board issued general NPDES permits for these types of facilities onto the local agencies, finding that “[r]equiring permittees to inspect commercial and industrial facilities and construction sites is authorized under the Clean Water Act, and both the Regional Board and the municipal permittees or the local government entities have concurrent roles in enforcing the industrial, construction and municipal permits. The Court finds that the Regional Board did not shift its inspection responsibilities to Petitioners.” (*Id.* at 17-18.)

As previously noted for inspections of commercial/industrial facilities, the California Court of Appeal also rejected arguments pertaining to similar inspection requirements for construction sites prescribed by the Santa Ana Regional Water Board. (*City of Rancho Cucamonga v. Regional Water Quality Control Board- Santa Ana Region* (2006) 135 Cal.App.4th 1377, 1389.) In that case, the City of Rancho Cucamonga claimed that the Santa Ana Regional Water Board improperly delegated to it and other permittees the inspection duties of the State and Regional Water Boards and that it was being required to conduct inspections for facilities covered by other state-issued general NPDES permits. The Court of Appeal upheld the Santa Ana Regional Water Board's requirements, finding that "Rancho Cucamonga and the other permittees are responsible for inspecting construction and industrial sites and commercial facilities within their jurisdiction for compliance with and enforcement of local municipal ordinances and permits. But the Regional Board continues to be responsible under the 2002 NPDES permit for inspections under the general permits. The Regional Board may conduct its own inspections but permittees must still enforce their own laws at these sites. (40 C.F.R. § 122.26, subd. (d)(2) (2005).)" (*Id.* at 1390.)

c. Construction Activity Applicability

Any construction or demolition activity, including, but not limited to, clearing, grading, grubbing, or excavation, or any other activity that results in a land disturbance of equal to or greater than one acre.

Construction activity that results in land surface disturbances of less than one acre if the construction activity is part of a larger common plan of development or sale of one or more acres of disturbed land surface.

Construction activity related to residential, commercial, or industrial development on lands currently used for agriculture including, but not limited to, the construction of buildings related to agriculture that are considered industrial pursuant to USEPA regulations, such as dairy barns or food processing facilities.

Construction activity associated with linear underground/overhead project (LUPs) including, but not limited to, those activities necessary for the installation of underground and overhead linear facilities (e.g., conduits, substructures, pipelines, towers, poles, cables, wires, connectors, switching, regulating and transforming equipment and associated ancillary facilities) and include, but are not limited to, underground utility mark-out, potholing, concrete and asphalt cutting and removal, trenching, excavation, boring and drilling, access road and pole/tower pad and cable/wire pull station, substation construction, substructure installation, construction of tower footings and/or foundations, pole and tower installations, pipeline installations, welding, concrete and/or pavement repair or replacement, and stockpile/borrow locations.

Discharges of sediment from construction activities associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities.

Storm water discharges from dredge spoil placement that occur outside of U.S. Army Corps of Engineers jurisdiction⁴⁰ (upland sites) and that disturb one or more acres of land surface from construction activity are covered by this General Permit. Construction projects that intend to disturb one or more acres of land within the jurisdictional boundaries of a CWA section 404 permit should contact the appropriate Regional Water Board to determine whether this permit applies to the project.

d. Development Construction Program Implementation

Permittees must implement a construction program that applies to all activities involving soil disturbance with the exception of agricultural activities. Minimum requirements have been established for construction activity less than one acre and for those activities equal or greater than one acre. Activities covered by the permit include but are not limited to grading, vegetation clearing, soil compaction, paving, re-paving, and LUPs. The construction program should be designed to: (1) prevent illicit construction-related discharges of pollutants into the MS4 and receiving waters; (2) implement and maintain structural and non-structural BMPs to reduce pollutants in storm water runoff from construction sites; (3) reduce construction site discharges of pollutants to the MS4 to the MEP; and (4) prevent construction site discharges to the MS4 from causing or contributing to a violation of water quality standards.

Each permittee shall use an site system to track grading permits, encroachment permits, demolition permits, building permits, or construction permits (and any other municipal authorization to move soil and/ or construct or destruct that involves land disturbance) issued by each permittee. To satisfy this requirement, the use of a database or GIS system is recommended.

For construction activity equal or greater than one acre, the Permittee must establish review procedures for construction site plans to determine potential water quality impacts and ensure the proposed controls are adequate. These procedures should include the preparation and submission of an Erosion and Sediment Control Plan (ESCP) containing elements of a Storm Water Pollution Prevention Plan (SWPPP) prior to issuance of a grading or building permit as well as a review of individual pre-construction site plans to ensure consistency with local sediment and erosion control requirements. The requirement that ESCP/SWPPPs must be developed by a Qualified SWPPP Developer (QSD) is new for this iteration of the permit. This requirement ensures the development of high quality ESCP/SWPPPs that protect water quality to the MEP.

A ESCP/SWPPP must be appropriate for the type and complexity of a project and will be developed and implemented to address project specific conditions. Some projects may have similarities or complexities, yet each project is unique in its progressive state that requires specific description and selection of BMPs

⁴⁰ A construction site that includes a dredge and/or fill discharge to any water of the United States (e.g., wetland, channel, pond, or marine water) requires a permit from the U.S. Army Corps of Engineers pursuant to CWA section 404 and a Water Quality Certification from the Regional Water Board or State Water Board pursuant to CWA section 401.

needed to address all possible generated pollutants. The Permittee must ensure that construction site operators select and implement appropriate erosion and sediment control measures to reduce or eliminate the impacts to receiving waters. To help guide their Construction Program and ensure consistency regarding BMP selection, the Permit requires the Permittee to develop or adopt BMP standards for a range of construction related activities. The list of activities is based on California Stormwater Quality Association's (CASQA) Construction BMP handbook. The ESCP/SWPPP must include the rationale used for selecting or rejecting BMPs. The project architect, or engineer of record, or authorized qualified designee, must sign a statement on the ESCP/SWPPP to the effect:

"As the architect/ engineer of record, I have selected, appropriate BMPs to effectively minimize the negative impact of the project's construction activities on storm water quality. The project owner and contractor are aware that the selected BMPs must be installed, monitored, and maintained to ensure their effectiveness. The BMPs not selected for implementation are redundant or deemed not applicable to the proposed construction activity."

The Permittee is responsible for conducting inspection and enforcement of erosion and sediment control measures at specified times and frequencies during construction including prior to land disturbance, during grading and land development, during streets and utilities activities, during vertical construction, and during final landscaping and site stabilization. The Permittees' Municipal Inspectors must be adequately trained and Permittees are encouraged to offer opportunities for inspectors to enroll in the State Water Board sponsored Qualified Storm Water Pollution Prevention Plan (SWPPP) Practitioner (QSP) certification program. A progressive enforcement policy has been integrated into this iteration of the permit to ensure that adequate penalties are in place and to ensure the protection of receiving water quality.

Prior to approving and/ or signing off for occupancy and issuing the Certificate of Occupancy for all construction projects subject to post-construction controls, each permittee shall inspect the constructed site design, source control and treatment control BMPs to verify that they have been constructed in compliance with all specifications, plans, permits, ordinances, and this Order. The initial/ acceptance BMP verification inspection does not constitute a maintenance and operation inspection.

The Permittee must ensure that staff has proper training. In addition, the Permittee must develop and distribute training and educational material and conduct outreach to the development community. To ensure that the construction program is followed, construction operators must be educated about site requirements for control measures, local storm water requirements, enforcement activities, and penalties for non-compliance.

8. Public Agency Activities Program

a. Background

Publically-owned or operated facilities serve as hubs of activity for a variety of municipal staff from many different departments. Some municipalities will have one property at which all activities take place (e.g., the municipal maintenance yard), whereas others will have several specialized facilities such as animal control facilities, chemical storage facilities, composting facilities, equipment storage and maintenance facilities, fueling facilities, hazardous waste disposal facilities, incinerators, landfills, materials storage yards, pesticide storage facilities, public buildings, public parking lots, public golf courses, public swimming pools, public parks, public marinas, recycling facilities, solid waste handling and transfer facilities, and flood control facilities.

b. Program Implementation

i. Public Construction Activities Management

The Permittee is required to implement BMPs and comply with the Planning and Land Development Program requirements in Part VI.D.6 of this Order and the Development Construction Program requirements in Part VI.D.7 of this Order at applicable Permittee-owned or operated (i.e., public or Permittee sponsored) construction projects. These requirements ensure that Permittee-owned or operated construction and development occurs in an equally protective manner as private development. The Permittee is also required to implement an effective combination of erosion and sediment control BMPs from Table 13 (see Construction Development Program, minimum BMPs) at those public sites that disturb less than one acre of soil. Last, the Permittee is required to obtain separate coverage under the State Water Board's Construction General NPDES Permit for all Permittee-owned or operated construction sites that require coverage.

ii. Public Facility Inventory

A comprehensive list of publically-owned or operated facilities will help staff responsible for storm water compliance build a better awareness of their locations within the MS4 service area and their potential to contribute storm water pollutants. The inventory should include information on the location, contact person at the facility, activities performed at the facility, and whether the facility is covered under an industrial general storm water permit or other individual or general NPDES permit, or any applicable waivers issued by the Regional or State Water Board pertaining to storm water discharges. Incorporation of GIS into the inventory is encouraged. The facility inventory should be updated at least twice during the permit term and will serve as a basis for setting up periodic facility assessments and developing, where necessary, facility storm water pollution prevention plans. By developing an inventory of Permittee-owned facilities that are potential sources of storm water pollution helps to ensure that these facilities are monitored and receiving water quality is protected.

iii. Inventory of Existing Development for Retrofitting Opportunities

Each Permittee is required to maintain an updated inventory of all Permittee-owned or operated (i.e., public) facilities within its jurisdiction that are potential sources of storm water pollution. This requirement is similar to the requirement of Order No. 01-182. In this Order, the incorporation of facility information into a GIS is recommended as this has been proven effective for effectively inventory and management of facilities and associated BMPs. Given that facility operation, condition, and practices can change over a five year period, the Permittees are required to update its inventory at least twice during the term of this Order.

In addition to developing an inventory of publically-owned or operated facilities, in this Order, Permittees are required to develop an inventory of existing development for retrofitting opportunities. The intention of adding this requirement to the permit is to encourage the use of retrofit projects that reduce storm water pollutants into the MS4 that are a result of impacts from existing development. Permittees are also required to evaluate and rank these retrofitting opportunities.

iv. Public Agency Facility and Activity Management

Each Permittee is required to manage its facilities in accordance with the State Water Board's Industrial General NPDES Permit, where applicable, and shall ensure the implementation and maintenance of appropriate BMPs at all facilities with a potential to pollute stormwater. Therefore, Permittees shall obtain separate coverage under the State Water Board's Industrial General NPDES Permit for all Permittee-owned or operated facilities where industrial activities are conducted that require coverage under the Industrial General NPDES Permit and shall implement and maintain activity specific BMPs listed in Table 19 (BMPs for Public Agency Facilities and Activities).

Many municipalities use third-party contractors to conduct municipal maintenance activities in lieu of using municipal employees. Contractors performing activities that can affect storm water quality must be held to the same standards as the Permittee. Not only must these expectations be defined in contracts between the Permittee and its contractors, but the Permittee is responsible for ensuring, through contractually-required documentation or periodic site visits, that contractors are using storm water controls and following standard operating procedures. Therefore, the Permittee shall ensure all contractors hired by the Permittee to conduct Public Agency Activities including, but not limited to, storm and/or sanitary sewer system inspection and repair, street sweeping, trash pick-up and disposal, and street and right-of-way construction and repair shall be contractually required to implement and maintain the activity specific BMPs listed in Table 18.

v. Vehicle and Equipment Washing

Specific BMPs for all fixed vehicle and equipment washing; including fire fighting and emergency response vehicles have been incorporated into this

Order and must be implemented. In addition, specific BMPs for wash waters from vehicle and equipment washing. These requirements effectively prohibit the occurrence of illicit discharges resulting from unauthorized washing activities.

vi. Landscape, Park, and Recreational Facilities Management

Specific BMPs for public right-of-ways, flood control facilities and open channels, lakes and reservoirs, and landscape, park, and recreation facilities and activities have been included this Order, similar to those in Order No. 01-182 and the more recently adopted Ventura County MS4 Permit, and must be implemented. These requirements are reflective of current environmentally responsible practices.

vii. Storm Drain Operation and Maintenance

Specific BMPs for storm drain operations and maintenance have been carried over from Order No. 01-182 into this Order.

Permittees must prioritize catch basins for cleaning activities based on the volume of trash or debris.

The materials removed from catch basins may not reenter the MS4. The material must be dewatered in a contained area and the water treated with an appropriate and approved control measure or discharged to the sanitary sewer. The solid material will need to be stored and disposed of properly to avoid discharge during a storm event. Some materials removed from storm drains and open channels may require special handling and disposal, and may not be authorized to be disposed of in a landfill.

viii. Streets, Roads, and Parking Facilities Maintenance

Permittees must prioritize streets and/or street segments for sweeping activities based on the volume of trash generated on the street or street segments. Based on these established priorities, Permittees must conduct street sweeping twice per month on the highest priority streets (Priority A), once per month on the medium priority streets (Priority B), and as needed but not less than once per year on the lowest priority streets (Priority C). In addition parking facilities must be cleaned using street sweeping equipment no less than two times per month and inspect no less than two times per month to determine if cleaning is necessary.

Specific BMPs for road reconstruction have been incorporated into this Order and must be followed during road repaving activities.

ix. Emergency Procedures

Permittees are required to conduct repairs of essential public service systems and infrastructure in emergency situations. These requirements ensure the protection of water quality. BMPs must be implemented to reduce the threat to water quality and the Regional Water Board must be notified of the occurrence, an explanation of the circumstances and measures taken to reduce the threat to water quality within 30 business days after the emergency has passed.

x. Municipal Employee and Contractor Training

Permittees are required to ensure that training is provided for employees and contractors that have job duties or participate in activities that have the potential to affect storm water quality. The training should promote a general understanding of the potential for activities to pollute storm water and include information on the identification of opportunities to require, implement, and maintain BMPs associated with the activities they perform. In addition training specific to employees or contractors that use or have the potential to use pesticides or fertilizers should be provided. This training should instruct employees and contractors on the potential for pesticide-related surface water toxicity, the proper use, handling and disposal of pesticides, the least toxic methods of pest prevention and control, and the overall reduction of pesticide use.

Many municipalities use third-party contractors to conduct municipal maintenance activities in lieu of using municipal employees. Contractors performing activities that can affect storm water quality must be held to the same standards as the Permittee. Not only must these expectations be defined in contracts between the Permittee and its contractors, but the Permittee is responsible for ensuring, through contractually-required documentation or periodic site visits, that contractors are using storm water controls and following standard operating procedures.

9. Illicit Connection and Illicit Discharge Elimination Program

a. Legal Authority

A proposed management program “shall be based on a description of a program, including a schedule, to detect and remove (or require the discharger to the municipal storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer,” per 40 CFR section 122.26(d)(2)(iv)(B). A Permittee must include in its proposed management program “a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal storm sewer system,” per subsection (1) of the above federal regulation.

USEPA stormwater regulations define "illicit discharge" as "any discharge to a municipal separate storm sewer that is not composed entirely of stormwater" except discharges resulting from fire fighting activities and discharges from NPDES permitted sources (see 40 CFR section 122.26(b)(2)). The applicable

regulations state that the following non-stormwater discharges may be allowed if they are not determined to be a significant source of pollutants to the MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR section 35.2005(20)), uncontaminated pumped ground water, discharges from drinking water supplier distribution systems, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water. If, however, these discharges are determined to be a significant source of pollution then they must be prohibited.

Examples of common sources of illicit discharges in urban areas include apartments and homes, car washes, restaurants, airports, landfills, and gas stations. These so called "generating sites" discharge sanitary wastewater, septic system effluent, vehicle wash water, washdown from grease traps, motor oil, antifreeze, gasoline and fuel spills, among other substances. Although these illicit discharges can enter the storm drain system in various ways, they generally result from either direct connections (e.g., wastewater piping either mistakenly or deliberately connected to the storm drains) or indirect connections (e.g., infiltration into the storm drain system, spills, or "midnight dumping"). Illicit discharges can be further divided into those discharging continuously and those discharging intermittently.

b. Illicit Discharge Source Investigation and Elimination

Section 402(p)(3)(B)(ii) of the CWA requires MS4 permits to "effectively prohibit non-stormwater discharges into the storm sewers." The permit implements this requirement, in part by requiring the development of procedures to investigate and eliminate illicit discharges. The permittee must develop a clear, step-by-step procedure for conducting the investigation of illicit discharges. The procedure must include an investigation protocol that clearly defines what constitutes an illicit discharge and what steps shall be taken to identify and eliminate its source. In many circumstances, sources of intermittent, illicit discharges are very difficult to locate, and these cases may remain unresolved. The permit requires that each case be conducted in accordance with the procedures developed to locate the source and conclude the investigation, after which the case may be considered closed. These procedures should be completed per the Progressive Enforcement Policy identified in Part VI.D.2 of this Order and should include enforcement as necessary to ensure the elimination of the illicit discharge/connection.

Illicit discharges may also originate in upstream jurisdictions and therefore this Order establishes procedures for communicating with upstream entities and providing information that may prove helpful in their investigation of its source(s).

If a Permittee is unable to eliminate an ongoing illicit discharge following full execution of its legal authority and in accordance with its Progressive Enforcement Policy, or other circumstances prevent the full elimination of an

ongoing illicit discharge, including the inability to find the responsible party/parties, the Permittee shall require diversion of the entire flow to the sanitary sewer or treatment. In either instance, the Permittee shall notify the Regional Water Board in writing within 30 days of such determination and shall provide a written plan for review and comment that describes the efforts that have been undertaken to eliminate the illicit discharge, a description of the actions to be undertaken, anticipated costs, and a schedule for completion. The goal of these requirements is to provide a permanent solution for ongoing illicit discharges.

c. Identification and Response to Illicit Connections

Illicit connections to the MS4 can lead to the direct discharge or infiltration of sewage or other prohibited discharges into the MS4. Permittees have been conducting illicit connection screening throughout the term of Order No. 01-182 and this Order requires a continuation of response efforts once an illicit connection is identified. This Order establishes unique obligations for the LACFCD and for the individual Permittees. The requirements for LACFCD are based on the unique obligations and infrastructure of a regional flood control district. Requirements for the individual Permittees require the investigation and follow-up of all illicit connections within 21 days of identification and elimination within 180 days.

d. Public Reporting of Non-Storm Water Discharges and Spills

Each Permittee needs to promote a program to help in the identification and termination of illicit discharges. This Order establishes requirements for the Permittees, individually or as a group, to develop public education campaigns and reporting numbers which are intended to promote public reporting of illicit discharges. Specifically, a stormwater hotline can be used to help permittees become aware of and mitigate spills or dumping incidents. Spills can include everything from an overturned gasoline tanker to sediment leaving a construction site to a sanitary sewer overflow entering into a storm drain. Permittees must set up a hotline consisting of any of the following (or combination thereof): a dedicated or non-dedicated phone line, E-mail address, or website.

This Order also requires development of written procedures for receiving and responding to calls from the public and for maintaining documentation about reported illicit discharges and spills and their investigation and remedy. These requirements are intended to ensure that reliable and consistent practices are deployed to address this persistent problem.

e. Spill Response Plan

Spills, leaks, sanitary sewer overflows, and illicit dumping or discharges can introduce a range of stormwater pollutants into the storm system. Prompt response to these occurrences is the best way to prevent or reduce negative impacts to waterbodies. The permittee must develop a spill response plan that includes an investigation procedure similar to or in conjunction with the

investigation procedures developed for illicit discharges in general. Often, a different entity might be responsible for spill response in a community (i.e. fire department), therefore, it is imperative that adequate communication exists between stormwater and spill response staff to ensure that spills are documented and investigated in a timely manner.

f. Illicit Connection and Illicit Discharge Education and Training

The permit requires each Permittee to train field staff, who may come into contact or observe illicit discharges, on the identification and proper procedures for reporting illicit discharges. Field staff to be trained may include, but are not limited to, municipal maintenance staff, inspectors, and other staff whose job responsibilities regularly take them out of the office and into areas within the MS4 area. Permittee field staff are out in the community every day and are in the best position to locate and report spills, illicit discharges, and potentially polluting activities. With proper training and information on reporting illicit discharges easily accessible, these field staff can greatly expand the reach of the IDDE program.

10. Los Angeles County Flood Control District Section

Due to the unique characteristics of the Los Angeles County Flood Control District, a Minimum Control Measure Section unique to the Los Angeles County Flood Control District was included in the Order. Unlike other Permittees, the LACFCD does not own or operate any municipal sanitary sewer systems, public streets, roads, or highways. Additionally, The LACFCD has no planning, zoning, development permitting or other land use authority over industrial or commercial facilities, new developments or re-development projects, or development construction sites located in any incorporated or unincorporated areas within its service area. The Permittees that have such land use authority are responsible for implementing a storm water management program to inspect and control pollutants from industrial and commercial facilities, new development and re-development projects, and development construction sites within their jurisdictional boundaries. The requirements included in the Section are the same as those for other Permittees, but requirements that are not applicable due to the unique characteristic of the Los Angeles County Flood Control District were eliminated.

D. Total Maximum Daily Load Provisions

Clean Water Act section 303(d)(1)(A) requires each State to conduct a biennial assessment of its waters, and identify those waters that are not achieving water quality standards. These waters are identified as impaired on the State's Clean Water Act section "303(d) List" of water quality limited segments. The Clean Water Act also requires States to establish a priority ranking for waters on the 303(d) List and to develop and implement Total Maximum Daily Loads (TMDLs) for these waters. A TMDL specifies the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and allocates the acceptable pollutant load to point

and nonpoint sources. The elements of a TMDL are described in 40 CFR sections 130.2 and 130.7. A TMDL is defined as “the sum of the individual waste load allocations for point sources and load allocations for nonpoint sources and natural background” (40 CFR § 130.2). Regulations further require that TMDLs must be set at “levels necessary to attain and maintain the applicable narrative and numeric water quality standards with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality” (40 CFR section 130.7(c)(1)). The regulations at 40 CFR section 130.7 also state that TMDLs shall take into account critical conditions for stream flow, loading and water quality parameters. Essentially, TMDLs serve as a backstop provision of the CWA designed to implement water quality standards when other provisions have failed to achieve water quality standards.

Upon establishment of TMDLs by the State or the USEPA, the State is required to incorporate, or reference, the TMDLs in the State Water Quality Management Plan (40 CFR sections 130.6(c)(1) and 130.7). The Regional Water Board’s Basin Plan, and applicable statewide plans, serves as the State Water Quality Management Plan governing the watersheds under the jurisdiction of the Regional Water Board. When adopting TMDLs as part of its Basin Plan, the Regional Water Board includes, as part of the TMDL, a program for implementation of the WLAs for point sources and load allocations (LAs) for nonpoint sources.

TMDLs are not self-executing, but instead rely upon further Board orders to impose pollutant restrictions on discharges to achieve the TMDL’s WLAs. Section 402(p)(3)(B)(iii) of the Clean Water Act requires the Regional Water Board to impose permit conditions, including: “management practices, control techniques and system, design and engineering methods, and *such other provisions as the Administrator of the State determines appropriate for the control of such pollutants.*” (emphasis added.) Section 402(a)(1) of the Clean Water Act also requires states to issue permits with conditions necessary to carry out the provisions of the Clean Water Act. Federal regulations also require that NPDES permits must include conditions consistent with the assumptions and requirements of any available waste load allocation (40 CFR section 122.44(d)(1)(vii)(B)). Similarly, state law requires both that the Regional Water Board implement its Basin Plan when adopting waste discharge requirements (WDRs) and that NPDES permits apply “any more stringent effluent standards or limitations necessary to implement water quality control plans...” (Cal. Wat. Code §§ 13263, 13377).

An NPDES permit should incorporate the WLAs as numeric WQBELs, where feasible. Where a non-numeric permit limitation is selected, such as BMPs, the permit’s administrative record must support the expectation that the BMPs are sufficient to achieve the WLAs. (40 CFR §§ 124.8, 124.9, and 124.18.) The USEPA has published guidance for establishing WLAs for storm water discharges in TMDLs and their incorporation as numeric WQBELs in MS4 permits.⁴¹

⁴¹ USEPA (2010) “Revisions to the November 22, 2002 Memorandum ‘Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those TMDLs.’” Issued by James A. Hanlon, Director, Office of Wastewater Management and Denise Keehner, Director, Office of Wetlands, Oceans and Watersheds. November 12, 2010.

As required, permit conditions are included in this Order consistent with the assumptions and requirements of the available WLAs assigned to MS4 discharges, which have been established in thirty-three TMDLs. The Regional Water Board adopted twenty-five (25) TMDLs and USEPA established seven (7) TMDLs that assign WLAs to MS4 Permittees within the County of Los Angeles. In addition, the Santa Ana Regional Water Board adopted a TMDL that assigns WLAs to the Cities of Pomona and Claremont. The TMDLs included in this Order along with the adoption and approval dates are listed in the table below. Permit conditions for two of these TMDLs – the Marina del Rey Harbor Bacteria TMDL and the Los Angeles River Watershed Trash TMDL – were previously incorporated into Order No. 01-182 during re-openers in 2007 and 2009, respectively (Orders R4-2007-0042 and R4-2009-0130). TMDLs are typically developed on a watershed or subwatershed basis, which facilitates a more accurate assessment of cumulative impacts of pollutants from all sources. An overview of each Watershed Management Area, including the TMDLs applicable to it, is provided below.

TMDLs with Resolution Numbers, Adoption Dates and Effective Dates

| TOTAL MAXIMUM DAILY LOAD | RESOLUTION NUMBER | ADOPTION DATE | STATE BOARD RESOLUTION NUMBER | STATE BOARD APPROVAL DATE | OAL APPROVAL DATE | EPA APPROVAL DATE | EFFECTIVE DATE |
|--|-------------------|---------------|-------------------------------|---------------------------|-------------------|-------------------|----------------|
| Santa Clara River Watershed Management Area | | | | | | | |
| Santa Clara River Nitrogen Compounds TMDL | 2003-011 | 8/7/2003 | 2003-0073 | 11/19/2003 | 2/27/2004 | 3/18/2004 | 3/23/2004 |
| Upper Santa Clara River Chloride TMDL | 2008-012 | 12/11/2008 | 2009-0077 | 10/20/2009 | 1/26/2010 | 4/6/2010 | 4/6/2010 |
| Lake Elizabeth, Munz Lake, and Lake Hughes Trash TMDL (Lake Elizabeth only) | 2007-009 | 6/7/2007 | 2007-0073 | 12/4/2007 | 2/8/2008 | 2/27/2008 | 3/6/2008 |
| Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL | R10-006 | 7/8/2010 | 2011-0048 | 10/4/2011 | 12/19/2011 | 1/13/2012 | 3/21/2012 |
| Santa Monica Bay Watershed Management Area | | | | | | | |
| Santa Monica Bay Beaches Bacteria TMDL (Dry Weather) | 2002-004 | 1/24/2002 | 2002-0149 | 9/19/2002 | 12/9/2002 | 6/19/2003 | 7/15/2003 |
| Santa Monica Bay Beaches Bacteria TMDL (Wet Weather) | 2002-022 | 12/12/2002 | 2003-0022 | 3/19/2003 | 5/20/2003 | 6/19/2003 | 7/15/2003 |
| Santa Monica Bay Nearshore and Offshore Debris TMDL | R10-010 | 11/4/2010 | 2011-0064 | 12/6/2011 | 3/15/2012 | 3/20/2012 | 3/20/2012 |
| Santa Monica Bay TMDL for DDTs and PCBs (USEPA established) | N/A | N/A | N/A | N/A | N/A | 3/26/2012 | N/A |
| Malibu Creek Subwatershed | | | | | | | |
| Malibu Creek and Lagoon Bacteria TMDL | 2004-019R | 12/13/2004 | 2005-0072 | 9/22/2005 | 12/1/2005 | 1/10/2006 | 1/24/2006 |
| Malibu Creek Watershed Trash TMDL | 2008-007 | 5/1/2008 | 2009-0029 | 3/17/2009 | 6/16/2009 | 6/26/2009 | 7/7/2009 |
| Malibu Creek Watershed Nutrients TMDL (USEPA established) | N/A | N/A | N/A | N/A | N/A | 3/21/2003 | N/A |
| Ballona Creek Subwatershed | | | | | | | |
| Ballona Creek Trash TMDL | 2004-023 | 3/4/2004 | 2004-0059 | 9/30/2004 | 2/8/2005 | N/A | 8/11/2005 |
| Ballona Creek Estuary Toxic Pollutants TMDL | 2005-008 | 7/7/2005 | 2005-0076 | 10/20/2005 | 12/15/2005 | 12/22/2005 | 1/11/2006 |
| Ballona Creek, Ballona Estuary and | 2006-011 | 6/8/2006 | 2006-0092 | 11/15/2006 | 2/20/2007 | 3/26/2007 | 4/27/2007 |

| TOTAL MAXIMUM DAILY LOAD | RESOLUTION NUMBER | ADOPTION DATE | STATE BOARD RESOLUTION NUMBER | STATE BOARD APPROVAL DATE | OAL APPROVAL DATE | EPA APPROVAL DATE | EFFECTIVE DATE |
|--|-------------------|---------------|-------------------------------|---------------------------|-------------------|-------------------|----------------|
| Sepulveda Channel Bacteria TMDL | | | | | | | |
| Ballona Creek Metals TMDL | 2007-015 | 9/6/2007 | 2008-0045 | 6/17/2008 | 10/6/2008 | 10/29/2008 | 10/29/2008 |
| Ballona Creek Wetlands TMDL for Sediment and Invasive Exotic Vegetation (USEPA established) | N/A | N/A | N/A | N/A | N/A | 3/26/2012 | N/A |
| Marina del Rey Subwatershed | | | | | | | |
| Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL | 2003-012 | 8/7/2003 | 2003-0072 | 11/19/2003 | 1/30/2004 | 3/18/2004 | 3/18/2004 |
| Marina del Rey Harbor Toxic Pollutants TMDL | 2005-012 | 10/6/2005 | 2006-0006 | 1/13/2006 | 3/13/2006 | 3/16/2006 | 3/22/2006 |
| Dominguez Channel and Greater Harbors Waters Watershed Management Area | | | | | | | |
| Los Angeles Harbor Bacteria TMDL (Inner Cabrillo Beach and Main Ship Channel) | 2004-011 | 7/1/2004 | 2004-0071 | 10/21/2004 | 1/5/2005 | 3/1/2005 | 3/10/2005 |
| Machado Lake Trash TMDL | 2007-006 | 6/7/2007 | 2007-0075 | 12/4/2007 | 2/8/2008 | 2/27/2008 | 3/6/2008 |
| Machado Lake Nutrient TMDL | 2008-006 | 5/1/2008 | 2008-0089 | 12/2/2008 | 2/19/2009 | 3/11/2009 | 3/11/2009 |
| Machado Lake Pesticides and PCBs TMDL | R10-008 | 9/2/2010 | 2011-0065 | 12/6/2011 | 2/29/2012 | 3/20/2012 | 3/20/2012 |
| Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL | R11-008 | 5/5/2011 | 2012-0008 | 2/7/2012 | 3/21/2012 | 3/23/2012 | 3/23/2012 |
| Los Angeles River Watershed Management Area | | | | | | | |
| Los Angeles River Watershed Trash TMDL | 2007-012 | 8/9/2007 | 2008-0024 | 4/15/2008 | 7/1/2008 | 7/24/2008 | 9/23/2008 |
| Los Angeles River Nitrogen Compounds and Related Effects TMDL | 2003-016 | 12/4/2003 | 2004-0014 | 3/24/2004 | 9/27/2004 | N/A | 9/27/2004 |
| Los Angeles River and Tributaries Metals TMDL | R10-003 | 5/6/2010 | 2011-0021 | 4/19/2011 | 7/28/2011 | 11/3/2011 | 11/3/2011 |
| Los Angeles River Bacteria TMDL | R10-007 | 7/9/2010 | 2011-0056 | 11/1/2011 | 3/21/2012 | 3/23/2012 | 3/23/2012 |
| Legg Lake Trash TMDL | 2007-010 | 6/7/2007 | 2007-0074 | 12/4/2007 | 2/5/2008 | 2/27/2008 | 3/6/2008 |

| TOTAL MAXIMUM DAILY LOAD | RESOLUTION NUMBER | ADOPTION DATE | STATE BOARD RESOLUTION NUMBER | STATE BOARD APPROVAL DATE | OAL APPROVAL DATE | EPA APPROVAL DATE | EFFECTIVE DATE |
|--|-------------------|---------------|-------------------------------|---------------------------|-------------------|-------------------|----------------|
| Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDL (USEPA established) | N/A | N/A | N/A | N/A | N/A | 3/26/2012 | N/A |
| Los Angeles Area Lakes TMDLs (USEPA established for Lake Calabasas, Echo Park Lake, Legg Lake and Peck Road Park Lake) | N/A | N/A | N/A | N/A | N/A | 3/26/2012 | N/A |
| San Gabriel River Watershed Management Area | | | | | | | |
| San Gabriel River and Impaired Tributaries Metals and Selenium TMDL (USEPA established) | N/A | N/A | N/A | N/A | N/A | 3/26/2007 | N/A |
| Los Angeles Area Lakes TMDLs (USEPA established for Puddingstone Reservoir) | N/A | N/A | N/A | N/A | N/A | 3/26/2012 | N/A |
| Los Cerritos Channel and Alamitos Bay Watershed Management Area | | | | | | | |
| Los Cerritos Channel Metals TMDL (USEPA established) | N/A | N/A | N/A | N/A | N/A | 3/17/2010 | N/A |
| Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals TMDL | R09-005 | 10/1/2009 | 2010-0056 | 11/16/2010 | 5/6/2011 | 6/14/2011 | 7/28/2011 |
| Middle Santa Ana River Watershed Management Area (Santa Ana Region TMDL) | | | | | | | |
| Middle Santa Ana River Watershed Bacterial Indicator TMDLs | R8-2005-0001 | 8/26/2005 | 2006-0030 | 5/15/2006 | 9/1/2006 | 5/16/2007 | 5/16/2007 |

Santa Clara River Watershed Management Area. The Santa Clara River and its tributaries drain a watershed area of 1,634 square miles (sq. miles) (Figure B-1). Santa Clara River Reaches 1, 2, 3, 4A, 4B and major tributaries Santa Paula, Sespe and Piru Creeks are in Ventura County. Santa Clara River Reaches 5, 6, 7, 8 and major tributaries Castaic, San Francisquito, and Bouquet Canyon Creeks are in Los Angeles County. About 40% of the watershed, the Upper Santa Clara River, is located in County of Los Angeles. Approximately, 75% of the Upper Santa Clara River watershed is open space used for recreation in the Angeles National Forest. The remainder of the upper portion of the watershed is characterized by a mixture of residential, mixed urban, and industrial land uses with low density residential more common in the uppermost areas of the watershed, while high density residential is more prevalent in the City of Santa Clarita.

Various reaches of the Santa Clara River are on the 2010 CWA Section 303(d) List of impaired water bodies for nitrogen, bacteria, chloride, and trash (in lakes), among other pollutants. The excess nitrogen compounds are causing impairments to the WARM, WILD, and GWR designated beneficial uses of the Santa Clara River in Reaches 3, 7 and 8. The elevated bacterial indicator densities are causing impairment of the REC-1 and REC-2 designated beneficial uses for the Santa Clara River Estuary and Reaches 3, 5, 6, and 7. The excessive levels of chloride are impairing the AGR and GWR designated beneficial uses of the Upper Santa Clara River Reaches 4A, 4B, 5 and 6. The trash in Lake Elizabeth is causing impairments to the WARM, WILD, RARE, REC-1 and REC-2 designated beneficial uses.

TMDLs have been adopted by the Regional Water Board to address the impairments due to nitrogen, bacteria and chloride in the Upper Santa Clara River Watershed and for trash in Lake Elizabeth. Each of these TMDLs identifies MS4 discharges as a source of pollutants and assigns allocations to MS4 discharges. In the nitrogen compounds TMDL, storm water discharges were identified as potentially contributing nitrogen loads. Data from land use monitoring conducted under the LA County MS4 Permit from 1994-1999 indicate some concentrations of ammonia from commercial land uses in excess of the 30-day average concentration based WLA of 1.75 mg/l, and potential concentrations of nitrate-N and nitrite-N from residential land uses in excess of the WLA of 6.8 mg/l. Recent data from the 2010-11 annual monitoring report indicate low levels of ammonia and nitrite at the mass emissions station (S29) in the Santa Clara River, and concentrations of nitrate-N ranging from 1.38-1.66 mg/l in dry weather and 0.015-1.86 mg/l in wet weather. In the chloride TMDL, major point sources are assigned a WLA of 100 mg/l. Data from land use monitoring conducted under the LA County MS4 Permit from 1994-99 indicate chloride concentrations ranging from 3.2-48 mg/l, while more recent data from the mass emissions station (S29) indicate concentrations ranging from 116-126 mg/l in dry weather, and 25.1-96.3 mg/l in wet weather. For the bacteria TMDL, the Regional Water Board found that the significant contributors of bacteria loading to the Santa Clara River are discharges of storm water and non-storm water from the MS4. For the trash TMDL, discharges from the MS4 are sources of trash discharged to Lake Elizabeth.

Santa Monica Bay Watershed Management Area. The Santa Monica Bay Watershed Management Area (WMA) encompasses an area of 414 sq. miles (Figure B-2). Its

borders reach from the crest of the Santa Monica Mountains on the north and from the Ventura-Los Angeles County line to downtown Los Angeles. From there it extends south and west across the Los Angeles plain to include the area east of Ballona Creek and north of the Baldwin Hills. A narrow strip of land between Playa del Rey and Palos Verdes drains to the Bay south of Ballona Creek. The WMA includes several subwatersheds, the two largest being Malibu Creek to the north (west) and Ballona Creek to the south. SCAG land use data from 2005 shows 62% of the area is open space, high density residential is 17% of the area, and low density residential is 2.3% of the area. Commercial and industrial land uses total 6% of the area and are found in all but a handful of the subwatersheds.

Many of the Santa Monica Bay beaches were identified on the 1998 CWA Section 303(d) List of impaired water bodies for high coliform counts and beach closures. Santa Monica Bay offshore and nearshore is on the 2010 CWA Section 303(d) List of impaired water bodies for debris, DDTs, PCBs and sediment toxicity. The elevated bacterial indicator densities during both dry and wet weather are causing impairments of the REC-1 and REC-2 designated beneficial uses of the Santa Monica Bay beaches. The debris and elevated concentrations of DDT and PCBs are causing impairments to the IND, NAV, REC-1, REC-2, COMM, EST, MAR, BIOL, MIGR, WILD, RARE, SPWN, SHELL, and WET designated beneficial uses of the Santa Monica Bay.

TMDLs have been adopted by the Regional Water Board and USEPA for bacteria at Santa Monica Bay Beaches, and for debris, DDTs, PCBs and sediment toxicity in Santa Monica Bay. In the bacteria TMDL, the Regional Water Board determined that discharges of storm water and non-storm water from the MS4 are the primary source of elevated bacterial indicator densities to Santa Monica Bay beaches during dry and wet weather. In the debris TMDL, the Regional Water Board determined that most of the land-based debris is discharged to the marine environment through the MS4. In the DDT and PCBs TMDL, USEPA determined that although DDT is no longer used, it persists in the environment, adhering strongly to soil particles. The manufacture of PCBs is no longer legal, but PCBs also persist in the environment and are inadvertently produced as a result of some manufacturing processes. Both DDT and PCBs are transported in contaminated sediments via urban runoff through the MS4 to Santa Monica Bay.

The Malibu Creek subwatershed drains an area of about 109 square miles (Figure B-2a). Approximately two-thirds of this subwatershed lies in Los Angeles County and the remaining third in Ventura County. Much of the land is part of the Santa Monica Mountains National Recreation Area and is under the purview of the National Parks Service. The watershed borders the eastern portion of Ventura County to the west and north and Los Angeles River watershed to the east. Major tributaries include Cold Creek, Lindero Creek, Las Virgenes Creek, Medea Creek, and Triunfo Creek. Located at the end of and receiving flows from Malibu Creek is the 40-acre Malibu Lagoon. The Malibu Creek subwatershed land uses are 88% open space, 3% commercial/light industry, 9% residential and less than 1% public.

The Malibu Creek Watershed is on the 2010 CWA Section 303(d) List of impaired water bodies for bacteria, nutrients, and trash. Elevated bacterial indicator densities are

causing impairment of the REC-1 and REC-2 designated beneficial uses of Malibu Creek, Malibu Lagoon, and the adjacent beaches. Excess nutrients are causing impairments to the REC-1, REC-2, WARM, COLD, EST, MAR, WILD, RARE, MIGR, and SPWN designated beneficial uses of waterbodies in the Malibu Creek Watershed. Trash is causing impairments to the MUN, GWR, REC-1, REC-2, WARM, COLD, MIGR, WILD, RARE, SPWN, and WET designated beneficial uses of the waterbodies in the Malibu Creek Watershed.

TMDLs have been adopted by the Regional Water Board for bacteria and trash in Malibu Creek. USEPA established a TMDL for nutrients in Malibu Creek. Fecal coliform bacteria may be introduced from a variety of sources including storm water and non-storm water discharges from the MS4. USEPA determined that high nitrogen and phosphorus loadings are associated with storm water discharges from commercial and residential land uses and also from undeveloped areas. During the summer non-storm water discharges add a significant portion of the load. The Regional Water Board determined in the trash TMDL that discharges from the MS4 are a source of trash to waterbodies in the Malibu Creek Watershed.

Ballona Creek and its tributaries drain a subwatershed of about 127 square miles (Figure B-2b). The watershed boundary extends in the east from the crest of the Santa Monica Mountains southward and westward to the vicinity of central Los Angeles and thence to Baldwin Hills. Tributaries of Ballona Creek include Centinela Creek, Sepulveda Canyon Channel, Benedict Canyon Channel, and numerous other storm drains. Ballona Creek is concrete lined upstream of Centinela Boulevard. All of its tributaries are either concrete channels or covered culverts. The channel downstream of Centinela Boulevard is trapezoidal composed of grouted rip-rap side slopes and an earth bottom. The urbanized areas of Ballona Creek, which consists of residential and commercial properties, accounts for 80% of the watershed; the partially developed foothill and mountains make up the other 20%.

Ballona Creek and Ballona Creek Estuary is on the 2010 CWA Section 303(d) List for trash, toxicity, bacteria, and metals. The Ballona Creek Wetlands is on the 2010 CWA Section 303(d) List for trash, exotic vegetation, habitat alterations and hydromodification. Trash is causing impairments to the REC-1, REC-2, WARM, WILD, EST, MAR, RARE, MIGR, SPWN, COMM, WET, and COLD designated beneficial uses of Ballona Creek. A suite of toxic pollutants, including cadmium, copper, lead, silver, zinc, chlordane, DDT, PCBs, and PAHs in sediments and dissolved copper, dissolved lead, total selenium, and dissolved zinc, are causing impairments to the REC-1, REC-2, EST, MAR, WILD, RARE, MIGR, SPWN, COMM, and SHELL designated beneficial uses of Ballona Creek Estuary and Ballona Creek and Sepulveda Channel, respectively. The elevated bacterial indicator densities are causing impairment of the REC-1, LREC-1, and REC-2 designated beneficial uses of Ballona Creek and Ballona Estuary. The excess sediment and invasive exotic vegetation is causing impairments to the EST, MIGR, RARE, REC-1, REC-2, SPWN, WET, and WILD designated beneficial uses of the Ballona Creek Wetlands.

TMDLs have been adopted by the Regional Water Board for trash, metals and toxic pollutants in Ballona Creek and Estuary, and bacteria. USEPA established a TMDL for

Sediment and Invasive Exotic Vegetation in the Ballona Creek Wetlands. Stormwater discharge is the major source of trash in Ballona Creek. Urban storm water has been recognized as a substantial source of metals. Storm drains convey a large percentage of the metals loadings during dry weather because although their flows are typically low, concentrations of metals in urban runoff may be quite high. Because metals are typically associated with fine particles in storm water runoff, they have the potential to accumulate in estuarine sediments where they may pose a risk of toxicity. Similar to metals, the majority of organic constituents in storm water are associated with particulates. There is toxicity associated with suspended solids in urban runoff discharged from Ballona Creek, as well as with the receiving water sediments. This toxicity is likely attributed to metals and organics associated with the suspended sediments. The major contributors of flows and associated bacteria loading to Ballona Creek and Ballona Estuary are storm water and non-storm water discharges from the MS4. The potential for sediment loading into the Ballona Creek Wetlands is associated with the flow coming down the watershed. Sediment moves from the watershed through the MS4 as a result of storms, wind and land based runoff. Major storms usually take place in winter and are responsible for major movements of sediment down the watershed into Ballona Creek and Ballona Wetland towards the coastal waterbodies. These activities can lead to discharge of large quantities of sediments in runoff.

The Marina del Rey subwatershed is approximately 2.9 square miles located adjacent to the mouth of Ballona Creek. The Marina del Rey subwatershed is highly developed at 80%, the remaining 20% is split between water and open/recreation land uses.

Marina del Rey is on the 2010 CWA Section 303(d) List for bacteria and sediment concentrations of copper, lead, zinc, DDT, PCBs, chlordan, and sediment toxicity. The elevated bacterial indicator densities are causing impairment of the REC-1 and REC-2 designated beneficial uses at Marina del Rey Harbor Mothers' Beach and back basins. The toxic pollutants are causing impairments to the REC-1, MAR, WILD, COMM, and SHELL designated beneficial uses of the Marina del Rey Harbor.

TMDLs have been adopted by the Regional Water Board for bacteria and toxic pollutants. Non-storm water and storm water discharges from the MS4 are the primary sources of elevated bacterial indicator densities to Marina del Rey Harbor Mothers' Beach and back basins during dry and wet weather. Urban storm water has been recognized as a substantial source of metals. Numerous researchers have documented that the most prevalent metals in urban storm water (i.e., copper, lead, and zinc) are consistently associated with suspended solids. Because metals are typically associated with fine particles in storm water runoff, they have the potential to accumulate in marine sediments where they may pose a risk of toxicity. Similar to metals, the majority of organic constituents in storm water are associated with particulates.

On June 7, 2012, the Regional Water Board adopted revised Basin Plan Amendments (BPAs) for the Santa Monica Bay Beaches Bacteria TMDL; the Malibu Creek and Lagoon Bacteria TMDL; the Ballona Creek, Ballona Estuary, and Sepulveda Channel Bacteria TMDL; and the Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL. In the revised TMDLs the method of calculating the geometric mean was changed from the existing methods in the current Bacteria TMDLs and the

allowable winter dry weather exceedance days was redefined. Although, the revised BPAs are not in effect until approved by the State Board, OAL and USEPA these changes have been included in the Permit and will become effective upon the effective dates of the revised Bacteria TMDLs.

Dominguez Channel and Greater Harbor Waters Watershed Management Area.

The Dominguez Channel and Los Angeles/Long Beach Harbors Watershed Management Area (Dominguez WMA) is located in the southern portion of the Los Angeles Basin (Figure B-3). Los Angeles Harbor is 7,500 acres and the Long Beach Harbor is 7,600 acres; together they have an open water area of approximately 8,128 acres. The 15 mile-long Dominguez Channel drains a densely urbanized area to Inner Los Angeles Harbor. Near the end of the 19th century and during the beginning of the next century, channels were dredged, marshes were filled, wharves were constructed, the Los Angeles River was diverted, and breakwaters were constructed in order to allow deep draft ships to be directly offloaded at the docks. The Dominguez Slough was completely channelized and became the drainage endpoint for runoff from a highly industrialized area. Eventually, the greater San Pedro Bay was enclosed by two more breakwaters and deep entrance channels were dredged to allow for entry of ships.

Various reaches of the Dominguez WMA are on the 2010 CWA Section 303(d) List of impaired water bodies for metals, DDT, PCBs, PAHs, historic pesticides, coliform, and sediment toxicity. The elevated bacteria indicator densities is causing impairments to the SHELL, REC-1, and REC-2 designated beneficial uses of Los Angeles Harbor. The elevated levels of metals and organics are causing impairments to beneficial uses designated in these waters to protect aquatic life, including MAR and RARE. In addition, the elevated levels are causing impairments in the estuaries, which are designated with SPWN, MIGR, and WILD beneficial uses. Dominguez Channel also has an existing designated use of WARM and the Los Angeles River Estuary has the designated use of WET. Beneficial uses associated with human use of these waters that are impaired due to the elevated concentrations of metals and organics include REC-1, REC-2, IND, NAV, COMM, and SHELL.

TMDLs have been adopted by the Regional Water Board for toxic pollutants in the Dominguez WMA and for bacteria at Inner Cabrillo Beach and the Main Ship Channel. Discharges from the MS4 are a source of elevated bacterial indicator densities to Inner Cabrillo Beach and the Main Ship Channel during dry and wet weather. The major point sources of organochlorine pesticides, PCBs, and metals into Dominguez Channel are storm water and non-storm water discharges. The contaminated sediments are a reservoir of historically deposited pollutants. Storm water runoff from manufacturing, military facilities, fish processing plants, wastewater treatment plants, oil production facilities, and shipbuilding or repair yards in both Ports have discharged untreated or partially treated wastes into Harbor waters. Current activities also contribute pollutants to Harbor sediments, in particular, storm water runoff.

On June 7, 2012, the Regional Water Board adopted a revised Basin Plan Amendment (BPA) for the Los Angeles Harbor Inner Cabrillo Beach and Main Ship Channel Bacteria TMDL. In the revised TMDL the method of calculating the geometric mean was changed from the existing methods in the current Bacteria TMDL and the allowable

winter dry weather exceedance days was redefined. Although, the revised BPA is not in effect until approved by the State Board, OAL and USEPA these changes have been included in the Permit and will become effective upon the effective date of the revised Bacteria TMDL.

Machado Lake is listed for trash, nutrients, PCBs and historic pesticides. Trash, nutrients and toxic pollutants are causing impairments to the WARM, WET, RARE, WILD, REC-1 and REC-2 designated beneficial uses of Machado Lake. TMDLs have been adopted by the Regional Water Board for trash, nutrients, PCBs and pesticides for Machado Lake. The point sources of trash and nutrients into Machado Lake are storm water and non-storm water discharges from the MS4. Storm water discharges occur through the following sub-drainage systems: Drain 553, Wilmington Drain, Project 77/510, and Walteria Lake.

Los Angeles River Watershed Management Area. The Los Angeles River Watershed Management Area (LAR WMA) drains a watershed of 824 square miles (Figure B-4). The LAR WMA is one of the largest in the Region and is also one of the most diverse in terms of land use patterns. Approximately 324 square miles of the watershed are covered by forest or open space land including the area near the headwaters, which originate in the Santa Monica, Santa Susana, and San Gabriel Mountains. The remainder of the watershed is highly developed. The river flows through the San Fernando Valley past heavily developed residential and commercial areas. From the Arroyo Seco, north of downtown Los Angeles, to the confluence with the Rio Hondo, the river flows through industrial and commercial areas and is bordered by rail yards, freeways, and major commercial and government buildings. From the Rio Hondo to the Pacific Ocean, the river flows through industrial, residential, and commercial areas, including major refineries and petroleum products storage facilities, major freeways, rail lines, and rail yards serving the Ports of Los Angeles and Long Beach. Due to major flood events at the beginning of the century, by the 1950s most of the LA River was lined with concrete. In the San Fernando Valley, there is a section of the river with a soft bottom at the Sepulveda Flood Control Basin. At the eastern end of the San Fernando Valley, the river bends around the Hollywood Hills and flows through Griffith and Elysian Parks, in an area known as the Glendale Narrows. Since the water table was too high to allow laying of concrete, the river in this area has a rocky, unlined bottom with concrete-lined or rip-rap sides. South of the Glendale Narrows, the river is contained in a concrete-lined channel down to Willow Street in Long Beach. The LA River tidal prism/estuary begins in Long Beach at Willow Street and runs approximately three miles before joining with Queensway Bay. The channel has a soft bottom in this reach with concrete-lined sides. A number of lakes are also part of the LAR WMA, including Legg Lake, Peck Road Park, Belvedere Park, Hollenbeck Park, Lincoln Park, and Echo Park Lakes as well as Lake Calabasas.

Various reaches and lakes within the LAR WMA are on the 2010 CWA Section 303(d) List of impaired water bodies for trash, nitrogen compounds and related effects (ammonia, nitrate, nitrite, algae, pH, odor, and scum), metals (copper, cadmium, lead, zinc, aluminum and selenium), bacteria, and historic pesticides. Beneficial uses impaired by trash in the Los Angeles River are REC-1, REC-2, WARM, WILD, EST, MAR, RARE, MIGR, SPWN, COMM, WET and COLD. The excess nitrogen compounds

are causing impairments to the WARM and WILD designated beneficial uses of Los Angeles River. Excess metals are causing impairments to the WILD, RARE, WARM, WET, and GWR designated beneficial uses of the Los Angeles River and its tributaries. Elevated indicator bacteria densities are causing impairments to the REC-1 and REC-2 designated beneficial uses of Los Angeles River and the Los Angeles River Estuary. Beneficial uses impaired by trash in Legg Lake include REC1, REC2, and WILD.

TMDLs have been adopted by the Regional Water Board for trash, nitrogen, metals, and bacteria in the Los Angeles River. USEPA established TMDLs for bacteria in the Los Angeles River Estuary and for various pollutants in Los Angeles Area Lakes. The Los Angeles River Watershed Trash TMDL identifies discharges from the municipal separate storm sewer system as the principal source of trash to the Los Angeles River and its tributaries. The Regional Water Board determined that urban runoff and storm water may contribute to nitrate loads. Discharges from the MS4 contribute a large percentage of the metals loadings during dry weather because although non-storm water flows from the MS4 are typically low relative to other discharges during dry weather, concentrations of metals in urban runoff may be quite high. During wet weather, most of the metals loadings are in the particulate form and are associated with wet-weather storm water flow. On an annual basis, storm water discharges from the MS4 contribute about 40% of the cadmium loading, 80% of the copper loading, 95% of the lead loading, and 90% of the zinc loading. Discharges from the MS4 are the principal source of bacteria to the Los Angeles River, its tributaries and the Los Angeles River Estuary in both dry weather and wet weather.

A TMDL has been adopted by the Regional Water Board for trash in Legg Lake. The Legg Lake Trash TMDL identifies MS4 storm drains as the principal point source for trash discharged to Legg Lake.

The Los Angeles Water Board identified 10 lakes in the Los Angeles region as impaired by algae, ammonia, chlordane, copper, DDT, eutrophication, lead, organic enrichment/low dissolved oxygen, mercury, odor, PCBs, pH and/or trash and placed them on California's 303(d) list of impaired waters. For several lakes, USEPA concluded that ammonia, pH, copper and/or lead are currently meeting water quality standards and TMDLs are not required at this time. In other lakes, recent chlordane and dieldrin data indicate additional impairment. Associated with this WMA are: Lake Calabazas TMDLs for total nitrogen and total phosphorus; Echo Park Lake TMDLs for nutrients (total nitrogen and total phosphorus), total chlordane, dieldrin, total PCBs, and trash; Legg Lake TMDLs for total nitrogen and total phosphorus; and Peck Road Park Lake TMDLs for nutrients (total nitrogen and total phosphorus), total chlordane, total DDT, dieldrin, total PCBs, and trash.

In Lake Calabazas beneficial uses impaired by elevated levels of nutrients include REC1, REC2, and WARM. At high enough concentrations, WILD and MUN uses could also become impaired. MS4 discharges from the surrounding watershed to Lake Calabazas during dry and wet weather contributes 97.7 percent of the total phosphorus load and 74.4 percent of the total nitrogen load.

In Echo Park Lake beneficial uses impaired by elevated levels of nutrients, PCBs, chlordane, and dieldrin are currently impairing the REC1, REC2, and WARM uses. At high enough concentrations WILD and MUN uses could also become impaired. Beneficial uses impaired by trash in Echo Park Lake include REC1, REC2, WARM and WILD. The Echo Park Lake nutrient TMDL found that MS4 discharges from the northern and southern watershed to Echo Lake contribute 29 percent of the total phosphorus load and 28 percent of the total nitrogen load during wet weather with dry weather loading data unavailable due to the majority of runoff being diverted downstream of the lake. PCBs, chlordane, and dieldrin in Echo Park Lake are primarily due to historical loading and storage within the lake sediments, with some ongoing contribution by watershed wet weather loads. Dry weather loading is assumed to be negligible because hydrophobic contaminants primarily move with particulate matter that is mobilized by higher flows. Storm water loads from the watershed were estimated based on simulated sediment load and observed pollutant concentrations on sediment near inflows to the lake. MS4 discharges via storm drains are the principal point source for trash in Echo Park Lake.

In Legg Lake beneficial uses impaired due to elevated nutrient levels include REC1, REC2, WARM and COLD. At high enough concentrations the WILD, MUN, and GWR uses could also become impaired. The Legg Lake nutrient TMDL found that MS4 discharges from the surrounding watershed to Legg Lake during dry and wet weather contributes 69.1 percent of the total phosphorus load and 36 percent of the total nitrogen load.

In Peck Road Park Lake beneficial uses impaired by elevated levels of nutrients, PCBs, chlordane, DDT, dieldrin, and trash are currently impairing the REC1, REC2, and WARM uses. At high enough concentrations WILD and MUN uses could also become impaired. The Peck Road Park Lake nutrient TMDL found that MS4 discharges from the surrounding watershed including both wet and dry weather contribute 80.2 percent of the total phosphorus load and 55.5 percent of the total nitrogen load. PCBs, chlordane, DDT, and dieldrin in Peck Road Park Lake loads are primarily due to historical loading and storage within the lake sediments, with some ongoing contribution by watershed wet weather loads. Dry weather loading is assumed to be negligible because hydrophobic contaminants primarily move with particulate matter that is mobilized by higher flows. Stormwater loads from the watershed were estimated based on simulated sediment load and observed pollutant concentrations on sediment near inflows to the lake. MS4 discharges via storm drains are the principal point source for trash in Peck Road Park Lake.

San Gabriel River Watershed Management Area. The San Gabriel River Watershed (SGR WMA) receives drainage from a 689-square mile area of eastern Los Angeles County (Figure B-5). The main channel of the San Gabriel River is approximately 58 miles long. Its headwaters originate in the San Gabriel Mountains with the East, West, and North Forks. The river empties to the Pacific Ocean at the Los Angeles and Orange Counties boundary in Long Beach. The main tributaries of the river are Big and Little Dalton Wash, San Dimas Wash, Walnut Creek, San Jose Creek, Fullerton Creek, and Coyote Creek. Part of the Coyote Creek subwatershed is in Orange County and is under the authority of the Santa Ana Water Board. A number of lakes and reservoirs

are also part of the SGR WMA, including Puddingstone Reservoir. Land use in the watershed is diverse and ranges from predominantly open space in the upper watershed to urban land uses in the middle and lower parts of the watershed.

Various reaches of the SGR WMA are on the 2010 CWA Section 303(d) List of impaired water bodies due to trash, nitrogen, phosphorus, and metals (copper, lead, selenium, and zinc). USEPA established TMDLs for metals and selenium in the San Gabriel River and various pollutants in Los Angeles Area Lakes. Segments of the San Gabriel River and its tributaries exceed water quality objectives for copper, lead, selenium, and zinc. Metals loadings to San Gabriel River are causing impairments of the WILD, WARM, COLD, RARE, EST, MAR, MIGR, SPWN, WET, MUN, IND, AGR, GWR, and PROC beneficial uses. The San Gabriel River metals and selenium TMDL found that the MS4 contributes a large percentage of the metals loadings during dry weather because although their flows are typically low, concentrations of metals in urban runoff may be quite high. During wet weather, most of the metals loadings are in the particulate form and are associated with wet-weather storm water flow.

The Regional Water Board identified 10 lakes in the Los Angeles Region as impaired by algae, ammonia, chlordane, copper, DDT, eutrophication, lead, organic enrichment/low dissolved oxygen, mercury, odor, PCBs, pH and/or trash and placed them on California's 303(d) list of impaired waters. For several lakes, USEPA concluded that ammonia, pH, copper and/or lead are currently meeting water quality standards and TMDLs are not required at this time. In other lakes, recent chlordane and dieldrin data indicate additional impairment. Associated with this WMA is: Puddingstone Reservoir TMDLs for total nitrogen, total phosphorus, total chlordane, total DDT, total PCBs, total mercury, and dieldrin.

In Puddingstone Reservoir beneficial uses impaired due to elevated nutrient, mercury, PCBs, chlordane, dieldrin, and DDT levels include REC1, REC2, WARM, and COLD. At high enough concentrations the WILD, MUN, GWR, and RARE uses could also become impaired. The Puddingstone Reservoir nutrients TMDL found that MS4 discharges from the surrounding watershed to Puddingstone Reservoir during dry and wet weather contributes 79.8 percent of the total phosphorus and 74.1 percent of the total nitrogen load. Mercury, PCBs, chlordane, dieldrin, and DDT in Puddingstone Reservoir loads are primarily due to historical loading and storage within the lake sediments, with some ongoing contribution by watershed wet weather loads. Dry weather loading is assumed to be negligible because hydrophobic contaminants primarily move with particulate matter that is mobilized by higher flows. Stormwater loads from the watershed were estimated based on simulated sediment load and observed pollutant concentrations on sediment near inflows to the lake.

Los Cerritos Channel and Alamitos Bay Watershed Management Area. The Los Cerritos Channel is concrete-lined above the tidal prism and drains a small but densely urbanized area of east Long Beach (Figure B-6). The channel's tidal prism starts at Anaheim Road and connects with Alamitos Bay through the Marine Stadium; the wetlands connect to the Channel a short distance from the lower end of the Channel. Alamitos Bay is composed of the Marine Stadium, a recreation facility built in 1932; Long Beach Marina; a variety of public and private berths; and the Bay proper. A small

bathing lagoon, Colorado Lagoon located entirely in Long Beach, has a tidal connection with the Bay. The majority of land use in this WMA is high density residential.

Los Cerritos Channel is on the 2010 CWA Section 303(d) List of impaired water bodies for metals (copper, zinc, and lead). Beneficial uses impaired by metals in the Los Cerritos Channel include WILD, REC2 and WARM. USEPA established a TMDL for various metals in Los Cerritos Channel. The TMDL for metals in Los Cerritos Channel found that the MS4 contributes a large percentage of the metals loadings during dry weather because although their flows are typically low, concentrations of metals in urban runoff may be quite high. During wet weather, most of the metals loadings are in the particulate form and are associated with wet-weather storm water flow.

Middle Santa Ana River Watershed Management Area. The Middle Santa Ana River Watershed Management Area (MSAR WMA) covers approximately 488 square miles (mi²) and lies mostly in San Bernardino and Riverside Counties; however, a small part of Los Angeles County is also included. The area of Los Angeles County, which lays in the MSAR WMA, includes portions of the Cities of Pomona (12.3 mi²), Claremont (8.4 mi²), and Diamond Bar (0.7 mi²) and unincorporated Los Angeles County (12.3 mi²) (Figure B-7). The MSAR WMA is comprised of three subwatersheds. The subwatershed that includes portions of Pomona and Claremont is the Chino Basin Subwatershed. Surface drainage from Pomona and Claremont is generally southward toward San Antonio Creek, which is tributary to Chino Creek, which feeds into the Prado Flood Control Basin.

Various reaches of the MSAR WMA, including Chino Creek, are listed on 2010 CWA Section 303(d) List for bacteria. Elevated bacterial indicator densities are causing impairments of the REC-1 and REC-2 designated beneficial for the Santa Ana River Reach 3; Chino Creek Reaches 1 and 2; Mill Creek (Prado Area); Cucamonga Creek Reach 1; and Prado Park Lake.

The Santa Ana Water Board adopted TMDLs for bacteria for the Middle Santa Ana River Watershed. The Basin Plan amendment incorporating the Middle Santa Ana River Watershed Bacterial Indicator TMDLs was approved by the Santa Ana Water Board on August 26, 2005 (Resolution No. R8-2005-0001), by the State Water Board on May 15, 2006, by the Office of Administrative Law on September 1, 2006, and by the USEPA on May 16, 2007. The TMDL was effective on May 16, 2007. The Santa Ana Water Board concluded based upon data and information collected in 1993, 1996-1998 and in 2002-2004, that urban runoff from the MS4 is a significant source of bacterial indicators year round to the Middle Santa Ana River and its tributaries (Rice, 2005). The TMDL specifies both dry weather and wet weather WLAs, with distinct implementation schedules. Compliance with the summer dry (April 1st through October 31st) WLAs is to be achieved as soon as possible, but no later than December 31, 2015. In recognition of the difficulties associated with the control of storm water discharges, compliance with the winter wet (November 1st through March 31st) WLAs is to be achieved as soon as possible, but no later than December 31, 2025. The MS4 permit allows for discharges of bacteria from the MS4s of the Cities of Claremont and Pomona to be regulated to ensure compliance with the wasteload allocations set forth in the Middle Santa Ana Bacterial Indicator TMDL and with the corresponding receiving water limitations by the

terms of an NPDES permit issued by the Santa Ana Regional Water Quality Control Board that is applicable to such MS4 discharges. The NPDES permit must be issued pursuant to a designation agreement between the Los Angeles and Santa Ana Regional Boards under Water Code § 13228. In the absence of such an NPDES permit, the MS4 permit includes specific provisions in Attachment R that are consistent with the assumptions and requirements of the wasteload allocations applicable to MS4 discharges as set forth in the Middle Santa Ana Bacterial Indicator TMDL.

Calleguas Creek Watershed Management Area. Calleguas Creek and its tributaries drain a watershed area of 343 square miles (sq. miles) in southern Ventura County and a small portion of western Los Angeles County. Approximately, 4.16 sq. miles of Los Angeles County is part of the Calleguas Creek Watershed. The land use of the 4.15 sq. miles is open space and recreation. The land use of the remaining 0.01 sq. miles is divided between low density residential, industrial, and agriculture (Southern California Association of Governments, 2008). Six TMDLs have been adopted and are in effect for the Calleguas Creek Watershed. None of the TMDLs assign waste load allocations to the Los Angeles County Flood Control District, County of Los Angeles or any incorporated city within Los Angeles County. Therefore, no water quality based effluent limitations were incorporated in this Order for TMDLs in the Calleguas Creek Watershed.

Manner of Incorporation of TMDL WLAs. The description of the permit conditions and the basis for the manner for incorporating requirements to implement the TMDLs' WLAs is discussed below.

WLAs may be expressed in different ways in a TMDL. In general, a WLA is expressed as a discharge condition that must be achieved in order to ensure that water quality standards are attained in the receiving water. The discharge condition may be expressed in terms of mass or concentration of a pollutant. However, in some cases, a WLA may be expressed as a receiving water condition such as an allowable number of exceedance days of the bacteria objectives.

In this Order, in most cases, TMDL WLAs have been translated into numeric WQBELs and, where consistent with the expression of the WLA in the TMDL, also as receiving water limitations. For each TMDL included in this Order, the WLA were translated into numeric WQBELs, which were based on the WLAs in terms of the numeric value and averaging period. For those TMDLs where the averaging period was not specific for the WLA, the averaging period was based on the averaging period for the numeric target.

For the bacteria TMDLs, where the WLA are expressed as an allowable number of exceedance days in the water body, the WLAs were translated into receiving water limitations. In addition to the receiving water limitations, WQBELs were established based on the bacteria water quality objectives. In the bacteria TMDLs, the numeric targets are based on the multi-part bacteriological water quality objectives; therefore, this approach is consistent with the assumptions of the bacteria TMDLs.

In the Ballona Creek Trash TMDL, the default baseline WLA for the MS4 Permittees is equal to 640 gallons (86 cubic feet) of uncompressed trash per square mile per year.

No differentiation is applied for different land uses in the default baseline WLA. The default baseline WLAs for the Permittees has been refined based on results from the baseline monitoring conducted by the City of Los Angeles. The City of Los Angeles provided trash generation flux data for five land uses: commercial, industrial, high density residential, low density residential and open space and recreation. The Baseline WLA for any single city is the sum of the products of each land use area multiplied by the WLA for the land use area, as shown below:

$WLA = \sum \text{for each city (area by land uses} \times \text{allocations for this land use)}$

The baseline was calculated using the City of Los Angeles trash generation flux data provided for the 2003-04 and 2004-05 storm years averaged for pounds of trash per acre and the 2003-04 storm year for gallons of trash per acre. The urban portion of the Ballona Creek watershed was divided into twelve types of land uses for every city and unincorporated area in the watershed. The land use categories are: (1) high density residential, (2) low density residential, (3) commercial and services, (4) industrial, (5) public facilities, (6) educational institutions, (7) military installations, (8) transportation, (9) mixed urban, (10) open space and recreation, (11) agriculture, and (12) water. The land use data used in the calculation is based on the Southern California Association of Governments 2005 data.

1. Compliance Determination

For TMDLs that establish individual mass-based WLAs or a concentration-based WLA such as the Trash TMDLs, Nitrogen TMDLs, and Chloride TMDL, this Order requires Permittees to demonstrate compliance with their assigned WQBELs individually.

A number of the TMDLs for Bacteria, Metals and Toxics establish WLAs that are assigned jointly to a group of Permittees whose storm water and/or non-storm water discharges are or may be commingled in the MS4 prior to discharge to the receiving water subject to the TMDL. TMDLs address commingled MS4 discharges by assigning a WLA to a group of MS4 Permittees based on co-location within the same subwatershed. Permittees with co-mingled storm water are jointly responsible for meeting the WQBELs and receiving water limitations assigned to MS4 discharges in this Order. "Joint responsibility" means that the Permittees that have commingled MS4 discharges are responsible for implementing programs in their respective jurisdictions, or within the MS4 for which they are an owner or operator, to meet the WQBELs and/or receiving water limitations assigned to such commingled MS4 discharges.

In these cases, federal regulations state that co-permittees need only comply with permit conditions relating to discharges from the MS4 for which they are owners or operators. (40 CFR § 122.26(a)(3)(vi).) Individual co-permittees are only responsible for their contributions to the commingled discharge. This Order does not require a Permittee to individually ensure that a commingled MS4 discharge meets the applicable WQBELs included in this Order, unless such Permittee is shown to be solely responsible for the exceedances.

Additionally, this Order allows a Permittee to clarify and distinguish their individual contributions and demonstrate that its MS4 discharge did not cause or contribute to exceedances of applicable WQBELs and/or receiving water limitations. In this case, though the Permittee's discharge may commingle with that of other Permittees, the Permittee would not be held jointly responsible for the exceedance of the WQBELs or receiving water limitation.

Individual co-permittees who demonstrate compliance with the WQBELs will not be held responsible for violations by non-compliant co-permittees.

Demonstrating Compliance with Interim Limitations. This Order provides Permittees with several means of demonstrating compliance with applicable interim WQBELs and interim receiving water limitations for the pollutant(s) associated with a specific TMDL. These include any of the following:

- a. There are no violations of the interim WQBELs for the pollutant(s) associated with a specific TMDL at the Permittee's applicable MS4 outfall(s) or access points,⁴² including an outfall to the receiving water that collects discharges from multiple Permittees' jurisdictions;
- b. There are no exceedances of the applicable receiving water limitation for the pollutant(s) associated with a specific TMDL in the receiving water(s) at, or downstream of, the Permittee's outfall(s);
- c. There is no direct or indirect discharge from the Permittee's MS4 to the receiving water during the time period subject to the WQBEL and/or receiving water limitation for the pollutant(s) associated with a specific TMDL; or
- d. The Permittee has submitted and is fully implementing an approved Watershed Management Program or Enhanced Watershed Management Program (EWMP), which includes analyses that provide the Regional Water Board with reasonable assurance that the watershed control measures proposed will achieve the applicable WQBELs and receiving water limitations consistent with relevant compliance schedules.

Demonstrating Compliance with Final Limitations. This Order provides Permittees with three general means of demonstrating compliance with an applicable *final* WQBEL and *final* receiving water limitation for the pollutant(s) associated with a specific TMDL.

These include any of the following:

- a. There are no violations of the final WQBEL for the specific pollutant at the Permittee's applicable MS4 outfall(s)⁴³;

⁴² An access point may include a manhole or other point of access to the MS4 at the Permittee's jurisdictional boundary.

⁴³ Ibid.

- b. There are no exceedances of applicable receiving water limitation for the specific pollutant in the receiving water(s) at, or downstream of, the Permittee's outfall(s);
- c. There is no direct or indirect discharge from the Permittee's MS4 to the receiving water during the time period subject to the WQBEL and/or receiving water limitation for the pollutant(s) associated with a specific TMDL; or
- d. In drainage areas where Permittees are implementing an EWMP, (i) all non-storm water and (ii) all storm water runoff up to and including the volume equivalent to the 85th percentile, 24-hour event is retained for the drainage area tributary to the applicable receiving water, and the Permittee is implementing all requirements of the EWMP, including, but not limited to, Parts VI.C.7 and VI.C.8 of this Order. This compliance mechanism does not apply to final trash WQBELs.

This Order provides the opportunity for Permittees to demonstrate compliance with *interim* effluent limitations through development and implementation of a Watershed Management Program or EWMP, where Permittees have provided a reasonable demonstration through quantitative analysis (i.e., modeling or other approach) that the control measures/BMPs to be implemented will achieve the interim effluent limitations in accordance with the schedule provided in this Order. It is premature to consider application of this action based compliance demonstration option to the final effluent limitations and final receiving water limitations that have deadlines outside the term of this Order. More data is needed to validate assumptions and model results regarding the linkage among BMP implementation, the quality of MS4 discharges, and receiving water quality.

During the term of this Order, there are very few deadlines for compliance with final effluent limitations applicable to storm water, or final receiving water limitations applicable during wet weather conditions. Most deadlines during the term of this Order are for interim effluent limitations applicable to storm water, or for final effluent limitations applicable to non-storm water discharges and final dry weather receiving water limitations.

There are only five State-adopted TMDLs for which the compliance deadlines for final water quality-based effluent limitations applicable to storm water occur during the term of this Order. These include: Santa Clara River Chloride TMDL, Santa Clara River Nitrogen TMDL, Los Angeles River Nitrogen TMDL, Marina del Rey Harbor Toxics TMDL, and LA Harbor Bacteria TMDL. In most of these five TMDLs, compliance with the final water quality-based effluent limitations assigned to MS4 discharges is expected to be achieved (e.g., Santa Clara River Chloride TMDL⁴⁴), or a mechanism is in place to potentially allow additional time to come into compliance (e.g. reconsideration of the Marina del Rey Harbor Toxics TMDL implementation schedule).

⁴⁴ Data from land use monitoring conducted under the LA County MS4 Permit from 1994-99 indicate chloride concentrations ranging from 3.2-48 mg/L, while more recent data from the mass emissions station in the Santa Clara River (S29) indicate concentrations ranging from 116-126 mg/l in dry weather, and 25.1-96.3 mg/l in wet weather, suggesting that storm water has a diluting effect on chloride concentrations in the receiving water.

The Regional Water Board will evaluate the effectiveness of this action-based compliance determination approach in ensuring that interim effluent limitations for storm water are achieved during this permit term. If this approach is effective in achieving compliance with interim effluent limitations for storm water during this permit term, the Regional Water Board will consider during the next permit cycle whether it would be appropriate to allow a similar approach for demonstrating compliance with final water quality-based effluent limitations applicable to storm water. The Order includes a specific provision to support reopening the permit to include provisions or modifications to WQBELs in Part VI.E and Attachments L-R in this Order prior to the final compliance deadlines, if practicable, that would allow an action-based, BMP compliance demonstration approach with regard to final WQBELs for storm water discharges based on the Regional Board's review of relevant research, including but not limited to data and information provided by Permittees, on storm water quality and control technologies

2. Compliance Schedules for Achieving TMDL Requirements

A Regional Water Board may include a compliance schedule in an NPDES permit when the state's water quality standards or regulations include a provision that authorizes such schedules in NPDES permits.⁴⁵ In California, TMDL implementation plans⁴⁶ are typically adopted through Basin Plan Amendments. The TMDL implementation plan, which is part of the Basin Plan Amendment, becomes a regulation upon approval by the State of California Office of Administrative Law (OAL).⁴⁷ Pursuant to California Water Code sections 13240 and 13242, TMDL implementation plans adopted by the Regional Water Board "shall include ... a time schedule for the actions to be taken [for achieving water quality objectives]," which allows for compliance schedules in future permits. This Basin Plan Amendment becomes the applicable regulation that authorizes an MS4 permit to include a compliance schedule to achieve effluent limitations derived from wasteload allocations.

Where a TMDL implementation schedule has been established through a Basin Plan Amendment, it is incorporated into this Order as a compliance schedule to achieve interim and final WQBELs and corresponding receiving water limitations, in accordance with 40 CFR section 122.47. WQBELs must be consistent with the assumptions and requirements of any WLA, which includes applicable implementation schedules.⁴⁸ California Water Code sections 13263 and 13377 state that waste discharge requirements must implement the Basin Plan.⁴⁹ Therefore,

⁴⁵ See *In re Star-Kist Caribe, Inc.*, (Apr. 16, 1990) 3 E.A.D. 172, 175, modification denied, 4 E.A.D. 33, 34 (EAB 1992).

⁴⁶ TMDL implementation plans consist of those measures, along with a schedule for their implementation, that the Water Boards determine are necessary to correct an impairment. The NPDES implementation measures are thus required by sections 303(d) and 402(p)(3)(B)(iii) of the CWA. State law also requires the Water Boards to implement basin plan requirements. (See Wat. Code §§ 13263, 13377; *State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 189.)

⁴⁷ See Gov. Code, § 11353, subd. (b). Every amendment to a Basin Plan, such as a TMDL and its implementation plan, requires approval by the State Water Board and OAL. When the TMDL and implementation plan is approved by OAL, it becomes a state regulation.

⁴⁸ See 40 C.F.R. § 122.44(d)(1)(vii)(B).

⁴⁹ Cal. Wat. Code, § 13263, subd. (a) ("requirements shall implement any relevant water quality control plans that have been adopted"); Cal. Wat. Code, § 13377 ("the state board or the regional boards shall . . . issue waste discharge requirements and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the [CWA], thereto,

compliance schedules for attaining WQBELs derived from WLAs must be based on a state-adopted TMDL implementation plan and cannot exceed the maximum time that the implementation plan allows.

In determining the compliance schedules, the Regional Water Board considered numerous factors to ensure that the schedules are as short as possible. Factors examined include, but are not limited to, the size and complexity of the watershed; the pollutants being addressed; the number of responsible agencies involved; time for Co-Permittees to negotiate memorandum of agreements; development of water quality management plans; identification of funding sources; determination of an implementation strategy based on the recommendations of water quality management plans and/or special studies; and time for the implementation strategies to yield measurable results. Compliance schedules may be altered based on the monitoring and reporting results as set forth in the individual TMDLs.

In many ways, the incorporation of interim and final WQBELs and associated compliance schedules is consistent with the iterative process of implementing BMPs that has been employed in the previous Los Angeles County MS4 Permits in that progress toward compliance with the final effluent limitations may occur over the course of many years. However, because the waterbodies in Los Angeles County are impaired due to MS4 discharges, it is necessary to establish more specific provisions in order to: (i) ensure measurable reductions in pollutant discharges from the MS4, resulting in progressive water quality improvements during the iterative process, and (ii) establish a final date for completing implementation of BMPs and, ultimately, achieving effluent limitations and water quality standards.

The compliance schedules established in this Order are consistent with the implementation plans established in the individual TMDLs. The compliance dates for meeting the final WQBELs and receiving water limitations for each TMDL are listed below in Table F-7.

together with any more stringent effluent standards or limitations necessary to implement waste quality control plans, or for the protection of beneficial uses, or to prevent nuisance"); see also, *State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 189.

Table F-7. Compliance Schedule for final compliance dates.

| | Final Compliance date has Passed | Final Compliance date within 5 years (2012-2017) | Final Compliance date between 5 and 10 years (2018-2022) | Final Compliance date after 10 years (2023) |
|--|----------------------------------|--|--|---|
| TOTAL MAXIMUM DAILY LOADS (TMDL) | | | | |
| Santa Clara River Nitrogen Compounds TMDL | March 23, 2004 | | | |
| Upper Santa Clara River Chloride TMDL | April 6, 2010 | | | |
| Lake Elizabeth, Munz Lake, and Lake Hughes Trash TMDL (Lake Elizabeth only) | | March 6, 2016 | | |
| Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL | | | | |
| Dry Weather | | | | March 21, 2023 |
| Wet Weather | | | | March 21, 2029 |
| Santa Monica Bay Beaches Bacteria TMDL | | | | |
| Summer Dry Weather | July 15, 2006 | | | |
| Winter Dry Weather | July 15, 2009 | | | |
| Wet Weather | | | July 15, 2021 | |
| Santa Monica Bay Nearshore and Offshore Debris TMDL | | | March 20, 2020 | |
| Santa Monica Bay TMDL for DDTs and PCBs (USEPA established) | | March 26, 2012 | | |
| Malibu Creek and Lagoon Bacteria TMDL | | | | |
| Summer Dry Weather | January 24, 2009 | | | |
| Winter Dry Weather | January 24, 2012 | | | |
| Wet Weather | | | July 15, 2021 | |
| Malibu Creek Watershed Trash TMDL | | July 7, 2017 | | |
| Malibu Creek Watershed Nutrients TMDL (USEPA established) | March 21, 2003 | | | |
| Ballona Creek Trash TMDL | | September 30, 2015 | | |
| Ballona Creek Estuary Toxic Pollutants TMDL | | | January 11, 2021 | |
| Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL | | | | |
| Dry Weather | | April 27, 2013 | | |
| Wet Weather | | | July 15, 2021 | |
| Ballona Creek Metals TMDL | | | | |

| TOTAL MAXIMUM DAILY LOADS (TMDL) | Final Compliance date has Passed | Final Compliance date within 5 years (2012-2017) | Final Compliance date between 5 and 10 years (2018-2022) | Final Compliance date after 10 years (2023) |
|---|---|---|---|--|
| Dry Weather | | January 11, 2016 | | |
| Wet Weather | | | January 11, 2021 | |
| Ballona Creek Wetlands TMDL for Sediment and Invasive Exotic Vegetation (USEPA established) | | March 26, 2012 | | |
| Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL | | | | |
| Dry Weather | March 18, 2007 | | | |
| Wet Weather | | | July 15, 2021 | |
| Marina del Rey Harbor Toxic Pollutants TMDL | | March 22, 2016 | March 22, 2021* | |
| Los Angeles Harbor Bacteria TMDL | March 10, 2010 | | | |
| Machado Lake Trash TMDL | | March 6, 2016 | | |
| Machado Lake Nutrient TMDL | | | September 11, 2018 | |
| Machado Lake Pesticides and PCBs TMDL | | | September 30, 2019 | |
| Dominguez Channel and Greater LA and LB Harbor Waters Toxic Pollutants TMDL | | | | March 23, 2032 |
| Los Angeles River Watershed Trash TMDL | | September 30, 2016 | | |
| Los Angeles River Nitrogen Compounds and Related Effects TMDL | March 23, 2004 | | | |
| Los Angeles River and Tributaries Metals TMDL | | | | |
| Dry Weather | | | | January 11, 2024 |
| Wet Weather | | | | January 11, 2028 |
| Los Angeles River Watershed Bacteria TMDL | | | | |
| Dry Weather (Compliance dates range from 10 to 25 years) | | | March 23, 2022 | March 23, 2037 |
| Wet Weather | | | | March 23, 2037 |
| Legg Lake Trash TMDL | | March 6, 2016 | | |
| Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDL (USEPA established) | | March 26, 2012 | | |

| TOTAL MAXIMUM DAILY LOADS (TMDL) | Final Compliance date has Passed | Final Compliance date within 5 years (2012-2017) | Final Compliance date between 5 and 10 years (2018-2022) | Final Compliance date after 10 years (2023) |
|---|---|---|---|--|
| Los Angeles Area Lakes TMDLs (USEPA established) | | March 26, 2012 | | |
| San Gabriel River and Impaired Tributaries Metals and Selenium TMDL (USEPA established) | March 26, 2007 | | | |
| Los Cerritos Channel Metals TMDL (USEPA established) | March 17, 2010 | | | |
| Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals TMDL | | | July 28, 2018 | |
| Middle Santa Ana River Watershed Bacterial Indicator TMDLs | | | | |
| Dry Weather | | December 31, 2015 | | |
| Wet Weather | | | | December 31, 2025 |

* If an Integrated Water Resources Approach is approved and implemented then Permittees have an extended compliance deadline.

3. State Adopted TMDLs with Past Final Compliance Deadlines

In accordance with federal regulations, this Order includes WQBELs necessary to achieve applicable wasteload allocations assigned to MS4 discharges. In some cases, the deadline specified in the TMDL implementation plan for achieving the final wasteload allocation has passed. (See Table F-8) This Order requires that Permittees comply immediately with WQBELs and/or receiving water limitations for which final compliance deadlines have passed.

Table F-8. State-Adopted TMDLs with Past Final Implementation Deadlines

| TOTAL MAXIMUM DAILY LOADS (TMDL) | Final Compliance date has Passed |
|---|----------------------------------|
| Santa Clara River Nitrogen Compounds TMDL | March 23, 2004 |
| Upper Santa Clara River Chloride TMDL | April 6, 2010 |
| Santa Monica Bay Beaches Bacteria TMDL <i>Summer Dry Weather only</i> | July 15, 2006 |
| Santa Monica Bay Beaches Bacteria TMDL <i>Winter Dry Weather only</i> | July 15, 2009 |
| Malibu Creek and Lagoon Bacteria TMDL <i>Summer Dry Weather only</i> | January 24, 2009 |
| Malibu Creek and Lagoon Bacteria TMDL <i>Winter Dry Weather only</i> | January 24, 2012 |
| Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL <i>Dry Weather Year-round only</i> | March 18, 2007 |
| Los Angeles Harbor Bacteria TMDL | March 10, 2010 |
| Los Angeles River Nitrogen Compounds and Related Effects TMDL | March 23, 2004 |

Where a Permittee determines that its MS4 discharge may not meet the final WQBELs for the TMDLs in Table F-8 upon adoption of this Order, the Permittee may request a time schedule order (TSO) from the Regional Water Board. TSOs are issued pursuant to California Water Code section 13300, whenever a Water Board "finds that a discharge of waste is taking place or threatening to take place that violates or will violate [Regional Water Board] requirements." Permittees may individually request a TSO, or may jointly request a TSO with all Permittees subject to the WQBELs and/or receiving water limitations. Permittees must request a TSO to achieve WQBELs for the TMDLs in Table F-8 no later than 45 days after the date this Order is adopted, or no less than 90 days prior to the final compliance deadline if after adoption of the Order.

In the request, the Permittee(s) must include, at a minimum, the following:

- a. Location specific data demonstrating the current quality of the MS4 discharge(s) in terms of concentration and/or load of the target pollutant(s) to the receiving waters subject to the TMDL;
- b. A detailed description and chronology of structural controls and source control efforts, including location(s) of implementation, since the effective date of the TMDL, to reduce the pollutant load in the MS4 discharges to the receiving waters subject to the TMDL;
- c. A list of discharge locations for which additional time is needed to achieve the water quality based effluent limitations and/or receiving water limitations;
- d. Justification of the need for additional time to achieve the water quality-based effluent limitations and/or receiving water limitations for each location identified in Part VI.E.3.c, above;

- e. A detailed time schedule of specific actions the Permittee will take in order to achieve the water quality-based effluent limitations and/or receiving water limitations at each location identified in Part VI.E.3.c, above;
- f. A demonstration that the time schedule requested is as short as possible, consistent with California Water Code section 13385(j)(3)(C)(i), taking into account the technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation(s); and
- g. If the requested time schedule exceeds one year, the proposed schedule shall include interim requirements and the date(s) for their achievement. The interim requirements shall include both of the following:
 - i. Effluent limitation(s) for the pollutant(s) of concern; and
 - ii. Actions and milestones leading to compliance with the effluent limitation(s).

The Regional Water Board does not intend to take enforcement action against a Permittee for violations of specific WQBELs and corresponding receiving water limitations for which the final compliance deadline has passed if a Permittee is fully complying with the requirements of a TSO to resolve exceedances of the WQBELs for the specific pollutant(s) in the MS4 discharge.

4. USEPA Established TMDLs

USEPA has established seven TMDLs that include wasteload allocations for MS4 discharges covered by this Order (See Table F-9). Five TMDLs were established since 2010, one in 2007, and one in 2003.

Table F-9. USEPA Established TMDLs with WLAs Assigned to MS4 Discharges

| TOTAL MAXIMUM DAILY LOADS (TMDL) | Effective Date |
|---|----------------|
| Santa Monica Bay TMDL for DDTs and PCBs (USEPA established) | March 26, 2012 |
| Ballona Creek Wetlands TMDL for Sediment and Invasive Exotic Vegetation (USEPA established) | March 26, 2012 |
| Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDL (USEPA established) | March 26, 2012 |
| Los Angeles Area Lakes TMDLs (USEPA established) | March 26, 2012 |
| Los Cerritos Channel Metals TMDL (USEPA established) | March 17, 2010 |
| San Gabriel River and Impaired Tributaries Metals and Selenium TMDL (USEPA established) | March 26, 2007 |
| Malibu Creek Watershed Nutrients TMDL (USEPA established) | March 21, 2003 |

In contrast to State-adopted TMDLs, USEPA established TMDLs do not contain an implementation plan or schedule. The Clean Water Act does not allow USEPA to either adopt implementation plans or establish compliance schedules for TMDLs that it establishes. Such decisions are generally left with the States. The Regional Water Board could either (1) adopt a separate implementation plan as a Basin Plan Amendment for each USEPA established TMDL, which would allow inclusion of compliance schedules in the permit where applicable, or (2) issue a Permittee a schedule leading to full compliance in a separate enforcement order (such as a Time Schedule Order or a Cease and Desist Order). To date, the Board has not adopted a

separate implementation plan or enforcement order for any of these TMDLs. As such, the final WLAs in the seven USEPA established TMDLs identified above become effective immediately upon establishment by USEPA and placement in a NPDES permit.

The Regional Water Board's decision as to how to express permit conditions for USEPA established TMDLs is based on an analysis of several specific facts and circumstances surrounding these TMDLs and their incorporation into this Order. First, since these TMDLs do not include implementation plans, none of these TMDLs have undergone a comprehensive evaluation of implementation strategies or an evaluation of the time required to fully implement control measures to achieve the final WLAs. Second, given the lack of an evaluation, the Regional Water Board is not able to adequately assess whether Permittees will be able to immediately comply with the WLAs at this time. Third, the majority of these TMDLs were established by USEPA recently (i.e., since 2010) and permittees have had limited time to plan for and implement control measures to achieve compliance with the WLAs. Lastly, while federal regulations do not allow USEPA to establish implementation plans and schedules for achieving these WLAs, USEPA has nevertheless included implementation recommendations regarding MS4 discharges as part of six of the seven of these TMDLs. The Regional Water Board needs time to adequately evaluate USEPA's recommendations. For the reasons above, the Regional Water Board has determined that numeric water quality based effluent limitations for these USEPA established TMDLs are infeasible at the present time. The Regional Water Board may at its discretion revisit this decision within the term of the Order or in a future permit, as more information is developed to support the inclusion of numeric water quality based effluent limitations.

In lieu of inclusion of numeric water quality based effluent limitations at this time, this Order requires Permittees subject to WLAs in USEPA established TMDLs to propose and implement best management practices (BMPs) that will be effective in achieving the numeric WLAs. Permittees will propose these BMPs to the Regional Water Board in a Watershed Management Program Plan, which is subject to Regional Water Board Executive Officer approval. As part of this Plan, Permittees are also required to propose a schedule for implementing the BMPs that is as short as possible. The Regional Water Board finds that, at this time, it is reasonable to include permit conditions that require Permittees to develop specific Watershed Management Program plans that include interim milestones and schedules for actions to achieve the WLAs. These plans will facilitate a comprehensive planning process, including coordination among co-permittees where necessary, on a watershed basis to identify the most effective watershed control measures and implementation strategies to achieve the WLAs.

At a minimum, the Watershed Management Program Plan must include the following data and information relevant to the USEPA established TMDL:

- i. Available data demonstrating the current quality of the MS4 discharge(s) in terms of concentration and/or load of the target pollutant(s) to the receiving waters subject to the TMDL;

- ii. A detailed time schedule of specific actions the Permittee will take in order to achieve the WLA(s);
- iii. A demonstration that the time schedule requested is as short as possible, taking into account the time since USEPA establishment of the TMDL, and technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the WLA(s);
 - a. For the Malibu Creek Nutrient TMDL established by USEPA in 2003, in no case shall the time schedule to achieve the final numeric WLAs exceed five years from the effective date of this Order; and
- iv. If the requested time schedule exceeds one year, the proposed schedule shall include interim requirements, including numeric milestones, and the date(s) for their achievement.

Each Permittee subject to a WLA in a TMDL established by USEPA must submit a draft of a Watershed Management Program Plan to the Regional Water Board Executive Officer per the timelines outlined for submittal of a Watershed Management Program or EWMP.

Based on the nature and timing of the proposed watershed control measures, the Regional Water Board will consider appropriate actions on its part, which may include: (1) no action and continued reliance on permit conditions that require implementation of the approved watershed control measures throughout the permit term; (2) adopting an implementation plan and corresponding schedule through the Basin Plan Amendment process and then incorporating water quality based effluent limitations and a compliance schedule into this Order consistent with the State-adopted implementation plan; or (3) issuing a time schedule order to provide the necessary time to fully implement the watershed control measures to achieve the WLAs.

If a Permittee chooses not to submit a Watershed Management Program Plan, or the plan is determined to be inadequate by the Regional Water Board Executive Officer and necessary revisions are not made within 90 days of written notification to the Permittee that that plan is inadequate, the Permittee will be required to demonstrate compliance with the numeric WLAs immediately based on monitoring data collected under the MRP (Attachment E) for this Order.

The Regional Water Board does not intend to take enforcement action against a Permittee for violations of specific WLAs and corresponding receiving water limitations for USEPA established TMDLs if a Permittee has developed and is implementing an approved Watershed Management Program to achieve the WLAs in the USEPA TMDL and the associated receiving water limitations.

5. TMDL Revisions Incorporated after November 8, 2012

Part VI.A.7 of this Order contains reopener and modification provisions that allow for the permit to be modified, revoked, reissued, or terminated under certain

circumstances. Subpart a.iv. provides that a cause for taking such actions includes incorporating provisions as a result of TMDL reconsiderations.

a. Permit Modification Related to Revised Los Angeles River Watershed and Ballona Creek Watershed Trash TMDLs

On June 11, 2015, the Regional Water Board adopted Resolution No. R15-006, an amendment to the Water Quality Control Plan for the Los Angeles Region to revise the Los Angeles River Watershed Trash TMDL and the Ballona Creek Watershed Trash TMDL. The revised TMDLs were subsequently approved by the State Water Resources Control Board (State Water Board) by Resolution No. 2015-0068 on November 17, 2015; the Office of Administrative Law on May 4, 2016; and the U.S. Environmental Protection Agency (U.S. EPA) on June 30, 2016. The revised TMDLs became effective upon approval by U.S. EPA.

This Order has been modified consistent with the revisions to these TMDLs, as described below.

Alternative Methods for Demonstrating Compliance with Final Effluent Limitations

Provisions are included in Part VI.E.5.b to provide Permittees alternatives for demonstrating compliance with the final effluent limitations prescribed to achieve the Los Angeles River Watershed Trash TMDL and the Ballona Creek Watershed Trash TMDL. The Staff Report for Resolution No. R15-006 describes the practical considerations that these alternatives address. For example, regarding responsible agencies that have chosen to use full capture systems (FCS) to achieve compliance, the Staff Report notes that:

Exclusive use of full capture systems provides advantages and many responsible agencies have chosen to use full capture systems exclusively to achieve their WLAs. However, some of these responsible agencies have found that there are some catch basins for which retrofitting with a full capture system, or even a partial capture device, is technically infeasible due to the configuration of the catch basin (i.e., usually too shallow to accommodate a full capture system). In these cases, installation of a full capture system would create a flood risk or would require significant expense to redesign the catch basin and the connected storm drain system that may be out of proportion with the reduction in trash that would be achieved.

To address these practical considerations, in drainage areas where the vast majority of catch basins are retrofitted with Full Capture Systems (FCS); the FCS are properly sized, operated, and maintained; and retrofit of the remaining catch basins is technically infeasible, Permittees may request that the Executive Officer make a determination that the agency is in full compliance with its final WLA if three criteria are met as specified in Part VI.E.5.b.ii.(1).

In these instances, Part VI.E.5.b.ii.(1) of the Order also requires Permittees to re-evaluate the effectiveness of institutional controls and partial capture devices and

report the findings to the Regional Water Board for confirmation or change to the determination, if significant land use changes occur in the affected subwatershed (based on permits for new and significant re-development) or if there is a significant change in the suite of implemented partial capture devices and/or institutional controls (e.g., reduced frequency of implementation, reduced spatial coverage of implementation, change in technology employed). The Order requires such re-evaluation to occur within one year of the identification of the significant changes.

The TMDL revisions addressed similar practical considerations for Permittees employing institutional controls or a combination of full capture systems, partial capture devices, and institutional controls. According to the TMDL revisions, Permittees employing these strategies shall be deemed in compliance with the final WLAs when the reduction of trash from the jurisdiction's baseline load is between 99% and 100% as calculated using a mass balance approach, and the FCS and partial capture devices are properly sized, operated, and maintained.

Alternatively, Permittees may request that the Executive Officer make a determination that a 97% to 98% reduction of the baseline load as calculated using a mass balance approach, constitutes full compliance with the final WLA if the criteria set forth in Part VI.E.5.b.ii.(2) are met.

Finally, Permittees may demonstrate compliance with interim and final WLAs through a scientifically based alternative compliance approach as described in Part VI.E.5.b.ii.(3).

Permittees employing alternative compliance options for FCS, partial capture devices, and the application of institutional controls, or employing a scientifically based alternative compliance approach shall submit a revised Watershed Management Program (WMP) or Enhanced Watershed Management Program (EWMP) or separate TMDL implementation plan if the Permittee does not have an approved WMP or EWMP, for Executive Officer approval prior to use of these alternative compliance options.

Provisions Related to Permittee Responsibilities Relative to the Los Angeles River Watershed and Ballona Creek Watershed Trash TMDLs

Updates to the list of Permittees subject to the Los Angeles River Watershed Trash TMDL and Ballona Creek Watershed Trash TMDL have been made to Attachment K, Tables K-3 and K-5, to ensure that compliance with the interim and final water quality-based effluent limitations and related permit provisions is appropriately determined.

First, consistent with the revised Los Angeles River Watershed Trash TMDL, the City of Santa Clarita was removed as a responsible Permittee for the TMDL and is therefore no longer subject to the effluent limitations for trash assigned to MS4 discharges for the Los Angeles River watershed. The City of Santa Clarita was originally assigned effluent limitations for discharges of trash from its MS4

because a small area within the city's jurisdiction is in the Los Angeles River Watershed. However, as noted in the Staff Report to Resolution No. R15-006, the Los Angeles Water Board has established that the area of the city within the Los Angeles River watershed is undeveloped open space and contains no storm drains or other MS4 infrastructure. The City of Santa Clarita has been removed from Table K-5 in Attachment K and Part A.3 of Attachment O.

Second, the Los Angeles County Flood Control District (LACFCD) has been added as a responsible Permittee subject to the Los Angeles River Watershed Trash TMDL and the Ballona Creek Watershed Trash TMDL. The LACFCD is not assigned a waste load allocation, since waste load allocations are based on jurisdictional area. However, given the LACFCD's separate authority over the MS4, and the fact that some of the key compliance strategies for trash TMDLs rely on installation within the LACFCD's infrastructure, permit provisions affirming and outlining the LACFCD's responsibilities are necessary. Provisions have been added to Part VI.E.5.b.v. pertaining to the LACFCD's responsibilities with respect to the effluent limitations for trash and how the LACFCD may be held responsible with a Permittee for non-compliance with the trash effluent limitations.

Provisions for Plastic Pellet Monitoring for Permittees Subject to the Los Angeles River Watershed Trash TMDL

Permittees subject to the Ballona Creek Watershed Trash TMDL are already addressing plastic pellets as part of the requirements related to the Santa Monica Bay Debris TMDL to which they are also subject. The addition of similar provisions for Permittees subject to the Los Angeles River Watershed Trash TMDL ensures consistency among trash TMDLs.

Specifically, Attachment E, Part XIX.D requires that Permittees that are subject to the Los Angeles River Watershed Trash TMDL and which do not meet the exemption criteria (as set forth in Attachment E, Part XIX.D) prepare a Plastic Pellet Monitoring and Reporting Plan (PMRP) to (i) monitor the amount of plastic pellets being discharged from the MS4; (ii) establish triggers for increased industrial facility inspections and enforcement of Storm Water Pollution Prevention Plan (SWPPP) requirements for industrial facilities identified as responsible for the plastic pellet WLA herein; and/or (iii) address possible plastic pellet spills. Permittees subject to the Los Angeles River Trash TMDL must submit a PMRP to the Regional Water Board either (i) by December 28, 2017 or (ii) as part of its adaptive management process if the Permittee is participating in an approved WMP or EWMP.

Provisions for Receiving Water Monitoring for Trash

Incorporation of receiving water monitoring requirements allows for an objective evaluation of the effectiveness, and continued effectiveness, of the implementation actions to control trash discharges from the MS4 throughout the two watersheds.

Attachment E, Parts XIX.B and XIX.D require that Permittees propose for Executive Officer approval, and implement, a Trash Monitoring and Reporting Plan (TMRP). To meet this requirement, Permittees must submit a revised Integrated Monitoring Program (IMP) or Coordinated Integrated Monitoring Program (CIMP) incorporating the TMRP requirements or a stand-alone TMRP (if the Permittee does not have an approved IMP or CIMP) for Executive Officer approval six months after the effective date of the TMDL (i.e., December 30, 2016).

E. Other Provisions

1. Legal Authority

Adequate legal authority is required to implement and enforce most parts of the Minimum Control Measures and all equivalent actions if implemented with a Watershed Management Program (See 40 CFR section 122.26(d)(2)(i)(A)-(F) and 40 CFR section 122.26(d)(2)(iv). Without adequate legal authority the MS4 would be unable to perform many vital functions such as performing inspections, requiring remedies, and requiring installation of control measures. In addition, the Permittee would not be able to penalize and/or attain remediation costs from violators.

2. Fiscal Resources

The annual fiscal analysis will show the allocated resources, expenditures, and staff resources necessary to comply with the permit, and implement and enforce the Permittee's Watershed Management Program (See 40 CFR section 122.26(d)(2)(vi). The annual analysis is necessary to show that the Permittee has adequate resources to meet all Permit Requirements. The analysis can also show year-to-year changes in funding for the storm water program. A summary of the annual analysis must be reported in the annual report. This report will help the Permitting Authority understand the resources that are dedicated to compliance with this permit, and to implementation and enforcement of the Watershed Management Program, and track how this changes over time. Furthermore, the inclusion of the requirement to perform a fiscal analysis annually is similar to requirements included in Order No. 01-182 permit as well as the current Ventura County MS4 permit.

3. Responsibilities of the Permittees

Because of the complexity and networking of the storm drain system and drainage facilities within and tributary to the LA MS4, the Regional Water Board adopted an area-wide approach in permitting storm water and urban runoff discharges. Order No. 01-182 was structured as a single permit whereby individual Permittees were assigned uniform requirements and additional requirements were assigned to the Principal Permittee (Los Angeles County Flood Control District). This permit does not designate a principal Permittee and as such requires each Permittee to implement provisions as a separate entity. Furthermore it does not hold a Permittee responsible for implementation of provisions applicable to other Permittees.

Part VI.A.4.a requires inter and intra-agency coordination to facilitate implementation of this Order. This requirement is based on 40 CFR section 122.26(d)(2)(iv) which requires "a comprehensive planning process which public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable [...]."

4. Reopener and Modification Provisions

These provisions are based on 40 CFR sections 122.44, 122.62, 122.63, 122.64, 124.5, 125.62, and 125.64, and are also consistent with Order No. 01-182. The Regional Water Board may reopen the permit to modify permit conditions and requirements, as well as revoke, reissue, or terminate in accordance with federal regulations. Causes for such actions include, but are not limited to, endangerment to human health or the environment; acquisition of newly-obtained information that would have justified the application of different conditions if known at the time of Order adoption; to incorporate provisions as a result of new federal or state laws, regulations, plans, or policies (including TMDLs and other Basin Plan amendments); modification in toxicity requirements; violation of any term or condition in this Order; and/or minor modifications to correct typographical errors or require more frequent monitoring or reporting by a Permittee. The Order also includes additional causes including: within 18 months of the effective date of a revised TMDL or as soon as practicable thereafter, where the revisions warrant a change to the provisions of this Order, the Regional Water Board may modify this Order consistent with the assumptions and requirements of the revised WLA(s), including the program of implementation; in consideration of any State Water Board action regarding the precedential language of State Water Board Order WQ 99-05; and to include provisions or modifications to WQBELs in Part VI.E and Attachments L-R in this Order prior to the final compliance deadlines, if practicable, that would allow an action-based, BMP compliance demonstration approach with regard to final WQBELs for storm water discharges based on the Regional Board's evaluation of whether Watershed Management Programs in Part VI.C. of the Order have resulted in attainment of interim WQBELs for storm water and review of relevant research, including but not limited to data and information provided by Permittees and other stakeholders, on storm water quality and the efficacy and reliability of control technologies.

VII. RATIONALE FOR MONITORING AND REPORTING REQUIREMENTS

Section 308(a) of the federal Clean Water Act, and sections 122.41(h), (j)-(l), 122.44(i), and 122.48 of Title 40 of the Code of Federal Regulations requires that all NPDES permits specify monitoring and reporting requirements. Federal regulations applicable to large and medium MS4s also specify additional monitoring and reporting requirements. (40 C.F.R. §§ 122.26(d)(2)(i)(F) & (d)(2)(iii)(D), 122.42(c).) California Water Code section 13383 further authorizes the Regional Water Board to establish monitoring, inspection, entry, reporting, and recordkeeping requirements. The MRP (Attachment E of this Order) establishes monitoring, reporting, and recordkeeping requirements that implement the federal and state laws and/or regulations. The following provides the rationale for the monitoring and reporting requirements contained in the MRP for this Order.

A. Integrated Monitoring Plans

1. Integrated Monitoring Program and Coordinated Integrated Monitoring Program

As discussed in Part VI.B of this Fact Sheet, the purpose of the Watershed Management Programs is to provide a framework for Permittees to implement the requirements of this Order in an integrated and collaborative fashion and to address water quality priorities on a watershed scale. Additionally, the Watershed Management Programs are to be designed to ensure that discharges from the Los Angeles County MS4: (i) achieve applicable water quality based effluent limitations that implement TMDLs, (ii) do not cause or contribute to exceedances of receiving water limitations, and (iii) for non-storm water discharges from the MS4, are not a source of pollutants to receiving waters. This Order allows Permittees in coordination with an approved Watershed Management Program per Part VI.C, to implement a customized monitoring program with the primary objective of allowing for the customization of the outfall monitoring programs and that achieves the five Primary Objectives set forth in Part II.A. of Attachment E and includes the elements set forth in Part II.E. of Attachment E. If pursuing a customized monitoring program, the Permittees must provide sufficient justification for each element of the program that differs from the monitoring program as set forth in Attachment E of the Order. This Order provides options for each Permittee to individually develop and implement an Integrated Monitoring Program (IMP), or alternatively, Permittees may cooperate with other Permittees to develop a Coordinated Integrated Monitoring Program (CIMP). Both the IMP and CIMP are intended to facilitate the effective and collaborative monitoring of receiving waters, storm water, and non-storm water discharges and to report the results of monitoring to the Regional Water Board.

The key requirements for Watershed Management Programs are included in Part VI.C of this Order. The IMP and CIMP requirements within the MRP largely summarize the requirements and reinforce that, at a minimum, the IMP or CIMP must address all TMDL and Non-TMDL monitoring requirements of this Order, including receiving water monitoring, storm water outfall based monitoring, non-storm water outfall based monitoring, and regional water monitoring studies.

Both the IMP and CIMP approach provides opportunities to increase the cost efficiency and effectiveness of the Permittees monitoring program as monitoring can be designed, prioritized and implemented on a watershed basis. The IMP/CIMP approach allows the Permittees to prioritize monitoring resources between watersheds based on TMDL Implementation and Monitoring Plan schedules, coordinate outfall based monitoring programs and implement regional studies. Cost savings can also occur when Permittees coordinate their monitoring programs with other Permittees.

B. TMDL Monitoring Plans

Monitoring requirements established in TMDL Monitoring Plans, presented in Table E-1. Approved TMDL Monitoring Plans by Watershed Management Area, were approved by

the Executive Officer of the Regional Water Board prior to the effective date of this Order are incorporated into this Order by reference.

C. Receiving Water Monitoring

The purposes of receiving water monitoring are to measure the effects of storm water and non-storm water discharges from the MS4 to the receiving water, to identify water quality exceedances, to evaluate compliance with TMDL WLAs and receiving water limitations, and to evaluate whether water quality is improving, staying the same or declining.

1. Receiving Water Monitoring Stations

Receiving water monitoring is linked to outfall based monitoring in order to gauge the effects of MS4 discharges on receiving water. Receiving water monitoring stations must be downstream of outfall monitoring stations.

The IMP, CIMP or stand-alone receiving monitoring plan (in the case of jurisdictional monitoring) must include a map identifying proposed wet weather and dry weather monitoring stations. Receiving water monitoring stations may include historical mass emission stations, TMDL compliance monitoring stations, and other selected stations. The Permittee must describe how monitoring at the proposed locations will accurately characterize the effects of the discharges from the MS4 on the receiving water, and meet other stated objectives. The plan must also state whether historical mass emission stations will continue to be monitored, and if not, provide sufficient justification for discontinuation of monitoring at the historical mass emissions stations, and describe the value of past receiving water monitoring data in performing trends analysis to assess whether water quality is improving, staying the same or declining.

2. Minimum Monitoring Requirements

Receiving water is to be monitored during both dry and wet weather conditions to assess the impact of non-storm water and storm water discharges. Wet weather and dry weather are defined in each watershed, consistent with the definitions in TMDLs approved within the watershed. Monitoring is to commence as soon as possible after linked outfall monitoring in order to be reflective of potential impacts from MS4 discharges. At a minimum, the parameters to be monitored and the monitoring frequency are the same as those required for the linked outfalls.

D. Outfall Based Monitoring

The MRP requires Permittees to conduct outfall monitoring, linked with receiving water monitoring, bioassessment monitoring and TMDL special studies. The MRP allows the Permittees flexibility to integrate the minimum requirements of this Order, applicable TMDL monitoring plans and other regional monitoring obligations into a single IMP or within a CIMP.

Per Part VII.A of the MRP, the Permittee must establish a map or geographic database of storm drains, channels and outfalls to aid in the development of the outfall monitoring plan and to assist the Regional Water Board in reviewing the logic and adequacy of the number and location of outfalls selected for monitoring. The map/database must include the storm drain network, receiving waters, other surface waters that may impact hydrology, including dams and dry weather diversions. In addition, the map must identify the location and identifying code for each major outfall within the Permittee's jurisdiction. The map must include overlays including jurisdictional boundaries, subwatershed boundaries and storm drain outfall catchment boundaries. The map must distinguish between storm drain catchment drainage areas and subwatershed drainage areas, as these may differ. In addition, the map must include overlays displaying land use, impervious area and effective impervious area (if available). To the extent known, outfalls that convey significant non-stormwater discharges (see Part I.F to this Fact Sheet), must also be identified on the map, and the map must be updated annually to include the total list of known outfalls conveying significant flow of non-storm water discharge.

E. Storm Water Outfall Based Monitoring

The purpose of the outfall monitoring plan is to characterize the storm water discharges from each Permittee's drainages within each subwatershed. Outfall based monitoring is also conducted to assess compliance with WQBELs. Unless Permittees have proposed and received approval for a customized monitoring program as previously discussed, each Permittee must identify at least one outfall within each subwatershed (HUC 12) within its jurisdictional boundary to monitor storm water discharges. The selected outfall(s) should receive drainage from an area representative of the land uses within the portion of its jurisdiction that drains to the subwatershed, and not be unduly influenced by storm water discharges from upstream jurisdictions or other NPDES discharges. It is assumed that storm water runoff quality will be similar for similar land use areas, and therefore runoff from a representative area will provide sufficient characterization of the entire drainage area. Factors that may impact storm water runoff quality include the land use (industrial, residential, commercial) and the control measures that are applied. Factors that may impact storm water runoff volume include percent effective impervious cover (connected to the storm drain system), vegetation type, soil compaction and soil permeability.

Storm water outfall monitoring is linked to receiving water monitoring (see above). Monitoring must be conducted at least three times per year during qualifying rain events, including the first rain event of the year and conducted approximately concurrently (within 6 hours) before the commencement of the downstream receiving water monitoring.

Monitoring is conducted for pollutants of concern including all pollutants with assigned WQBELs. Parameters to be monitored during wet weather include: flow, pollutants subject to a TMDL applicable to the receiving water, pollutants listed on the Clean Water Act Section 303(d) list for the receiving water or a downstream receiving water. Flow is necessary to calculate pollutant loading. Sampling requirements, including

methods for collecting flow-weighted composite samples, are consistent with the Ventura County Monitoring program (Order No. C17388).

For water bodies listed on the Clean Water Act section 303(d) list as being impaired due to sedimentation, siltation or turbidity, total suspended solids (TSS) and suspended sediment concentration (SSC) must be analyzed. TSS is the parameter most often required in NPDES permits to measure suspended solids. However, studies conducted by the United States Geological Survey (USGS) have found that the TSS procedure may not capture the full range of sediment particle sizes contributing to sediment impairments. Therefore both TSS and SSC are required in this Order.

For freshwater, the following field measurements are also required: hardness, pH, dissolved oxygen, temperature, and specific conductivity. Hardness, pH and temperature are parameters impacting the effect of pollutants in freshwater (i.e., metals water quality standards are dependent on hardness, ammonia toxicity is dependent on pH and temperature. Temperature and dissolved oxygen are interdependent and fundamental to supporting aquatic life beneficial uses. Specific conductivity is a parameter important to assessing potential threats to MUN and freshwater aquatic life beneficial uses.

Aquatic toxicity monitoring is required in the receiving water twice per year during wet weather conditions. Aquatic toxicity is a direct measure of toxicity and integrates the effects of multiple synergistic effects of known and unidentified pollutants. When samples are found to be toxic, a Toxicity Identification Evaluation must be performed in an attempt to identify the pollutants causing toxicity. Aquatic toxicity is required to be monitored in the receiving water twice per year during wet-weather rather than three times per year due to the expense of the procedure.

The monitoring data is to be accompanied by rainfall data and hydrographs, and a narrative description of the storm event, consistent with the requirements in the Ventura County MS4 (Monitoring Program No. CI 7388). This information will allow the Permittee and the Regional Water Board staff to evaluate the effects of differing storm events in terms of storm water runoff volume and duration and in-stream effects.

F. Non-Stormwater Outfall-Based Screening and Monitoring Program

The non-storm water outfall screening and monitoring program is intended to build off of Permittees prior efforts under Order No. 01-182 to screen all outfalls within their MS4 to identify illicit connections and discharges. Under this Order, the Permittees will use the following step-wise method to assess non-storm water discharges.

- Develop criteria or other means to ensure that all outfalls with significant non-storm water discharges are identified and assessed during the term of this Order.
- For outfalls determined to have significant non-storm water flow, determine whether flows are the result of illicit connections/illicit discharges (IC/IDs), authorized or conditionally exempt non-storm water flows, or from unknown sources.
- Refer information related to identified IC/IDs to the IC/ID Elimination Program (Part VI.D.10 of this Order) for appropriate action.

- Based on existing screening or monitoring data or other institutional knowledge, assess the impact of non-storm water discharges (other than identified IC/IDs) on the receiving water.
- Prioritize monitoring of outfalls considering the potential threat to the receiving water and applicable TMDL compliance schedules.
- Conduct monitoring or assess existing monitoring data to determine the impact of non-storm water discharges on the receiving water.
- Conduct monitoring or other investigations to identify the source of pollutants in non-storm water discharges.
- Use results of the screening process to evaluate the conditionally exempt non-storm water discharges identified in Part III.A.2 and III.A.3 in this Order and take appropriate actions pursuant to Part III.A.4.d of this Order for those discharges that have been found to be a source of pollutants. Any future reclassification shall occur per the conditions in Parts III.A.2 or III.A.6 of this Order.

The screening and monitoring program is intended to maximize the use of Permittee resources by integrating the screening and monitoring process into existing or planned IMP/CIMP efforts. It is also intended to rely on the illicit discharge source investigation and elimination requirements in Part VI.D.10 of this Order and the MS4 Mapping requirements in Part VII.A of the MRP.

The screening and source identification component of the program is used to identify the source(s) and point(s) of origin of the non-storm water discharge. The Permittee is required to develop a source identification schedule based on the prioritized list of outfalls exhibiting significant non-storm water discharges. The schedule shall ensure that source investigations are to be conducted for no less than 25% of the outfalls in the inventory within three years of the effective date of this Order and 100% of the outfalls within 5 years of the effective date of this Order. This will ensure that all outfalls with significant non-storm water discharges will be assessed within the term of this Order.

Additional requirements have been included to require the Permittee to develop a map and database of all outfalls with known non-storm water discharges. The database and map are to be updated throughout the term of this Order. If the source of the non-storm water discharge is determined to be an NPDES permitted discharge, a discharge subject to a Record of Decision approved by USEPA pursuant to section 121 of CERCLA, a conditionally exempt essential non-storm water discharge, or entirely comprised of natural flows as defined at Part III.A.d of this Order, the Permittee need only document the source and report to the Regional Water Board within 30 days of determination and in the next annual report. Likewise, if the discharge is determined to originate in an upstream jurisdiction, the Permittee is to provide notice and all characterization data to the upstream jurisdiction within 30 days of determination.

However, if the source is either unknown or a conditionally exempt non-essential non-storm water discharge, each Permittee shall conduct monitoring required in Part IX.F of the MRP. Special provisions are also provided if the discharge is found to result from multiple sources.

The parameters to be monitored include flow rate, pollutants assigned a WQBEL or receiving water limitation to implement TMDL provisions for the respective receiving water, as identified in Attachments L - R of this Order, non-storm water action levels as identified in Attachment G of this Order, and CWA Section 303(d) listed pollutants for the respective receiving water. Aquatic Toxicity required only when receiving water monitoring indicates aquatic toxicity and the TIE conducted in the receiving water is inconclusive.

In an effort to provide flexibility and allow the Permittee to prioritize its monitoring efforts, the outfall based monitoring can be integrated within an IMP/CIMP. For outfalls subject to a dry weather TMDL, monitoring frequency is established per the approved TMDL Monitoring Program.

Unless specified in an approved IMP/CIMP, outfalls not subject to dry weather TMDLs must be monitored at least four times during the first year of monitoring. The four times per year monitoring is reflective of the potential for high variability in the quality and volume of non-storm water discharges and duration as opposed to storm water discharges.

Collected monitoring data is to be compared against applicable receiving water limitations, water quality based effluent limitations, non-storm water action levels, or exhibited Aquatic Toxicity as defined in the Parts XII.F and G of the MRP and all exceedances are to be reported in the Integrated Monitoring Compliance Report required in Part XIX.A.5 of the MRP.

After the first year, monitoring for specific pollutants may be reduced to once per year, if the values reported in the first year do not exceed applicable non-storm water WQBELs, non-storm water action levels, or a water quality standard applicable to the receiving water.

After one year of monitoring, the Permittee may submit a written request to the Executive Officer of the Regional Water Board requesting to eliminate monitoring for specific pollutants based on an analysis demonstrating that there is no reasonable potential for the pollutant to exist in the discharge at a concentration exceeding applicable water quality standards.

1. Dry Weather Screening Monitoring

a. Background

Clean Water Act section 402(p) regulates discharges from municipal separate storm sewer systems (MS4s). Clean Water Act section 402(p)(3)(B)(ii) requires the Permittees to effectively prohibit non-storm water from entering the MS4.

Non-exempted, non-storm water discharges are to be effectively prohibited from entering the MS4 or become subject to another NPDES permit (55 Fed.Reg. 47990, 47995 (Nov.16, 1990)). Conveyances which continue to accept non-

exempt, non-storm water discharges do not meet the definition of MS4 and are not subject to Clean Water Act section 402(p)(3)(B) unless the discharges are issued separate NPDES permits. Instead, conveyances that continue to accept non-exempt, non-storm water discharges that do not have a separate NPDES permit are subject to sections 301 and 402 of the CWA (55 Fed.Reg. 47990, 48037 (Nov. 16, 1990)).

In part, to implement these statutory provisions, Order No. 01-182 included non-storm water discharge prohibitions. Several categories of non-storm water discharges are specifically identified as authorized or conditionally exempt non-storm water discharges, including:

- i. Discharges covered under an NPDES permit
- ii. Discharges authorized by USEPA under CERCLA
- iii. Discharges resulting from natural flows
- iv. Discharges from emergency fire fighting activity
- v. Some Categories of Discharges incidental to urban activities

Further, as another mechanism to effectively prohibit non-storm water discharges into the MS4, Order No. 01-182 also requires the Los Angeles County MS4 Co-Permittees to implement an illicit connections and illicit discharges elimination program as part of their storm water management program pursuant to 40 CFR section 122.26(d)(2)(iv)(B).

Finally, Monitoring and Reporting Program CI 6948, a part of Order No. 01-182, required dry weather monitoring at the Mass Emissions Stations (MES) to estimate pollutant contributions and determine if the MS4 is contributing to exceedances of applicable water quality standards during dry weather.

b. Evaluation of Dry Weather Data

40 CFR section 122.44(d)(1)(i) mandates that permits include effluent limitations for all pollutants that are or may be discharged at levels that have the reasonable potential to cause or contribute to an exceedance of a water quality standard. The process for determining reasonable potential and calculating WQBELs when necessary is intended to protect the designated uses of the receiving water as specified in the Basin Plan, and achieve applicable water quality objectives and criteria that are contained in the Basin Plan and other state plans and policies, or any applicable water quality criteria contained in the California Toxics Rule (CTR) and National Toxics Rule (NTR).

In an effort to evaluate the Discharger's program to effectively prohibit non-storm water discharges into the MS4, as well as to determine whether MS4 discharges are potentially contributing to exceedances of water quality standards, the Reasonable Potential Analysis (RPA) process was used as a screening tool. In doing so, dry weather monitoring data submitted by the Discharger was evaluated to identify where non-storm water discharges may impact beneficial

uses and where additional monitoring and/or investigations of non-storm water discharges should be focused.

Order No. 01-182 and Monitoring and Reporting Program No. 6948 required the Discharger to implement core monitoring at seven mass emission stations:

- Ballona Creek
- Malibu Creek
- Los Angeles River
- San Gabriel River (representing the upper portion of the San Gabriel River Watershed Management Area)
- Coyote Creek (representing the lower portion of the San Gabriel River Watershed Management Area)
- Dominguez Channel
- Santa Clara River

In addition to wet weather monitoring requirements at each of the mass emission stations, a minimum of two dry weather samples were required each year. Monitoring was required for conventional pollutants (BOD, TSS, pH, fecal coliform, oil and grease), priority pollutants, and a variety of other nonconventional pollutants (e.g., nutrients, dissolved oxygen, salinity/conductivity).

Dry weather monitoring data were compiled from Annual Stormwater Monitoring Reports submitted by the Los Angeles County Department of Public Works for the period from 2005 to 2011 to reflect the most recent data. The Annual Stormwater Monitoring Reports include the results for dry weather samples that were collected from 2005 to 2011 on 15 different dates.

For each monitored parameter, the most stringent applicable water quality objective/criterion was identified from the Basin Plan and the CTR at 40 CFR section 131.38. The following assumptions were made when conducting the analysis:

- The mass emissions stations represented only freshwater segments. Accordingly, CTR criteria for the protection of freshwater aquatic life were selected for comparison to monitoring results.
- For hardness-dependent metals, criteria were derived by using the lowest reported dry-weather hardness value for each mass emission station for the period of 2005 to 2011.
- For screening purposes the criteria associated with the most protective beneficial use for any segment within the watershed was selected for comparison to monitoring results.
- Basin Plan surface water quality objectives for minerals (i.e., total dissolved solids, sulfate, and chloride) apply to specific stream reaches within each watershed and are provided in Chapter 3 of the Basin Plan. Where no specific objectives are identified, footnote f to Table 3-8 provides guidelines

for protection of various beneficial uses. When guidelines were presented as a range, the most protective (low end of range) value was selected and applied according to beneficial uses in the watershed.

- With the exception of bacteria, the water quality objectives used for the analysis are the most current in effect. Since adoption of Order No. 01-182 in 2001, some Basin Plan objectives and CTR criteria have been amended. As a result, the pollutants monitored under the MRP for Order No. 01-182 may not necessarily reflect current objectives.
- *E coli* bacteria was not required as part of the MRP to Order No. 01-182, thus screening for bacteria was based solely on fecal coliform. Monitoring results for fecal coliform were compared to the Basin Plan fecal coliform objective in effect during the monitoring period. The Basin Plan objective for bacteria was amended in December 2011 to omit fecal coliform as a fresh water objective. The existing numeric bacteria objective for freshwater is limited to *E. coli*. The Basin Plan bacteria objectives are expressed as a single sample maximum and a geometric mean. In this screening, limited data precluded calculation of geometric means, therefore, the geometric mean objective was treated as a “not-to-exceed” criterion for screening purposes. The geometric mean objective for fecal coliform is 200/100 ml (the Basin Plan objective to protect primary contact recreation beneficial use (REC-1) uses in freshwaters).
- Within a given watershed, where the Basin Plan designates a “Potential” beneficial use of MUN, drinking water maximum contaminant levels (MCLs) were not applied as the most stringent objectives. Within a given watershed, where the Basin Plan designates “Potential” or “Intermittent” for beneficial uses other than MUN, the appropriate protective objectives were used for screening. This is consistent with Basin Plan requirements and existing permitting procedures.

The maximum reported pollutant concentration was compared to the most stringent applicable water quality objective to determine if there was potential for receiving water concentrations to exceed water quality objectives.

Table F-10 summarizes the results of the RPA analysis based on evaluation of the 15 sets of data for the period of 2005 to 2011 for each of the mass emission stations. Generally, all priority pollutant organic parameters were reported as below detection levels at practical quantitation levels (PQLs) consistent with the minimum levels (MLs) listed in the SIP. The most prevalent pollutants of concern among the mass emission stations include fecal coliform bacteria, cyanide, mercury, chloride, sulfate, total dissolved solids, copper, and selenium. Reported fecal coliform bacteria, cyanide, copper, and selenium concentrations appear to consistently exceed objectives/criteria in all watersheds at relatively high levels. For watersheds where objectives apply for sulfate and total dissolved solids, the receiving water concentrations consistently exceeded the objectives. The incidences where exceedances are indicated for mercury are largely due to analytical detection levels that were higher than the applicable criterion.

Table F-10. Summary of LA County Watersheds and Frequency of Receiving Water Exceeding Criteria - 2005 to 2011- Dry Season Data Analysis¹

| Parameter | Santa Clara River | Los Angeles River | Dominguez Channel | Ballona Creek | Malibu Creek | San Gabriel River | |
|----------------------------------|-------------------|-------------------|-------------------|-----------------|-----------------|-------------------|-----------------|
| | | | | | | Upper Portion | Lower Portion |
| pH | 0/15 | 7/15 | 5/15 | 3/15 | 0/15 | 1/14 | 2/15 |
| Total Coliform | No FW Objective | No FW Objective) | No FW Objective | No FW Objective | No FW Objective | No FW Objective | No FW Objective |
| Fecal Coliform | 4/15 | 4/15 | 10/15 | 13/15 | 6/15 | 11/14 | 13/15 |
| Enterococcus | No FW Objective | No FW Objective | No FW Objective | No FW Objective | No FW Objective | No FW Objective | No FW Objective |
| Chloride | 15/15 | 15/15 | No Objective | 0/15 | 0/15 | 14/14 | 15/15 |
| Dissolved Oxygen | 1/15 | 0/15 | 0/15 | 0/15 | 0/15 | √1/14 | 0/15 |
| Nitrate-N | 0/15 | 0/15 | No Objective | No Objective | 0/15 | 7/14 | No Objective |
| Nitrite-N | 0/15 | 3/15 | No Objective | No Objective | 0/15 | 0/15 | No Objective |
| Methylene Blue Active Substances | 4/15 | 0/15 | No Objective | No Objective | 0/15 | 0/14 | No Objective |
| Sulfate | 15/15 | 15/15 | No Objective | No Objective | 15/15 | 14/14 | 15/15 |
| Total Dissolved Solids | 15/15 | 15/15 | No Objective | No Objective | 13/15 | 14/14 | 15/15 |
| Turbidity ² | 0/15 | 2/15 | No Objective | No Objective | 0/15 | 0/15 | 0/15 |
| Cyanide | 11/15 | 14/15 | 4/15 | 15/15 | 3/15 | 14/14 | 15/15 |
| Total Aluminum | 1/15 | 2/15 | No Objective | No Objective | 0/15 | 1/14 | No Objective |
| Dissolved Copper | 0/15 | 0/15 | 5/15 | 0/15 | 0/15 | 13/14 | 0/15 |
| Total Copper | 1/15 | 6/15 | 11/15 | 3/15 | 0/15 | 13/14 | 2/15 |
| Dissolved Lead | 0/15 | 0/15 | 0/15 | 0/15 | 0/15 | 1/14 | 0/15 |
| Total Lead | 0/15 | 0/15 | 1/15 | 1/15 | 0/15 | 13/14 | 0/15 |
| Total Mercury | 15/15 | 14/15 | 14/15 | 15/15 | 15/15 | 14/14 | 15/15 |
| Dissolved Mercury | 15/15 | 15/15 | 15/15 | 15/15 | 15/15 | 14/14 | 14/14 |
| Total Nickel | 0/15 | 0/15 | 0/15 | 0/15 | 0/15 | 1/14 | 0/15 |
| Dissolved Selenium | 2/15 | 2/15 | 1/15 | 2/15 | 6/15 | 1/15 | 10/11 |
| Total Selenium | 2/15 | 2/15 | 1/15 | 2/15 | 6/15 | 1/15 | 10/11 |
| Dissolved Zinc | 0/15 | 0/15 | 0/15 | 0/15 | 0/15 | 7/10 | 0/15 |
| Total Zinc | 0/15 | 0/15 | 0/15 | 0/15 | 0/15 | 10/10 | 0/15 |

¹ Frequency of exceedance is denoted as number of exceedances/number of dry weather samples evaluated. For example, “2/15” indicates 2 of the 15 samples had analytical results that exceeded the water quality objective for a given parameter.

² The Basin Plan objective for turbidity for the protection of MUN is the secondary MCL of 5 NTU. The Basin Plan contains additional turbidity objectives expressed as incremental changes over natural conditions. Since inadequate data were available to assess criteria expressed as incremental changes, only the MCL was considered in the analysis.

c. Requirements for Controlling Non-Storm Water Discharges

The USEPA’s approach for non-storm water discharges from MS4s is to regulate these discharges under the existing CWA section 402 NPDES framework for discharges to surface waters. The NPDES program (40 CFR section 122.44(d)) utilizes discharge prohibitions and effluent limitations as regulatory mechanisms to regulate non-storm water discharges, including the use of technology- and water quality-based effluent limitations. Non-numerical controls, such as BMPs for non-storm water discharges may only be authorized where numerical effluent limitations are infeasible.

As described in Table F-10 above, there were a number of pollutants for which it was determined that receiving water concentrations at the mass emission

stations indicate possible exceedances of water quality standards within the watershed. However, for waterbody-pollutant combinations not subject to a TMDL, there is uncertainty regarding whether exceedances occurred within specific segments where standards apply; the extent to which non-storm water discharges from the MS4 have caused or contributed to any exceedances; and whether the exceedances are attributable to any one or more specific MS4 outfalls within the watershed management area.

Given the need for additional data on non-stormwater discharges from the MS4 where a TMDL has not been developed, USEPA and the State have used action levels as a means to gauge potential impact to water quality and to identify the potential need for additional controls for non-stormwater discharges in the future. If these action levels are exceeded, then additional requirements (e.g., numeric effluent limitations, increased monitoring, special studies, additional BMPs) are typically used to address the potential impacts. In this case, non-storm water action levels are applicable to non-storm water discharges from that MS4 outfall. Non-storm water discharges from the MS4 are those which occur during dry weather conditions. These action levels are not applied to storm water discharges, as defined within this Order. Storm water discharges regulated by this Order are required to meet the MEP standard and other provisions determined necessary by the State to control pollutants and have separate requirements under this Order.

The use of action levels in this Order does not restrict the Regional Water Boards ability to modify this Order in accordance with 40 CFR section 122.62 to include numeric effluent limitations should monitoring data indicate that controls beyond action levels are necessary to ensure that non-storm water discharges do not cause or contribute to exceedances of water quality standards.

i. Approach for Deriving Action Levels

Where exceedances are indicated in Table F-10 and where a TMDL has not been developed, action levels are applied as a screening tool to indicate where non-storm water discharges, including exempted flows and illicit connections may be causing or contributing to exceedances of water quality objectives. Action levels in this Order are based upon numeric or narrative water quality objectives and criteria as defined in the Basin Plan, the Water Quality Control Plan for Ocean Waters of California (Ocean Plan), and the CTR.

(1) Discharges to Inland Surface Waters, Enclosed Bays, and Estuaries

Priority Pollutants Subject to the CTR

Priority pollutant water quality criteria in the CTR are applicable to all inland surface waters, enclosed bays, and estuaries. The CTR contains both saltwater and freshwater criteria. Because a distinct separation generally does not exist between freshwater and saltwater aquatic communities, the following apply, in accordance with Section 131.38(c)(3):

- For waters in which the salinity is equal to or less than 1 part per thousand (ppt), the freshwater criteria apply.
- For waters in which the salinity is greater than 10 ppt 95 percent or more of the time, the saltwater criteria apply.
- For waters in which the salinity is between 1 ppt and 10 ppt, the more stringent of the freshwater or saltwater criteria apply.

For continuous discharges, 40 CFR section 122.45(d)(1) specifies daily maximum and average monthly effluent limitations. Because of the uncertainty regarding the frequency of occurrence and duration of non-storm water discharges through the MS4, average monthly action levels (AMALs) and maximum daily action levels (MDALs) were calculated following the procedure based on the steady-state model, available in Section 1.4 of the SIP. The SIP procedures were used to calculate action levels for CTR priority pollutants and other constituents for which the Basin Plan contains numeric objectives.

Since many of the streams in the Region have minimal upstream flows, mixing zones and dilution credits are usually not appropriate. Therefore, in this Order, no dilution credit is being allowed.

40 CFR section 122.45(c) requires that effluent limitations for metals be expressed as total recoverable concentration; therefore it is appropriate to include action levels also as a total recoverable concentration. The SIP requires that if it is necessary to express a dissolved metal value as a total recoverable and a site-specific translator has not yet been developed, the Regional Water Board shall use the applicable conversion factor contained in the 40 CFR section 131.38.

Using nickel as an example, and assuming application of saltwater criteria (e.g., a situation where an MS4 outfall discharges to an estuary), the following demonstrates how action levels were established for this Order. The tables in Attachment H provide the action levels for each watershed management area addressed by this Order using the process described below.

The process for developing these limits is in accordance with Section 1.4 of the SIP. Two sets of AMAL and MDAL values are calculated separately, one set for the protection of aquatic life and the other for the protection of human health (consumption of organisms only). The AMALs and MDALs for aquatic life and human health are compared, and the most restrictive AMAL and the most restrictive MDAL are selected as the action level.

Step 1: For each constituent requiring an action level, identify the applicable water quality criteria or objective. For each criterion, determine

the effluent concentration allowance (ECA) using the following steady state mass balance equation:

$$\begin{aligned} \text{ECA} &= C + D(C-B) \quad \text{when } C > B, \text{ and} \\ \text{ECA} &= C \quad \text{when } C \leq B, \end{aligned}$$

Where:

- C = The priority pollutant criterion/objective, adjusted if necessary for hardness, pH and translators (criteria for saltwater are independent of hardness and pH).
- D = The dilution credit, and
- B = The ambient background concentration

As discussed above, for this Order, dilution was not allowed; therefore:

$$\text{ECA} = C$$

For nickel the applicable ECAs are:

$$\text{ECA}_{\text{acute}} = 75 \mu\text{g/L}$$

$$\text{ECA}_{\text{chronic}} = 8.3 \mu\text{g/L}$$

Step 2: For each ECA based on aquatic life criterion/objective, determine the long-term average discharge condition (LTA) by multiplying the ECA by a factor (multiplier). The multiplier is a statistically based factor that adjusts the ECA to account for effluent variability. The value of the multiplier varies depending on the coefficient of variation (CV) of the data set and whether it is an acute or chronic criterion/objective. Table 1 of the SIP provides pre-calculated values for the multipliers based on the value of the CV. Equations to develop the multipliers in place of using values in the tables are provided in Section 1.4, Step 3 of the SIP and will not be repeated here.

$$\text{LTA}_{\text{acute}} = \text{ECA}_{\text{acute}} \times \text{Multiplier}_{\text{acute}}^{99}$$

$$\text{LTA}_{\text{chronic}} = \text{ECA}_{\text{chronic}} \times \text{Multiplier}_{\text{chronic}}^{99}$$

The CV for the data set must be determined before the multipliers can be selected and will vary depending on the number of samples and the standard deviation of a data set. If the data set is less than 10 samples, or at least 80% of the samples in the data set are reported as non-detect, the CV shall be set equal to 0.6. For nickel, a CV of 0.6 was assumed.

For nickel, the following data were used to develop the acute and chronic LTA using equations provided in Section 1.4, Step 3 of the SIP (Table 1 of the SIP also provides this data up to three decimals):

| CV | ECA Multiplier _{acute} | ECA Multiplier _{chronic} |
|-----|---------------------------------|-----------------------------------|
| 0.6 | 0.32 | 0.53 |

$$LTA_{acute} = 75 \mu\text{g/L} \times 0.32 = 24 \mu\text{g/L}$$

$$LTA_{chronic} = 8.3 \mu\text{g/L} \times 0.53 = 4.4 \mu\text{g/L}$$

Step 3: Select the most limiting (lowest) of the LTA.

LTA = most limiting of LTA_{acute} or LTA_{chronic}

For nickel, the most limiting LTA was the LTA_{chronic}

$$LTA_{nickel} = LTA_{chronic} = 4.4 \mu\text{g/L}$$

Step 4: Calculate the action levels by multiplying the LTA by a factor (multiplier). Action levels are expressed as AMAL and MDAL. The multiplier is a statistically based factor that adjusts the LTA for the averaging periods and exceedance frequencies of the criteria/objectives and the action levels. The value of the multiplier varies depending on the probability basis, the CV of the data set, the number of samples (for AMAL) and whether it is a monthly or daily limit. Table 2 of the SIP provides pre-calculated values for the multipliers based on the value of the CV and the number of samples. Equations to develop the multipliers in place of using values in the tables are provided in Section 1.4, Step 5 of the SIP and will not be repeated here.

$$AMAL_{aquatic\ life} = LTA \times AMAL_{multiplier\ 95}$$

$$MDAL_{aquatic\ life} = LTA \times MDAL_{multiplier\ 99}$$

AMAL multipliers are based on a 95th percentile occurrence probability, and the MDAL multipliers are based on the 99th percentile occurrence probability. If the number of samples is less than four (4), the default number of samples to be used is four (4).

For nickel, the following data were used to develop the AMAL and MDAL for action levels using equations provided in Section 1.4, Step 5 of the SIP (Table 2 of the SIP also provides this data up to two decimals):

| No. of Samples Per Month | CV | Multiplier _{MDAL 99} | Multiplier _{AMAL 95} |
|--------------------------|-----|-------------------------------|-------------------------------|
| 4 | 0.6 | 3.11 | 1.55 |

Therefore:

$$AMAL = 4.4 \mu\text{g/L} \times 1.55 = 6.8 \mu\text{g/L}$$

$$MDAL = 4.4 \mu\text{g/L} \times 3.11 = 14 \mu\text{g/L}$$

Step 5: For the ECA based on human health, set the AMAL equal to the $ECA_{\text{human health}}$

$$AMAL_{\text{human health}} = ECA_{\text{human health}}$$

For nickel:

$$AMAL_{\text{human health}} = 4,600 \mu\text{g/L}$$

Step 6: Calculate the MDAL for human health by multiplying the AMAL by the ratio of the $Multiplier_{MDAL}$ to the $Multiplier_{AMAL}$. Table 2 of the SIP provides pre-calculated ratios to be used in this calculation based on the CV and the number of samples.

$$MDAL_{\text{human health}} = AMAL_{\text{human health}} \times (Multiplier_{MDAL} / Multiplier_{AMAL})$$

For nickel, the following data were used to develop the $MDAL_{\text{human health}}$:

| No. of Samples Per Month | CV | $Multiplier_{MDAL\ 99}$ | $Multiplier_{AMAL\ 95}$ | Ratio |
|--------------------------|-----|-------------------------|-------------------------|-------|
| 4 | 0.6 | 3.11 | 1.55 | 2.0 |

For nickel:

$$MDAL_{\text{human health}} = 4,600 \mu\text{g/L} \times 2 = 9,200 \mu\text{g/L}$$

Step 7: Select the lower of the AMAL and MDAL based on aquatic life and human health as the non-storm water action level for this Order.

| $AMAL_{\text{aquatic life}}$ | $MDAL_{\text{aquatic life}}$ | $AMAL_{\text{human health}}$ | $MDAL_{\text{human health}}$ |
|------------------------------|------------------------------|------------------------------|------------------------------|
| 6.8 | 14 | 4,600 | 9,200 |

For nickel, the lowest (most restrictive) levels are based on aquatic toxicity and serve as the basis for non-storm water action levels included in this Order.

Table F-11: Calculations of Freshwater Action Levels¹

| Parameter | Units | CV | Aquatic Life Criteria ² | | Human Health Criteria | HH Calculations | | | Aquatic Life Calculations | | | | | | | | Final Action Levels | | |
|-----------|-------|-----|------------------------------------|---------------------|-----------------------|-------------------|--|------------------------------------|---------------------------|---------------------------------|----------------------|-----------------------------------|------------------------|------------|-------------------------------|--------------------|-------------------------------|--------------------|-------------|
| | | | C acute = CMC tot | C chronic = CCC tot | | HH-Organisms only | ECA _{HH} = AMAL _{HH} | AMAL/MDAL Multiplier _{HH} | MDAL _{HH} | ECA Multiplier _{acute} | LTA _{acute} | ECA Multiplier _{chronic} | LTA _{chronic} | Lowest LTA | AMAL Multiplier ₉₅ | AMAL _{AL} | MDAL Multiplier ₉₉ | MDAL _{AL} | Lowest AMAL |
| Cadmium | µg/L | 0.6 | 4.52 | 2.46 | N | | 2.01 | | 0.321 | 1.45 | 0.527 | 1.30 | 1.30 | 1.55 | 2.02 | 3.11 | 4.0 | 2.0 | 4.0 |
| Copper | µg/L | 0.6 | 14.00 | 9.33 | | | 2.01 | | 0.321 | 4.49 | 0.527 | 4.92 | 4.49 | 1.55 | 6.98 | 3.11 | 14 | 7.0 | 14 |
| Lead | µg/L | 0.6 | 81.65 | 3.18 | N | | 2.01 | | 0.321 | 26.21 | 0.527 | 1.68 | 1.68 | 1.55 | 2.61 | 3.11 | 5.2 | 2.6 | 5.2 |
| Mercury | µg/L | 0.6 | R | R | 0.051 | 0.051 | 2.01 | 0.1023 | | | | | | | | | | 0.051 | 0.10 |
| Nickel | µg/L | 0.6 | 469.17 | 52.16 | 4600 | 4600 | 2.01 | 9228 | 0.321 | 150.6 | 0.527 | 27.51 | 27.51 | 1.55 | 42.71 | 3.11 | 86 | 43 | 86 |
| Selenium | µg/L | 0.6 | 20.00 | 5.00 | N | | 2.01 | | 0.321 | 6.42 | 0.527 | 2.64 | 2.64 | 1.55 | 4.09 | 3.11 | 8.2 | 4.1 | 8.2 |
| Silver | µg/L | 0.6 | 4.06 | | | | 2.01 | | 0.321 | 1.30 | 0.527 | | 1.30 | 1.55 | 2.02 | 3.11 | 4.1 | 2.0 | 4.1 |
| Zinc | µg/L | 0.6 | 119.82 | 119.82 | | | 2.01 | | 0.321 | 38.47 | 0.527 | 63.20 | 38.47 | 1.55 | 59.72 | 3.11 | 120 | 60 | 120 |
| Cyanide | µg/L | 0.6 | 22.00 | 5.20 | 22,0000 | 22,0000 | 2.01 | 44,1362 | 0.321 | 7.06 | 0.527 | 2.74 | 2.74 | 1.55 | 4.26 | 3.11 | 8.5 | 4.3 | 8.5 |

R = Reserved

N = Narrative

¹ Calculations include rounded results. Final AMALs/MDALs are rounded to 2 significant digits.

² Where criteria are based on hardness, a value of 100 mg/L CaCO₃ was used for these sample calculations.

Table F-12: Calculations of Saltwater Action Levels

| Parameter | Units | CV | Aquatic Life Criteria | | Human Health Criteria | HH Calculations | | | Aquatic Life Calculations | | | | | | | | | Final Action Levels | |
|-----------|-------|-----|-----------------------|---------------------|-----------------------|--|------------------------------------|--------------------|---------------------------------|----------------------|-----------------------------------|------------------------|------------|-------------------------------|--------------------|-------------------------------|--------------------|---------------------|-------------|
| | | | C acute = CMC tot | C chronic = CCC tot | HH-Organisms only | ECA _{HH} = AMAL _{HH} | AMAL/MDAL Multiplier _{HH} | MDAL _{HH} | ECA Multiplier _{acute} | LTA _{acute} | ECA Multiplier _{chronic} | LTA _{chronic} | Lowest LTA | AMAL Multiplier ₉₅ | AMAL _{AL} | MDAL Multiplier ₉₅ | MDAL _{AL} | Lowest AMAL | Lowest MDAL |
| Cadmium | µg/L | 0.6 | 42.25 | 9.36 | N | | 2.01 | | 0.321 | 13.57 | 0.527 | 4.93 | 4.93 | 1.55 | 7.66 | 3.11 | 15.4 | 7.7 | 15 |
| Copper | µg/L | 0.6 | 5.78 | 3.73 | | | 2.01 | | 0.321 | 1.86 | 0.527 | 1.97 | 1.86 | 1.55 | 2.88 | 3.11 | 5.8 | 2.9 | 5.8 |
| Lead | µg/L | 0.6 | 220.82 | 8.52 | N | | 2.01 | | 0.321 | 70.90 | 0.527 | 4.49 | 4.49 | 1.55 | 6.97 | 3.11 | 14 | 7.0 | 14 |
| Mercury | µg/L | 0.6 | R | R | 0.051 | 0.051 | 2.01 | 0.1023 | | | | | | | | | | 0.051 | 0.10 |
| Nickel | µg/L | 0.6 | 74.75 | 8.28 | 4600 | 4600 | 2.01 | 9228 | 0.321 | 24.00 | 0.527 | 4.37 | 4.37 | 1.55 | 6.78 | 3.11 | 14 | 6.8 | 14 |
| Selenium | µg/L | 0.6 | 290.58 | 71.14 | N | | 2.01 | | 0.321 | 93.30 | 0.527 | 37.52 | 37.52 | 1.55 | 58.25 | 3.11 | 117 | 58 | 117 |
| Silver | µg/L | 0.6 | 2.24 | | | | 2.01 | | 0.321 | 0.72 | 0.527 | | 0.72 | 1.55 | 1.11 | 3.11 | 2.2 | 1.1 | 2.2 |
| Zinc | µg/L | 0.6 | 95.14 | 85.62 | | | 2.01 | | 0.321 | 30.55 | 0.527 | 45.16 | 30.55 | 1.55 | 47.42 | 3.11 | 95 | 47 | 95 |
| Cyanide | µg/L | 0.6 | 1.00 | 1.00 | 22,0000 | 22,0000 | 2.01 | 44,1362 | 0.321 | 0.32 | 0.527 | 0.53 | 0.32 | 1.55 | 0.50 | 3.11 | 1.0 | 0.50 | 1.0 |

R = Reserved

N = Narrative

¹ Calculations include rounded results. Final AMALs/MDALs are rounded to 2 significant digits.

Basin Plan Requirements for Other Pollutants

A number of pollutants were identified that exceed applicable Basin Plan objectives. These objectives however, are not amenable to the SIP process for developing action levels.

Resolution No. 01-018, Amendment to the Water Quality Control Plan for the Los Angeles Region to Update the Bacteria Objectives for Water Bodies Designated for Water Contact Recreation, adopted by the Regional Water Board on October 25, 2001, served as the basis for the action levels for bacteria. Subsequently, the Basin Plan was amended through Order No. R10-005 (effective on December 5, 2011) to remove the freshwater fecal coliform numeric objective while retaining the freshwater objective for *E. coli*. The dry-weather evaluation conducted for fecal coliform indicates of a need for a bacteria action level. Since the Basin Plan no longer contains freshwater objectives for fecal coliform, action levels have been developed for *E. coli* in freshwater. The current bacteria objectives (saltwater and freshwater) are applied directly to the MS4 outfalls discharging to freshwaters to serve as action levels.

The Basin Plan, in Tables 3-5 through 3-7, include chemical constituents objectives based on the incorporation of Title 22, Drinking Water Standards, by reference, to protect the surface water MUN beneficial use. The Basin Plan in Tables 3-8 and 3-10 also includes mineral quality objectives that apply to specific watersheds and stream reaches and where indicated by the beneficial use of ground water recharge (GWR). These objectives contained in the Basin Plan are listed as not-to-exceed values. Consistent with the approach used by the Regional Water Board in other Orders for dry weather discharges, these not-to-exceed values will be applied as AMALs in this Order.

(2) Discharges to the Surf Zone

From the Table B water quality objectives of the Ocean Plan, action levels are calculated according to Equation 1 of the Ocean Plan for all pollutants:

$$C_e = C_o + D_m(C_o - C_s)$$

Where:

- C_e = the Action Level (µg/L)
- C_o = the water quality objective to be met at the completion of initial dilution (µg/L)
- C_s = background seawater concentration (µg/L)
- D_m = minimum probable initial dilution expressed as parts seawater per part wastewater

The D_m is based on observed waste flow characteristics, receiving water density structure, and the assumption that no currents of sufficient strength to influence the initial dilution process flow across the discharge structure. Initial dilution is the process that results in the rapid and irreversible turbulent mixing of wastewater with ocean water around the point of discharge. It is conservatively assumed that when non-storm water discharges to the surf zone occur, that conditions are such that no rapid mixing would occur. Therefore, an initial dilution is not allowed and the formula above reduces to:

$$C_e = C_o$$

The following demonstrates how the action levels for copper are established.

Copper

$C_e = 3 \mu\text{g/L}$ (6-Month Median)

$C_e = 12 \mu\text{g/L}$ (Daily Maximum)

$C_e = 30 \mu\text{g/L}$ (Instantaneous Maximum)

ii. Applicability of Action Levels

The action levels included in this Order apply to pollutants in non-storm water discharges from the MS4 to receiving waters that are not already subject to WQBELs to implement TMDL wasteload allocations applicable during dry weather.

This Order requires outfall-based monitoring throughout each Watershed Management Area, including monitoring during dry weather. The dry weather monitoring data will be evaluated by the Permittee(s) in comparison to all applicable action levels.

iii. Requirements When Action Levels are Exceeded

When monitoring data indicates an action level is exceeded for one or more pollutants, then the Permittee will be required to implement actions to identify the source of the non-storm water discharge, and depending on the identified source, implement an appropriate response. With respect to action levels, the Permittee will have identified appropriate procedures within the Watershed Management Program (Part VI.C) and the Illicit Connection and Illicit Discharge Elimination Program (Part VI.D.9).

G. New Development/Re-Development Tracking

This Order requires the use of Low Impact Development (LID) designs to reduce storm water runoff (and pollutant discharges) from new development or re-development projects. In areas that drain to water bodies that have been armored or are not natural drainages, the goal of this requirement is to protect water quality by retaining on-site the

storm water runoff from the 85th percentile storm event. This is the design storm used throughout most of California for water quality protection. If it is not technically feasible due to site constraints (e.g., close proximity to a drinking water supply, slope instability) or if instead the project proponent is proposing to supplement a groundwater replenishment project, the project proponent may provide treatment BMPs to reduce pollutant loading in storm water runoff from the project site. Flow through treatment BMPs are less effective in reducing pollutant loadings than on-site retention for the design storm. Therefore the project proponent must mitigate the impacts further by providing for LID designs at retrofit projects or other off-site locations within the same subwatershed. The effectiveness monitoring is designed to assess and track whether post construction operation of the LID designs are effective in retaining the design storm runoff volume.

For projects located in natural drainages, the goal of the LID design is to retain the pre-development hydrology, unless a water body is not susceptible to hydromodification effects (e.g., estuaries or the ocean). Smaller projects that will disturb less than 50 acres of land are presumed to meet the criteria if the project retains the storm water runoff from the 95th percentile storm. The effectiveness monitoring in this situation should be design to confirm that storm water runoff is not occurring for any storm at or less than the 95th percentile storm. Projects may also demonstrate compliance by showing that the erosion potential will be approximately 1 as described in Attachment J of this Order. For larger projects, the project proponent may be required to conduct modeling to demonstrate compliance by comparing the hydrographs of a two-year storm for the pre-development and post-development conditions, or by comparing the flow duration curves for a reference watershed and the post project condition. Flow monitoring will be required to substantiate the simulated hydrographs or flow duration curves.

Monitoring studies conducted by the California Department of Public Health (CDPH) have documented that mosquitoes opportunistically breed in structural storm water Best Management Practices (BMPs), particularly those that hold standing water for over 96 hours. Certain Low Impact Development (LID) site design measures that hold standing water such as rainwater capture systems may similarly produce mosquitoes. BMPs and LID design features should incorporate design, construction, and maintenance principles to promote drainage within 96 hours to minimize standing water available to mosquitoes. This Order requires regulated MS4 Permittees to coordinate with other agencies necessary to successfully implement the provisions of this Order. These agencies may include CDPH and local mosquito and vector control agencies on vector-related issues surrounding implementation of post-construction BMPs.

This Order is not intended to prohibit the inspection for or abatement of vectors by the State Department of Public Health or local vector agencies in accordance with CA Health and Safety Code, § 116110 et seq. and Water Quality Order No. 2012-0003-DWQ.

H. Regional Studies

1. Southern California Stormwater Monitoring Coalition Watershed Monitoring Program

As a condition to this Order, Permittees must participate in the bioassessment studies conducted under the Southern California Stormwater Monitoring Coalition Watershed Monitoring Program. Bioassessment provides a direct measure of whether aquatic life beneficial uses are fully supported and integrates the effects of multiple factors including pollutant discharges, changes in hydrology, geomorphology, and riparian buffers.

I. Aquatic Toxicity Monitoring Methods

Based on the stated goals of the CWA, the USEPA and individual states implement three approaches to monitoring water quality. These approaches include chemical-specific monitoring, toxicity testing, and bioassessments (USEPA 1991a). Each of the three approaches has distinct advantages and all three work together to ensure that the physical, chemical and biological integrity of our waters are protected. Water quality objectives have been developed for only a limited universe of chemicals. For mixtures of chemicals with unknown interactions or for chemicals having no chemical-specific objectives, the sole use of chemical-specific objectives to safeguard aquatic resources would not ensure adequate protection. Aquatic life in southern California coastal watersheds are often exposed to nearly 100% effluent from wastewater treatment plants, urban runoff, or storm water; therefore, toxicity testing and bioassessments are also critical components for monitoring programs as they offer a more direct and thorough confirmation of biological impacts. The primary advantage of using the toxicity testing approach is that this tool can be used to assess toxic effects (acute and chronic) of all the chemicals in aqueous samples of effluent, receiving water, or storm water. This allows the cumulative effect of the aqueous mixture to be evaluated, rather than the toxic responses to individual chemicals (USEPA, EPA Regions 8, 9, and 10 Toxicity Training Tool, January 2010).

Based on available data from the LA County MS4 Permit Annual Monitoring Reports, samples collected at mass emissions stations during both wet weather and dry weather have been found to be toxic in the San Gabriel River, Coyote Creek, the Los Angeles River, Dominguez Channel, Ballona Creek, Malibu Creek, and the Santa Clara River, demonstrating the need for this toxicity monitoring requirement (see Table below).

| Summary of Toxicity by Watershed | | | | | | | |
|--|-------------------|---------------|-------------------|-------------------|---------------|--------------|-------------------|
| Source and Season | San Gabriel River | Coyote Creek | Los Angeles River | Dominguez Channel | Ballona Creek | Malibu Creek | Santa Clara River |
| Integrated Receiving Water Impacts Report (1994-2005) | | | | | | | |
| Wet Weather | - | CDS, CDR, SUF | CDS, SUF | CDS, CDR, SUF | CDR, SUF | CDR | CDS |
| Dry Weather | - | SUF | SUF | SUF | SUF | - | - |

| Annual Monitoring Reports (2005-2010) | | | | | | | |
|---------------------------------------|-----|-----|---------|------------------|-----|-------------|-----|
| Wet Weather | | | | | | | |
| 2005-06 | - | - | SUF | CDS, CDR, SUF | SUF | - | - |
| 2006-07 | SUF | SUF | SUF | SUF | SUF | SUF | SUF |
| 2007-08 | SUF | - | - | SUF | - | CDS,CDR,SUF | SUF |
| 2008-09 | - | SUF | SUF | - | SUF | CDS,CDR,SUF | - |
| 2009-10 | - | - | - | - | - | - | - |
| Dry Weather | | | | | | | |
| 2005-06 | - | - | - | - | - | CDS,CDR | - |
| 2006-07 | - | - | - | - | SUF | - | - |
| 2007-08 | - | - | CDS,CDR | - | SUF | - | - |
| 2008-09 | - | - | SUF | - | - | - | - |
| 2009-10 | - | - | - | - | - | - | - |

Notes:

CDS= Ceriodaphnia survival toxicity
SUF= Sea Urchin fertilization toxicity
CDR= Ceriodaphnia reproduction
toxicity

This Order requires Permittee(s) to conduct chronic toxicity tests on water samples, by methods specified in *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms* (EPA/821/R-02/013, 2002; Table IA, 40 CFR Part 136) or a more recent edition.

To determine the most sensitive test species, the Permittee(s) shall conduct two wet weather and two dry weather toxicity tests with a vertebrate, an invertebrate, and a plant. After this screening period, subsequent monitoring shall be conducted using the most sensitive test species. Alternatively, if a sensitive test species has already been determined, or if there is prior knowledge of potential toxicant(s) and a test species is sensitive to such toxicant(s), then monitoring shall be conducted using only that test species. Sensitive test species determinations shall also consider the most sensitive test species used for proximal receiving water monitoring. After the screening period, subsequent monitoring shall be conducted using the most sensitive test species. Rescreening shall occur in the fourth year of the permit term.

For brackish water, this Order requires the Permittee(s) to conduct the chronic toxicity test in accordance with USEPA’s Short-Term Methods for Estimating the Chronic Toxicity of Effluent and Receiving Waters to West Coast Marine and Estuarine Organisms, First Edition, August 1995, (EPA/600/R-95/136), or Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, Third Edition, October 2002, (EPA/821-R-02-014), or a more recent edition.

Furthermore, the toxicity component of the Monitoring Program includes toxicity identification procedures so that pollutants that are causing or contributing to acute or

chronic effects in aquatic life exposed to these waters can be identified and others can be discounted. TIEs are needed to identify the culprit constituents to be used to prioritize management actions. Where toxicants are identified in a MS4 discharge, the Order requires a Toxicity Reduction Plan (TRE).

TRE development and implementation is directly tied to the integrated monitoring programs and watershed management program, to ensure that management actions and follow-up monitoring are implemented when problems are identified. Permittees are encouraged to coordinate TREs with concurrent TMDLs where overlap exists. If a TMDL is being developed or implemented for an identified toxic pollutant, much of the work necessary to meet the objectives of a TRE may already be underway, and information and implementation measures should be shared.

Overall, the toxicity monitoring program will assess the impact of storm water and non-storm water discharges on the overall quality of aquatic fauna and flora and implement measures to ensure that those impacts are eliminated or reduced. As stated previously, chemical monitoring does not necessarily reveal the totality of impacts of storm water on aquatic life and habitat-related beneficial uses of water bodies. Therefore, toxicity requirements are a necessary component of the MS4 monitoring program.

J. Special Studies

Requirements to conduct special studies as described in TMDL Implementation Plans that were approved by the Executive Officer of the Regional Water Board prior to the effective date of this Order are incorporated into this Order by reference.

K. Annual Reporting

The Annual Reporting requirement was also required in Order No. 01-182 and provides summary information to the Regional Water Board on each Permittee's participation in one or more Watershed Management Programs; the impact of each Permittee(s) storm water and non-storm water discharges on the receiving water; each Permittee's compliance with receiving water limitations, numeric water quality based effluent limitations, and non-storm water action levels; and the effectiveness of each Permittee(s) control measures in reducing discharges of pollutants from the MS4 to receiving waters. In addition the Annual Report allows the Regional Water Board to assess whether the quality of MS4 discharges and the health of receiving waters is improving, staying the same, or declining as a result watershed management program efforts, and/or TMDL implementation measures, or other Control Measures and whether changes in water quality can be attributed to pollutant controls imposed on new development, re-development, or retrofit projects. The Annual Report provides the Permittee(s) a forum to discuss the effectiveness of its past and ongoing control measure efforts and to convey its plans for future control measures as well as a way to present data and conclusions in a transparent manner so as to allow review and understanding by the general public. Overall the Annual Report allows Permittee's to focus reporting efforts on watershed condition, water quality assessment, and an evaluation of the effectiveness of control measures.

L. Watershed Summary Information, Organization and Content

As a means to establish a baseline and then identify changes or trends, for each watershed, each Permittee shall provide the information on its watershed management area, subwatershed area, and drainage areas within the subwatershed area in its odd year Annual Report (e.g., Year 1, 3, 5). The requested information should be provided for each watershed within the Permittee's jurisdiction. Alternatively, permittees participating in a Watershed Management Program may provide the requested information through the development and submission of a Watershed Management Program report or within a TMDL Implementation Plan Annual Report. However, in either case, the Permittee shall bear responsibility for the completeness and accuracy of the referenced information. This reporting requirement helps to ensure that both the Permittee and the Regional Water Board have up to date information on the status of each of their watersheds and subwatersheds.

M. Jurisdictional Assessment and Reporting

The requested information shall be provided for each watershed within the Permittee's jurisdiction. Annual Reports submitted on behalf of a group of Watershed Permittees shall clearly identify all data collected and strategies, control measures, and assessments implemented by each Permittee within its jurisdiction as well as those implemented by multiple Permittees on a watershed scale. Permittees must provide information on storm water control measures, an effectiveness assessment of storm water control measures, information on non-storm water control measures, an effectiveness assessment of non-storm water control measures, an integrated monitoring compliance report, information on adaptive management strategies, and supporting data and information. The addition of this reporting requirement serves as a mechanism to evaluate and ensure the protection of receiving water quality on a watershed scale. If Permittees do not elect to develop a Watershed Management Program, all required information shall be provided by the Permittee for its jurisdiction.

N. TMDL Reporting

Reporting requirements included in this Order and Attachment E (MRP) were established during the TMDL development process for each individual TMDL. These reporting requirements have incorporated into this Order to implement TMDL requirements.

VIII. CALIFORNIA WATER CODE SECTION 13241

California Water Code section 13241 requires the Regional Water Board to consider certain factors, including economic considerations, in the adoption of water quality objectives. California Water Code section 13263 requires the Board to take into consideration the provisions of section 13241 in adopting waste discharge requirements. In *City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613, the California Supreme Court considered whether regional water boards must comply with section 13241 when issuing waste discharge requirements under section 13263(a) by taking into account the costs a

permittee will incur in complying with the permit requirements. The Court concluded that whether it is necessary to consider such cost information “depends on whether those restrictions meet or exceed the requirements of the federal Clean Water Act.” (*Id.* at p. 627.) The Court ruled that regional water boards may not consider the factors in section 13241, including economics, to justify imposing pollutant restriction that are less stringent than the applicable federal law requires. (*Id.* at pp. 618, 626-627 “[Water Code s]ection 13377 specifies that [] 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...Because section 13263 cannot authorize what federal law forbids, it cannot authorize a regional board, when issuing a [] discharge permit, to use compliance costs to justify pollutant restrictions that do not comply with federal clean water standards”].) However, when the pollutant restrictions in an NPDES permit are more stringent than federal law requires, California Water Code section 13263 requires that the Water Boards consider the factors described in section 13241 as they apply to those specific restrictions.

The Regional Water Board finds that the requirements in this Order are not more stringent than the minimum federal requirements. Among other requirements, federal law requires MS4 permits to include requirements to effectively prohibit non-storm water discharges into the storm sewers, in addition to requiring controls to reduce the discharge of pollutants in storm water to the maximum extent practicable and other provisions that the agency determines are necessary for the control of pollutants in MS4 discharges. The requirements in this Order may be more specific or detailed than those enumerated in federal regulations under 40 CFR § 122.26 or in USEPA guidance. However, the requirements have been designed to be consistent with and within the federal statutory mandates described in Clean Water Act section 402(p)(3)(B)(ii) and (iii) and the related federal regulations and guidance. Consistent with federal law, all of the conditions in this Order could have been included in a permit adopted by USEPA in the absence of the in lieu authority of California to issue NPDES permits. Moreover, the inclusion of numeric WQBELs in this Order does not cause the permit to be more stringent than current federal law. Federal law authorizes both narrative and numeric effluent limitations to meet state water quality standards. The inclusion of WQBELs as discharge specifications in an NPDES permit in order to achieve compliance with water quality standards is not a more stringent requirement than the inclusion of BMP based permit limitations to achieve water quality standards. (State Water Board Order No. WQ 2006-0012 (*Boeing*)). Therefore, consideration of the factors set forth in section 13241 is not required for permit requirements that implement the effective prohibition on the discharge of non-storm water discharges into the MS4, or for controls to reduce the discharge of pollutants in storm water to the maximum extent practicable, or other provisions that the Regional Water Board has determined appropriate to control such pollutants, as those requirements are mandated by federal law..

Notwithstanding the above, the Regional Water Board has considered the factors set forth in California Water Code section 13241 in issuing this Order. That analysis is provided below. The Regional Water Board has also considered all of the evidence that has been presented to the Board regarding the section 13241 factors in adopting this Order. The Regional Water Board finds that the requirements in this Order are reasonably necessary to protect beneficial uses identified in the Basin Plan, and the economic information related

to costs of compliance and other section 13241 factors are not sufficient to justify failing to protect those beneficial uses. Where appropriate, the Regional Water Board has provided Permittees with additional time to implement control measures to achieve final WQBELs and/or water quality standards.

A. Past, present and probable future beneficial uses of water.

Chapter 2 of the Basin Plan identifies designated beneficial uses for water bodies in the Los Angeles Region, which are the receiving waters for MS4 discharges. Beneficial uses are also identified in the findings of this Order and further discussed relative to TMDLs in section VI.D of this Fact Sheet.

B. Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.

Environmental characteristics of each of the Watershed Management Areas covered by this Order, including the quality of water, are discussed in the Region's Watershed Management Initiative Chapter as well as available in State of the Watershed reports and the State's CWA Section 303(d) List of impaired waters.

- ❖ Santa Clara River Watershed Management Area
www.waterboards.ca.gov/losangeles/water_issues/programs/regional_program/wmi/santa_clara_river_watershed/santa_clara_river_watershed.doc
- ❖ Santa Monica Bay Watershed Management Area
www.waterboards.ca.gov/losangeles/water_issues/programs/regional_program/wmi/santa_monica_bayWMA/santa_monica_bayWMA.doc
- ❖ Dominguez Channel Watershed Management Area
www.waterboards.ca.gov/losangeles/water_issues/programs/regional_program/wmi/dominguez_channelWMA/dominguez_channelWMA.doc
- ❖ Los Angeles River Watershed Management Area
www.waterboards.ca.gov/losangeles/water_issues/programs/regional_program/wmi/los_angeles_river_watershed/los_angeles_river_watershed.doc
- ❖ San Gabriel River Watershed Management Area
www.waterboards.ca.gov/losangeles/water_issues/programs/regional_program/wmi/san_gabriel_river_watershed/san_gabriel_river_watershed.doc
- ❖ Los Cerritos Channel and Alamitos Bay Watershed Management Area
www.waterboards.ca.gov/losangeles/water_issues/programs/regional_program/wmi/los_cerritos_channelWMA/los_cerritos_channelWMA.doc
- ❖ Middle Santa Ana River Watershed Management Area
http://www.waterboards.ca.gov/santaana/water_issues/programs/wmi/index.shtml
<http://www.sawpa.org/watershedinfo.html>

The quality of water in receiving waters for MS4 discharges has been routinely monitored by Permittees through the Monitoring and Reporting Program under Order No. 01-182. Below are summaries of water quality exceedances reported for the 2010-2011 reporting year.

**Summary of Constituents that Did Not Meet Water Quality Objectives at Mass
Emission Stations during 2010-2011 for One or More Events**

| Mass Emission/Watershed | Wet | Dry |
|---|--|------------------------------------|
| Ballona Creek (S01) ¹ | Fecal coliforms ² pH ³ Dissolved zinc | pH ³ |
| Malibu Creek (S02) | Fecal coliforms Cyanide pH ³ Sulfate | Fecal coliforms Sulfate |
| Los Angeles River (S10) ¹ | Fecal coliforms ² pH ³ Dissolved zinc Cyanide | Fecal coliforms pH ³ |
| Coyote Creek (S13) | Fecal coliforms ² pH ³ Dissolved zinc | Fecal coliforms |
| San Gabriel River (S14) | Fecal coliforms ² pH ³ | |
| Dominguez Channel (S28) ¹ | Fecal coliforms ² Dissolved copper Dissolved zinc | Fecal coliforms pH ³ |
| Santa Clara River (S29) | Fecal coliforms pH ³ Dissolved zinc | |

¹ More urbanized watersheds.

² Subject to the fecal coliform water quality objective high-flow suspension (LARWQCB, 2003).

³ pH was evaluated outside of holding time.

The following table summarizes the results of an analysis based on evaluation of the 15 sets of dry weather data for the period of 2005 to 2011 for each of the mass emission stations. The most prevalent pollutants of concern among the mass emission stations include fecal coliform bacteria, cyanide, mercury, chloride, sulfate, total dissolved solids, copper, and selenium. Reported results for fecal coliform bacteria, cyanide, copper, and

selenium concentrations consistently exceeded water quality objectives in all watersheds. For watersheds where objectives apply for sulfate and total dissolved solids, the receiving water concentrations consistently exceeded the objectives. The incidences where exceedances are indicated for mercury are largely due to analytical detection levels that were higher than the applicable objective.

Summary of LA County Watersheds and Frequency of Receiving Water Exceeding Water Quality Objectives (2005 to 2011 - Dry Season Data Analysis)¹

| Parameter | Santa Clara River | Los Angeles River | Dominguez Channel | Ballona Creek | Malibu Creek | San Gabriel River | |
|-------------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| | | | | | | Upper Portion | Lower Portion |
| pH | 0/15 | 7/15 | 5/15 | 3/15 | 0/15 | 1/14 | 2/15 |
| Total Coliform | No FW ³ Objective | No FW ³ Objective | No FW ³ Objective | No FW ³ Objective | No FW ³ Objective | No FW ³ Objective | No FW ³ Objective |
| Fecal Coliform | 4/15 | 4/15 | 10/15 | 13/15 | 6/15 | 11/14 | 13/15 |
| Enterococcus | No FW ³ Objective | No FW ³ Objective | No FW ³ Objective | No FW ³ Objective | No FW ³ Objective | No FW ³ Objective | No FW ³ Objective |
| Chloride | 15/15 | 15/15 | No Objective | 0/15 | 0/15 | 14/14 | 15/15 |
| Dissolved Oxygen | 1/15 | 0/15 | 0/15 | 0/15 | 0/15 | 1/14 | 0/15 |
| Nitrate-N | 0/15 | 0/15 | No Objective | No Objective | 0/15 | 7/14 | No Objective |
| Nitrite-N | 0/15 | 3/15 | No Objective | No Objective | 0/15 | 0/15 | No Objective |
| Methylene Blue Active Substances | 4/15 | 0/15 | No Objective | No Objective | 0/15 | 0/14 | No Objective |
| Sulfate | 15/15 | 15/15 | No Objective | No Objective | 15/15 | 14/14 | 15/15 |
| Total Dissolved Solids | 15/15 | 15/15 | No Objective | No Objective | 13/15 | 14/14 | 15/15 |
| Turbidity ² | 0/15 | 2/15 | No Objective | No Objective | 0/15 | 0/15 | 0/15 |
| Cyanide | 11/15 | 14/15 | 4/15 | 15/15 | 3/15 | 14/14 | 15/15 |
| Total Aluminum | 1/15 | 2/15 | No Objective | No Objective | 0/15 | 1/14 | No Objective |
| Dissolved Copper | 0/15 | 0/15 | 5/15 | 0/15 | 0/15 | 13/14 | 0/15 |
| Total Copper | 1/15 | 6/15 | 11/15 | 3/15 | 0/15 | 13/14 | 2/15 |
| Dissolved Lead | 0/15 | 0/15 | 0/15 | 0/15 | 0/15 | 1/14 | 0/15 |
| Total Lead | 0/15 | 0/15 | 1/15 | 1/15 | 0/15 | 13/14 | 0/15 |
| Total Mercury | 15/15 | 14/15 | 14/15 | 15/15 | 15/15 | 14/14 | 15/15 |
| Dissolved Mercury | 15/15 | 15/15 | 15/15 | 15/15 | 15/15 | 14/14 | 14/14 |
| Total Nickel | 0/15 | 0/15 | 0/15 | 0/15 | 0/15 | 1/14 | 0/15 |
| Dissolved Selenium | 2/15 | 2/15 | 1/15 | 2/15 | 6/15 | 1/15 | 10/11 |
| Total Selenium | 2/15 | 2/15 | 1/15 | 2/15 | 6/15 | 1/15 | 10/11 |
| Dissolved Zinc | 0/15 | 0/15 | 0/15 | 0/15 | 0/15 | 7/10 | 0/15 |
| Total Zinc | 0/15 | 0/15 | 0/15 | 0/15 | 0/15 | 10/10 | 0/15 |

¹ Frequency of exceedance is denoted as number of exceedances/number of dry weather samples evaluated. For example, “2/15” indicates 2 of the 15 samples had analytical results that exceeded the water quality objective for a given parameter.

² The Basin Plan water quality objective for turbidity for the protection of MUN is the secondary MCL of 5 NTU. The Basin Plan contains additional turbidity objectives expressed as incremental changes over natural conditions. Since inadequate data were available to assess criteria expressed as incremental changes, only the MCL was considered in the analysis.

³ FW means freshwater

C. *Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.*

Since 2001, municipalities both locally and nationally have gained considerable experience in the management of municipal storm water and non-storm water discharges. The technical capacity to monitor storm water and its impacts on water quality has also increased. In many areas, monitoring of the impacts of storm water on water quality has become more sophisticated and widespread. Better information on the effectiveness of storm water controls to reduce pollutant loadings and address water quality impairments is now available. The International Stormwater BMP Database (<http://www.bmpdatabase.org/>) provides extensive information of the performance capabilities of storm water controls. Additionally, the County of Los Angeles conducted a BMP effectiveness study as a requirement of Order No. 01-182.⁵⁰

Generally, improvements in the quality of receiving waters impacted by MS4 discharges can be achieved by reducing the volume of storm water or non-storm water discharged through the MS4 to receiving waters; reducing pollutant loads to storm water and non-storm water through source control/pollution prevention, including operational source control such as street sweeping, public education, and product or materials elimination or substitution; and removing pollutants that have been loaded into storm water or non-storm water before they enter receiving waters, through treatment or diversion to a sanitary sewer. The following factors are generally accepted to affect pollutant concentrations in MS4 discharges⁵¹:

- Land use
- Climatic conditions
- Season (i.e. for southern California, dry season and winter wet season)
- Percentage imperviousness (in particular, “effective impervious area” or “EIA”)
- Rainfall amount and intensity (including seasonal “first-flush” effects)
- Runoff amount
- Watershed size
- Motor vehicle operation
- Aerial deposition

In their 2010-2011 Annual Report, Permittees identified the following storm water and non-storm water pollutant control measures as particularly effective:

- Street sweeping;
- Catch basin cleaning;
- Catch basin inserts
- Trash bins;
- End-of-pipe controls such as low-flow diversions;
- Infiltration controls;
- Erosion controls; and

⁵⁰ County of Los Angeles Department of Public Works. “Los Angeles County BMP Effectiveness Study,” August 2005.

⁵¹ Maestre, Alexander and Robert Pitt. “Identification of Significant Factors Affecting Stormwater Quality Using the NSQD” (draft monograph, 2005).

- Public education and outreach, including multi-lingual strategies.

Permittees summarized the most-used BMPs and most popular BMPs (according to the number of Permittees using a particular BMP) in their 2010-2011 Annual Report. An itemization of all BMPs installed and maintained during the 2010-11 reporting period is provided in Appendices B and C of the Permittees' Annual Report.

Most installed BMPs County-wide During 2010-11

| BMP Type | Total Number Installed |
|--|------------------------|
| Catch Basin Connector Pipe Full Capture (CPS) | 6377 |
| Fossil Filter Catch Basin Insert | 5968 |
| Automatic Retractable Catch Basin Trash Screen (ARS) | 3870 |
| Clean Screen Catch Basin Insert | 3767 |
| Extra Trash Can | 3681 |
| Covered Trash Bin | 3119 |
| Signage and Stenciling | 1884 |
| Drain Pac Catch Basin Insert | 1625 |
| CulTec Infiltration Systems | 1296 |
| Infiltration Trenches | 963 |
| Infiltration Pit | 958 |
| Abtech Ultra Urban Catch Basin Insert | 748 |
| CDS Gross Pollutant Separator | 438 |
| United Storm Water Catch Basin Scree Inserts | 403 |
| Restaurants Vent Traps | 258 |
| Stormceptor Gross Pollutant Separators | 211 |

Most Used Proprietary and Non-Proprietary BMPs During 2010-11

| Types of Nonproprietary BMPs Used By Most Permittees | | Types Proprietary BMPs Used By Most Permittees | |
|--|---------------|--|---------------|
| BMP Type | No. of Cities | BMP Type | No. of Cities |
| Infiltration Trenches | 40 | Fossil Filter Catch Basin Inserts | 46 |
| Covered Trash Bins | 32 | CDS Gross Pollutant Separator | 36 |
| Extra Trash Cans | 31 | Drain Pac Catch Basin Insert | 21 |
| Enhanced Street Sweeping | 26 | Clean Screen Catch Basin Insert | 21 |

| | | | |
|-----------|----|--|----|
| Dog Parks | 23 | Stormceptor Gross Pollutant Separator | 19 |
|-----------|----|--|----|

Some of the many advances in how to effectively control storm water and pollutants in storm water have occurred locally within the Los Angeles Region and include the development of cost effective trash full capture devices, storm water diversion, treatment and beneficial use facilities such as SMURRF and storm water capture, storage, and reuse facilities such as Sun Valley, low impact development/site design practices, and innovative/opportunistic culvert inlet multi-media filters. There are many other case studies of municipalities that have implemented innovative and effective storm water management measures (e.g., Portland, OR).

This Order is designed to reduce pollutant loading to waterbodies within Los Angeles County from discharges to and from the Los Angeles County MS4 through the implementation of multi-faceted storm water management programs at the municipal and watershed levels. Overall improvements in MS4 discharge quality are expected to occur over time with ongoing implementation of the Los Angeles County MS4 Permit. However, currently little information on the quality of storm water in the region and the water quality that can be achieved with the coordinated control of all MS4 discharges through full implementation of all storm water management measures by individual municipalities and collectively by all Permittees within a watershed is available. This Order, however, is designed to effectively focus and broaden monitoring requirements with the addition of outfall monitoring and monitoring associated with the 33 TMDLs being incorporated, so pollutant loading from the MS4 can be better quantified and improvements in water quality resulting from implementation of storm water management measures can be tracked.

D. Economic considerations.

The Regional Water Board recognizes that Permittees will incur costs in implementing this Order above and beyond the costs from the Permittees’ prior permit. Such costs will be incurred in complying with the post-construction, hydromodification, Low Impact Development, TMDL, and monitoring and reporting requirements of this Order. The Regional Water Board also recognizes that, due to California’s current economic condition, many Permittees currently have limited staff and resources to implement actions to address its MS4 discharges. Based on the economic considerations below, the Board has provided permittees a significant amount of flexibility to choose how to implement the permit. This Order allows Permittees the flexibility to address critical water quality priorities, namely discharges to waters subject to TMDLs, but aims to do so in a focused and cost-effective manner while maintaining the level of water quality protection mandated by the Clean Water Act and other applicable requirements. For example, the inclusion of a watershed management program option allows Permittees to submit a plan, either individually or in collaboration with other Permittees, for Regional Water Board Executive Officer approval that would allow for actions to be prioritized based on specific watershed needs. The Order also allows Permittees to customize monitoring requirements, which they may do individually, or in collaboration with other Permittees. In the end, it is up to the permittees to determine the effective BMPs and measures needed to comply with this Order. Permittees

can choose to implement the least expensive measures that are effective in meeting the requirements of this Order. This Order also does not require permittees to fully implement all requirements within a single permit term. Where appropriate, the Board has provided permittees with additional time outside of the permit term to implement control measures to achieve final WQBELs and/or water quality standards. Lastly, this Order includes several reopener provisions whereby the Board can modify this Order based on new information gleaned during the term of this Order.

Before discussing the economics associated with regulating MS4 discharges, it should be noted that there are instances outside of this Order where the Board previously considered economics. First, when the Board adopted the water quality objectives that serve as the basis for several requirements in this Order, it took economic considerations into account. (See *In re Los Angeles County Municipal Storm Water Permit Litigation* (Sup. Ct. Los Angeles County, March 24, 2005, Case No. BS 080548), Statement of Decision from Phase II Trial on Petitions for Writ of Mandate, p. 21.) Second, the cost of complying with TMDL wasteload allocations has been previously considered during the adoption of each TMDL. The costs of complying with the water quality based effluent limitations and receiving water limitations derived from the 33 TMDLs, which are incorporated into this Order, are not additive. For example, the costs estimated for compliance with a TMDL for one pollutant in a watershed, such as metals, can be applied to the costs to achieve compliance with a TMDL for another pollutant in the same watershed, such as pesticides, because the same implementation strategies can be used for both pollutants. Several MS4 permittees have recognized this opportunity in the multi-pollutant TMDL implementation plans they have submitted (e.g. Ballona Creek Metals/Bacteria TMDLs and Machado Lake Pesticides/Nutrients TMDLs). In other words, the estimated cost of complying with the Ballona Creek Metals TMDL can apply to metals, pesticides, PCBs, and bacteria. The costs for complying with trash TMDLs are based on different implementation strategies (e.g., full capture devices), but those strategies are effective at removing metals and toxic pollutants as well. Thus, the costs estimated for each TMDL should not be added to determine the cost of compliance with all TMDLs. The staff reports for the various TMDLs include this disclaimer, and also discuss the cost efficiencies that can be achieved by treating multiple pollutants. Further, the Board's considerations of economics in developing each TMDL have often resulted in lengthy implementation schedules to achieve water quality standards. Where appropriate, these implementation schedules have been used to justify compliance schedules in this Order.

Economic Considerations of Regulating MS4 Discharges

It is very difficult to determine the true cost of implementing storm water and urban runoff management programs because of highly variable factors and unknown level of implementation among different municipalities and inconsistencies in reporting by Permittees. In addition, it is difficult to isolate program costs attributable to permit compliance. Reported costs of compliance for the same program element can vary widely from Permittee to Permittee, often by a very wide margin that is not easily explained. Despite these problems, efforts have been made to identify storm water and urban runoff

management program costs, which can be helpful in understanding the costs of program implementation.

Economic considerations of implementing this Order were examined by primarily utilizing the data that are self-reported by the Permittees in their annual reports and a State Water Board funded study, which examined the costs of municipal MS4 programs statewide.⁵² The economic impact to public agencies was tabulated based on the reported costs of implementing the six minimum control measures (Public Information and Participation, Industrial/Commercial Facilities Control, Development Planning, Development Construction, Public Agency Activities, and Illicit Connections and Illicit Discharges Elimination) required by 40 CFR section 122.26(d)(2)(iv) as well as costs associated with program management, monitoring programs, and a category described as other. As noted above, Permittees report wide variability in the cost of compliance, which is not easily explained. Based on reported values, the average annual cost to the Permittees in 2010-11 was \$4,090,876 with a median cost of \$687,633.

It is important to note that reported program costs are not all solely attributable to compliance with requirements of the LA County MS4 Permit. Many program components, and their associated costs, existed before the first LA County MS4 Permit was issued in 1990. For example, storm drain maintenance, street sweeping and trash/litter collection costs are not solely or even principally attributable to MS4 permit compliance, since these practices have long been implemented by municipalities. Therefore, the true program cost related to complying with MS4 permit requirements is some fraction of the total reported costs. For example, after adjusting the total reported costs by subtracting out the costs for street sweeping and trash collection, the average annual cost to the Permittees was \$2,397,315 with a median cost of \$290,000.

These results are consistent with the State Water Board funded study ("State Water Board Study") that surveyed the costs to develop, implement, maintain and monitor municipal separate storm sewer system management and control programs in 2004.⁵³ The objectives of the study were to: 1) document stormwater program costs and 2) assess alternative approaches to MS4 quality control. The six cities selected for the study were judged by State Water Board staff as having good MS4 management programs, adequate accounting systems, and represented a variety of geographic locations, hydrologic areas, populations and incomes. The cities selected were Corona, Encinitas, Fremont, Fresno-Clovis Metropolitan Area, Sacramento and Santa Clarita. The results found that the annual total cost per household ranged from \$18 to \$46. The average cost was found to be \$35 and the median, \$36. The true mean, which is derived by dividing the total sample costs by the total sample number of households, is \$29 in 2002 dollars. This study was further examined and applied to the Ventura County MS4 Permit in "*Economic Considerations of the Proposed (February 25, 2008) State of California Regional Water Quality Control Board Los Angeles Region, Order 08-xxx, NPDES Permit No. CAS004002, Waste Discharge*

⁵² Data from NPDES Stormwater Cost Survey, prepared by the Office of Water Programs, California State University, Sacramento (January 2005) and the Los Angeles County Municipal Storm Water Permit (Order No. 01-182), Unified Annual Stormwater Report, 2010 – 2011, <http://ladpw.org/wmd/npdesrsa/annualreport/>

⁵³ Currier, Brian K., Joseph M. Jones, Glenn L. Moeller. "NPDES Stormwater Cost Survey, Final Report", Prepared for California State Water Resources Control Board, California State University Sacramento, Office of Water Programs, January, 2005.

Requirements for Stormwater (Wet Weather) and Non-Stormwater (Dry Weather) Discharges from the Municipal Separate Storm Sewer Systems within the Ventura County Watershed Protection District, County of Ventura and the Incorporated Cities Therein,” and found that when adjusted for inflation, the total annual cost to the MS4 Permittees ranged from \$7.15 to \$10.9 million, depending on the averaging method applied.

The State Water Board Study noted inherent limitations in the cost data quality. The most significant data quality limitation cited is that the costs provided by the municipalities were not sufficiently detailed or referenced to provide opportunity for independent review of the accuracy and completeness of the cost data. Similarly, the costs presented in the Los Angeles County Unified Annual Report (“Unified Annual Report”) are not presented with supporting data or references so that they can be independently reviewed. Some of the limitations of the reported cost data are illustrated by a comparison of monitoring costs in different sections of the Unified Annual Report. In the monitoring costs section, the total costs for monitoring, including sample collection, analytical results, and sampling station maintenance was \$713,409 for 2010-2011. In contrast, the same report showed the monitoring costs of \$9,008,460 in the Unified Cost Table. Absent further explanation in the Unified Annual Report, this suggests that the reported costs may not be reliable.

The State Water Board Study also found that certain stormwater implementation costs included activities that provide separate and additional municipal benefits such as street sweeping and storm drain and channel cleaning. The State Water Board Study indicated that the inclusion of these costs as stormwater implementation costs is not uniform across different municipalities. In order to assess the variability of costs reported by different municipalities under the same permit and determine if Los Angeles County MS4 Permittees are reporting costs for activities that provide municipal benefits beyond storm water management and permit compliance, Regional Water Board staff reviewed costs reported by Los Angeles County MS4 Permittees in the Unified Annual Report. The reported storm water costs range from \$11.45 to \$928.10 per household per year. The average reported cost was \$120.04 per household per year and the median cost was \$57.31 per household per year. The wide spread of annual costs and the significant difference between the mean and median costs indicate that the LA County MS4 Permittees are not reporting costs in a uniform manner.

Board staff also reviewed available cost data in the Unified Annual Report for Permittees that provided separate costs regarding street sweeping and trash collection. Staff adjusted the total costs so that the costs for these multi-benefit municipal programs were not included in the storm water cost and found that the adjusted storm water costs were greatly reduced by excluding these activities. These adjusted costs ranged from \$0.00 per household per year to \$903.10 per household per year. The mean adjusted rate is \$42.57 per household per year and the median adjusted rate is \$17.89 per household per year. Clearly, a significant portion (greater than 50%) of the costs attributed to storm water compliance activities also provide additional municipal benefits. (In the case of the Los Angeles County MS4 Permittees, some municipalities reported costs for trash collection; these costs were not reported by municipalities in the State Water Board Study.)

Finally, Board staff reviewed the cost breakdowns reported in the State Water Board Study and the Unified Annual Report for Los Angeles County MS4 Permittees. The following table summarizes the results:

| Cost Category | State Water Board Study | Los Angeles County (2010-2011) |
|---------------------------|-------------------------|--------------------------------|
| Watershed Management | 6% | 5% |
| Construction | 11% | 1% |
| Illicit Discharge | 4% | 2% |
| Industrial and Commercial | 8% | 1% |
| Overall Management | 37% | 5% |
| Pollution Prevention | 2% | 2% |
| Post Construction | 3% | |
| Public Education | 13% | 2% |
| Monitoring | 16% | 3% |
| BMP Maintenance | Not Reported | 2% |
| Development | Not Reported | 1% |
| Other | Not reported | 76% |

The reported costs show differences between the MS4 Permittees surveyed in the State Water Board Study and the Los Angeles County MS4 Permittee costs in the following categories: construction, industrial and commercial activities, public education and monitoring. These categories all show greater proportional statewide cost allocations relative to the cost allocations by the Los Angeles County MS4 Permittees. The Los Angeles County MS4 Permittees report a cost category of BMP maintenance, which is not defined in the State Water Board Study. The management costs in the State Water Board Study were greater than the management costs reported by the Los Angeles County MS4 Permittees, but the Los Angeles County MS4 Permittees also reported a category of “Other” that accounted for a large proportion of costs, which is not defined in the Unified Annual Report.

The State Water Board Study found that cost information is crucial in making management decisions regarding storm water requirements. The report also recommends that annual reports required under MS4 permits throughout the State follow a standard format for cost reporting and that costs for all MS4 program activities (per program area) should be identified as existing, enhanced or new according to the extent that the activity was required under the previous permit, is enhanced by the permit, or is exclusively a result of compliance efforts with new provisions of the MS4 permit.

Further, 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, USEPA, 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. This 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.)

In addition to considering the costs of storm water management, it is important to consider the benefits of storm water and urban runoff management programs. A recent study conducted by USC/UCLA assessed the costs and benefits of implementing various approaches for achieving compliance with the MS4 permits in the Los Angeles Region. The study found that non-structural systems would cost \$2.8 billion but provide \$5.6 billion in benefit. If structural systems were determined to be needed, the study found that total costs would be \$5.7 to \$7.4 billion, while benefits could reach \$18 billion.⁵⁴ Costs are anticipated to be borne over many years. As can be seen, the benefits of the programs are expected to considerably exceed their costs. Such findings are corroborated by USEPA, which found that the benefits of implementation of its Phase II storm water rule would also outweigh the costs.⁵⁵

Economic Considerations of Not Regulating MS4 Discharges

Economic discussions of storm water and urban runoff management programs tend to focus on costs incurred by municipalities in developing and implementing the programs. This is appropriate, and these costs are significant and a major issue for the Permittees. However, in adopting Order WQ 2000-11, the State Water Board further found that in considering the cost of compliance, it is also important to consider the costs of impairment; that is, the negative impact of pollution on the economy and the positive impact of improved water quality. For example, economic benefits may result through program implementation, and alternative costs (as well as environmental impacts) may be incurred by not fully implementing the program. So, while it is appropriate and necessary to consider the cost of compliance, it is also important to consider the alternative costs incurred by not fully implementing the programs, as well as the benefits which result from program implementation.

The benefits of implementation of the Los Angeles County MS4 Permit include improvements in water quality, enhancement of beneficial uses, and increased employment, income and satisfaction from environmental amenities. Most of the benefits of this permit can be identified and, in some cases, quantified in monetary terms. Others cannot be expressed in dollar terms and can only be described. For example, household willingness to pay for improvements in fresh water quality for fishing and boating has been estimated by USEPA⁵⁶ to be \$158-210.62. This estimate can be considered conservative, since it does not include important considerations such as marine waters benefits, wildlife

⁵⁴ LARWQCB, 2004. Alternative Approaches to Stormwater Control.

⁵⁵ Federal Register / Vol. 64, No. 235 / Wednesday, December 8, 1999 / Rules and Regulations. P. 68791.

⁵⁶ Federal Register / Vol. 64, No. 235 / Wednesday, December 8, 1999 / Rules and Regulations. P. 68793.

benefits, or flood control benefits. The California State University, Sacramento study corroborates USEPA’s estimates, reporting annual household willingness to pay for statewide clean water to be \$180.63.⁵⁷ When viewed in comparison to household costs of existing urban runoff management programs, these household willingness to pay estimates exhibit that per household costs incurred by Permittees to implement their urban runoff management programs remain reasonable.

Not regulating discharges from the Los Angeles County MS4 will result in greater pollution of rivers, streams, lakes, reservoirs, bays, harbors, estuaries, groundwater, coastal shorelines and wetlands. Urban runoff in southern California has been found to cause illness in people bathing near storm drains.⁵⁸ A study of south Huntington Beach and north Newport Beach found that an illness rate of about 0.8% among bathers at those beaches resulted in about \$3 million annually in health-related expenses.⁵⁹ In addition, poor beach water quality negatively affects tourism, which in turn reduces revenues to local businesses.

Funding Sources.

Public agencies (both federal and state) recognize the importance of storm water improvement projects and have provided significant sources of funding through grants, bonds, and fee collections to help offset the costs of storm water management in Los Angeles County. The table below summarizes the funds that have been allocated to storm water management in Los Angeles County, to date.

| Source of Money | Dollars | % of total costs funded by State (only for those projects which included State funding) |
|---|---------------|---|
| Only State Board-awarded funding (Propositions 12, 13, 40, 50, and 84; and federal money, 319h, 205j, ARRA) | \$49,143,132 | 47% |
| Only State money from any State agency (propositions only, no federal); includes State Board, DWR, Coastal Conservancy, Fish & Game | \$67,461,699 | 58% |
| Total costs (approx.) for projects involving State money | \$114,703,731 | N/A |
| Prop A | \$4,981,772 | N/A |
| Prop O | \$508,678,258 | N/A |
| Measure V | \$9,107,959 | N/A |
| Total Public Funds (federal, | \$645,389,932 | N/A (information not |

⁵⁷ State Water Board, 2005. NPDES Stormwater Cost Survey. P. iv.

⁵⁸ Haile, R.W., et al, 1996. An Epidemiological Study of Possible Adverse Health Effects of Swimming in Santa Monica Bay. Santa Monica Bay Restoration Project.

⁵⁹ Los Angeles Times, May 2, 2005. Here’s What Ocean Germs Cost You: A UC Irvine Study Tallies the Cost of Treatment and Lost Wages for Beachgoers Who Get Sick.

| | | |
|--|--|--|
| State, local bonds and measures) expended on stormwater control projects | | available for projects funded by local bonds and measures) |
|--|--|--|

In addition to current funding options, future funding options continue to be created. Assembly Bill 2554, known as the Los Angeles County Flood Control District’s Water Quality Funding Initiative, is currently under consideration by the LACFCD’s Board of Supervisors. If the Board of Supervisors approve the fee proposal and no majority protest is received, then it will be submitted for voter approval and could create an estimated annual revenue of \$300 million to be utilized for various storm water projects including but not limited to:

- New and Existing Water Quality Projects and Programs
- Maintenance of Existing Facilities
- TMDL and MS4 Permit Implementation

Of the annual revenue, forty percent would be returned to the municipalities to create new local projects and programs and maintenance. Below are the estimated revenues that would be allocated to certain municipalities based on the estimated annual revenue of \$300 million.

| Municipalities | Estimated Annual Revenue |
|--|--------------------------|
| City of Los Angeles | \$37 million |
| City of Santa Monica | \$1 million |
| El Segundo | \$600,000 |
| Manhattan Beach | \$300,000 |
| Redondo Beach | \$750,000 |
| Unincorporated Areas on Los Angeles County | \$15 million |

Fifty percent of the annual revenue would be spread across nine watershed authority groups (WAGs) to develop Water Quality Improvement Plans and implement regional projects and programs. Some examples of the possible annual revenues available to the WAGs are provided below:

| WAG | Estimated Revenue |
|-------------------------|-------------------|
| Santa Monica Bay | \$12 million |
| Upper Los Angeles River | \$36 million |
| Lower Los Angeles River | \$15 million |
| Upper San Gabriel River | \$17 million |

The remaining ten percent of the annual revenues would be allocated to the Los Angeles County Flood Control District for administration of the program and other district water quality projects and programs.

E. Need for developing housing within the region.

For over 100 years, this region has relied on imported water to meet many of our water resource needs. Imported water makes up approximately 70 to 75% of the Southern California region's water supply, with local groundwater, local surface water, and reclaimed water making up the remaining 25 to 30%.⁶⁰ The area encompassed by this Order imports approximately 50% of its water supply. The Los Angeles County MS4 permit helps address the need for housing by controlling pollutants in MS4 discharges, which will improve the quality of water available for recycling and re-use. This in turn may reduce the demand for imported water thereby increasing the region's capacity to support continued housing development.

A reliable water supply for future housing development is required by law, and with less imported water available to guarantee this reliability, an increase in local supply is necessary.

In this Order, the Regional Water Board supports integrated water resources approaches. An integrated water resources approach manages water resources by integrating wastewater, stormwater, recycled water, and potable water planning through the capture and beneficial use of stormwater. An integrated approach can preserve local groundwater resources and reduce imported water needs. Thus, complying with this Order can positively affect the need for developing housing in the region. Furthermore, the low impact development (LID) requirements of this MS4 permit emphasize the necessity to balance growth with the protection of water quality. LID emphasizes cost effective, lot-level strategies that replicate the natural hydrology of the site and reduces the negative impacts of development. By avoiding the installation of more costly conventional storm water management strategies and harnessing runoff at the source, LID practices enhance the environment while providing cost savings to both developers and local governments.

F. Need to develop and use recycled water.

Storm water runoff that travels across the urban landscape quickly becomes contaminated with the wastes inherent from urban living. This polluted water is then discharged to the surface waters and eventually the ocean where it wreaks havoc on the natural coastal ecosystem and impacts human health. If the storm water is captured and treated (or captured prior to contamination) a new resource could be added to local water supplies. If this water is more effectively harnessed and recycled, numerous benefits could be achieved. These include:

- Regional reduction on imported water;
- Aid in the restoration of area aquifers;
- Reduction in the need for extensive public works projects; and
- Improvement in the quality of impaired water bodies.

⁶⁰ Southern California Association of Governments. The State of the Region 2007 Measuring Regional Progress (Housing, Environment). December 6, 2007. <http://www.scag.ca.gov/publications/index.htm>.

The exact volume of storm water available for capture is dependent on the intensity and duration of storm events. Looking at land uses across the region and applying land use-specific runoff coefficients, the annual average runoff in the Los Angeles subarea is 450,000 acre-feet/year (with an average annual rainfall of 15.5 inches). The Los Angeles and San Gabriel Rivers Watershed Council estimates that, on average, about 550,000 acre-feet/year of runoff are discharged from Los Angeles area to the ocean.⁶¹

It is not possible to capture all MS4 discharges; however, a significant portion could be put to beneficial use. Potentially, in Los Angeles, “[i]f we could capture 80% of the rainfall that falls on just a quarter of the urban area-15% of the total watershed-we would be reducing total runoff by approximately 30%. That translates into a diversion of 43 billion gallons of water per year (132,000 acre-feet) or enough to supply 800,000 people for a year.”⁶² That water capture would render a savings of almost sixty million dollars of imported State Water Project water. Capturing storm water from a larger portion of the watershed could increase the volume of this “new” water even further. Unlike traditional recycled water that requires the installation of dual plumbing and intensive infrastructure, much of the storm water capture could be done with minimal infrastructure retrofits in established communities.

Larger projects (and the corresponding savings) are also possible. The County of Los Angeles recharges storm water already. While the scale of these recharge activities is limited compared to the volume of water potentially available to recharge, the value of the process is significant. For example, in 2000 “County conservation efforts captured 220,000 acre-feet of local storm water runoff that was valued at \$80 million dollars.”⁶³

The unknown effects of infiltrating stormwater to recharge ground water have created some concern that such activities could introduce pollutants to the water supply. However, the U.S. Bureau of Reclamation has found⁶⁴:

“Based on the findings of the WAS research, decentralized stormwater management would provide a local and reliable supply of water that would not negatively impact groundwater quality. A decentralized approach could contribute up to 384,000 acre-feet of additional groundwater recharge annually if the first $\frac{3}{4}$ ” of each storm is infiltrated on all parcels, enough to provide water annually to approximately 1.5 million people. The value of this new water supply would be approximately \$311 million, using the MWD Tier 2 rate for 2010.”

Recent studies in the Los Angeles area have also shown that in the process of infiltration through the soil, many contaminants are removed with no immediate impacts, and no apparent trends to indicate that storm water infiltration will negatively impact groundwater.⁶⁵ In areas with groundwater contamination issues, utilizing recycled storm water to recharge the aquifers may actually aid in the dilution of the buildup of salts. The value of this is hard to quantify but is an additional benefit. The use of recycled water can be accomplished in direct (such as irrigation projects or dual plumbing fixtures) or indirect

⁶¹ http://www.lasgrwc.org/WAS/WASflyer_web.pdf

⁶² Los Angeles and San Gabriel River Watershed Council. 1999. *Stormwater: asset not liability*.

⁶³ Los Angeles County Department of Regional Planning. 2008. 2008 Draft General Plan-Planning Tomorrow's Great Places.

⁶⁴ Los Angeles and San Gabriel River Watershed Council. 2010. Water Augmentation Study: Research, Strategy, and Implementation Report.

⁶⁵ Los Angeles and San Gabriel River Watershed Council. 2005. Los Angeles Basin Water Augmentation Study Phase II Final Report.

(such as infiltration) ways. Both direct and indirect methods can be completed on a variety of different scales. To maximize the benefits available from using recycled water, the direct and indirect projects will need to be completed on household, neighborhood, watershed and regional scales. Currently there are a limited (but growing) number of projects in the region that can serve as examples of what may be accomplished through the development and implementation of recycled water projects. The Los Angeles County MS4 permit addresses the need for recycled water by controlling pollutants in storm water, which will result in water of improved quality with a greater potential for recycling or beneficial use. State law and policy advocates greatly expanding the use of recycled water to help meet local demand and reduce the volumes of water that are imported from other regions. Increased utilization of recycled water will require looking beyond the traditional reclaimed wastewater and will require utilizing storm water that is wasted by conveyance in the MS4 and dumping into the ocean. Storm water capture and use has not traditionally been included in the discussion of water recycling, but the process meets the definitional constraints and is bound by the same limitations and boundaries.

In addition, there are a number of Total Maximum Daily Loads (TMDLs) developed by the Regional Water Board that incorporate recycled water programs as potential implementation actions to meet TMDL requirements. These potential actions focus on both traditional water recycling and the newer storm water recycling approaches. Such recycled water programs could also reduce reliance on potable water supplies by expanding water recycling and aiding in the reclamation of poor quality, unconfined groundwater supplies. The capture, treatment and use of stormwater could augment these techniques as well. On-site capture of storm water helps prevent the water from being contaminated by urban by-products to begin with and the use of this high quality resource could reduce the unnecessary use of potable water for non-potable needs.

Some great examples of onsite capture are being demonstrated by TreePeople⁶⁶ who have demonstration projects ranging from small scale rainwater harvesting at the single family home locations, to large scale watershed projects at Tuxedo Green in Sun Valley where the project redesigned the intersection with a flood control system that conveys most stormwater under, instead of into, the busy intersection. The water is stored in a 45,000-gallon cistern to be used for irrigating the landscaping at the new pocket park, which is planted with native and drought-tolerant species.

Another state of the art project was implemented by the City of Santa Monica called the Santa Monica Urban Runoff Recycling Facility (SMURRF).⁶⁷ The project harnesses the urban runoff (primarily during the dry season) and treats it for various pollutants to create a source of high quality water for reuse in landscape irrigation. Because the facility captures the dry weather runoff before it reaches the Santa Monica Bay it decreases a significant amount of pollutants from negatively impacting the Bay and associated beaches. The SMURRF is also open to the public and has several exhibits to raise public awareness of Santa Monica Bay pollution and the role of each individual in the watershed's health.

⁶⁶ www.treepeople.org

⁶⁷ <http://c0133251.cdn.cloudfiles.rackspacecloud.com/Case%20Study%20-%20Santa%20Monica%20Urban%20Runoff%20Recycling%20Facility%20SMURRF.pdf>

The County of Los Angeles Department of Public Works, Watershed Management Division has targeted the Sun Valley Watershed "...to solve the local flooding problem while retaining all storm water runoff from the watershed, increasing water conservation, recreational opportunities, wildlife habitat, and reducing stormwater pollution."⁶⁸ This aggressive plan involves several stakeholders and has implemented a variety of on-site BMPs as well as storm water infiltration retrofits and diversions.

IX. STATE MANDATES

Article XIII B, Section 6(a) of the California Constitution provides that whenever "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." The requirements of this Order do not constitute state mandates that are subject to a subvention of funds for several reasons, including, but not limited to, the following.

First, the requirements of this Order do not constitute a new program or a higher level of service as compared to the requirements contained in the previous permit, Order No. 01-182 (as amended). The overarching requirement to impose controls to reduce the pollutants in discharges from MS4s is dictated by the Clean Water Act and is not new to this permit cycle. (33 U.S.C. §1342(p)(3)(B).) The inclusion of new and advanced measures as the MS4 programs evolve and mature over time is anticipated under the Clean Water Act (55 Fed.Reg. 47990, 48052 (Nov. 16, 1990)), and these new and advanced measures do not constitute a new program or higher level of service.

Second, and more broadly, mandates imposed by federal law, rather than by a state agency, are exempt from the requirement that the local agency's expenditures be reimbursed. (Cal. Const., art. XIII B, §9, subd. (b).) This Order implements federally mandated requirements under the Clean Water Act and its requirements are therefore not subject to subvention of funds. 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. (30 U.S.C. §1342(p)(3)(B).) 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.)

⁶⁸ http://www.sunvalleywatershed.org/watershed_management_plan/wmp-0ES.pdf

The maximum extent practicable standard is a flexible standard that balances a number of considerations, including technical feasibility, cost, public acceptance, regulatory compliance, and effectiveness. (*Building Ind. Asso.*, *supra*, 124 Cal. App.4th at pp. 873, 874, 889.) Such considerations change over time with advances in technology and with experience gained in storm water management. (55 Fed.Reg. 47990, 48052 (Nov. 16, 1990).) Accordingly, a determination of whether the conditions contained in this Order exceed the requirements of federal law cannot be based on a point by point comparison of the permit conditions and the six minimum control measures that are required “at a minimum” to reduce pollutants to the maximum extent practicable and to protect water quality (40 CFR § 122.34). Rather, the appropriate focus is whether the permit conditions, as a whole, exceed the maximum extent practicable standard. In recent months, the County of Los Angeles and County of Sacramento Superior Courts have granted writs setting aside decisions of the Commission on State Mandates that held that certain requirements in Phase I permits constituted unfunded mandates. In both cases, the courts found that the correct analysis in determining whether a MS4 permit constituted a state mandate was to evaluate whether the permit as a whole -- and not a specific permit provision -- exceeds the maximum extent practicable standard. (*State of Cal. v. Comm. on State Mandates* (Super. Ct. Sacramento County, 2012, No. 34-2010-80000604), *State of Cal. v. County of Los Angeles* (Super. Ct. Los Angeles County, 2011, No. BS130730).)

The requirements of the Order, taken as a whole rather than individually, are necessary to reduce the discharge of pollutants to the maximum extent practicable and to protect water quality. The Regional Water Board finds that the requirements of the Order are practicable, do not exceed federal law, and thus do not constitute an unfunded mandate. These findings are the expert conclusions of the principal state agency charged with implementing the NPDES program in California. (Cal. Wat. Code, §§ 13001, 13370.)

It should also be noted that the provisions in this Order to effectively prohibit non-storm water discharges are also mandated by the Clean Water Act. (33 U.S.C. § 1342(p)(3)(B)(ii).) Likewise, the provisions of this Order to implement total maximum daily loads (TMDLs) are federal mandates. The 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 USEPA or a state establishes or adopts a TMDL, federal law requires that permits must contain effluent limitations consistent with the assumptions and requirements of any applicable waste load allocation in a TMDL. (40 CFR § 122.44(d)(1)(vii)(B).)

Third, 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 Water Quality Control Act (Porter-Cologne Act) regulates the discharge of waste (Cal. 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 non-governmental 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 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. Generally, 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, certain provisions of this Order do not require strict compliance with water quality standards. (SWRCB Order No. WQ 2001-15, p. 7.) Those provisions of this Order regulate the discharge of waste in municipal storm water under the Clean Water Act MEP standard, not the BAT/BCT standard that applies to other types of discharges. These provisions, therefore, regulate the discharge of waste in municipal storm water more leniently than the discharge of waste from non-governmental sources.

Fourth, the Permittees have requested permit coverage in lieu of compliance with the complete prohibition against the discharge of pollutants contained in Clean Water Act section 301, subdivision (a) (33 U.S.C. § 1311(a)). To the extent that 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.)

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 XIII B, Section (6) of the California Constitution.

Finally, even if any of the permit provisions could be considered unfunded mandates, under Government Code section 17556, subdivision (d), a state mandate is not subject to reimbursement if the local agency has the authority to charge a fee. The local agency Permittees have the authority to levy service charges, fees, or assessments sufficient to pay for compliance with this Order subject to certain voting requirements contained in the California Constitution. (See California Constitution XIII D, section 6, subdivision (c); see also *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal. App. 4th 1351, 1358-1359.) Additional fee authority has recently been established through amendments to the Los Angeles County Flood Control Act (Chapter 755 of the Statutes of 1915, as amended by Assembly Bill 2554 (2010)) to provide funding for municipalities, watershed authority groups, and the LACFCD to initiate, plan, design, construct, implement, operate, maintain, and sustain projects and services to improve surface water quality and reduce storm water and non-storm water pollution in the LACFCD, which may directly support Permittees' implementation of the requirements in 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 authority and 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. (*Clovis Unified School Dist. v. Chiang* (2010) 188

Cal. App.4th 794, 812, quoting *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487-488.)

X. PUBLIC PARTICIPATION

Regional Water Board staff held a kick-off meeting on May 25, 2011 to discuss the preliminary schedule for permit development; identify potential alternative permit structures; and outline some of the major technical and policy aspects of permit development. All LA County MS4 Permittees, as well as other known interested stakeholders, were invited to attend. Ninety-five individuals attended the meeting, representing most of the permittees as well as environmental organizations. After a presentation by Board staff, Permittees and interested persons had an initial opportunity to ask questions of staff, raise concerns, and provide feedback.

At the May 25, 2011 kick-off meeting, Board staff requested input from the attendees on various permit structures. In order to solicit more focused input from permittees on alternative permit structures, and per suggestions at the kick-off meeting, Board staff developed and distributed an on-line survey to permittees using the on-line survey tool, SurveyMonkey®. The survey was distributed to all Los Angeles County MS4 Permittees on June 14, 2011 and responses were requested within two weeks. Fifty-two permittees responded using the on-line survey tool. The on-line survey sought input on several options for permit structure, including an individual permit for each municipality, a single permit for all permittees (i.e., the existing permit structure), and a single or multiple watershed-based permits.

Regional Water Board staff also held three topical workshops on December 15, 2011, January 23, 2012, and March 1, 2012. At the December 2011 workshop, staff discussed and invited feedback on: tentative permit requirements for the “minimum control measures” that comprise Permittees core storm water management program, approaches to addressing non-storm water MS4 discharges, and options for flexibility in permit requirements to address watershed priorities. At the January 2012 workshop, staff discussed and invited feedback on: tentative permit requirements to implement TMDL waste load allocations assigned to MS4 discharges and monitoring and reporting requirements for this Order. At the March 2012 workshop, staff discussed the use of water quality-based effluent limitations in this Order, discussed a revised proposal for monitoring requirements based on comments from the January 2012 workshop, and provided additional detail on proposed minimum control measure requirements.

Three Regional Water Board workshops were held during regularly scheduled Board meetings on November 10, 2011, April 5, 2012, and May 3, 2012. At the November 2011 Board workshop, staff discussed the objectives for the new permit, the status and schedule for permit development, alternatives for permit structure, provisions to implement TMDL WLAs, and provisions for minimum control measures, and identified preliminary considerations related to provisions for non-storm water discharges, receiving water limitations, water quality-based effluent limitations, and requirements for monitoring and reporting.

Prior to the April 5, 2012 Board workshop, staff released complete working proposals of the permit provisions related to two key parts of this Order: the storm water management

program “minimum control measures” and the non-storm water MS4 discharge prohibitions on March 21, 2012 and March 28, 2012, respectively. Staff provided Permittees and interested persons the opportunity to submit written and oral comments over a period of three weeks for early consideration by staff prior to the release of the tentative Order. At the April 2012 Board workshop, staff presented the working proposals and the Board invited public comments. Detailed comments were made on both working proposals, and in particular, comments were made on how to address “essential” non-storm water discharges from drinking water supplier distribution systems and fire fighting activities in this Order.

Prior to the May 3, 2012 Board workshop, staff released complete working proposals of the permit provisions related to three other key parts of this Order: provisions for watershed management programs, TMDL-related requirements, and receiving water limitations language. Staff provided Permittees and interested persons the opportunity to submit written and oral comments over a period of three weeks for early consideration by staff prior to the release of the tentative Order. At the May 2012 Board workshop, staff presented the three working proposals and the Board invited public comments. Staff answered extensive questions from Board members following public comments.

In addition to staff and Board workshops, Regional Water Board staff met regularly with Permittees, including the LA Permit Group (a coalition of 62 of the 86 Permittees covered by this Order), the Los Angeles County Flood Control District and the County of Los Angeles, the City of Los Angeles, and interested environmental organizations including Heal the Bay, Santa Monica Baykeeper, and the Natural Resources Defense Council (NRDC). Staff also met on several occasions with other affected agencies including large public water suppliers (Los Angeles Department of Water and Power and Metropolitan Water District), small community water suppliers, and local fire departments.

Finally, staff hosted several “joint” meetings to bring together key leaders among the Permittees and environmental organizations to discuss significant issues and work towards consensus on these issues where possible. The first two of these were held on May 17, 2012 and May 31, 2012, during which the group discussed permit requirements for USEPA established TMDLs. Staff prepared a working proposal based on the areas of agreement from the May 17th joint meeting, and distributed the proposal for review prior to the second meeting on May 31st. The proposal was discussed and refined at the second meeting. A third meeting was held on June 14, 2012.

Prior to the Board’s consideration of this Order, the Regional Water Board notified the Permittees and all interested agencies and persons of its intent to hold a hearing to issue an NPDES permit for discharges from the Los Angeles County MS4 and provided them with an opportunity to submit written comments over a 45-day period. The procedures followed for submission of written comments are described in the Notice of Hearing and Opportunity to Comment published for this Order. Notification was provided through the Regional Water Board’s website, the Regional Water Board’s e-mail subscription service, and the LA Times. After releasing the tentative permit for public review, the Regional Water Board held a staff level workshop on July 9, 2012 to answer questions regarding the tentative permit. A Board member field tour of portions of the MS4 in the San Gabriel Valley was held on July 31, 2012.

The Regional Water Board held a public hearing on the tentative Order during its regular Board meeting on October 4-5, 2012. The Regional Water Board continued the public hearing at its next regular Board meeting on November 8, 2012. Permittees and interested persons were invited to attend. At the public hearing, the Regional Water Board heard testimony and comments pertinent to the discharge and this Order. The hearing procedures followed by the Regional Water Board are described in the Notice of Hearing and Opportunity to Comment published for this Order.

ATTACHMENT G. NON-STORM WATER ACTION LEVELS AND MUNICIPAL ACTION LEVELS

I. SANTA CLARA RIVER WATERSHED AREA

Table G-1. Action Levels for Discharges to Inland Surface Waters, Enclosed Bays, and Estuaries (with receiving water salinity equal to or less than 1 ppt)

| Parameter | Units | Average Monthly | Daily Maximum |
|----------------------------------|----------|------------------|------------------|
| <i>E. coli</i> Bacteria | #/100 ml | 126 ¹ | 235 ² |
| Chloride | mg/L | ³ | -- |
| Sulfate | mg/L | ³ | -- |
| Total Dissolved Solids | mg/L | ³ | -- |
| Methylene Blue Active Substances | mg/L | 0.5 ⁴ | -- |
| Aluminum, Total Recoverable | mg/L | 1.0 ⁴ | -- |
| Cyanide, Total Recoverable | µg/L | 4.3 | 8.5 |
| Copper, Total Recoverable | µg/L | ⁵ | ⁵ |
| Mercury, Total Recoverable | µg/L | 0.051 | 0.1 |
| Selenium, Total Recoverable | µg/L | 4.1 | 8.2 |

- ¹ *E. coli* density shall not exceed a geometric mean of 126/100 ml.
² *E. coli* density in a single sample shall not exceed 235/100 ml.
³ In accordance with applicable water quality objectives contained in Chapter 3 of the Basin Plan.
⁴ Applicable only to discharges to receiving waters designated for Municipal and Domestic Supply (MUN) use as specified in Tables 2-1 and 2-2 of the Basin Plan.
⁵ Action levels are hardness dependent. See Section VII of this Attachment for a listing of the applicable action levels.

Table G-2. Action Levels for Discharges to Inland Surface Waters, Enclosed Bays, and Estuaries (with receiving water salinity between 1 ppt and 10 ppt)

| Parameter | Units | Average Monthly | Daily Maximum |
|----------------------------------|----------|--------------------|---------------------|
| <i>E. coli</i> Bacteria | #/100 ml | 126 ¹ | 235 ² |
| Total Coliform Bacteria | #/100 ml | 1,000 ³ | 10,000 ⁴ |
| Fecal Coliform Bacteria | #/100 ml | 200 ³ | 400 ⁴ |
| Enterococcus Bacteria | #/100 ml | 35 ³ | 104 ⁴ |
| Chloride | mg/L | ⁵ | -- |
| Sulfate | mg/L | ⁵ | -- |
| Total Dissolved Solids | mg/L | ⁵ | -- |
| Methylene Blue Active Substances | mg/L | 0.5 ⁶ | -- |
| Aluminum, Total Recoverable | mg/L | 1.0 ⁶ | -- |
| Cyanide, Total Recoverable | µg/L | 0.50 | 1.0 |
| Copper, Total Recoverable | µg/L | ⁷ | ⁷ |
| Mercury, Total Recoverable | µg/L | 0.051 | 0.1 |
| Selenium, Total Recoverable | µg/L | 4.1 | 8.2 |

- ¹ *E. coli* density shall not exceed a geometric mean of 126/100 ml.
² *E. coli* density in a single sample shall not exceed 235/100 ml.
³ Total coliform density shall not exceed a geometric mean of 1,000/100 ml. Fecal coliform density shall not exceed a geometric mean of 200/100 ml. Enterococcus density shall not exceed a geometric mean of 35/100 ml.

- ⁴ Total coliform density in a single sample shall not exceed 10,000/100 ml. Fecal coliform density in a single sample shall not exceed 400/100 ml. Enterococcus density shall not exceed a geometric mean of 104/100 ml.
- ⁵ In accordance with applicable water quality objectives contained in Chapter 3 of the Basin Plan.
- ⁶ Applicable only to discharges to receiving waters designated for Municipal and Domestic Supply (MUN) use as specified in Tables 2-1 and 2-2 of the Basin Plan.
- ⁷ The applicable action level is the most stringent between corresponding Table G-1 and Table G-3 action levels.

Table G-3. Action Levels for Discharges to Inland Surface Waters, Enclosed Bays, and Estuaries (with receiving water salinity equal to or greater than 10 ppt 95% or more of the time)

| Parameter | Units | Average Monthly | Daily Maximum |
|----------------------------------|----------|----------------------|-----------------------|
| Total Coliform Bacteria | #/100 ml | 1,000 ^{1,2} | 10,000 ^{2,3} |
| Fecal Coliform Bacteria | #/100 ml | 200 ¹ | 400 ³ |
| Enterococcus Bacteria | #/100 ml | 35 ¹ | 104 ³ |
| Chloride | mg/L | 4 | -- |
| Sulfate | mg/L | 4 | -- |
| Total Dissolved Solids | mg/L | 4 | -- |
| Methylene Blue Active Substances | mg/L | 0.5 ⁵ | -- |
| Aluminum, Total Recoverable | mg/L | 1.0 ⁵ | -- |
| Cyanide, Total Recoverable | µg/L | 0.50 | 1.0 |
| Copper, Total Recoverable | µg/L | 2.9 | 5.8 |
| Mercury, Total Recoverable | µg/L | 0.051 | 0.1 |
| Selenium, Total Recoverable | µg/L | 58 | 117 |

- ¹ Total coliform density shall not exceed a geometric mean of 1,000/100 ml. Fecal coliform density shall not exceed a geometric mean of 200/100 ml. Enterococcus density shall not exceed a geometric mean of 35/100 ml.
- ² In areas where shellfish may be harvested for human consumption, as determined by the Regional Water Board, the median total coliform density shall not exceed 70/100 ml and not more than 10 percent of the samples shall exceed 230/100 ml.
- ³ Total coliform density in a single sample shall not exceed 10,000/100 ml. Fecal coliform density in a single sample shall not exceed 400/100 ml. Enterococcus density shall not exceed a geometric mean of 104/100 ml.
- ⁴ In accordance with applicable water quality objectives contained in Chapter 3 of the Basin Plan.
- ⁵ Applicable only to discharges to receiving waters designated for Municipal and Domestic Supply (MUN) use as specified in Tables 2-1 and 2-2 of the Basin Plan.

Table G-4. Action Levels for Discharges to Ocean Waters (Surf Zone)

| Parameter | Units | 6-Month Median | Daily Maximum | Instantaneous Maximum |
|-----------------------------|----------|-----------------|------------------|-----------------------|
| Total Coliform Bacteria | #/100 ml | 70 ¹ | 230 ¹ | -- |
| Fecal Coliform Bacteria | #/100 ml | -- | 200 ² | 400 ³ |
| Enterococcus Bacteria | #/100 ml | -- | 35 ² | 104 ³ |
| Cyanide, Total Recoverable | µg/L | 1 | 4 | 10 |
| Copper, Total Recoverable | µg/L | 3 | 12 | 30 |
| Mercury, Total Recoverable | µg/L | 0.04 | 0.16 | 0.4 |
| Selenium, Total Recoverable | µg/L | 15 | 60 | 150 |

- ¹ In areas where shellfish may be harvested for human consumption, as determined by the Regional Water Board, the median total coliform density shall not exceed 70/100 ml and not more than 10 percent of the samples shall exceed 230/100 ml.

- ² Fecal coliform density shall not exceed a geometric mean of 200/100 ml. Enterococcus density shall not exceed a geometric mean of 35/100 ml.
- ³ Fecal coliform density in a single sample shall not exceed 400/100 ml. Enterococcus density shall not exceed a geometric mean of 104/100 ml.

II. LOS ANGELES RIVER WATERSHED MANAGEMENT AREA

Table G-5. Action Levels for Discharges to Inland Surface Waters, Enclosed Bays, and Estuaries (with receiving water salinity equal to or less than 1 ppt)

| Parameter | Units | Average Monthly | Daily Maximum |
|--------------------------------|----------------|----------------------|------------------|
| pH | Standard units | 6.5-8.5 ¹ | |
| <i>E. coli</i> Bacteria | #/100 ml | 126 ² | 235 ³ |
| Chloride | mg/L | ⁴ | -- |
| Nitrite Nitrogen, Total (as N) | mg/L | 1.0 ⁵ | -- |
| Sulfate | mg/L | ⁴ | -- |
| Total Dissolved Solids | mg/L | ⁴ | -- |
| Turbidity | NTU | 5 ⁵ | -- |
| Aluminum, Total Recoverable | mg/L | 1.0 ⁵ | -- |
| Cyanide, Total Recoverable | µg/L | 4.3 | 8.5 |
| Copper, Total Recoverable | µg/L | ⁶ | ⁶ |
| Mercury, Total Recoverable | µg/L | 0.051 | 0.10 |
| Selenium, Total Recoverable | µg/L | 4.1 | 8.2 |

- ¹ Within the range of 6.5 to 8.5 at all times.
- ² *E. coli* density shall not exceed a geometric mean of 126/100 ml.
- ³ *E. coli* density in a single sample shall not exceed 235/100 ml.
- ⁴ In accordance with applicable water quality objectives contained in Chapter 3 of the Basin Plan.
- ⁵ Applicable only to discharges to receiving waters or receiving waters with underlying groundwater designated for Municipal and Domestic Supply (MUN) use as specified in Tables 2-1 and 2-2 of the Basin Plan.
- ⁶ Action levels are hardness dependent. See Section VII of this Attachment for a listing of the applicable action levels.

Table G-6. Action Levels for Discharges to Inland Surface Waters, Enclosed Bays, and Estuaries (with receiving water salinity between 1 ppt and 10 ppt)

| Parameter | Units | Average Monthly | Daily Maximum |
|--------------------------------|----------------|----------------------|---------------------|
| pH | Standard units | 6.5-8.5 ¹ | |
| <i>E. coli</i> Bacteria | #/100 ml | 126 ² | 235 ³ |
| Total Coliform Bacteria | #/100 ml | 1,000 ⁴ | 10,000 ⁵ |
| Fecal Coliform Bacteria | #/100 ml | 200 ⁴ | 400 ⁵ |
| Enterococcus Bacteria | #/100 ml | 35 ⁴ | 104 ⁵ |
| Chloride | mg/L | ⁶ | -- |
| Nitrite Nitrogen, Total (as N) | mg/L | 1.0 ⁷ | -- |
| Sulfate | mg/L | ⁶ | -- |
| Total Dissolved Solids | mg/L | ⁶ | -- |
| Turbidity | NTU | 5 ⁷ | -- |
| Aluminum, Total Recoverable | mg/L | 1.0 ⁷ | -- |
| Cyanide, Total Recoverable | µg/L | 0.50 | 1.0 |
| Copper, Total Recoverable | µg/L | ⁸ | ⁸ |

| Parameter | Units | Average Monthly | Daily Maximum |
|-----------------------------|-------|-----------------|---------------|
| Mercury, Total Recoverable | µg/L | 0.051 | 0.10 |
| Selenium, Total Recoverable | µg/L | 4.1 | 8.2 |

- ¹ Within the range of 6.5 to 8.5 at all times.
- ² *E. coli* density shall not exceed a geometric mean of 126/100 ml.
- ³ *E. coli* density in a single sample shall not exceed 235/100 ml.
- ⁴ Total coliform density shall not exceed a geometric mean of 1,000/100 ml. Fecal coliform density shall not exceed a geometric mean of 200/100 ml. Enterococcus density shall not exceed a geometric mean of 35/100 ml.
- ⁵ Total coliform density in a single sample shall not exceed 10,000/100 ml. Fecal coliform density in a single sample shall not exceed 400/100 ml. Enterococcus density shall not exceed a geometric mean of 104/100 ml.
- ⁶ In accordance with applicable water quality objectives contained in Chapter 3 of the Basin Plan.
- ⁷ Applicable only to discharges to receiving waters or receiving waters with underlying groundwater designated for Municipal and Domestic Supply (MUN) use as specified in Tables 2-1 and 2-2 of the Basin Plan.
- ⁸ The applicable action level is the most stringent between corresponding Table G-5 and Table G-7 action levels.

Table G-7. Action Levels for Discharges to Inland Surface Waters, Enclosed Bays, and Estuaries (with receiving water salinity equal to or greater than 10 ppt 95% or more of the time)

| Parameter | Units | Average Monthly | Daily Maximum |
|--------------------------------|----------------|----------------------|-----------------------|
| pH | Standard units | 6.5-8.5 ¹ | |
| Total Coliform Bacteria | #/100 ml | 1,000 ^{2,3} | 10,000 ^{3,4} |
| Fecal Coliform Bacteria | #/100 ml | 200 ² | 400 ⁴ |
| Enterococcus Bacteria | #/100 ml | 35 ² | 104 ⁴ |
| Chloride | mg/L | ⁵ | -- |
| Nitrite Nitrogen, Total (as N) | mg/L | 1.0 ⁶ | -- |
| Sulfate | mg/L | ⁵ | -- |
| Total Dissolved Solids | mg/L | ⁵ | -- |
| Turbidity | NTU | 5 ⁶ | -- |
| Aluminum, Total Recoverable | mg/L | 1.0 ⁶ | -- |
| Cyanide, Total Recoverable | µg/L | 0.50 | 1.0 |
| Copper, Total Recoverable | µg/L | 2.9 | 5.8 |
| Mercury, Total Recoverable | µg/L | 0.051 | 0.10 |
| Selenium, Total Recoverable | µg/L | 58 | 117 |

- ¹ Within the range of 6.5 to 8.5 at all times.
- ² Total coliform density shall not exceed a geometric mean of 1,000/100 ml. Fecal coliform density shall not exceed a geometric mean of 200/100 ml. Enterococcus density shall not exceed a geometric mean of 35/100 ml.
- ³ In areas where shellfish may be harvested for human consumption, as determined by the Regional Water Board, the median total coliform density shall not exceed 70/100 ml and not more than 10 percent of the samples shall exceed 230/100 ml.
- ⁴ Total coliform density in a single sample shall not exceed 10,000/100 ml. Fecal coliform density in a single sample shall not exceed 400/100 ml. Enterococcus density shall not exceed a geometric mean of 104/100 ml.
- ⁵ In accordance with applicable water quality objectives contained in Chapter 3 of the Basin Plan.
- ⁶ Applicable only to discharges to receiving waters or receiving waters with underlying groundwater designated for Municipal and Domestic Supply (MUN) use as specified in Tables 2-1 and 2-2 of the Basin Plan.

Table G-8. Action Levels for Discharges to Ocean Waters (Surf Zone)

| Parameter | Units | 6-Month Median | Daily Maximum | Instantaneous Maximum |
|-----------------------------|----------------|----------------------|------------------|-----------------------|
| pH | Standard units | 6.0-9.0 ¹ | | |
| Total Coliform Bacteria | #/100 ml | 70 ² | 230 ² | -- |
| Fecal Coliform Bacteria | #/100 ml | -- | 200 ³ | 400 ⁴ |
| Enterococcus Bacteria | #/100 ml | -- | 35 ³ | 104 ⁴ |
| Turbidity | NTU | 75 | 100 | 225 |
| Cyanide, Total Recoverable | µg/L | 1 | 4 | 10 |
| Copper, Total Recoverable | µg/L | 3 | 12 | 30 |
| Mercury, Total Recoverable | µg/L | 0.04 | 0.16 | 0.4 |
| Selenium, Total Recoverable | µg/L | 15 | 60 | 150 |

- ¹ Within the range of 6.0 to 9.0 at all times.
² In areas where shellfish may be harvested for human consumption, as determined by the Regional Water Board, the median total coliform density shall not exceed 70/100 ml and not more than 10 percent of the samples shall exceed 230/100 ml.
³ Fecal coliform density shall not exceed a geometric mean of 200/100 ml. Enterococcus density shall not exceed a geometric mean of 35/100 ml.
⁴ Fecal coliform density in a single sample shall not exceed 400/100 ml. Enterococcus density shall not exceed a geometric mean of 104/100 ml.

III. DOMINGUEZ CHANNEL WATERSHED MANAGEMENT AREA

Table G-9. Action Levels for Discharges to Inland Surface Waters, Enclosed Bays, and Estuaries (with receiving water salinity equal to or less than 1 ppt)

| Parameter | Units | Average Monthly | Daily Maximum |
|-----------------------------|----------------|----------------------|------------------|
| pH | Standard units | 6.5-8.5 ¹ | |
| <i>E. coli</i> Bacteria | #/100 ml | 126 ² | 235 ³ |
| Cyanide, Total Recoverable | µg/L | 4.3 | 8.5 |
| Copper, Total Recoverable | µg/L | 4 | 4 |
| Lead, Total Recoverable | µg/L | 4 | 4 |
| Mercury, Total Recoverable | µg/L | 0.051 | 0.10 |
| Selenium, Total Recoverable | µg/L | 4.1 | 8.2 |

- ¹ Within the range of 6.5 to 8.5 at all times.
² *E. coli* density shall not exceed a geometric mean of 126/100 ml.
³ *E. coli* density in a single sample shall not exceed 235/100 ml.
⁴ Action levels are hardness dependent. See Section VII of this Attachment for a listing of the applicable action levels.

Table G-10. Action Levels for Discharges to Inland Surface Waters, Enclosed Bays, and Estuaries (with receiving water salinity between 1 ppt and 10 ppt)

| Parameter | Units | Average Monthly | Daily Maximum |
|-------------------------|----------|----------------------|---------------------|
| pH | s.u | 6.5-8.5 ¹ | |
| <i>E. coli</i> Bacteria | #/100 ml | 126 ² | 235 ³ |
| Total Coliform Bacteria | #/100 ml | 1,000 ⁴ | 10,000 ⁵ |

| Parameter | Units | Average Monthly | Daily Maximum |
|-----------------------------|----------|------------------|------------------|
| Fecal Coliform Bacteria | #/100 ml | 200 ⁴ | 400 ⁵ |
| Enterococcus Bacteria | #/100 ml | 35 ⁴ | 104 ⁵ |
| Cyanide, Total Recoverable | µg/L | 0.50 | 1.0 |
| Copper, Total Recoverable | µg/L | ⁶ | ⁶ |
| Lead, Total Recoverable | µg/L | ⁶ | ⁶ |
| Mercury, Total Recoverable | µg/L | 0.051 | 0.10 |
| Selenium, Total Recoverable | µg/L | 4.1 | 8.2 |

¹ Within the range of 6.5 to 8.5 at all times.

² *E. coli* density shall not exceed a geometric mean of 126/100 ml.

³ *E. coli* density in a single sample shall not exceed 235/100 ml.

⁴ Total coliform density shall not exceed a geometric mean of 1,000/100 ml. Fecal coliform density shall not exceed a geometric mean of 200/100 ml. Enterococcus density shall not exceed a geometric mean of 35/100 ml.

⁵ Total coliform density in a single sample shall not exceed 10,000/100 ml. Fecal coliform density in a single sample shall not exceed 400/100 ml. Enterococcus density shall not exceed a geometric mean of 104/100 ml.

⁶ The applicable action level is the most stringent between corresponding Table G-9 and Table G-11 action levels.

Table G-11. Action Levels for Discharges to Inland Surface Waters, Enclosed Bays, and Estuaries (with receiving water salinity equal to or greater than 10 ppt 95% or more of the time)

| Parameter | Units | Average Monthly | Daily Maximum |
|-----------------------------|----------|----------------------|-----------------------|
| pH | s.u | 6.5-8.5 ¹ | |
| Total Coliform Bacteria | #/100 ml | 1,000 ^{2,3} | 10,000 ^{3,4} |
| Fecal Coliform Bacteria | #/100 ml | 200 ² | 400 ⁴ |
| Enterococcus Bacteria | #/100 ml | 35 ² | 104 ⁴ |
| Cyanide, Total Recoverable | µg/L | 0.50 | 1.0 |
| Copper, Total Recoverable | µg/L | 2.9 | 5.8 |
| Lead, Total Recoverable | µg/L | 7.0 | 14 |
| Mercury, Total Recoverable | µg/L | 0.051 | 0.10 |
| Selenium, Total Recoverable | µg/L | 58 | 117 |

¹ Within the range of 6.5 to 8.5 at all times.

² Total coliform density shall not exceed a geometric mean of 1,000/100 ml. Fecal coliform density shall not exceed a geometric mean of 200/100 ml. Enterococcus density shall not exceed a geometric mean of 35/100 ml.

³ In areas where shellfish may be harvested for human consumption, as determined by the Regional Water Board, the median total coliform density shall not exceed 70/100 ml and not more than 10 percent of the samples shall exceed 230/100 ml.

⁴ Total coliform density in a single sample shall not exceed 10,000/100 ml. Fecal coliform density in a single sample shall not exceed 400/100 ml. Enterococcus density shall not exceed a geometric mean of 104/100 ml.

Table G-12. Action Levels for Discharges to Ocean Waters (Surf Zone)

| Parameter | Units | 6-Month Median | Daily Maximum | Instantaneous Maximum |
|----------------------------|----------|----------------------|------------------|-----------------------|
| pH | s.u | 6.0-9.0 ¹ | | |
| Total Coliform Bacteria | #/100 ml | 70 ² | 230 ² | -- |
| Fecal Coliform Bacteria | #/100 ml | -- | 200 ³ | 400 ⁴ |
| Enterococcus Bacteria | #/100 ml | -- | 35 ³ | 104 ⁴ |
| Cyanide, Total Recoverable | µg/L | 1 | 4 | 10 |
| Copper, Total Recoverable | µg/L | 3 | 12 | 30 |

| Parameter | Units | 6-Month Median | Daily Maximum | Instantaneous Maximum |
|-----------------------------|-------|----------------|---------------|-----------------------|
| Lead, Total Recoverable | µg/L | 2 | 8 | 20 |
| Mercury, Total Recoverable | µg/L | 0.04 | 0.16 | 0.4 |
| Selenium, Total Recoverable | µg/L | 15 | 60 | 150 |

¹ Within the range of 6.0 to 9.0 at all times.

² In areas where shellfish may be harvested for human consumption, as determined by the Regional Water Board, the median total coliform density shall not exceed 70/100 ml and not more than 10 percent of the samples shall exceed 230/100 ml.

³ Fecal coliform density shall not exceed a geometric mean of 200/100 ml. Enterococcus density shall not exceed a geometric mean of 35/100 ml.

⁴ Fecal coliform density in a single sample shall not exceed 400/100 ml. Enterococcus density shall not exceed a geometric mean of 104/100 ml.

IV. BALLONA CREEK WATERSHED MANAGEMENT AREA

Table G-13. Action Levels for Discharges to Inland Surface Waters, Enclosed Bays, and Estuaries (with receiving water salinity equal to or less than 1 ppt)

| Parameter | Units | Average Monthly | Daily Maximum |
|-----------------------------|----------------|----------------------|------------------|
| pH | Standard units | 6.5-8.5 ¹ | |
| <i>E. coli</i> Bacteria | #/100 ml | 126 ² | 235 ³ |
| Cyanide, Total Recoverable | µg/L | 4.3 | 8.5 |
| Copper, Total Recoverable | µg/L | 4 | 4 |
| Lead, Total Recoverable | µg/L | 4 | 4 |
| Mercury, Total Recoverable | µg/L | 0.051 | 0.10 |
| Selenium, Total Recoverable | µg/L | 4.1 | 8.2 |

¹ Within the range of 6.5 to 8.5 at all times.

² *E. coli* density shall not exceed a geometric mean of 126/100 ml.

³ *E. coli* density in a single sample shall not exceed 235/100 ml.

⁴ Action levels are hardness dependent. See Section VII of this Attachment for a listing of the applicable action levels.

Table G-14. Action Levels for Discharges to Inland Surface Waters, Enclosed Bays, and Estuaries (with receiving water salinity between 1 ppt and 10 ppt)

| Parameter | Units | Average Monthly | Daily Maximum |
|-----------------------------|----------------|----------------------|---------------------|
| pH | Standard units | 6.5-8.5 ¹ | |
| <i>E. coli</i> Bacteria | #/100 ml | 126 ² | 235 ³ |
| Total Coliform Bacteria | #/100 ml | 1,000 ⁴ | 10,000 ⁵ |
| Fecal Coliform Bacteria | #/100 ml | 200 ⁴ | 400 ⁵ |
| Enterococcus Bacteria | #/100 ml | 35 ⁴ | 104 ⁵ |
| Cyanide | µg/L | 0.50 | 1.0 |
| Copper, Total Recoverable | µg/L | 6 | 6 |
| Lead, Total Recoverable | µg/L | 6 | 6 |
| Mercury, Total Recoverable | µg/L | 0.051 | 0.1 |
| Selenium, Total Recoverable | µg/L | 4.1 | 8.2 |

¹ Within the range of 6.5 to 8.5 at all times.

² *E. coli* density shall not exceed a geometric mean of 126/100 ml.

- ³ *E. coli* density in a single sample shall not exceed 235/100 ml.
- ⁴ Total coliform density shall not exceed a geometric mean of 1,000/100 ml. Fecal coliform density shall not exceed a geometric mean of 200/100 ml. Enterococcus density shall not exceed a geometric mean of 35/100 ml.
- ⁵ Total coliform density in a single sample shall not exceed 10,000/100 ml. Fecal coliform density in a single sample shall not exceed 400/100 ml. Enterococcus density shall not exceed a geometric mean of 104/100 ml.
- ⁶ The applicable action level is the most stringent between corresponding Table G-13 and Table G-15 action levels.

Table G-15. Action Levels for Discharges to Inland Surface Waters, Enclosed Bays, and Estuaries (with receiving water salinity equal to or greater than 10 ppt 95% or more of the time)

| Parameter | Units | Average Monthly | Daily Maximum |
|-----------------------------|----------------|----------------------|-----------------------|
| pH | Standard units | 6.5-8.5 ¹ | |
| Total Coliform Bacteria | #/100 ml | 1,000 ^{2,3} | 10,000 ^{3,4} |
| Fecal Coliform Bacteria | #/100 ml | 200 ² | 400 ⁴ |
| Enterococcus Bacteria | #/100 ml | 35 ² | 104 ⁴ |
| Cyanide, Total Recoverable | µg/L | 0.50 | 1.0 |
| Copper, Total Recoverable | µg/L | 2.9 | 5.8 |
| Lead, Total Recoverable | µg/L | 7.0 | 14 |
| Mercury, Total Recoverable | µg/L | 0.051 | 0.1 |
| Selenium, Total Recoverable | µg/L | 58 | 117 |

- ¹ Within the range of 6.5 to 8.5 at all times.
- ² Total coliform density shall not exceed a geometric mean of 1,000/100 ml. Fecal coliform density shall not exceed a geometric mean of 200/100 ml. Enterococcus density shall not exceed a geometric mean of 35/100 ml.
- ³ In areas where shellfish may be harvested for human consumption, as determined by the Regional Water Board, the median total coliform density shall not exceed 70/100 ml and not more than 10 percent of the samples shall exceed 230/100 ml.
- ⁴ Total coliform density in a single sample shall not exceed 10,000/100 ml. Fecal coliform density in a single sample shall not exceed 400/100 ml. Enterococcus density shall not exceed a geometric mean of 104/100 ml.

Table G-16. Action Levels for Discharges to Ocean Waters (Surf Zone)

| Parameter | Units | 6-Month Median | Daily Maximum | Instantaneous Maximum |
|-----------------------------|----------------|----------------------|------------------|-----------------------|
| pH | Standard units | 6.0-9.0 ¹ | | |
| Total Coliform Bacteria | #/100 ml | 70 ² | 230 ² | -- |
| Fecal Coliform Bacteria | #/100 ml | -- | 200 ³ | 400 ⁴ |
| Enterococcus Bacteria | #/100 ml | -- | 35 ³ | 104 ⁴ |
| Cyanide, Total Recoverable | µg/L | 1 | 4 | 10 |
| Copper, Total Recoverable | µg/L | 3 | 12 | 30 |
| Lead, Total Recoverable | µg/L | 2 | 8 | 20 |
| Mercury, Total Recoverable | µg/L | 0.04 | 0.16 | 0.4 |
| Selenium, Total Recoverable | µg/L | 15 | 60 | 150 |

- ¹ Within the range of 6.0 to 9.0 at all times.
- ² In areas where shellfish may be harvested for human consumption, as determined by the Regional Water Board, the median total coliform density shall not exceed 70/100 ml and not more than 10 percent of the samples shall exceed 230/100 ml.
- ³ Fecal coliform density shall not exceed a geometric mean of 200/100 ml. Enterococcus density shall not exceed a geometric mean of 35/100 ml.

⁴ Fecal coliform density in a single sample shall not exceed 400/100 ml. Enterococcus density shall not exceed a geometric mean of 104/100 ml.

V. MALIBU CREEK WATERSHED MANAGEMENT AREA NON-STORM WATER ACTION LEVELS

Table G-17. Action Levels for Discharges to Inland Surface Waters, Enclosed Bays, and Estuaries (with receiving water salinity equal to or less than 1 ppt)

| Parameter | Units | Average Monthly | Daily Maximum |
|-----------------------------|----------|------------------|------------------|
| <i>E. coli</i> Bacteria | #/100 ml | 126 ¹ | 235 ² |
| Sulfate | mg/L | ³ | -- |
| Total Dissolved Solids | mg/L | ³ | -- |
| Cyanide, Total Recoverable | µg/L | 4.3 | 8.5 |
| Mercury, Total Recoverable | µg/L | 0.051 | 0.10 |
| Selenium, Total Recoverable | µg/L | 4.1 | 8.2 |

¹ *E. coli* density shall not exceed a geometric mean of 126/100 ml.

² *E. coli* density in a single sample shall not exceed 235/100 ml.

³ In accordance with applicable water quality objectives contained in Chapter 3 of the Basin Plan.

Table G-18. Action Levels for Discharges to Inland Surface Waters, Enclosed Bays, and Estuaries (with receiving water salinity between 1 ppt and 10 ppt)

| Parameter | Units | Average Monthly | Daily Maximum |
|-----------------------------|----------|--------------------|---------------------|
| <i>E. coli</i> Bacteria | #/100 ml | 126 ¹ | 235 ² |
| Total Coliform Bacteria | #/100 ml | 1,000 ³ | 10,000 ⁴ |
| Fecal Coliform Bacteria | #/100 ml | 200 ³ | 400 ⁴ |
| Enterococcus Bacteria | #/100 ml | 35 ³ | 104 ⁴ |
| Sulfate | mg/L | ⁵ | -- |
| Total Dissolved Solids | mg/L | ⁵ | -- |
| Cyanide, Total Recoverable | µg/L | 0.50 | 1.0 |
| Mercury, Total Recoverable | µg/L | 0.051 | 0.10 |
| Selenium, Total Recoverable | µg/L | 4.1 | 8.2 |

¹ *E. coli* density shall not exceed a geometric mean of 126/100 ml.

² *E. coli* density in a single sample shall not exceed 235/100 ml.

³ Total coliform density shall not exceed a geometric mean of 1,000/100 ml. Fecal coliform density shall not exceed a

geometric mean of 200/100 ml. Enterococcus density shall not exceed a geometric mean of 35/100 ml.

⁴ Total coliform density in a single sample shall not exceed 10,000/100 ml. Fecal coliform density in a single sample shall not exceed 400/100 ml. Enterococcus density shall not exceed a geometric mean of 104/100 ml.

⁵ In accordance with applicable water quality objectives contained in Chapter 3 of the Basin Plan.

Table G-19. Action Levels for Discharges to Inland Surface Waters, Enclosed Bays, and Estuaries (with receiving water salinity equal to or greater than 10 ppt 95% or more of the time)

| Parameter | Units | Average Monthly | Daily Maximum |
|-------------------------|----------|----------------------|-----------------------|
| Total Coliform Bacteria | #/100 ml | 1,000 ^{1,2} | 10,000 ^{2,3} |
| Fecal Coliform Bacteria | #/100 ml | 200 ¹ | 400 ³ |
| Enterococcus Bacteria | #/100 ml | 35 ¹ | 104 ³ |
| Sulfate | mg/L | ⁴ | -- |
| Total Dissolved Solids | mg/L | ⁴ | -- |

| Parameter | Units | Average Monthly | Daily Maximum |
|-----------------------------|-------|-----------------|---------------|
| Cyanide, Total Recoverable | µg/L | 0.50 | 1.0 |
| Mercury, Total Recoverable | µg/L | 0.051 | 0.10 |
| Selenium, Total Recoverable | µg/L | 58 | 117 |

¹ Total coliform density shall not exceed a geometric mean of 1,000/100 ml. Fecal coliform density shall not exceed a geometric mean of 200/100 ml. Enterococcus density shall not exceed a geometric mean of 35/100 ml.

² In areas where shellfish may be harvested for human consumption, as determined by the Regional Water Board, the median total coliform density shall not exceed 70/100 ml and not more than 10 percent of the samples shall exceed 230/100 ml.

³ Total coliform density in a single sample shall not exceed 10,000/100 ml. Fecal coliform density in a single sample shall not exceed 400/100 ml. Enterococcus density shall not exceed a geometric mean of 104/100 ml.

⁴ In accordance with applicable water quality objectives contained in Chapter 3 of the Basin Plan.

Table G-20. Action Levels for Discharges to Ocean Waters (Surf Zone)

| Parameter | Units | 6-Month Median | Daily Maximum | Instantaneous Maximum |
|-----------------------------|----------|-----------------|------------------|-----------------------|
| Total Coliform Bacteria | #/100 ml | 70 ¹ | 230 ¹ | -- |
| Fecal Coliform Bacteria | #/100 ml | -- | 200 ² | 400 ³ |
| Enterococcus Bacteria | #/100 ml | -- | 35 ² | 104 ³ |
| Cyanide, Total Recoverable | µg/L | 1 | 4 | 10 |
| Mercury, Total Recoverable | µg/L | 0.04 | 0.16 | 0.4 |
| Selenium, Total Recoverable | µg/L | 15 | 60 | 150 |

¹ In areas where shellfish may be harvested for human consumption, as determined by the Regional Water Board, the median total coliform density shall not exceed 70/100 ml and not more than 10 percent of the samples shall exceed 230/100 ml.

² Fecal coliform density shall not exceed a geometric mean of 200/100 ml. Enterococcus density shall not exceed a geometric mean of 35/100 ml.

³ Fecal coliform density in a single sample shall not exceed 400/100 ml. Enterococcus density shall not exceed a geometric mean of 104/100 ml.

VI. SAN GABRIEL RIVER WATERSHED MANAGEMENT AREA

Table G-21. Action Levels for Discharges to Inland Surface Waters, Enclosed Bays, and Estuaries (with receiving water salinity equal to or less than 1 ppt)

| Parameter | Units | Average Monthly | Daily Maximum |
|--------------------------------|----------------|----------------------|------------------|
| pH | Standard units | 6.0-9.0 ¹ | |
| <i>E. coli</i> Bacteria | #/100 ml | 126 ² | 235 ³ |
| Chloride | mg/L | 4 | -- |
| Nitrate Nitrogen, Total (as N) | mg/L | 4 | -- |
| Sulfate | mg/L | 4 | -- |
| Total Dissolved Solids | mg/L | 4 | -- |
| Aluminum, Total Recoverable | mg/L | 1.0 ⁵ | -- |
| Cyanide, Total Recoverable | µg/L | 4.3 | 8.5 |
| Cadmium, Total Recoverable | µg/L | 6 | 6 |

| Parameter | Units | Average Monthly | Daily Maximum |
|-----------------------------|-------|-----------------|---------------|
| Copper, Total Recoverable | µg/L | 6 | 6 |
| Lead, Total Recoverable | µg/L | 6 | 6 |
| Mercury, Total Recoverable | µg/L | 0.051 | 0.10 |
| Nickel, Total Recoverable | µg/L | 6 | 6 |
| Selenium, Total Recoverable | µg/L | 4.1 | 8.2 |
| Silver, Total Recoverable | µg/L | 6 | 6 |
| Zinc, Total Recoverable | µg/L | 6 | 6 |

- ¹ Within the range of 6.5 to 8.5 at all times.
² *E. coli* density shall not exceed a geometric mean of 126/100 ml.
³ *E. coli* density in a single sample shall not exceed 235/100 ml.
⁴ In accordance with applicable water quality objectives contained in Chapter 3 of the Basin Plan.
⁵ Applicable only to discharges to receiving waters or receiving waters with underlying groundwater designated for Municipal and Domestic Supply (MUN) use as specified in Tables 2-1 and 2-2 of the Basin Plan.
⁶ Action levels are hardness dependent. See Section VII of this Attachment for a listing of the applicable action levels.

Table G-22. Action Levels for Discharges to Inland Surface Waters, Enclosed Bays, and Estuaries (with receiving water salinity between 1 ppt and 10 ppt)

| Parameter | Units | Average Monthly | Daily Maximum |
|--------------------------------|----------------|----------------------|---------------------|
| pH | Standard units | 6.0-9.0 ¹ | |
| <i>E. coli</i> Bacteria | #/100 ml | 126 ² | 235 ³ |
| Total Coliform Bacteria | #/100 ml | 1,000 ⁴ | 10,000 ⁵ |
| Fecal Coliform Bacteria | #/100 ml | 200 ⁴ | 400 ⁵ |
| Enterococcus Bacteria | #/100 ml | 35 ⁴ | 104 ⁵ |
| Chloride | mg/L | 6 | -- |
| Nitrate Nitrogen, Total (as N) | mg/L | 6 | -- |
| Sulfate | mg/L | 6 | -- |
| Total Dissolved Solids | mg/L | 6 | -- |
| Aluminum, Total Recoverable | mg/L | 1.0 ⁷ | -- |
| Cyanide, Total Recoverable | µg/L | 0.50 | 1.0 |
| Cadmium, Total Recoverable | µg/L | 8 | 8 |
| Copper, Total Recoverable | µg/L | 8 | 8 |
| Lead, Total Recoverable | µg/L | 8 | 8 |
| Mercury, Total Recoverable | µg/L | 0.051 | 0.10 |
| Nickel, Total Recoverable | µg/L | 8 | 8 |
| Selenium, Total Recoverable | µg/L | 4.1 | 8.2 |
| Silver, Total Recoverable | µg/L | 8 | 8 |
| Zinc, Total Recoverable | µg/L | 8 | 8 |

- ¹ Within the range of 6.5 to 8.5 at all times.
² *E. coli* density shall not exceed a geometric mean of 126/100 ml.
³ *E. coli* density in a single sample shall not exceed 235/100 ml.
⁴ Total coliform density shall not exceed a geometric mean of 1,000/100 ml. Fecal coliform density shall not exceed a geometric mean of 200/100 ml. Enterococcus density shall not exceed a geometric mean of 35/100 ml.
⁵ Total coliform density in a single sample shall not exceed 10,000/100 ml. Fecal coliform density in a single sample shall not exceed 400/100 ml. Enterococcus density shall not exceed a geometric mean of 104/100 ml.
⁶ In accordance with applicable water quality objectives contained in Chapter 3 of the Basin Plan.
⁷ Applicable only to discharges to receiving waters designated for Municipal and Domestic Supply (MUN) use as specified in Tables 2-1 and 2-2 of the Basin Plan.
⁸ The applicable action level is the most stringent between corresponding Table G-21 and Table G-23 action levels.

Table G-23. Action Levels for Discharges to Inland Surface Waters, Enclosed Bays, and Estuaries (with receiving water salinity equal to or greater than 10 ppt 95% or more of the time)

| Parameter | Units | Average Monthly | Daily Maximum |
|--------------------------------|----------------|----------------------|-----------------------|
| pH | Standard units | 6.0-9.0 ¹ | |
| Total Coliform Bacteria | #/100 ml | 1,000 ^{2,3} | 10,000 ^{2,4} |
| Fecal Coliform Bacteria | #/100 ml | 200 ² | 400 ⁴ |
| Enterococcus Bacteria | #/100 ml | 35 ² | 104 ⁴ |
| Chloride | mg/L | 5 | -- |
| Nitrate Nitrogen, Total (as N) | mg/L | 5 | -- |
| Sulfate | mg/L | 5 | -- |
| Total Dissolved Solids | mg/L | 5 | -- |
| Aluminum, Total Recoverable | mg/L | 1.0 ⁶ | -- |
| Cyanide, Total Recoverable | µg/L | 0.50 | 1.0 |
| Cadmium, Total Recoverable | µg/L | 7.7 | 15 |
| Copper, Total Recoverable | µg/L | 2.9 | 5.8 |
| Lead, Total Recoverable | µg/L | 7.0 | 14 |
| Mercury, Total Recoverable | µg/L | 0.051 | 0.10 |
| Nickel, Total Recoverable | µg/L | 6.8 | 14 |
| Silver, Total Recoverable | µg/L | 1.1 | 2.2 |
| Selenium, Total Recoverable | µg/L | 58 | 117 |
| Zinc, Total Recoverable | µg/L | 47 | 95 |

- ¹ Within the range of 6.5 to 8.5 at all times.
- ² Total coliform density shall not exceed a geometric mean of 1,000/100 ml. Fecal coliform density shall not exceed a geometric mean of 200/100 ml. Enterococcus density shall not exceed a geometric mean of 35/100 ml.
- ³ In areas where shellfish may be harvested for human consumption, as determined by the Regional Water Board, the median total coliform density shall not exceed 70/100 ml and not more than 10 percent of the samples shall exceed 230/100 ml.
- ⁴ Total coliform density in a single sample shall not exceed 10,000/100 ml. Fecal coliform density in a single sample shall not exceed 400/100 ml. Enterococcus density shall not exceed a geometric mean of 104/100 ml.
- ⁵ In accordance with applicable water quality objectives contained in Chapter 3 of the Basin Plan.
- ⁶ Applicable only to discharges to receiving waters designated for Municipal and Domestic Supply (MUN) use as specified in Tables 2-1 and 2-2 of the Basin Plan.

Table G-24. Action Levels for Discharges to Ocean Waters (Surf Zone)

| Parameter | Units | 6-Month Median | Daily Maximum | Instantaneous Maximum |
|----------------------------|----------------|----------------------|------------------|-----------------------|
| pH | Standard units | 6.0-9.0 ¹ | | |
| Total Coliform Bacteria | #/100 ml | 70 ² | 230 ² | -- |
| Fecal Coliform Bacteria | #/100 ml | -- | 200 ³ | 400 ⁴ |
| Enterococcus | #/100 ml | -- | 35 ³ | 104 ⁴ |
| Cyanide, Total Recoverable | µg/L | 1 | 4 | 10 |
| Cadmium, Total Recoverable | µg/L | 1 | 4 | 10 |
| Copper, Total Recoverable | µg/L | 3 | 12 | 30 |

| Parameter | Units | 6-Month Median | Daily Maximum | Instantaneous Maximum |
|-----------------------------|-------|----------------|---------------|-----------------------|
| Lead, Total Recoverable | µg/L | 2 | 8 | 20 |
| Mercury, Total Recoverable | µg/L | 0.04 | 0.16 | 0.4 |
| Nickel, Total Recoverable | µg/L | 5 | 20 | 50 |
| Silver, Total Recoverable | µg/L | 0.7 | 2.8 | 7.0 |
| Selenium, Total Recoverable | µg/L | 15 | 60 | 150 |
| Zinc, Total Recoverable | µg/L | 20 | 80 | 200 |

- ¹ Within the range of 6.0 to 9.0 at all times.
- ² In areas where shellfish may be harvested for human consumption, as determined by the Regional Water Board, the median total coliform density shall not exceed 70/100 ml and not more than 10 percent of the samples shall exceed 230/100 ml.
- ³ Fecal coliform density shall not exceed a geometric mean of 200/100 ml. Enterococcus density shall not exceed a geometric mean of 35/100 ml.
- ⁴ Fecal coliform density in a single sample shall not exceed 400/100 ml. Enterococcus density shall not exceed a geometric mean of 104/100 ml.

VII. HARDNESS-BASED ACTION LEVELS FOR METALS

| Cadmium, Total Recoverable | | | | | | | | |
|---------------------------------------|-------------|-------------|---------------------------------------|-------------|-------------|---------------------------------------|-------------|-------------|
| Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) | Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) | Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) |
| 5.0 | 0.1 | 0.2 | 125.0 | 2.4 | 4.8 | 245.0 | 4.1 | 8.2 |
| 10.0 | 0.2 | 0.3 | 130.0 | 2.5 | 5.0 | 250.0 | 4.1 | 8.3 |
| 15.0 | 0.3 | 0.5 | 135.0 | 2.5 | 5.1 | 255.0 | 4.2 | 8.4 |
| 20.0 | 0.4 | 0.7 | 140.0 | 2.6 | 5.3 | 260.0 | 4.3 | 8.5 |
| 25.0 | 0.5 | 0.9 | 145.0 | 2.7 | 5.4 | 265.0 | 4.3 | 8.7 |
| 30.0 | 0.6 | 1.2 | 150.0 | 2.8 | 5.5 | 270.0 | 4.4 | 8.8 |
| 35.0 | 0.7 | 1.4 | 155.0 | 2.8 | 5.7 | 275.0 | 4.5 | 8.9 |
| 40.0 | 0.8 | 1.6 | 160.0 | 2.9 | 5.8 | 280.0 | 4.5 | 9.1 |
| 45.0 | 0.9 | 1.8 | 165.0 | 3.0 | 6.0 | 285.0 | 4.6 | 9.2 |
| 50.0 | 1.0 | 2.1 | 170.0 | 3.1 | 6.1 | 290.0 | 4.6 | 9.3 |
| 55.0 | 1.1 | 2.3 | 175.0 | 3.1 | 6.3 | 295.0 | 4.7 | 9.4 |
| 60.0 | 1.3 | 2.5 | 180.0 | 3.2 | 6.4 | 300.0 | 4.8 | 9.6 |
| 65.0 | 1.4 | 2.8 | 185.0 | 3.3 | 6.5 | 310.0 | 4.9 | 9.8 |
| 70.0 | 1.5 | 3.0 | 190.0 | 3.3 | 6.7 | 320.0 | 5.0 | 10.1 |
| 75.0 | 1.6 | 3.2 | 195.0 | 3.4 | 6.8 | 330.0 | 5.1 | 10.3 |
| 80.0 | 1.7 | 3.4 | 200.0 | 3.5 | 7.0 | 340.0 | 5.3 | 10.5 |
| 85.0 | 1.8 | 3.6 | 205.0 | 3.5 | 7.1 | 350.0 | 5.4 | 10.8 |
| 90.0 | 1.9 | 3.7 | 210.0 | 3.6 | 7.2 | 360.0 | 5.5 | 11.0 |
| 95.0 | 1.9 | 3.9 | 215.0 | 3.7 | 7.4 | 370.0 | 5.6 | 11.3 |
| 100.0 | 2.0 | 4.0 | 220.0 | 3.7 | 7.5 | 380.0 | 5.7 | 11.5 |
| 105.0 | 2.1 | 4.2 | 225.0 | 3.8 | 7.6 | 390.0 | 5.9 | 11.7 |
| 110.0 | 2.2 | 4.3 | 230.0 | 3.9 | 7.8 | 400.0 | 6.0 | 12.0 |
| 115.0 | 2.2 | 4.5 | 235.0 | 3.9 | 7.9 | >400 | 6.0 | 12.0 |

| Cadmium, Total Recoverable | | | | | | | | |
|---|----------------|----------------|---|----------------|----------------|---|----------------|----------------|
| Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) | Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) | Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) |
| 120.0 | 2.3 | 4.7 | 240.0 | 4.0 | 8.0 | | | |

| Copper, Total Recoverable | | | | | | | | |
|---|----------------|----------------|---|----------------|----------------|---|----------------|----------------|
| Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) | Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) | Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) |
| 5.0 | 0.4 | 0.8 | 125.0 | 8.6 | 17.2 | 245.0 | 16.2 | 32.5 |
| 10.0 | 0.8 | 1.6 | 130.0 | 8.9 | 17.9 | 250.0 | 16.5 | 33.1 |
| 15.0 | 1.2 | 2.3 | 135.0 | 9.2 | 18.5 | 255.0 | 16.8 | 33.8 |
| 20.0 | 1.5 | 3.1 | 140.0 | 9.6 | 19.2 | 260.0 | 17.1 | 34.4 |
| 25.0 | 1.9 | 3.8 | 145.0 | 9.9 | 19.8 | 265.0 | 17.4 | 35.0 |
| 30.0 | 2.2 | 4.5 | 150.0 | 10.2 | 20.5 | 270.0 | 17.8 | 35.6 |
| 35.0 | 2.6 | 5.2 | 155.0 | 10.5 | 21.1 | 275.0 | 18.1 | 36.2 |
| 40.0 | 2.9 | 5.9 | 160.0 | 10.8 | 21.8 | 280.0 | 18.4 | 36.9 |
| 45.0 | 3.3 | 6.6 | 165.0 | 11.2 | 22.4 | 285.0 | 18.6 | 37.4 |
| 50.0 | 3.6 | 7.3 | 170.0 | 11.5 | 23.0 | 290.0 | 18.9 | 38.0 |
| 55.0 | 4.0 | 8.0 | 175.0 | 11.8 | 23.7 | 295.0 | 19.2 | 38.5 |
| 60.0 | 4.3 | 8.6 | 180.0 | 12.1 | 24.3 | 300.0 | 19.5 | 39.1 |
| 65.0 | 4.6 | 9.3 | 185.0 | 12.4 | 25.0 | 310.0 | 20.0 | 40.2 |
| 70.0 | 5.0 | 10.0 | 190.0 | 12.8 | 25.6 | 320.0 | 20.6 | 41.3 |
| 75.0 | 5.3 | 10.7 | 195.0 | 13.1 | 26.2 | 330.0 | 21.1 | 42.4 |
| 80.0 | 5.6 | 11.3 | 200.0 | 13.4 | 26.9 | 340.0 | 21.7 | 43.5 |
| 85.0 | 6.0 | 12.0 | 205.0 | 13.7 | 27.5 | 350.0 | 22.2 | 44.6 |
| 90.0 | 6.3 | 12.7 | 210.0 | 14.0 | 28.1 | 360.0 | 22.8 | 45.7 |
| 95.0 | 6.6 | 13.3 | 215.0 | 14.3 | 28.7 | 370.0 | 23.3 | 46.8 |
| 100.0 | 7.0 | 14.0 | 220.0 | 14.6 | 29.4 | 380.0 | 23.8 | 47.8 |
| 105.0 | 7.3 | 14.6 | 225.0 | 15.0 | 30.0 | 390.0 | 24.4 | 48.9 |
| 110.0 | 7.6 | 15.3 | 230.0 | 15.3 | 30.6 | 400.0 | 24.9 | 50.0 |
| 115.0 | 7.9 | 15.9 | 235.0 | 15.6 | 31.3 | >400 | 24.9 | 50.0 |
| 120.0 | 8.3 | 16.6 | 240.0 | 15.9 | 31.9 | | | |

| Lead, Total Recoverable | | | | | | | | |
|---|----------------|----------------|---|----------------|----------------|---|----------------|----------------|
| Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) | Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) | Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) |
| 5.0 | 0.1 | 0.1 | 125.0 | 3.5 | 6.9 | 245.0 | 8.1 | 16.3 |
| 10.0 | 0.1 | 0.3 | 130.0 | 3.6 | 7.3 | 250.0 | 8.3 | 16.7 |
| 15.0 | 0.2 | 0.5 | 135.0 | 3.8 | 7.6 | 255.0 | 8.6 | 17.2 |
| 20.0 | 0.3 | 0.7 | 140.0 | 4.0 | 8.0 | 260.0 | 8.8 | 17.6 |
| 25.0 | 0.4 | 0.9 | 145.0 | 4.2 | 8.4 | 265.0 | 9.0 | 18.0 |
| 30.0 | 0.6 | 1.1 | 150.0 | 4.4 | 8.7 | 270.0 | 9.2 | 18.5 |
| 35.0 | 0.7 | 1.4 | 155.0 | 4.5 | 9.1 | 275.0 | 9.4 | 18.9 |
| 40.0 | 0.8 | 1.6 | 160.0 | 4.7 | 9.5 | 280.0 | 9.6 | 19.3 |

| Lead, Total Recoverable | | | | | | | | |
|---|----------------|----------------|---|----------------|----------------|---|----------------|----------------|
| Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) | Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) | Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) |
| 45.0 | 0.9 | 1.9 | 165.0 | 4.9 | 9.9 | 285.0 | 9.9 | 19.8 |
| 50.0 | 1.1 | 2.2 | 170.0 | 5.1 | 10.2 | 290.0 | 10.1 | 20.2 |
| 55.0 | 1.2 | 2.4 | 175.0 | 5.3 | 10.6 | 295.0 | 10.3 | 20.7 |
| 60.0 | 1.4 | 2.7 | 180.0 | 5.5 | 11.0 | 300.0 | 10.5 | 21.1 |
| 65.0 | 1.5 | 3.0 | 185.0 | 5.7 | 11.4 | 310.0 | 11.0 | 22.0 |
| 70.0 | 1.7 | 3.3 | 190.0 | 5.9 | 11.8 | 320.0 | 11.4 | 22.9 |
| 75.0 | 1.8 | 3.6 | 195.0 | 6.1 | 12.2 | 330.0 | 11.9 | 23.8 |
| 80.0 | 2.0 | 3.9 | 200.0 | 6.3 | 12.6 | 340.0 | 12.3 | 24.8 |
| 85.0 | 2.1 | 4.2 | 205.0 | 6.5 | 13.0 | 350.0 | 12.8 | 25.7 |
| 90.0 | 2.3 | 4.6 | 210.0 | 6.7 | 13.4 | 360.0 | 13.3 | 26.6 |
| 95.0 | 2.4 | 4.9 | 215.0 | 6.9 | 13.8 | 370.0 | 13.7 | 27.6 |
| 100.0 | 2.6 | 5.2 | 220.0 | 7.1 | 14.2 | 380.0 | 14.2 | 28.5 |
| 105.0 | 2.8 | 5.5 | 225.0 | 7.3 | 14.6 | 390.0 | 14.7 | 29.5 |
| 110.0 | 2.9 | 5.9 | 230.0 | 7.5 | 15.1 | 400.0 | 15.2 | 30.5 |
| 115.0 | 3.1 | 6.2 | 235.0 | 7.7 | 15.5 | >400 | 15.2 | 30.5 |
| 120.0 | 3.3 | 6.6 | 240.0 | 7.9 | 15.9 | | | |

| Nickel, Total Recoverable | | | | | | | | |
|---|----------------|----------------|---|----------------|----------------|---|----------------|----------------|
| Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) | Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) | Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) |
| 5.0 | 3.4 | 6.8 | 125.0 | 51.5 | 103.3 | 245.0 | 90.9 | 182.5 |
| 10.0 | 6.1 | 12.2 | 130.0 | 53.2 | 106.7 | 250.0 | 92.5 | 185.6 |
| 15.0 | 8.6 | 17.2 | 135.0 | 54.9 | 110.2 | 255.0 | 94.1 | 188.7 |
| 20.0 | 10.9 | 21.9 | 140.0 | 56.6 | 113.6 | 260.0 | 95.6 | 191.9 |
| 25.0 | 13.2 | 26.5 | 145.0 | 58.3 | 117.1 | 265.0 | 97.2 | 195.0 |
| 30.0 | 15.4 | 30.9 | 150.0 | 60.0 | 120.5 | 270.0 | 98.7 | 198.1 |
| 35.0 | 17.5 | 35.2 | 155.0 | 61.7 | 123.9 | 275.0 | 100.3 | 201.2 |
| 40.0 | 19.6 | 39.4 | 160.0 | 63.4 | 127.2 | 280.0 | 101.8 | 204.3 |
| 45.0 | 21.7 | 43.5 | 165.0 | 65.1 | 130.6 | 285.0 | 103.3 | 207.4 |
| 50.0 | 23.7 | 47.6 | 170.0 | 66.8 | 133.9 | 290.0 | 104.9 | 210.4 |
| 55.0 | 25.7 | 51.6 | 175.0 | 68.4 | 137.3 | 295.0 | 106.4 | 213.5 |
| 60.0 | 27.7 | 55.5 | 180.0 | 70.1 | 140.6 | 300.0 | 107.9 | 216.6 |
| 65.0 | 29.6 | 59.4 | 185.0 | 71.7 | 143.9 | 310.0 | 111.0 | 222.7 |
| 70.0 | 31.5 | 63.2 | 190.0 | 73.3 | 147.1 | 320.0 | 114.0 | 228.7 |
| 75.0 | 33.4 | 67.0 | 195.0 | 75.0 | 150.4 | 330.0 | 117.0 | 234.7 |
| 80.0 | 35.3 | 70.8 | 200.0 | 76.6 | 153.7 | 340.0 | 120.0 | 240.7 |
| 85.0 | 37.1 | 74.5 | 205.0 | 78.2 | 156.9 | 350.0 | 123.0 | 246.7 |
| 90.0 | 39.0 | 78.2 | 210.0 | 79.8 | 160.2 | 360.0 | 125.9 | 252.7 |
| 95.0 | 40.8 | 81.9 | 215.0 | 81.4 | 163.4 | 370.0 | 128.9 | 258.6 |
| 100.0 | 42.6 | 85.5 | 220.0 | 83.0 | 166.6 | 380.0 | 131.8 | 264.5 |
| 105.0 | 44.4 | 89.1 | 225.0 | 84.6 | 169.8 | 390.0 | 134.8 | 270.4 |
| 110.0 | 46.2 | 92.7 | 230.0 | 86.2 | 173.0 | 400.0 | 137.7 | 276.2 |
| 115.0 | 48.0 | 96.2 | 235.0 | 87.8 | 176.1 | >400 | 137.7 | 276.2 |

| Nickel, Total Recoverable | | | | | | | | |
|---|----------------|----------------|---|----------------|----------------|---|----------------|----------------|
| Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) | Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) | Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) |
| 120.0 | 49.7 | 99.8 | 240.0 | 89.4 | 179.3 | | | |

| Zinc, Total Recoverable | | | | | | | | |
|---|----------------|----------------|---|----------------|----------------|---|----------------|----------------|
| Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) | Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) | Hardness (mg/L as CaCO ₃) | AMAL (µg/L) | MDAL (µg/L) |
| 5.0 | 4.7 | 9.4 | 125.0 | 72.0 | 144.5 | 245.0 | 127.4 | 255.6 |
| 10.0 | 8.5 | 17.0 | 130.0 | 74.5 | 149.4 | 250.0 | 129.6 | 260.0 |
| 15.0 | 11.9 | 24.0 | 135.0 | 76.9 | 154.2 | 255.0 | 131.8 | 264.4 |
| 20.0 | 15.2 | 30.6 | 140.0 | 79.3 | 159.1 | 260.0 | 134.0 | 268.8 |
| 25.0 | 18.4 | 37.0 | 145.0 | 81.7 | 163.9 | 265.0 | 136.1 | 273.1 |
| 30.0 | 21.5 | 43.1 | 150.0 | 84.1 | 168.6 | 270.0 | 138.3 | 277.5 |
| 35.0 | 24.5 | 49.1 | 155.0 | 86.4 | 173.4 | 275.0 | 140.5 | 281.9 |
| 40.0 | 27.4 | 55.0 | 160.0 | 88.8 | 178.1 | 280.0 | 142.6 | 286.2 |
| 45.0 | 30.3 | 60.8 | 165.0 | 91.1 | 182.8 | 285.0 | 144.8 | 290.5 |
| 50.0 | 33.1 | 66.5 | 170.0 | 93.5 | 187.5 | 290.0 | 146.9 | 294.8 |
| 55.0 | 35.9 | 72.1 | 175.0 | 95.8 | 192.2 | 295.0 | 149.1 | 299.1 |
| 60.0 | 38.7 | 77.6 | 180.0 | 98.1 | 196.8 | 300.0 | 151.2 | 303.4 |
| 65.0 | 41.4 | 83.0 | 185.0 | 100.4 | 201.4 | 310.0 | 155.5 | 312.0 |
| 70.0 | 44.1 | 88.4 | 190.0 | 102.7 | 206.0 | 320.0 | 159.7 | 320.5 |
| 75.0 | 46.7 | 93.7 | 195.0 | 105.0 | 210.6 | 330.0 | 163.9 | 328.9 |
| 80.0 | 49.3 | 99.0 | 200.0 | 107.3 | 215.2 | 340.0 | 168.1 | 337.4 |
| 85.0 | 51.9 | 104.2 | 205.0 | 109.5 | 219.8 | 350.0 | 172.3 | 345.8 |
| 90.0 | 54.5 | 109.4 | 210.0 | 111.8 | 224.3 | 360.0 | 176.5 | 354.1 |
| 95.0 | 57.1 | 114.5 | 215.0 | 114.0 | 228.8 | 370.0 | 180.6 | 362.4 |
| 100.0 | 59.6 | 119.6 | 220.0 | 116.3 | 233.3 | 380.0 | 184.8 | 370.7 |
| 105.0 | 62.1 | 124.7 | 225.0 | 118.5 | 237.8 | 390.0 | 188.9 | 379.0 |
| 110.0 | 64.6 | 129.7 | 230.0 | 120.7 | 242.3 | 400.0 | 193.0 | 387.2 |
| 115.0 | 67.1 | 134.7 | 235.0 | 123.0 | 246.7 | >400 | 193.0 | 387.2 |
| 120.0 | 69.6 | 139.6 | 240.0 | 125.2 | 251.2 | | | |

VIII. MUNICIPAL ACTION LEVELS

Conventional Pollutants

| Pollutants | pH | TSS mg/L | COD mg/L | Kjedahl Nitrogen (TKN) mg/L | Nitrate & Nitrite- total mg/L | P- total mg/L |
|------------------------------|-------------|-------------|-------------|-----------------------------------|----------------------------------|------------------|
| Municipal Action Level | 6.0- 9.0 | 264.1 | 247.5 | 4.59 | 1.85 | 0.80 |

Metals

| Pollutants | Cd- total µg/L | Cr-total µg/L | Cu- total µg/L | Pb- total µg/L | Ni- total µg/L | Zn- total µg/L | Hg- total µg/L |
|------------------------------|-------------------|------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| Municipal Action Level | 2.52 | 20.20 | 71.12 | 102.00 | 27.43 | 641.3 | 0.32 |

This Order establishes Municipal Action Levels (MALs) to identify subwatersheds requiring additional Best Management Practices (BMPs) to reduce pollutant loads and prioritize implementation of additional BMPs. MALs for selected pollutants are based on nationwide Phase I MS4 monitoring data for pollutants in storm water (<http://unix.eng.ua.edu/~rpitt/Research/Research.shtml>, last visited on May 9, 2012). The MALs were obtained by computing the upper 25th percentile for selected pollutants using the statistical program Minitab. Non-detects were removed from the data set and all data from the database were used.

Under this Order, the Municipal Action Levels (MALs) shall be utilized by Permittees to identify subwatersheds discharging pollutants at levels in excess of the MALs. Within those subwatersheds where pollutant levels in the discharge are in excess of the MALs, Permittees shall implement controls and measures necessary to reduce the discharge of pollutants.

In order to determine if MS4 discharges are in excess of the MALs, Permittees shall conduct outfall monitoring as required in the Monitoring and Reporting Program (MRP) (Attachment E). A MAL Assessment Report shall be submitted to the Regional Water Board Executive Officer as part of the Annual Report. The MAL Assessment Report shall present the monitoring data in comparison to the applicable MALs, and identify those subwatersheds with a running average of twenty percent or greater of exceedances of the MALs listed in this attachment in discharges of storm water from the MS4.

Beginning in Year 3 after the effective date of this Order, each Permittee shall submit a MAL Action Plan with the Annual Report (first MAL Action Plan due with December 15, 2015 Annual Report) to the Regional Water Board Executive Officer, for those subwatersheds with a running average of twenty percent or greater of exceedances of the MALs in any discharge of

storm water from the MS4. The plan shall include an assessment of the sources responsible for the MAL exceedances, the existing storm water programs and BMPs that address those sources, an assessment of potential program enhancements, alternative BMPs and actions the Permittee shall implement to reduce discharges to a level that is equivalent to or below the MALs, and an implementation schedule for such actions for Executive Officer approval. The MAL Action Plan shall provide the technical rationale to demonstrate the proposed measures and controls will attain the MALs. If the MAL Action Plan is not approved within 90 days of the due date, the Executive Officer may establish an appropriate plan with at least 90 day notification and consultation to the Permittees.

Within 90 days of the plan approval by the Regional Water Board Executive Officer, the Permittee shall initiate the BMPs and actions proposed in the MAL Action Plan, together with any other practicable BMPs or actions that the Executive Officer determines to be necessary to meet the MALs. The Permittee shall complete the proposed actions in accordance with the approved implementation schedule.

Upon completion of the actions specified in the approved MAL Action Plan, the Permittee shall re-monitor the subject subwatershed in accordance with the MRP, and submit a Post-Project MAL Assessment Report to the Regional Water Board Executive Officer.

Implementation of an approved Watershed Management Program per Part VI.C of the Order fulfills all requirements related to the development and implementation of the MAL Action Plan.

As additional data become available through the MRP or from the Regional Subset of the National Dataset, MALs may be revised annually by the Regional Water Board Executive Officer in accordance with an equivalent statistical method as that used to establish the MALs in this attachment with at least 90 day notification and consultation to the Permittees.

ATTACHMENT H. BIORETENTION / BIOFILTRATION DESIGN CRITERIA

Note: A significant portion of the information in this appendix has been copied verbatim from the *Ventura County Technical Guidance Manual*, Updated 2011, and modified to reflect recent changes to the bioretention/biofiltration soil media specifications as adopted by the California Regional Water Quality Control Board, San Francisco Region, on November 28, 2011, Order No. R2-2011-083, Attachment L. Permittees can submit alternate Bioretention/Biofiltration Design Criteria subject to Executive Officer approval.

1. Geometry

- a. Bioretention/biofiltration areas shall be sized to capture and treat the design with an 18-inch maximum ponding depth. *The intention is that the ponding depth be limited to a depth that will allow for a healthy vegetation layer.*
- b. Minimum planting soil depth should be 2 feet, although 3 feet is preferred. *The intention is that the minimum planting soil depth should provide a beneficial root zone for the chosen plant palette and adequate water storage for the SWQDv.*
- c. A gravel storage layer below the bioretention/biofiltration soil media is required as necessary to provide adequate temporary storage to retain the SWQDv and to promote infiltration.

2. Drainage

- a. Bioretention and biofiltration BMPs should be designed to drain below the planting soil in less than 48 hours and completely drain in less than 96 hours. *The intention is that soils must be allowed to dry out periodically in order to restore hydraulic capacity needed to receive flows from subsequent storms, maintain infiltration rates, maintain adequate soil oxygen levels for healthy soil biota and vegetation, and to provide proper soil conditions for biodegradation and retention of pollutants.*
- b. *Biofiltration BMPs are designed and constructed with an underdrain. The underdrain is preferably placed near the top of the gravel storage area to promote incidental infiltration and enhanced nitrogen removal.* However, if *in-situ*, underlying soils do not provide sufficient drainage, the underdrain may need to be placed lower in the gravel storage area (within 6 inches of the bottom) to prevent the unit from holding stagnant water for extended periods of time. At many sites, clay soils will drain sufficiently fast, particularly if they are not compacted. Observing soil moisture and surface conditions in the days following a wet period may provide sufficient information for making this decision and may be more directly applicable than *in situ* or laboratory testing of soil characteristics¹.

3. Overflow

An overflow device is required at the 18-inch ponding depth. The following, or equivalent, should be provided:

- a. A vertical PVC pipe (SDR 35) to act as an overflow riser.

¹ Dan Cloak, Dan Cloak Environmental Consulting to Tom Dalziel, Contra Costa County, February 22, 2011.

- b. The overflow riser(s) should be 6 inches or greater in diameter, so it can be cleaned without damage to the pipe.

The inlet to the riser should be at the ponding depth (18 inches for fenced bioretention areas and 6 inches for areas that are not fenced), and be capped with a spider cap to exclude floating mulch and debris. Spider caps should be screwed in or glued, i.e., not removable.

4. Integrated Water Quality/ Flow Reduction/Resources Management Criteria

- a. When calculating the capacity of an infiltration system, each Permittee shall account for the 24-hour infiltration assuming that the soil is saturated. Infiltration BMPs shall be limited to project sites where the in-situ soil or the amended on-site soils have a demonstrated infiltration rate under saturated conditions of no less than 0.3 inch per hour.
- b. Bioretention BMPs shall be designed to accommodate the minimum design flow at a surface loading rate of 5 inches per hour and no greater than 12 inches per hour, and shall have a total volume, including pore spaces and pre-filter detention volume of no less than the SWQDv.
- c. If rainwater harvested for use in irrigation is to be credited toward the total volume of storm water runoff retained on-site, each Permittee shall require the project proponent to conduct a conservative (assuming reasonable worst-case scenarios) assessment of water demand during the wet-weather season. This volume will be referred to as the “reliable” estimate of irrigation demand. The portion of water to be credited as retained on-site for use in irrigation shall not exceed the reliable estimate of irrigation demand.
- d. Harvested rainwater must be stored in a manner that precludes the breeding of mosquitoes or other vectors or with a draw down not to exceed 96 hours.
- e. When evaluating the potential for on-site retention, each Permittee shall consider the maximum potential for evapotranspiration from green roofs and rainfall harvest and use.
- f. Project requirements shall address at a minimum the potential use of harvested rainwater for non-potable uses including toilet flushing, laundry, and cooling water makeup water. If the municipal, building or county health code(s) does not allow such use of harvested rainwater, each Permittee shall develop a model ordinance and submit it to the city council or County Supervisors for consideration within 24 months after the Order effective date. The model ordinances shall be based on the International Association of Plumbing and Mechanical Officials’ (IAPMO’s) Green Plumbing and Mechanical Code Supplement to the 2012 National Standard Plumbing Code, or similar guidance to ensure the safe and effective use of harvested rainwater, separate from the existing provisions, if any, for reclaimed wastewater. California is in the process of adopting its 2012 update to the Uniform Plumbing Code that incorporates the IAPMO Green Plumbing and Mechanical Code Supplement. If the State of California update incorporates the IAPMO Green Plumbing and Mechanical Code Supplement, Permittees are not required to adopt a model ordinance addressing the potential use of harvested rainwater for non-potable uses including toilet flushing, laundry, and cooling water makeup water.

5. Hydraulic Restriction Layers

Infiltration pathways may need to be restricted due to the close proximity of roads, foundations, or other infrastructure. A geomembrane liner, or other equivalent water proofing, may be placed along the vertical walls to reduce lateral flows. This liner should have a minimum thickness of 30 mils. Generally, waterproof barriers should not be placed on the bottom of the biofiltration unit, as this would prevent incidental infiltration which is important to meeting the required pollutant load reduction.

6. Planting/Storage Media Specifications

- a. The planting media placed in the cell should achieve a long-term, in-place infiltration rate of at least 5 inches per hour. Higher infiltration rates of up to 12 inches per hour are permissible. Bioretention/biofiltration soil shall retain sufficient moisture to support vigorous plant growth.
- b. Planting media should consist of 60 to 80% fine sand and 20 to 40% compost.
- c. Sand should be free of wood, waste, coating such as clay, stone dust, carbonate, etc. or any other deleterious material. All aggregate passing the No. 200 sieve size should be non-plastic. Sand for bioretention should be analyzed by an accredited lab using #200, #100, #40, #30, #16, #8, #4, and 3/8 sieves (ASTM D 422 or as approved by the local permitting authority) and meet the following gradation (Note: all sands complying with ASTM C33 for fine aggregate comply with the gradation requirements provided in Table H-1):

Table H-1. Sand Texture Specifications

| Sieve Size ASTM D422 | Percent Passing by Weight | |
|-------------------------|---------------------------|---------|
| | Minimum | Maximum |
| 3 /8 inch | 100 | 100 |
| No. 4 | 90 | 100 |
| No. 8 | 70 | 100 |
| No. 16 | 40 | 95 |
| No. 30 | 15 | 70 |
| No. 40 | 5 | 55 |
| No. 110 | 0 | 15 |
| No. 200 | 0 | 5 |

Note: The gradation of the sand component of the media is believed to be a major factor in the hydraulic conductivity of the media mix. If the desired hydraulic conductivity of the media cannot be achieved within the specified proportions of sand and compost (#2), then it may be necessary to utilize sand at the coarser end of the range specified in above (“minimum” column).

- d. Compost should be a well decomposed, stable, weed free organic matter source derived from waste materials including yard debris, wood wastes, or other organic materials not including manure or biosolids meeting standards developed by the US Composting Council (USCC). The product shall be certified through the USCC Seal of Testing Assurance (STA) Program (a compost testing and information disclosure program). Compost quality should be verified via a lab analysis to be:

- Feedstock materials shall be specified and include one or more of the following: landscape/yard trimmings, grass clippings, food scraps, and agricultural crop residues.
- Organic matter: 35-75% dry weight basis.
- Carbon and Nitrogen Ratio: 15:1 < C:N < 25:1
- Maturity/Stability: shall have dark brown color and a soil-like odor. Compost exhibiting a sour or putrid smell, containing recognizable grass or leaves, or is hot (120 F) upon delivery or rewetting is not acceptable.
- Toxicity: any one of the following measures is sufficient to indicate non-toxicity:
 - NH₄:NH₃ < 3
 - Ammonium < 500 ppm, dry weight basis
 - Seed Germination > 80% of control
 - Plant trials > 80% of control
 - Solvita® > 5 index value
- Nutrient content:
 - Total Nitrogen content 0.9% or above preferred
 - Total Boron should be <80 ppm, soluble boron < 2.5 ppm
- Salinity: < 6.0 mmhos/cm
- pH between 6.5 and 8 (may vary with plant palette)
- Compost for bioretention should be analyzed by an accredited lab using #200, ¼ inch, ½ inch, and 1 inch sieves (ASTM D 422) and meet the gradation described in Table H-2:

Table H-2. Compost Texture Specifications

| Sieve Size ASTM D422 | Percent Passing by Weight | |
|-------------------------|---------------------------|---------|
| | Minimum | Maximum |
| 1 inch | 99 | 100 |
| ½ inch | 90 | 100 |
| ¼ inch | 40 | 90 |
| #200 | 2 | 10 |

Tests should be sufficiently recent to represent the actual material that is anticipated to be delivered to the site. If processes or sources used by the supplier have changed significantly since the most recent testing, new tests should be requested.

Note: the gradation of compost used in bioretention/biofiltration media is believed to play an important role in the saturated hydraulic conductivity of the media. To achieve a higher saturated hydraulic conductivity, it may be necessary to utilize compost at the coarser end of this range (“minimum” column). The percent passing the #200 sieve (fines) is believed to be the most important factor in hydraulic conductivity.

In addition, a coarser compost mix provides more heterogeneity of the bioretention media, which is believed to be advantageous for more rapid development of soil structure needed to support health biological processes. This may be an advantage for plant establishment with lower nutrient and water input.

- e. Bioretention/Biofiltration soils not meeting the above criteria shall be evaluated on a case by case basis. Alternative bioretention soil shall meet the following specification:

“Soils for bioretention facilities shall be sufficiently permeable to infiltrate runoff at a minimum rate of 5 inches per hour during the life of the facility, and provide sufficient retention of moisture and nutrients to support healthy vegetation.” The following steps shall be followed by the Permittees to verify that alternative soil mixes meet the specification:

- Submittals – The applicant must submit to the Permittee for approval:
 - A sample of mixed bioretention/biofiltration soil.
 - Certification from the soil supplier or an accredited laboratory that the bioretention/biofiltration soil meets the requirements of this specification.
 - Certification from an accredited geotechnical testing laboratory that the bioretention/biofiltration soil has an infiltration rate of between 5 and 12 inches per hour.
 - Organic content test results of mixed bioretention/biofiltration soil. Organic content test shall be performed in accordance with by Testing Methods for the Examination of Compost and Composting (TMECC) 05.07A, “Loss-On-Ignition Organic Matter Method”.
 - Organic Grain size analysis results of mixed bioretention/biofiltration soil performed in accordance with ASTM D 422, Standard Test Method for Particle Size Analysis of Soils.
 - A description of the equipment and methods used to mix the sand and compost to produce the bioretention/biofiltration soil.
- The name of the testing laboratory(s) and the following information:
 - Contact person(s)
 - Address(s)
 - Phone contact(s)
 - email address(s)
 - Qualifications of laboratory(s), and personnel including date of current
 - Certification by STA, ASTM, or approved equal.
- Bioretention/biofiltration soils shall be analyzed by an accredited lab using #200, and 1/2” inch sieves (ASTM D 422 or as approved by municipality), and meet the gradation described in Table H-3).

Table H-3. Alternative Bioretention/Biofiltration Soil Texture Specifications

| Sieve Size ASTM D422 | Percent Passing by Weight | |
|-------------------------|---------------------------|---------|
| | Minimum | Maximum |
| 1/2 inch | 97 | 100 |
| 200 | 2 | 5 |

- Bioretention/biofiltration soils shall be analyzed by an accredited geotechnical lab for the following tests:
 - Moisture – density relationships (compaction tests) shall be conducted on bioretention soil. Bioretention/biofiltration soil for the permeability test shall be compacted to 85 to 90 percent of the maximum dry density (ASTM D1557).
 - Constant head permeability testing in accordance with ASTM D2434 shall be conducted on a minimum of two samples with a 6-inch mold and vacuum saturation.

7. Mulch for Bioretention/Biofiltration Facilities

Mulch is recommended for the purpose of retaining moisture, preventing erosion and minimizing weed growth. Projects subject to the State's Model Water Efficiency Landscaping Ordinance (or comparable local ordinance) will be required to provide at least two inches of mulch. Aged mulch, also called compost mulch, reduces the ability of weeds to establish, keeps soil moist, and replenishes soil nutrients. Aged mulch can be obtained through soil suppliers or directly from commercial recycling yards. It is recommended to apply 1" to 2" of composted mulch, once a year, preferably in June following weeding

8. Plants

- a. Plant materials should be tolerant of summer drought, ponding fluctuations, and saturated soil conditions for 48 to 96 hours.
- b. It is recommended that a minimum of three types of tree, shrubs, and/or herbaceous groundcover species be incorporated to protect against facility failure due to disease and insect infestations of a single species.
- c. Native plant species and/or hardy cultivars that are not invasive and do not require chemical inputs should be used to the maximum extent practicable.

References

California Regional Water Quality Control Board, San Francisco Bay Region. 2011. Municipal Regional Stormwater Permit (Order No. R2-2011-0083, Attachment L). Adopted November 28, 2011.

Dan Cloak, Dan Cloak Environmental Consulting to Tom Dalziel, Contra Costa County, February 22, 2011.<<http://www.cccleanwater.org/c3-guidebook.html>>. Accessed on January 31, 2012.

Geosyntec Consultants and Larry Walker Associates. 2011. *Ventura County Technical Guidance Manual for Stormwater Quality Control Measures, Manual Update 2011. Appendix D*. Prepared for the Ventura Countywide Stormwater Quality Management Program. July 13, 2011.

ATTACHMENT I. DEVELOPER TECHNICAL INFORMATION AND GUIDELINES

- 1.** Each Permittee shall make available to the Development Community reference information and recommended guidelines. Such information may include the following:
 - a.** Hydromodification Control criteria described in this Order, including numerical criteria
 - b.** Links to the State Water Board's Water Balance Calculator
 - c.** Expected BMP pollutant removal performance including effluent quality (ASCE/ U.S. EPA International BMP Database, CASQA New Development BMP Handbook, technical reports, local data on BMP performance, and the scientific literature appropriate for southern California geography and climate)
 - d.** Selection of appropriate BMPs for stormwater pollutants of concern
 - e.** Data on observed local effectiveness and performance of implemented BMPs
 - f.** BMP maintenance and cost considerations
 - g.** Guiding principles to facilitate integrated water resources planning and management in the selection of BMPs, including water conservation, groundwater recharge, public recreation, multipurpose parks, open space preservation, and existing retrofits
 - h.** LID principles and specifications, including the objectives and specifications for integration of LID strategies in the areas of:
 - i.** Site Assessment
 - ii.** Site Planning and Design
 - iii.** Vegetative Protection, Revegetation, and Maintenance
 - iv.** Techniques to Minimize Land Disturbance
 - v.** Techniques to Implement LID Measures at Various Scales
 - vi.** Integrated Water Resources Management Practices
 - vii.** LID Design and Flow Modeling Guidance
 - viii.** Hydrologic Analysis
 - ix.** LID Credits for trees or other features that intercept storm water runoff.
 - i.** Recommended Guidelines to include:
 - i.** Locate structures on less pervious soils where possible so as to preserve areas with permeable soils (Hydrologic Soil Group Classes A and B, as defined by the National Cooperative Soil Survey), for use in stormwater infiltration and groundwater recharge. Minimize the need to grade the site by concentrating development in areas with minimal non-engineered slopes and existing infrastructure, and mitigate any construction disturbance.
 - ii.** The total disturbed area shall be no greater than 110 percent of the final project footprint plus the area of the construction stormwater detention basins, if any, and as required to meet applicable Fire Department regulations for brush clearance.

- iii. Construction vehicles shall be confined at all times to the area specifically permitted to be disturbed by construction as depicted in the approved construction documents. Physical barriers shall be used to designate and protect the boundary between disturbed and undisturbed areas.
 - iv. Materials staging shall be confined to the area permitted to be disturbed by construction or may be temporarily stored off-site at an approved location at the Contractor's option.
 - v. Construction vehicles shall not traverse areas within the drip lines of those trees and other landscaping to be preserved. Approved visible physical barriers, such as continuous fencing, shall be provided to completely surround all trees and other landscaping to be preserved. Barriers shall be placed not less than 5 feet outside the drip lines of trees.
 - vi. Preserve or restore continuous riparian buffers widths along all natural drainages to a minimum width of 100 feet from each bank top, for a total of 200 feet plus the width of the stream, unless the Watershed Plan demonstrates that a smaller riparian buffer width is protective of water quality, hydrology, and aquatic life beneficial uses within a specific drainage.
 - vii. Identify and avoid development of areas containing habitat with threatened or endangered plant and animal species¹.
- j. Each Permittee shall facilitate implementation of LID by providing key industry, regulatory, and other stakeholders with information regarding LID objectives and specifications through a training program. The LID training program will include the following:
- i. LID targeted sessions and materials for builders, design professionals, regulators, resource agencies, and stakeholders
 - ii. A combination of awareness on national efforts and local experience gained through LID pilot projects and demonstration projects
 - iii. Materials and data from LID pilot projects and demonstration projects including case studies
 - iv. Guidance on how to integrate LID requirements at various project scales
 - v. Guidance on the relationship among LID strategies, Source Control BMPs, Treatment Control BMPs, and Hydromodification Control requirements

¹ Federal Endangered Species Act, 16 U.S.C. §§ 1531–1544 (<http://water.epa.gov/lawsregs/guidance/wetlands/eo11990.cfm>); California Endangered Species Act, California Fish and Game Code, §§ 2050 to 2115.5.

ATTACHMENT J. DETERMINATION OF EROSION POTENTIAL

E_p is determined as follows - The *total effective work* done on the channel boundary is derived and used as a metric to predict the likelihood of channel adjustment given watershed and stream hydrologic and geomorphic variables. The index under urbanized conditions is compared to the index under pre-urban conditions expressed as a ratio (E_p). The effective work index (W) can be computed in a number of different ways including simplistic work equations, material specific sediment transport equations, or more complex functions based on site calibrated sediment rating curves. One such work equation, which represents the total work done on the channel boundary, includes the following:

$$W = \sum_{i=1}^n (\tau_i - \tau_c)^{1.5} \cdot V \cdot \Delta t_i \quad (1)$$

Where: W = effective work, τ_c = critical shear stress that initiates bed mobility or erodes the weakest bank layer, τ_i = applied hydraulic shear stress, Δt = duration of flows (in hours), V = mid-channel flow velocity, and n = length of flow record. The effective work index for presumed stable stream channels under pre-urban conditions is compared to stable and unstable channels under current urbanized conditions. The comparison, expressed as a ratio, is defined as the Erosion Potential (E_p)¹ (McRae (1992, 1996)).

$$E_p = \frac{W_{post}}{W_{pre}} \quad (2)$$

where:

W_{post} = work index estimated for the post-urban condition

W_{pre} = work index estimated for the pre-urban condition

Alternatively, a sediment transport function such as the Brownlie equation or the Meyer-Peter and Muller equation (*US Department of Agriculture, Natural Resources Conservation Service, 2007. Part 654 Stream Restoration Design, National Engineering Handbook, August 2007*) can be used to demonstrate appropriate Hydromodification control.

¹ MacRae, C.R. 1992. The Role of Moderate Flow Events and Bank Structure in the Determination of Channel Response to Urbanization. Resolving conflicts and uncertainty in water management: Proceedings of the 45th Annual Conference of the Canadian Water Resources Association. Shrubsole, D, ed. 1992, pg. 12.1-12.21; MacRae, C.R. 1996. Experience from Morphological Research on Canadian Streams: Is Control of the Two-Year Frequency Runoff Event the Best Basis for Stream Channel Protection. Effects of Watershed Development and Management on Aquatic Ecosystems, ASCE Engineering Foundation Conference, Snowbird, Utah, pg. 144-162.

ATTACHMENT K. PERMITTEES AND TMDLS MATRIX

Note: For all tables in this Attachment, Permittees listed in *italics* are Multi-Jurisdictional Permittees.

Table K-1: Santa Clara River Watershed Management Area TMDLs

| SANTA CLARA RIVER WATERSHED MANAGEMENT AREA PERMITTEES | ACTIVE TMDLS | | | |
|---|---|---|---|--|
| | Santa Clara River Nitrogen Compounds TMDL | Upper Santa Clara River Chloride TMDL | Lake Elizabeth, Munz Lake, and Lake Hughes Trash TMDL | Santa Clara River Estuary and Reaches 3, 5, 6, and 7 Indicator Bacteria TMDL |
| <i>Los Angeles (County of)</i> | X | X | X | X |
| <i>Los Angeles County Flood Control</i> | X | X | | X |
| <i>Santa Clarita</i> | X | X | | X |

Table K-2: Santa Monica Bay Watershed Management Area TMDLs

| SANTA MONICA BAY WATERSHED MANAGEMENT AREA PERMITTEES | ACTIVE TMDLS | | | | | |
|--|--|---|---|---|---|-------------------------------|
| | | | | Malibu Creek Subwatershed | | |
| | Santa Monica Bay Beaches Bacteria TMDL (Wet and Dry Weather) | Santa Monica Bay Nearshore and Offshore Debris TMDL | Santa Monica Bay TMDL for DDTs and PCBs | Malibu Creek and Lagoon Bacteria TMDL | Malibu Creek Watershed Trash TMDL | Malibu Creek Nutrient TMDL |
| <i>Agoura Hills</i> | X | X | X | X | X | X |
| <i>Beverly Hills</i> | X | X | X | | | |
| <i>Calabasas</i> | X | X | X | X | X | X |
| <i>Culver City</i> | X | X | X | | | |
| <i>El Segundo</i> | X | X | X | | | |
| <i>Hermosa Beach</i> | X | X | X | | | |
| <i>Hidden Hills</i> | X | X | X | X | X | X |
| <i>Inglewood</i> | X | X | X | | | |
| <i>Los Angeles (City of)</i> | X | X | X | | | |

| SANTA MONICA BAY WATERSHED MANAGEMENT AREA PERMITTEES | ACTIVE TMDLS | | | | | |
|--|--|---|---|---|---|-------------------------------|
| | | | | Malibu Creek Subwatershed | | |
| | Santa Monica Bay Beaches Bacteria TMDL (Wet and Dry Weather) | Santa Monica Bay Nearshore and Offshore Debris TMDL | Santa Monica Bay TMDL for DDTs and PCBs | Malibu Creek and Lagoon Bacteria TMDL | Malibu Creek Watershed Trash TMDL | Malibu Creek Nutrient TMDL |
| <i>Los Angeles (County of)</i> | X | X | X | X | X | X |
| <i>Los Angeles County Flood Control</i> | X | X | X | X | X | X |
| Malibu | X | X | X | X | X | X |
| <i>Manhattan Beach</i> | X | X | X | | | |
| <i>Palos Verdes Estates</i> | X | X | X | | | |
| <i>Rancho Palos Verdes</i> | X | X | X | | | |
| <i>Redondo Beach</i> | X | X | X | | | |
| <i>Rolling Hills</i> | X | X | X | | | |
| <i>Rolling Hills Estates</i> | X | X | X | | | |
| Santa Monica | X | X | X | | | |
| <i>Torrance</i> | X | X | X | | | |
| West Hollywood | X | X | X | | | |
| Westlake Village | X | X | X | X | X | X |

Table K-3: Santa Monica Bay Watershed Management Area TMDLs

| SANTA MONICA BAY WATERSHED MANAGEMENT AREA PERMITTEES | ACTIVE TMDLS | | | | | | |
|---|-----------------------------------|--|---|------------------------------------|---|--|--|
| | Ballona Creek Subwatershed | | | | | Marina del Rey Subwatershed | |
| | Ballona Creek Trash TMDL | Ballona Creek Estuary Toxic Pollutants TMDL | Ballona Creek, Ballona estuary and Sepulveda Channel Bacteria TMDL | Ballona Creek Metals TMDL | Ballona Creek Wetlands TMDL for Sediment and Invasive Exotic Vegetation | Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL | Marina del Rey Harbor Toxic Pollutants TMDL |
| Agoura Hills | | | | | | | |
| Beverly Hills | X | X | X | X | X | | |
| Calabasas | | | | | | | |
| Culver City | X | X | X | X | X | X | X |
| <i>El Segundo</i> | | | | | | | |
| Hermosa Beach | | | | | | | |
| <i>Hidden Hills</i> | | | | | | | |
| <i>Inglewood</i> | X | X | X | X | X | | |
| <i>Los Angeles (City of)</i> | X | X | X | X | X | X | X |
| <i>Los Angeles (County of)</i> | X | X | X | X | X | X | X |
| <i>Los Angeles County Flood Control</i> | X | X | X | X | X | X | X |
| Malibu | | | | | | | |
| <i>Manhattan Beach</i> | | | | | | | |
| <i>Palos Verdes Estates</i> | | | | | | | |
| <i>Rancho Palos Verdes</i> | | | | | | | |
| <i>Redondo Beach</i> | | | | | | | |
| <i>Rolling Hills</i> | | | | | | | |
| <i>Rolling Hills Estates</i> | | | | | | | |
| Santa Monica | X | X | X | X | X | | |

| SANTA MONICA BAY WATERSHED MANAGEMENT AREA PERMITTEES | ACTIVE TMDLS | | | | | | |
|---|-----------------------------------|--|---|------------------------------------|---|--|--|
| | Ballona Creek Subwatershed | | | | Marina del Rey Subwatershed | | |
| | Ballona Creek Trash TMDL | Ballona Creek Estuary Toxic Pollutants TMDL | Ballona Creek, Ballona estuary and Sepulveda Channel Bacteria TMDL | Ballona Creek Metals TMDL | Ballona Creek Wetlands TMDL for Sediment and Invasive Exotic Vegetation | Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL | Marina del Rey Harbor Toxic Pollutants TMDL |
| <i>Torrance</i> | | | | | | | |
| West Hollywood | X | X | X | X | X | | |
| Westlake Village | | | | | | | |

Table K-4: Dominguez Channel Watershed Management Area TMDLs

| DOMINGUEZ CHANNEL WATERSHED MANAGEMENT AREA PERMITTEES | ACTIVE TMDLS | | | | |
|--|-------------------------------------|----------------------------|-------------------------------|---|---|
| | Los Angeles Harbor Bacteria TMDL | Machado Lake Trash TMDL | Machado Lake Nutrient TMDL | Machado Lake Pesticides and PCBs TMDL | Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL ¹ |
| <i>Carson</i> | | X | X | X | X |
| <i>Compton</i> | | | | | X |
| <i>El Segundo</i> | | | | | X |
| <i>Gardena</i> | | | | | X |
| <i>Hawthorne</i> | | | | | X |
| <i>Inglewood</i> | | | | | X |
| <i>Lawndale</i> | | | | | X |
| <i>Lomita</i> | | X | X | X | |
| <i>Los Angeles (City of)</i> | X | X | X | X | X |
| <i>Los Angeles (County of)</i> | X | X | X | X | X |
| <i>Los Angeles County Flood Control</i> | | X | X | X | X |
| <i>Manhattan Beach</i> | | | | | X |
| <i>Palos Verdes Estates</i> | | X | X | X | |

| DOMINGUEZ CHANNEL WATERSHED MANAGEMENT AREA PERMITTEES | ACTIVE TMDLS | | | | |
|--|-------------------------------------|----------------------------|-------------------------------|---|---|
| | Los Angeles Harbor Bacteria TMDL | Machado Lake Trash TMDL | Machado Lake Nutrient TMDL | Machado Lake Pesticides and PCBs TMDL | Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL ¹ |
| <i>Rancho Palos Verdes</i> | | X | X | X | X |
| <i>Redondo Beach</i> | | X | X | X | X |
| <i>Rolling Hills</i> | | X | X | X | X |
| <i>Rolling Hills Estates</i> | | X | X | X | X |
| <i>Torrance</i> | | X | X | X | X |

¹ The requirements of this Order to implement the obligations of this TMDL do not apply to a Permittee to the extent that it is determined that the Permittee has been released from that obligation pursuant to the Amended Consent Decree entered in *United States v. Montrose Chemical Corp.*, Case No. 90-3122 AAH (JRx).

Table K-5: Los Angeles River Watershed Management Area TMDLs

| LOS ANGELES RIVER WATERSHED MANAGEMENT AREA PERMITTEES | ACTIVE TMDLS | | | | | | | |
|---|---|---|--|--|-------------------------|--|---|---|
| | Los Angeles River Watershed Trash TMDL | Los Angeles River Nitrogen Compounds and Related Effects TMDL | Los Angeles River and Tributaries Metals TMDL | Los Angeles River Watershed Bacteria TMDL | Legg Lake Trash TMDL | Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDL | Los Angeles Area Lake TMDLs for Lake Calabasas, Echo Park Lake, Legg Lake and Peck Road Park Lake | Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL ¹ |
| <i>Alhambra</i> | X | X | X | X | | | | |
| <i>Arcadia</i> | X | X | X | X | | | X | |
| <i>Bell</i> | X | X | X | X | | | | |
| <i>Bell Gardens</i> | X | X | X | X | | | | |
| <i>Bradbury</i> | X | X | X | X | | | X | |
| <i>Burbank</i> | X | X | X | X | | | | |
| <i>Calabasas</i> | X | X | X | X | | | X | |
| <i>Carson</i> | X | X | X | X | | | | X |
| <i>Commerce</i> | X | X | X | X | | | | |
| <i>Compton</i> | X | X | X | X | | | | X |

| LOS ANGELES RIVER WATERSHED MANAGEMENT AREA PERMITTEES | ACTIVE TMDLS | | | | | | | |
|--|--|---|---|---|----------------------|---|---|---|
| | Los Angeles River Watershed Trash TMDL | Los Angeles River Nitrogen Compounds and Related Effects TMDL | Los Angeles River and Tributaries Metals TMDL | Los Angeles River Watershed Bacteria TMDL | Legg Lake Trash TMDL | Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDL | Los Angeles Area Lake TMDLs for Lake Calabazas, Echo Park Lake, Legg Lake and Peck Road Park Lake | Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL ¹ |
| <i>Cudahy</i> | X | X | X | X | | | | |
| <i>Downey</i> | X | X | X | X | | | | |
| <i>Duarte</i> | X | X | X | X | | | X | |
| <i>El Monte</i> | X | X | X | X | X | | X | |
| <i>Glendale</i> | X | X | X | X | | | | |
| <i>Hidden Hills</i> | X | X | X | X | | | | |
| <i>Huntington Park</i> | X | X | X | X | | | | |
| <i>Irwindale</i> | X | X | X | X | | | X | |
| <i>La Canada Flintridge</i> | X | X | X | X | | | | |
| <i>Lakewood</i> | X | X | | | | | | X |
| <i>Los Angeles (City of)</i> | X | X | X | X | | | X | X |
| <i>Los Angeles (County of)</i> | X | X | X | X | X | | X | X |
| <i>Los Angeles County Flood Control</i> | X | X | X | X | X | X | X | X |
| <i>Lynwood</i> | X | X | X | X | | | | |
| <i>Maywood</i> | X | X | X | X | | | | |
| <i>Monrovia</i> | X | X | X | X | | | X | |
| <i>Montebello</i> | X | X | X | X | | | | |
| <i>Monterey Park</i> | X | X | X | X | | | | |
| <i>Paramount</i> | X | X | X | X | | | | X |
| <i>Pasadena</i> | X | X | X | X | | | | |
| <i>Pico Rivera</i> | X | X | X | X | | | | |

| LOS ANGELES RIVER WATERSHED MANAGEMENT AREA PERMITTEES | ACTIVE TMDLS | | | | | | | |
|--|--|---|---|---|----------------------|---|---|---|
| | Los Angeles River Watershed Trash TMDL | Los Angeles River Nitrogen Compounds and Related Effects TMDL | Los Angeles River and Tributaries Metals TMDL | Los Angeles River Watershed Bacteria TMDL | Legg Lake Trash TMDL | Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDL | Los Angeles Area Lake TMDLs for Lake Calabasitas, Echo Park Lake, Legg Lake and Peck Road Park Lake | Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL ¹ |
| Rosemead | X | X | X | X | | | | |
| San Fernando | X | X | X | X | | | | |
| San Gabriel | X | X | X | X | | | | |
| San Marino | X | X | X | X | | | | |
| Santa Clarita | | X | X | X | | | | |
| Sierra Madre | X | X | X | X | | | X | |
| Signal Hill | X | X | X | X | | X | | X |
| South El Monte | X | X | X | X | X | | X | |
| South Gate | X | X | X | X | | | | |
| South Pasadena | X | X | X | X | | | | |
| Temple City | X | X | X | X | | | | |
| Vernon | X | X | X | X | | | | |

¹ The requirements of this Order to implement the obligations of this TMDL do not apply to a Permittee to the extent that it is determined that the Permittee has been released from that obligation pursuant to the Amended Consent Decree entered in *United States v. Montrose Chemical Corp.*, Case No. 90-3122 AAH (JRx).

Table K-6: San Gabriel River Watershed Management Area TMDLs

| SAN GABRIEL RIVER WATERSHED MANAGEMENT AREA PERMITTEES | ACTIVE TMDLS | | |
|---|---|---|---|
| | San Gabriel River and Impaired Tributaries Metals and Selenium TMDL | Los Angeles Area Lakes TMDLs for Puddingstone Reservoir, and Santa Fe Dam Park Lake | Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL ¹ |
| <i>Arcadia</i> | X | | |
| <i>Artesia</i> | X | | |
| <i>Azusa</i> | X | X | |
| <i>Baldwin Park</i> | X | | |
| <i>Bellflower</i> | X | | X |
| <i>Bradbury</i> | X | | |
| <i>Cerritos</i> | X | | |
| <i>Claremont</i> | X | X | |
| <i>Covina</i> | X | | |
| <i>Diamond Bar</i> | X | | |
| <i>Downey</i> | X | | |
| <i>Duarte</i> | X | | |
| <i>El Monte</i> | X | | |
| <i>Glendora</i> | X | | |
| <i>Hawaiian Gardens</i> | X | | |
| <i>Industry</i> | X | | |
| <i>Irwindale</i> | X | X | |
| <i>La Habra Heights</i> | X | | |
| <i>La Mirada</i> | X | | |
| <i>La Puente</i> | X | | |
| <i>La Verne</i> | X | X | |
| <i>Lakewood</i> | X | | X |
| <i>Los Angeles (County of)</i> | X | X | X |
| <i>Los Angeles County Flood Control</i> | X | X | X |

| SAN GABRIEL RIVER WATERSHED MANAGEMENT AREA PERMITTEES | ACTIVE TMDLS | | |
|---|---|---|---|
| | San Gabriel River and Impaired Tributaries Metals and Selenium TMDL | Los Angeles Area Lakes TMDLs for Puddingstone Reservoir, and Santa Fe Dam Park Lake | Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL ¹ |
| <i>Monrovia</i> | X | | |
| Norwalk | X | | |
| <i>Pico Rivera</i> | X | | |
| Pomona | X | X | |
| San Dimas | X | X | |
| Santa Fe Springs | X | | |
| <i>South El Monte</i> | X | | |
| Walnut | X | | |
| West Covina | X | | |
| Whittier | X | | |

¹ The requirements of this Order to implement the obligations of this TMDL do not apply to a Permittee to the extent that it is determined that the Permittee has been released from that obligation pursuant to the Amended Consent Decree entered in *United States v. Montrose Chemical Corp.*, Case No. 90-3122 AAH (JRx).

Table K-7: Los Cerritos Channel and Alamitos Bay Watershed Management Area TMDLs

| LOS CERRITOS CHANNEL AND ALAMITOS BAY WATERSHED MANAGEMENT AREA PERMITTEES | ACTIVE TMDLS | | |
|--|----------------------------------|---|---|
| | Los Cerritos Channel Metals TMDL | Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals TMDL | Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL ¹ |
| <i>Bellflower</i> | X | | X |
| <i>Cerritos</i> | X | | |
| <i>Downey</i> | X | | |
| <i>Lakewood</i> | X | | X |
| <i>Los Angeles (County of)</i> | X | | X |
| <i>Los Angeles County Flood Control</i> | X | X | X |
| <i>Paramount</i> | X | | X |
| <i>Signal Hill</i> | X | | X |

¹ The requirements of this Order to implement the obligations of this TMDL do not apply to a Permittee to the extent that it is determined that the Permittee has been released from that obligation pursuant to the Amended Consent Decree entered in *United States v. Montrose Chemical Corp.*, Case No. 90-3122 AAH (JRx).

Table K-8: Middle Santa Ana River Watershed Management Area TMDLs

| MIDDLE SANTA ANA RIVER WATERSHED MANAGEMENT AREA PERMITTEES | ACTIVE TMDL |
|---|---|
| | Middle Santa Ana River Watershed Bacterial Indicator TMDL |
| <i>Claremont</i> | X |
| <i>Pomona</i> | X |

Table K-9: Los Angeles River Watershed Management Area Metals TMDLs by Reach

| LOS ANGELES RIVER WATERSHED MANAGEMENT AREA PERMITTEES | Los Angeles River and Tributaries Metals TMDL | | | | |
|--|---|--|---|---|--|
| | Reach 1 and Compton Creek | Reach 2, Rio Hondo, Arroyo Seco, and all contributing subwatersheds | Reach 3, Verdugo Wash, and Burbank Western Channel | Reach 4, Reach 5, Tujunga Wash, and all contributing subwatersheds | Reach 6, Bell Creek, and all contributing subwatersheds |
| <i>Alhambra</i> | | X | | | |
| <i>Arcadia</i> | | X | | | |
| <i>Bell</i> | | X | | | |
| <i>Bell Gardens</i> | | X | | | |
| <i>Bradbury</i> | | X | | | |
| <i>Burbank</i> | | | X | X | |
| <i>Calabasas</i> | | | | | X |
| <i>Carson</i> | X | | | | |
| <i>Commerce</i> | | X | | | |
| <i>Compton</i> | X | X | | | |
| <i>Cudahy</i> | | X | | | |
| <i>Downey</i> | | X | | | |
| <i>Duarte</i> | | X | | | |
| <i>El Monte</i> | | X | | | |
| <i>Glendale</i> | | X | X | X | |
| <i>Hidden Hills</i> | | | | | X |
| <i>Huntington Park</i> | X | X | | | |
| <i>Irwindale</i> | | X | | | |
| <i>La Canada Flintridge</i> | | X | X | | |
| <i>Lakewood</i> | | | | | |
| <i>Los Angeles (City of)</i> | X | X | X | X | X |
| <i>Los Angeles (County of)</i> | X | X | X | X | X |
| <i>Los Angeles County Flood Control</i> | X | X | X | X | X |
| <i>Lynwood</i> | X | X | | | |
| <i>Maywood</i> | | X | | | |

| LOS ANGELES RIVER WATERSHED MANAGEMENT AREA PERMITTEES | Los Angeles River and Tributaries Metals TMDL | | | | |
|--|---|--|---|---|--|
| | Reach 1 and Compton Creek | Reach 2, Rio Hondo, Arroyo Seco, and all contributing subwatersheds | Reach 3, Verdugo Wash, and Burbank Western Channel | Reach 4, Reach 5, Tujunga Wash, and all contributing subwatersheds | Reach 6, Bell Creek, and all contributing subwatersheds |
| <i>Monrovia</i> | | X | | | |
| <i>Montebello</i> | | X | | | |
| <i>Monterey Park</i> | | X | | | |
| <i>Paramount</i> | | X | | | |
| <i>Pasadena</i> | | X | X | | |
| <i>Pico Rivera</i> | | X | | | |
| <i>Rosemead</i> | | X | | | |
| <i>San Fernando</i> | | | | X | |
| <i>San Gabriel</i> | | X | | | |
| <i>San Marino</i> | | X | | | |
| <i>Santa Clarita</i> | | | | | |
| <i>Sierra Madre</i> | | X | | | |
| <i>Signal Hill</i> | X | | | | |
| <i>South El Monte</i> | | X | | | |
| <i>South Gate</i> | X | X | | | |
| <i>South Pasadena</i> | | X | | | |
| <i>Temple City</i> | | X | | | |
| <i>Vernon</i> | | X | | | |

Table K-10: Los Angeles River Watershed Management Area Bacteria TMDL by Reach

| LOS ANGELES RIVER WATERSHED MANAGEMENT AREA PERMITTEES | Los Angeles River Watershed Bacteria TMDL | | | | | | | | | | | | | | | |
|--|---|---|---|---|---|-----------------------------|-------------|------------|------------|-------------------------|---------------|------------------|--------------------|-----------|--------------|--------------|
| | Los Angeles River Segment | | | | | Los Angeles River Tributary | | | | | | | | | | |
| | A | B | C | D | E | Aliso Canyon Wash | Arroyo Seco | Bell Creek | Bull Creek | Burbank Western Channel | Compton Creek | Dry Canyon Creek | McCoy Canyon Creek | Rio Hondo | Tujunga Wash | Verdugo Wash |
| Alhambra | | X | | | | | | | | | | | | X | | |
| Arcadia | | | | | | | | | | | | | | X | | |
| Bell | | X | | | | | | | | | | | | | | |
| Bell Gardens | | X | | | | | | | | | | | | X | | |
| Bradbury | | | | | | | | | | | | | | X | | |
| Burbank | | | X | | | | | | X | | | | | | | |
| Calabasas | | | | | | | | | | | X | X | | | | |
| Carson | | | | | | | | | | X | | | | | | |
| Commerce | | X | | | | | | | | | | | | X | | |
| Compton | X | X | | | | | | | | X | | | | | | |
| Cudahy | | X | | | | | | | | | | | | | | |
| Downey | | X | | | | | | | | | | | | X | | |
| Duarte | | | | | | | | | | | | | | X | | |
| El Monte | | | | | | | | | | | | | | X | | |
| Glendale | | X | X | | | | X | | X | | | | | | X | X |
| Hidden Hills | | | | | | | | X | | | | X | | | | |
| Huntington Park | | X | | | | | | | | X | | | | | | |
| Irwindale | | | | | | | | | | | | | | X | | |
| La Canada Flintridge | | | X | | | | X | | | | | | | | | X |
| Lakewood | X | | | | | | | | | | | | | | | |
| Los Angeles (City of) | | X | X | X | X | X | X | X | X | X | X | X | X | | X | X |
| Los Angeles (County of) | X | X | X | | X | X | X | X | X | | X | X | X | X | X | X |

| LOS ANGELES RIVER WATERSHED MANAGEMENT AREA PERMITTEES | Los Angeles River Watershed Bacteria TMDL | | | | | | | | | | | | | | | |
|--|---|---|---|---|---|-----------------------------|-------------|------------|------------|-------------------------|---------------|------------------|--------------------|-----------|--------------|--------------|
| | Los Angeles River Segment | | | | | Los Angeles River Tributary | | | | | | | | | | |
| | A | B | C | D | E | Aliso Canyon Wash | Arroyo Seco | Bell Creek | Bull Creek | Burbank Western Channel | Compton Creek | Dry Canyon Creek | McCoy Canyon Creek | Rio Hondo | Tujunga Wash | Verdugo Wash |
| <i>Los Angeles County Flood Control</i> | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Lynwood | X | X | | | | | | | | X | | | | | | |
| Maywood | | X | | | | | | | | | | | | | | |
| <i>Monrovia</i> | | | | | | | | | | | | | X | | | |
| Montebello | | X | | | | | | | | | | | X | | | |
| Monterey Park | | X | | | | | | | | | | | X | | | |
| <i>Paramount</i> | X | X | | | | | | | | | | | | | | |
| Pasadena | | X | X | | | | X | | | | | | X | | | X |
| <i>Pico Rivera</i> | | | | | | | | | | | | | X | | | |
| Rosemead | | | | | | | | | | | | | X | | | |
| San Fernando | | | | | | | | | | | | | | X | | |
| San Gabriel | | | | | | | | | | | | | X | | | |
| San Marino | | | | | | | | | | | | | X | | | |
| <i>Santa Clarita</i> | | | | | | | | | X | | | | | | | |
| Sierra Madre | | | | | | | | | | | | | X | | | |
| <i>Signal Hill</i> | X | | | | | | | | | | | | | | | |
| <i>South El Monte</i> | | | | | | | | | | | | | X | | | |
| South Gate | | X | | | | | | | | X | | | X | | | |
| South Pasadena | | X | | | | | X | | | | | | X | | | |
| Temple City | | | | | | | | | | | | | X | | | |
| Vernon | | X | | | | | | | | | | | | | | |

Table K-11: Santa Monica Bay Watershed Management Area Bacteria TMDL by Reach

| SANTA MONICA BAY WATERSHED MANAGEMENT AREA PERMITTEES | Santa Monica Bay Beaches Bacteria TMDL (Wet and Dry Weather) | | | | | | | | |
|---|--|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| | Jurisdiction Group 1 | Jurisdiction Group 2 | Jurisdiction Group 3 | Jurisdiction Group 4 | Jurisdiction Group 5 | Jurisdiction Group 6 | Jurisdiction Group 7 | Jurisdiction Group 8 | Jurisdiction Group 9 |
| <i>Agoura Hills</i> | | | | | | | | | X |
| <i>Beverly Hills</i> | | | | | | | | X | |
| <i>Calabasas</i> | X | | | | | | | | X |
| <i>Culver City</i> | | | | | | | | X | |
| <i>El Segundo</i> | | X | | | X | | | | |
| <i>Hermosa Beach</i> | | | | | X | X | | | |
| <i>Hidden Hills</i> | | | | | | | | | X |
| <i>Inglewood</i> | | | | | | | | X | |
| <i>Los Angeles (City of)</i> | X | X | X | | | | X | X | |
| <i>Los Angeles (County of)</i> | X | X | | X | X | X | X | X | X |
| <i>Los Angeles County Flood Control</i> | X | X | X | X | X | X | X | X | X |
| <i>Malibu</i> | X | | | X | | | | | X |
| <i>Manhattan Beach</i> | | | | | X | X | | | |
| <i>Palos Verdes Estates</i> | | | | | | | X | | |
| <i>Rancho Palos Verdes</i> | | | | | | | X | | |
| <i>Redondo Beach</i> | | | | | | X | | | |
| <i>Rolling Hills</i> | | | | | | | X | | |
| <i>Rolling Hills Estates</i> | | | | | | | X | | |
| <i>Santa Monica</i> | | X | X | | | | | X | |
| <i>Torrance</i> | | | | | | X | | | |
| <i>West Hollywood</i> | | | | | | | | X | |

| SANTA MONICA BAY WATERSHED MANAGEMENT AREA PERMITTEES | Santa Monica Bay Beaches Bacteria TMDL (Wet and Dry Weather) | | | | | | | | |
|--|--|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| | Jurisdiction Group 1 | Jurisdiction Group 2 | Jurisdiction Group 3 | Jurisdiction Group 4 | Jurisdiction Group 5 | Jurisdiction Group 6 | Jurisdiction Group 7 | Jurisdiction Group 8 | Jurisdiction Group 9 |
| Westlake Village | | | | | | | | | X |

Table K-12: San Gabriel River Watershed Management Area Metals TMDLs by Reach

| SAN GABRIEL RIVER WATERSHED MANAGEMENT AREA PERMITTEES | San Gabriel River and Impaired Tributaries Metals and Selenium TMDL | | | | | | | |
|---|---|-------------------|-----------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|
| | Walnut Creek | San Jose Creek | Coyote Creek | San Gabriel River Reach 1 | San Gabriel River Reach 2 | San Gabriel River Reach 3 | San Gabriel River Reach 4 | San Gabriel River Reach 5 |
| <i>Arcadia</i> | | | | | | | X | |
| <i>Artesia</i> | | | X | X | | | | |
| <i>Azusa</i> | X | | | | | | | X |
| <i>Baldwin Park</i> | X | | | | | X | X | |
| <i>Bellflower</i> | | | | X | | | | |
| <i>Bradbury</i> | | | | | | | | |
| <i>Cerritos</i> | | | X | X | | | | |
| <i>Claremont</i> | X | X | | | | | | |
| <i>Covina</i> | X | | | | | | | |
| <i>Diamond Bar</i> | | X | X | | | | | |
| <i>Downey</i> | | | | X | X | | | |
| <i>Duarte</i> | | | | | | | | X |
| <i>El Monte</i> | | | | | | X | X | |
| <i>Glendora</i> | X | | | | | | | X |
| <i>Hawaiian Gardens</i> | | | X | | | | | |
| <i>Industry</i> | X | X | | | X | X | | |
| <i>Irwindale</i> | X | | | | | X | X | X |
| <i>La Habra Heights</i> | | X | X | | | | | |

| SAN GABRIEL RIVER WATERSHED MANAGEMENT AREA PERMITTEES | San Gabriel River and Impaired Tributaries Metals and Selenium TMDL | | | | | | | |
|---|---|-------------------|-----------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|
| | Walnut Creek | San Jose Creek | Coyote Creek | San Gabriel River Reach 1 | San Gabriel River Reach 2 | San Gabriel River Reach 3 | San Gabriel River Reach 4 | San Gabriel River Reach 5 |
| La Mirada | | | X | | | | | |
| La Puente | X | X | | | | X | | |
| La Verne | X | X | | | | | | |
| Lakewood | | | X | X | | | | |
| Los Angeles (County of) | X | X | X | | X | X | | X |
| Los Angeles County Flood Control | X | X | X | X | X | X | X | X |
| Monrovia | | | | | | | | X |
| Norwalk | | | X | X | | | | |
| Pico Rivera | | | | | X | X | | |
| Pomona | X | X | | | | | | |
| San Dimas | X | X | | | | | | |
| Santa Fe Springs | | | X | X | X | | | |
| South El Monte | | | | | | X | | |
| Walnut | X | X | | | | | | |
| West Covina | X | X | | | | | | |
| Whittier | | X | X | | X | X | | |

Table K-13: Dominguez Channel Watershed Management Area Toxics TMDL by Reach

| DOMINGUEZ CHANNEL WATERSHED MANAGEMENT AREA PERMITTEES | Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL ¹ | | | | | |
|---|---|------------------------------|--|------------------------------|----------------------|---|
| | Dominguez Channel | Dominguez Channel Estuary | Greater Los Angeles and Long Beach Harbors | Los Angeles River Estuary | Consolidated Slip | Los Angeles River and San Gabriel River |
| <i>Bellflower</i> | | | X | | | |
| <i>Carson</i> | X | X | | | | |
| <i>Compton</i> | X | X | | | | |
| <i>El Segundo</i> | X | | | | | |
| <i>Gardena</i> | X | X | | | | |
| <i>Hawthorne</i> | X | | | | | |
| <i>Inglewood</i> | X | | | | | |
| <i>Lakewood</i> | | | X | | | |
| <i>Lawndale</i> | X | | | | | |
| <i>Los Angeles (City of)</i> | X | X | X | X | X | |
| <i>Los Angeles (County of)</i> | X | X | X | X | X | |
| <i>Los Angeles County Flood Control District</i> | X | X | X | X | X | |
| <i>Manhattan Beach</i> | X | | | | | |
| <i>Paramount</i> | | | X | | | |
| <i>Rancho Palos Verdes</i> | | | X | | | |
| <i>Redondo Beach</i> | X | | | | | |
| <i>Rolling Hills</i> | | | X | | | |
| <i>Rolling Hills Estates</i> | | | X | | | |
| <i>Signal Hill</i> | | | X | X | | |
| <i>Torrance</i> | X | X | | | | |
| Los Angeles River and San Gabriel River Metals TMDLs Responsible Parties² | | | | | | see note 2 below |

¹ The requirements of this Order to implement the obligations of this TMDL do not apply to a Permittee to the extent that it is determined that the Permittee has been released from that obligation pursuant to the Amended Consent Decree entered in *United States v. Montrose Chemical Corp.*, Case No. 90-3122 AAH (JRx).

² Permittees subject to the Los Angeles River Metals TMDL and the San Gabriel River Metals TMDL are required to submit a monitoring plan and a report of implementation.

ATTACHMENT L. TMDLs IN THE SANTA CLARA RIVER WATERSHED MANAGEMENT AREA (WMA)

A. Santa Clara River Nitrogen Compounds TMDL

1. Permittees subject to the provisions below are identified in Attachment K, Table K-1.
2. Permittees shall comply with the following water quality-based effluent limitations for discharges to the Santa Clara River Reach 5¹ as of the effective date of this Order:

| Constituent | Effluent Limitations (mg/L) | |
|--|-----------------------------|----------------|
| | 1-hour Average | 30-day Average |
| Total Ammonia as Nitrogen | 5.2 | 1.75 |
| Nitrate as Nitrogen plus Nitrite as Nitrogen | -- | 6.8 |

B. Upper Santa Clara River Chloride TMDL

1. Permittees subject to the provisions below are identified in Attachment K, Table K-1.
2. Permittees shall comply with the following water quality-based effluent limitation for discharges to the Santa Clara River Reaches 5 and 6 as of the effective date of this Order:

| Constituent | Effluent Limitation Instantaneous Maximum (mg/L) |
|-------------|--|
| Chloride | 100 |

C. Lake Elizabeth Trash TMDL

1. Permittees subject to the provisions below are identified in Attachment K, Table K-1.
2. Permittees shall comply with the final water quality-based effluent limitation of zero trash discharged to Lake Elizabeth no later than March 6, 2016 and every year thereafter.
3. Permittees shall comply with interim and final water quality-based effluent limitations for trash discharged to Lake Elizabeth, per the schedule below:

| Deadline | Effluent Limitation | |
|---------------|--|------------------------------------|
| | Drainage Area covered by Full Capture Systems (%) | Annual Trash Discharge (gal/yr) |
| Baseline | 0 | 529 |
| March 6, 2012 | 20 | 423 |
| March 6, 2013 | 40 | 317 |
| March 6, 2014 | 60 | 212 |
| March 6, 2015 | 80 | 106 |
| March 6, 2016 | 100 | 0 |

4. Permittees shall comply with the interim and final water quality-based effluent limitations for trash in C.2 and C.3 above per the provisions in Part VI.E.5.

¹ The Basin Plan Chapter 7-9 Santa Clara River Nitrogen Compounds TMDL uses the USEPA Santa Clara River reach designations. The USEPA's Santa Clara River Reach 7 corresponds to Santa Clara River Reach 5 in the Los Angeles Region's Basin Plan Chapter 2.

D. Santa Clara River Indicator Bacteria TMDL

1. Permittees subject to the provisions below are identified in Attachment K, Table K-1.
2. Permittees shall comply with the following final water quality-based effluent limitations for discharges to the Santa Clara River Reaches 5, 6 and 7 during dry weather no later than March 21, 2023 and during wet weather² no later than March 21, 2029:

| Constituent | Effluent Limitation (MPN or cfu) | |
|-------------|----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| E. coli | 235/100 mL | 126/100 mL |

3. Receiving Water Limitations

- a. Permittees shall comply with the following interim bacteria receiving water limitations³ for the Santa Clara River Reaches 5, 6, and 7:

| Time Period | Annual Allowable Exceedance Days of the Single Sample Objective (days) | | Deadline |
|-------------|--|-----------------|----------------|
| | Daily Sampling | Weekly Sampling | |
| Dry Weather | 17 | 3 | March 21, 2016 |
| Wet Weather | 61 | 9 | March 21, 2016 |

- b. Permittees shall comply with the following final bacteria receiving water limitations⁴ for the Santa Clara River Reaches 5, 6, and 7:

| Time Period | Annual Allowable Exceedance Days of the Single Sample Objective (days) | | Deadline |
|-------------|--|-----------------|----------------|
| | Daily Sampling | Weekly Sampling | |
| Dry Weather | 5 | 1 | March 21, 2023 |
| Wet Weather | 16 | 3 | March 21, 2029 |

² Wet weather is defined as days with 0.1 inch of rain or more and the three days following the rain event.

³ The final receiving water limitations are group-based and shared among all MS4 Permittees located within the sub-drainage area to each reach.

⁴ Ibid.

- c. Permittees shall comply with the following geometric mean receiving water limitation for the Santa Clara River Reaches 5, 6, and 7 during dry weather no later than March 21, 2023 and during wet weather no later than March 21, 2029:

| Constituent | Geometric Mean (MPN or cfu) |
|--------------------|------------------------------------|
| E. coli | 126/100 mL |

- d. Permittees may propose wet-weather load-based compliance at MS4 outfalls. The plan shall include an estimate of existing load and the allowable load from MS4 outfalls to attain the allowable number of exceedance days instream. The plan shall include a technically defensible quantitative linkage to the allowable number of exceedance days. The plan shall include quantitative estimates of the water quality benefits provided by the proposed implementation approach.

ATTACHMENT M. TMDLs IN THE SANTA MONICA BAY WATERSHED MANAGEMENT AREA

A. Santa Monica Bay Beaches Bacteria TMDL

1. Permittees subject to the provisions below are identified in Attachment K, Table K-2.
2. Permittees shall comply with the following final water quality-based effluent limitations for discharges to Santa Monica Bay during dry weather as of the effective date of this Order and during wet weather no later than July 15, 2021:

| Constituent | Effluent Limitations (MPN or cfu) | |
|-----------------|-----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform* | 10,000/100 mL | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| Enterococcus | 104/100 mL | 35/100 mL |

* Total coliform density shall not exceed a daily maximum of 1,000/100 mL, if the ratio of fecal-to-total coliform exceeds 0.1.

3. Section A.2 above shall not be applicable upon the effective date of the revised Santa Monica Bay Beaches Bacteria TMDL (Attachment A of Resolution No. R12-007). Upon the effective date of the revised Santa Monica Bay Beaches Bacteria TMDL, Permittees shall comply with the following daily maximum final water quality-based effluent limitations for discharges to Santa Monica Bay during dry weather as of the effective date of the revised Santa Monica Bay Beaches Bacteria TMDL and during wet weather no later than July 15, 2021. Permittees shall comply with the following geometric mean final water quality-based effluent limitations for each individual monitoring location, calculated as defined in the revised Santa Monica Bay Beaches Bacteria TMDL, no later than July 15, 2021.

| Constituent | Effluent Limitations (MPN or cfu) | |
|-----------------|-----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform* | 10,000/100 mL | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| Enterococcus | 104/100 mL | 35/100 mL |

* Total coliform density shall not exceed a daily maximum of 1,000/100 mL, if the ratio of fecal-to-total coliform exceeds 0.1.

4. Receiving Water Limitations

- a.** Permittees in each defined jurisdictional group shall comply with the interim single sample bacteria receiving water limitations for shoreline monitoring stations within their jurisdictional area during wet weather, per the schedule below:

| Deadline | Cumulative percentage reduction from the total exceedance day reductions required for each jurisdictional group as identified in Table M-1 |
|-----------------|---|
| July 15, 2013 | 25% |
| July 15, 2018 | 50% |

- b.** Section A.4.a above shall not be applicable upon the effective date of the revised Santa Monica Bay Beaches Bacteria TMDL (Attachment A of Resolution No. R12-007). Upon the effective date of the revised Santa Monica Bay Beaches Bacteria TMDL, Permittees in each defined jurisdictional group shall comply with the interim single sample bacteria receiving water limitations for shoreline monitoring stations within their jurisdictional area during wet weather, per the schedule below:

| Deadline | Cumulative percentage reduction from the total wet weather exceedance day reductions required for each jurisdictional group as identified in Table M-2 |
|-----------------|---|
| July 15, 2013 | 25% |
| July 15, 2018 | 50% |

Table M-1: Interim Single Sample Bacteria Receiving Water Limitations by Jurisdictional Group

| Jurisdiction Group | Primary Jurisdiction | Additional Responsible Jurisdictions & Agencies | Subwatershed(s) | Monitoring Site(s) | Interim Single Sample Bacteria Receiving Water Limitations as Maximum Allowable Exceedance Days during Wet Weather | | |
|--------------------|-----------------------|--|---------------------|-----------------------|--|-------------------------|-------------------------|
| | | | | | 10% Reduction Milestone | 25% Reduction Milestone | 50% Reduction Milestone |
| 1 | County of Los Angeles | Malibu City of Los Angeles (Topanga only) Calabasas (Topanga only) | Arroyo Sequit | SMB 1-1 | 221 | 212 | 197 |
| | | | Carbon Canyon | SMB 1-13 | | | |
| | | | Corral Canyon | SMB 1-11, SMB 1-12 | | | |
| | | | Encinal Canyon | SMB 1-3 | | | |
| | | | Escondido Canyon | SMB 1-8 | | | |
| | | | Las Flores Canyon | SMB 1-14 | | | |
| | | | Latigo Canyon | SMB 1-9 | | | |
| | | | Los Alisos Canyon | SMB 1-2 | | | |
| | | | Pena Canyon | SMB 1-16 | | | |
| | | | Piedra Gorda Canyon | SMB 1-15 | | | |
| | | | Ramirez Canyon | SMB 1-6, SMB 1-7 | | | |
| | | | Solstice Canyon | SMB 1-10 | | | |
| | | | Topanga Canyon | SMB 1-18 | | | |
| | | | Trancas Canyon | SMB 1-4 | | | |
| | | | Tuna Canyon | SMB 1-17 | | | |
| Zuma Canyon | SMB 1-5 | | | | | | |

| Jurisdiction Group | Primary Jurisdiction | Additional Responsible Jurisdictions & Agencies | Subwatershed(s) | Monitoring Site(s) | Interim Single Sample Bacteria Receiving Water Limitations as Maximum Allowable Exceedance Days during Wet Weather | | |
|--------------------|----------------------|---|---------------------|--|--|-------------------------|-------------------------|
| | | | | | 10% Reduction Milestone | 25% Reduction Milestone | 50% Reduction Milestone |
| 2 | City of Los Angeles | County of Los Angeles El Segundo (Dockweiler only) Santa Monica | Castlerock | SMB 2-1 | 342 | 324 | 294 |
| | | | Dockweiler | SMB 2-10, SMB 2-11, SMB 2-12, SMB 2-13, SMB 2-14, SMB 2-15 | | | |
| | | | Venice Beach | SMB 2-8, SMB 2-9 | | | |
| | | | Pulga Canyon | SMB 2-4, SMB 2-5 | | | |
| | | | Santa Monica Canyon | SMB 2-7 | | | |
| | | | Santa Ynez Canyon | SMB 2-2, SMB 2-3, SMB 2-6 | | | |
| 3 | Santa Monica | City of Los Angeles County of Los Angeles | Santa Monica | SMB 3-1, SMB 3-2, SMB 3-3, SMB 3-4, SMB 3-5, SMB 3-6, SMB 3-7, SMB 3-8 [#] , SMB 3-9 | 257 | 237 | 203 |
| 4 | Malibu | County of Los Angeles | Nicholas Canyon | SMB 4-1 [#] | 14 | 14 | 14 |
| 5 | Manhattan Beach | El Segundo Hermosa Beach Redondo Beach County of Los Angeles | Hermosa | SMB 5-1 [#] , SMB 5-2, SMB 5-3 [#] , SMB 5-4 [#] , SMB 5-5 [#] | 29 | 29 | 29 |

| Jurisdiction Group | Primary Jurisdiction | Additional Responsible Jurisdictions & Agencies | Subwatershed(s) | Monitoring Site(s) | Interim Single Sample Bacteria Receiving Water Limitations as Maximum Allowable Exceedance Days during Wet Weather | | |
|--------------------|----------------------|--|------------------------|--|--|-------------------------|-------------------------|
| | | | | | 10% Reduction Milestone | 25% Reduction Milestone | 50% Reduction Milestone |
| 6 | Redondo Beach | Hermosa Beach Manhattan Beach Torrance County of Los Angeles | Redondo | SMB 6-1, SMB 6-2 [#] , SMB 6-3, SMB 6-4, SMB 6-5 [#] , SMB 6-6 [#] | 58 | 57 | 56 |
| 7 | Rancho Palos Verdes | City of Los Angeles Palos Verdes Estates Rolling Hills Rolling Hills Estates County of Los Angeles | Palos Verdes Peninsula | SMB 7-1 [#] , SMB 7-2 [#] , SMB 7-3 [#] , SMB 7-4 [#] , SMB 7-5 [#] , SMB 7-6 [#] , SMB 7-7, SMB 7-8 [#] , SMB 7-9 [#] | 36 | 36 | 36 |

For those beach monitoring locations subject to the antidegradation implementation provision in the TMDL, there shall be no increase in exceedance days during the implementation period above that estimated for the beach monitoring location in the critical year as identified in Table M-3.

* The California Department of Transportation (Caltrans) is a responsible agency in each Jurisdiction Group, except for Jurisdiction 7, and is jointly responsible for complying with the allowable number of exceedance days. Caltrans is separately regulated under the Statewide Storm Water Permit for State of California Department of Transportation (NPDES No. CAS000003).

Table M-2: Interim Wet Weather Single Sample Bacteria Receiving Water Limitations by Jurisdictional Group

| Jurisdiction Group | Primary Jurisdiction | Additional Responsible Jurisdictions & Agencies | Subwatershed(s) | Monitoring Site(s) | Interim Single Sample Bacteria Receiving Water Limitations as Maximum Exceedance Days Beyond those Allowed during Wet Weather | | |
|--------------------|-----------------------|--|---------------------|--|---|-------------------------|-------------------------|
| | | | | | 10% Reduction Milestone | 25% Reduction Milestone | 50% Reduction Milestone |
| 1 | County of Los Angeles | Malibu City of Los Angeles (Topanga only) Calabasas (Topanga only) | Arroyo Sequit | SMB 1-1 | 393 | 327 | 218 |
| | | | Carbon Canyon | SMB 1-13 | | | |
| | | | Corral Canyon | SMB 1-11, SMB 1-12, SMB O-2 [#] | | | |
| | | | Encinal Canyon | SMB 1-3 [#] | | | |
| | | | Escondido Canyon | SMB 1-8 | | | |
| | | | Las Flores Canyon | SMB 1-14 | | | |
| | | | Latigo Canyon | SMB 1-9 | | | |
| | | | Los Alisos Canyon | SMB 1-2 [#] | | | |
| | | | Pena Canyon | SMB 1-16 [#] | | | |
| | | | Piedra Gorda Canyon | SMB 1-15 | | | |
| | | | Ramirez Canyon | SMB 1-6, SMB 1-7, SMB O-1 [#] | | | |
| | | | Solstice Canyon | SMB 1-10 | | | |
| | | | Topanga Canyon | SMB 1-18 | | | |
| | | | Trancas Canyon | SMB 1-4 | | | |
| Tuna Canyon | SMB 1-17 [#] | | | | | | |
| Zuma Canyon | SMB 1-5 | | | | | | |

| Jurisdiction Group | Primary Jurisdiction | Additional Responsible Jurisdictions & Agencies | Subwatershed(s) | Monitoring Site(s) | Interim Single Sample Bacteria Receiving Water Limitations as Maximum Exceedance Days Beyond those Allowed during Wet Weather | | |
|--------------------|----------------------|---|---------------------|---|---|-------------------------|-------------------------|
| | | | | | 10% Reduction Milestone | 25% Reduction Milestone | 50% Reduction Milestone |
| 2 | City of Los Angeles | County of Los Angeles El Segundo (Dockweiler only) Santa Monica | Castlerock | SMB 2-1 | 382 | 318 | 212 |
| | | | Dockweiler | SMB 2-10, SMB 2-11, SMB 2-12, SMB 2-13, SMB 2-14, SMB 2-15 | | | |
| | | | Venice Beach | SMB 2-8, SMB 2-9 | | | |
| | | | Pulga Canyon | SMB 2-4, SMB 2-5 | | | |
| | | | Santa Monica Canyon | SMB 2-7 | | | |
| | | | Santa Ynez Canyon | SMB 2-2, SMB 2-3, SMB 2-6 | | | |
| 3 | Santa Monica | City of Los Angeles County of Los Angeles | Santa Monica | SMB 3-1, SMB 3-2, SMB 3-3, SMB 3-4, SMB 3-5, SMB 3-6, SMB 3-7, SMB 3-8, SMB 3-9 | 219 | 183 | 122 |
| 4 | Malibu | County of Los Angeles | Nicholas Canyon | SMB 4-1 [#] | 15 | 12 | 8 |

| Jurisdiction Group | Primary Jurisdiction | Additional Responsible Jurisdictions & Agencies | Subwatershed(s) | Monitoring Site(s) | Interim Single Sample Bacteria Receiving Water Limitations as Maximum Exceedance Days Beyond those Allowed during Wet Weather | | |
|--------------------|----------------------|--|------------------------|--|---|-------------------------|-------------------------|
| | | | | | 10% Reduction Milestone | 25% Reduction Milestone | 50% Reduction Milestone |
| 5 | Manhattan Beach | El Segundo Hermosa Beach Redondo Beach County of Los Angeles | Hermosa | SMB 5-1 [#] , SMB 5-2, SMB 5-3 [#] , SMB 5-4 [#] , SMB 5-5 [#] | 63 | 52 | 35 |
| 6 | Redondo Beach | Hermosa Beach Manhattan Beach Torrance County of Los Angeles | Redondo | SMB 6-1, SMB 6-2 [#] , SMB 6-3, SMB 6-4, SMB 6-5 [#] , SMB 6-6 [#] | 62 | 51 | 34 |
| 7 | Rancho Palos Verdes | City of Los Angeles Palos Verdes Estates Rolling Hills Rolling Hills Estates County of Los Angeles | Palos Verdes Peninsula | SMB 7-1 [#] , SMB 7-2 [#] , SMB 7-3 [#] , SMB 7-4 [#] , SMB 7-5 [#] , SMB 7-6 [#] , SMB 7-7, SMB 7-8 [#] , SMB 7-9 [#] | 88 | 73 | 49 |

For those beach monitoring locations subject to the antidegradation implementation provision in the TMDL, there shall be no increase in exceedance days during the implementation period above that estimated for the beach monitoring location in the critical year as identified in Table M-4.

* The California Department of Transportation (Caltrans) is a responsible agency in each Jurisdiction Group, except for Jurisdiction 7, and is jointly responsible for complying with the allowable number of exceedance days. Caltrans is separately regulated under the Statewide Storm Water Permit for State of California Department of Transportation (NPDES No. CAS000003).

- c. Permittees shall comply with the following grouped¹ final single sample bacteria receiving water limitations for all shoreline monitoring stations along Santa Monica Bay beaches, except for those monitoring stations subject to the antidegradation implementation provision as established in the TMDL and identified in subpart e. below, during dry weather as of the effective date of this Order and during wet weather no later than July 15, 2021:

| Time Period | Annual Allowable Exceedance Days of the Single Sample Objective (days) | |
|---|--|-----------------|
| | Daily Sampling | Weekly Sampling |
| Summer Dry-Weather (April 1 to October 31) | 0 | 0 |
| Winter Dry-Weather (November 1 to March 31) | 3 | 1 |
| Wet Weather ² (Year-round) | 17 | 3 |

- d. Section A.4.c above shall not be applicable upon the effective date of the revised Santa Monica Bay Beaches Bacteria TMDL (Attachment A of Resolution No. R12-007). Upon the effective date of the revised Santa Monica Bay Beaches Bacteria TMDL, Permittees shall comply with the following grouped³ final single sample bacteria receiving water limitations for all shoreline monitoring stations along Santa Monica Bay beaches, except for those monitoring stations subject to the antidegradation implementation provision as established in the TMDL and identified in subpart f. below, during dry weather as of the effective date of the revised Santa Monica Bay Beaches Bacteria TMDL and during wet weather no later than July 15, 2021:

| Time Period | Annual Allowable Exceedance Days of the Single Sample Objective (days) | |
|---|--|-----------------|
| | Daily Sampling | Weekly Sampling |
| Summer Dry-Weather (April 1 to October 31) | 0 | 0 |
| Winter Dry-Weather (November 1 to March 31) | 9 | 2 |
| Wet Weather ⁴ (Year-round) | 17 | 3 |

¹ The final receiving water limitations are group-based and shared among all MS4 Permittees located within the sub-drainage area to each beach monitoring location.

² Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

³ The final receiving water limitations are group-based and shared among all MS4 Permittees located within the sub-drainage area to each beach monitoring location.

⁴ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

- e. Permittees shall comply with the following grouped⁵ final single sample bacteria receiving water limitations for shoreline monitoring stations along Santa Monica Bay beaches subject to the antidegradation implementation provision in the TMDL as of the effective date of this Order:

Table M-3: Allowable Number of Days that may Exceed any Single Sample Bacteria Receiving Water Limitations

| Station ID | Beach Monitoring Location | Annual Allowable Exceedance Days of the Single Sample Objective (days) | | | | | |
|------------|--|---|--------------------|---|--------------------|-----------------------------|--------------------|
| | | Summer Dry Weather (April 1 – October 31) | | Winter Dry Weather (November 1 – March 31) | | Wet Weather (Year-round) | |
| | | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling |
| SMB 1-4 | Trancas Creek at Broad Beach | 0 | 0 | 0 | 0 | 17 | 3 |
| SMB 1-5 | Zuma Creek at Zuma Beach | 0 | 0 | 0 | 0 | 17 | 3 |
| SMB 2-13 | Imperial Highway storm drain | 0 | 0 | 2 | 1 | 17 | 3 |
| SMB 3-8 | Windward Ave. storm drain at Venice Pavilion | 0 | 0 | 2 | 1 | 13 | 2 |
| SMB 4-1 | San Nicholas Canyon Creek at Nicholas Beach | 0 | 0 | 0 | 0 | 14 | 2 |
| SMB 5-1 | Manhattan Beach at 40th Street | 0 | 0 | 1 | 1 | 4 | 1 |
| SMB 5-3 | Manhattan Beach Pier, southern drain | 0 | 0 | 1 | 1 | 5 | 1 |
| SMB 5-4 | Hermosa City Beach at 26th St. | 0 | 0 | 3 | 1 | 12 | 2 |
| SMB 5-5 | Hermosa Beach Pier | 0 | 0 | 2 | 1 | 8 | 2 |
| SMB 6-2 | Redondo Municipal Pier- 100 yards south | 0 | 0 | 3 | 1 | 14 | 2 |
| SMB 6-5 | Avenue I storm drain at Redondo Beach | 0 | 0 | 3 | 1 | 6 | 1 |
| SMB 6-6 | Malaga Cove, Palos Verdes Estates | 0 | 0 | 1 | 1 | 3 | 1 |

⁵ The final receiving water limitations are group-based and shared among all MS4 Permittees located within the sub-drainage area to each beach monitoring location.

| | | Annual Allowable Exceedance Days of the Single Sample Objective (days) | | | | | |
|------------|---|---|--------------------|---|--------------------|-----------------------------|--------------------|
| Station ID | Beach Monitoring Location | Summer Dry Weather (April 1 – October 31) | | Winter Dry Weather (November 1 – March 31) | | Wet Weather (Year-round) | |
| | | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling |
| SMB 7-1 | Malaga Cove, Palos Verdes Estates | 0 | 0 | 1 | 1 | 14 | 2 |
| SMB 7-2 | Bluff Cove, Palos Verdes Estates | 0 | 0 | 1 | 1 | 0 | 0 |
| SMB 7-3 | Long Point, Rancho Palos Verdes | 0 | 0 | 1 | 1 | 5 | 1 |
| SMB 7-4 | Abalone Cove, Rancho Palos Verdes | 0 | 0 | 0 | 0 | 1 | 1 |
| SMB 7-5 | Portuguese Bend Cove, Rancho Palos Verdes | 0 | 0 | 1 | 1 | 2 | 1 |
| SMB 7-6 | White's Point, Royal Palms County Beach | 0 | 0 | 1 | 1 | 6 | 1 |
| SMB 7-8 | Point Fermin/Wilder Annex, San Pedro | 0 | 0 | 1 | 1 | 2 | 1 |
| SMB 7-9 | Outer Cabrillo Beach | 0 | 0 | 1 | 1 | 3 | 1 |

- f. Section A.4.e above shall not be applicable upon the effective date of the revised Santa Monica Bay Beaches Bacteria TMDL (Attachment A of Resolution No. R12-007). Upon the effective date of the revised Santa Monica Bay Beaches Bacteria TMDL, Permittees shall comply with the following grouped⁶ final single sample bacteria receiving water limitations for shoreline monitoring stations along Santa Monica Bay beaches subject to the antidegradation implementation provision in the TMDL as of the effective date of the revised Santa Monica Bay Beaches Bacteria TMDL:

Table M-4: Allowable Number of Days that may Exceed any Single Sample Bacteria Receiving Water Limitations

| Station ID | | Beach Monitoring Location | | Annual Allowable Exceedance Days of the Single Sample Objective (days) | | | | | |
|------------|---|---------------------------|---|---|--------------------|---|--------------------|-----------------------------|--------------------|
| | | | | Summer Dry Weather (April 1 – October 31) | | Winter Dry Weather (November 1 – March 31) | | Wet Weather (Year-round) | |
| | | | | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling |
| SMB 1-2 | El Pescador State Beach | 0 | 0 | 1 | 1 | 5 | 1 | | |
| SMB 1-3 | El Matador State Beach | 0 | 0 | 1 | 1 | 3 | 1 | | |
| SMB O-1 | Paradise Cove | 0 | 0 | 9 | 2 | 15 | 3 | | |
| SMB 1-10 | Solstice Creek | 0 | 0 | 5 | 1 | 17 | 3 | | |
| SMB O-2 | Puerco Canyon Storm Drain | 0 | 0 | 0 | 0 | 6 | 1 | | |
| SMB 1-14 | Las Flores Creek | 0 | 0 | 6 | 1 | 17 | 3 | | |
| SMB 1-16 | Pena Creek | 0 | 0 | 3 | 1 | 14 | 2 | | |
| SMB 1-17 | Tuna Canyon Creek | 0 | 0 | 7 | 1 | 12 | 2 | | |
| SMB 2-11 | North Westchester Storm Drain | 0 | 0 | 0 | 0 | 17 | 3 | | |
| SMB 2-13 | Imperial Highway Storm Drain | 0 | 0 | 4 | 1 | 17 | 3 | | |
| SMB 3-6 | Rose Avenue Storm Drain at Venice Beach | 0 | 0 | 6 | 1 | 17 | 3 | | |
| SMB 4-1 | San Nicholas Canyon Creek | 0 | 0 | 4 | 1 | 14 | 2 | | |
| SMB 5-1 | Manhattan State Beach at 40th Street | 0 | 0 | 1 | 1 | 4 | 1 | | |

⁶ The final receiving water limitations are group-based and shared among all MS4 Permittees located within the sub-drainage area to each beach monitoring location.

| | | Annual Allowable Exceedance Days of the Single Sample Objective (days) | | | | | |
|------------|---|---|--------------------|---|--------------------|-----------------------------|--------------------|
| Station ID | Beach Monitoring Location | Summer Dry Weather (April 1 – October 31) | | Winter Dry Weather (November 1 – March 31) | | Wet Weather (Year-round) | |
| | | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling |
| SMB 5-3 | Manhattan Beach Pier, southern drain | 0 | 0 | 3 | 1 | 6 | 1 |
| SMB 5-4 | Hermosa Beach at 26th Street | 0 | 0 | 3 | 1 | 12 | 2 |
| SMB 5-5 | Hermosa Beach Pier | 0 | 0 | 2 | 1 | 8 | 2 |
| SMB 6-2 | Redondo Municipal Pier- 100 yards south at Redondo Beach | 0 | 0 | 3 | 1 | 14 | 2 |
| SMB 6-3 | Sapphire Street Storm Drain at Redondo Beach | 0 | 0 | 5 | 1 | 17 | 3 |
| SMB 6-5 | Avenue I Storm Drain at Redondo Beach | 0 | 0 | 4 | 1 | 11 | 2 |
| SMB 6-6 | Malaga Cove, Palos Verdes Estates | 0 | 0 | 1 | 1 | 3 | 1 |
| SMB 7-1 | Malaga Cove | 0 | 0 | 1 | 1 | 14 | 2 |
| SMB 7-2 | Bluff Cove | 0 | 0 | 1 | 1 | 0 | 0 |
| SMB 7-3 | Long Point | 0 | 0 | 1 | 1 | 5 | 1 |
| SMB 7-4 | Abalone Cove | 0 | 0 | 0 | 0 | 1 | 1 |
| SMB 7-5 | Portuguese Bend Cove | 0 | 0 | 1 | 1 | 2 | 1 |
| SMB 7-6 | Royal Palms County Beach | 0 | 0 | 1 | 1 | 6 | 1 |
| SMB 7-8 | Wilder Annex | 0 | 0 | 1 | 1 | 2 | 1 |
| SMB 7-9 | Outer Cabrillo Beach | 0 | 0 | 1 | 1 | 3 | 1 |

- g.** Permittees shall comply with the following geometric mean receiving water limitations for all shoreline monitoring stations along Santa Monica Bay beaches during dry weather as of the effective date of this Order and during wet weather no later than July 15, 2021:

| Constituent | Geometric Mean (MPN or cfu) |
|----------------|-----------------------------|
| Total coliform | 1,000/100 mL |
| Fecal coliform | 200/100 mL |
| Enterococcus | 35/100 mL |

- h.** Section A.4.g above shall not be applicable upon the effective date of the revised Santa Monica Bay Beaches Bacteria TMDL (Attachment A of Resolution No. R12-007). Upon the effective date of the revised Santa Monica Bay Beaches Bacteria TMDL, Permittees shall comply with the following geometric mean receiving water limitations for all shoreline monitoring stations along Santa Monica Bay beaches, calculated as defined in the revised Santa Monica Bay Beaches Bacteria TMDL, no later than July 15, 2021:

| Constituent | Geometric Mean (MPN or cfu) |
|----------------|-----------------------------|
| Total coliform | 1,000/100 mL |
| Fecal coliform | 200/100 mL |
| Enterococcus | 35/100 mL |

B. Santa Monica Bay Nearshore and Offshore Debris TMDL

1. Permittees subject to the provisions below are identified in Attachment K, Table K-2.
2. Permittees shall comply with the final water quality-based effluent limitation of zero trash discharged into water bodies within the Santa Monica Bay WMA and then into Santa Monica Bay or on the shoreline of Santa Monica Bay no later than March 20, 2020⁷, and every year thereafter.
3. Permittees shall comply with interim and final water quality-based effluent limitations for trash discharged into Santa Monica Bay or on the shoreline of Santa Monica Bay, per the schedule below:

⁷ If a Permittee by November 4, 2013, adopts local ordinances to ban plastic bags, smoking in public places and single use expanded polystyrene food packaging then the final compliance date will be extended until March 20, 2023.

| Permittees | Baseline ⁸ | Mar 20, 2016 | Mar 20, 2017 | Mar 20, 2018 | Mar 20, 2019 | Mar 20, 2020 ⁹ |
|----------------------------------|-----------------------|--------------|--------------|--------------|--------------|---------------------------|
| | | (80%) | (60%) | (40%) | (20%) | (0%) |
| Annual Trash Discharge (gals/yr) | | | | | | |
| Agoura Hills ¹⁰ | 1,044 | 835 | 626 | 418 | 209 | 0 |
| Calabasas ¹⁰ | 1,656 | 1,325 | 994 | 663 | 331 | 0 |
| Culver City | 52 | 42 | 31 | 21 | 10 | 0 |
| El Segundo | 2,732 | 2,186 | 1,639 | 1,093 | 546 | 0 |
| Hermosa Beach | 1,117 | 894 | 670 | 447 | 223 | 0 |
| Los Angeles, City of | 25,112 | 20,090 | 15,067 | 10,045 | 5,022 | 0 |
| Los Angeles, County of | 5,138 | 4,110 | 3,083 | 2,055 | 1,028 | 0 |
| Malibu | 5,809 | 4,648 | 3,486 | 2,324 | 1,162 | 0 |
| Manhattan Beach | 2,501 | 2,001 | 1,501 | 1,001 | 500 | 0 |
| Palos Verdes Estates | 3,346 | 2,677 | 2,007 | 1,338 | 669 | 0 |
| Rancho Palos Verdes | 7,254 | 5,803 | 4,353 | 2,902 | 1,451 | 0 |
| Redondo Beach | 3,197 | 2,558 | 1,918 | 1,279 | 639 | 0 |
| Rolling Hills | 515 | 412 | 309 | 206 | 103 | 0 |
| Rolling Hills Estates | 365 | 292 | 219 | 146 | 73 | 0 |
| Santa Monica | 5,672 | 4,537 | 3,403 | 2,269 | 1,134 | 0 |
| Torrance | 2,484 | 1,987 | 1,490 | 993 | 497 | 0 |
| Westlake Village ¹⁰ | 3,131 | 2,505 | 1,879 | 1,252 | 626 | 0 |

- Permittees shall comply with the interim and final water quality-based effluent limitations for trash in B.2 and B.3 above per the provisions in Part VI.E.5.

C. Santa Monica Bay TMDL for DDTs and PCBs (USEPA established)

- Permittees subject to the provisions below are identified in Attachment K, Table K-2.
- Permittees shall comply with the following WLAs, expressed as an annual loading of pollutants from the sediment discharged to Santa Monica Bay, per the provisions in Part VI.E.3:

| Constituent | Annual Mass-Based WLA (g/yr) |
|-------------|------------------------------|
| DDT | 27.08 |
| PCBs | 140.25 |

⁸ If a Permittee elects not to use the default baseline, then the Permittee shall include a plan to establish a site specific trash baseline in their Trash Monitoring and Reporting Plan.

⁹ Permittees shall achieve their final effluent limitation of zero trash discharge for the 2019-2020 storm year and every year thereafter.

¹⁰ Permittees shall be deemed in compliance with the water quality-based effluent limitation for trash established to implement the Santa Monica Bay Nearshore and Offshore Debris TMDL, if the Permittee is in compliance with the water quality-based effluent limitations established to implement the Malibu Creek Watershed Trash TMDL.

3. Compliance shall be determined based on a three-year averaging period.

D. TMDLs in the Malibu Creek Subwatershed

1. Malibu Creek and Lagoon Bacteria TMDL

a. Permittees subject to the provisions below are identified in Attachment K, Table K-2.

b. Water Quality-Based Effluent Limitations

i. Permittees shall comply with the following final water quality-based effluent limitations for discharges to Malibu Lagoon during dry weather as of the effective date of this Order, and during wet weather no later than July 15, 2021:

| Constituent | Effluent Limitations (MPN or cfu) | |
|---------------------|-----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform* | 10,000/100 mL | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| <i>Enterococcus</i> | 104/100 mL | 35/100 mL |

* Total coliform density shall not exceed a daily maximum of 1,000/100 mL, if the ratio of fecal-to-total coliform exceeds 0.1.

ii. Section D.1.b.i above shall not be applicable upon the effective date of the revised Malibu Creek and Lagoon Bacteria TMDL (Attachment A of Resolution No. R12-009). Upon the effective date of the revised Malibu Creek and Lagoon Bacteria TMDL, Permittees shall comply with the following daily maximum final water quality-based effluent limitations for discharges to Malibu Lagoon during dry weather as of the effective date of the revised Malibu Creek and Lagoon Bacteria TMDL and during wet weather no later than July 15, 2021. Permittees shall comply with the following geometric mean final water quality-based effluent limitations for each monitoring location, calculated as defined in the revised Malibu Creek and Lagoon Bacteria TMDL, no later than July 15, 2021.

| Constituent | Effluent Limitations (MPN or cfu) | |
|---------------------|-----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform* | 10,000/100 mL | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| <i>Enterococcus</i> | 104/100 mL | 35/100 mL |

* Total coliform density shall not exceed a daily maximum of 1,000/100 mL, if the ratio of fecal-to-total coliform exceeds 0.1.

iii. Permittees shall comply with the following final water quality-based effluent limitations for discharges to Malibu Creek and its tributaries during dry weather as of the effective date of this Order, and during wet weather no later than July 15, 2021:

| Constituent | Effluent Limitation (MPN or cfu) | |
|----------------|----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| <i>E. coli</i> | 235/100 mL | 126/100 mL |

- iv. Section D.1.b.iii above shall not be applicable upon the effective date of the revised Malibu Creek and Lagoon Bacteria TMDL (Attachment A of Resolution No. R12-009). Upon the effective date of the revised Malibu Creek and Lagoon Bacteria TMDL, Permittees shall comply with the following daily maximum final water quality-based effluent limitations for discharges to Malibu Creek and its tributaries during dry weather as of the effective date of the revised Malibu Creek and Lagoon Bacteria TMDL and during wet weather no later than July 15, 2021. Permittees shall comply with the following geometric mean final water quality-based effluent limitations for each monitoring location, calculated as defined in the revised Malibu Creek and Lagoon Bacteria TMDL, no later than July 15, 2021.

| Constituent | Effluent Limitation (MPN or cfu) | |
|----------------|----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| <i>E. coli</i> | 235/100 mL | 126/100 mL |

c. Receiving Water Limitations

- i. Permittees shall comply with the following grouped¹¹ final single sample bacteria receiving water limitations for Malibu Creek, its tributaries, and Malibu Lagoon during dry weather as of the effective date of this Order, and during wet weather no later than July 15, 2021:

| Time Period | Annual Allowable Exceedance Days of the Single Sample Objective (days) | |
|---|--|-----------------|
| | Daily Sampling | Weekly Sampling |
| Summer Dry-Weather (April 1 to October 31) | 0 | 0 |
| Winter Dry-Weather (November 1 to March 31) | 3 | 1 |
| Wet Weather ¹² (Year-round) | 17 | 3 |

- ii. Section D.1.c.i above shall not be applicable upon the effective date of the revised Malibu Creek and Lagoon Bacteria TMDL (Attachment A of Resolution No. R12-009). Upon the effective date of the revised Malibu Creek and Lagoon Bacteria TMDL, Permittees shall comply with the following grouped¹³ final single sample bacteria receiving water limitations for each monitoring location within Malibu Creek and its tributaries during

¹¹ The final receiving water limitations are group-based and shared among all MS4 Permittees located within the drainage area to the receiving water.

¹² Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

¹³ The final receiving water limitations are group-based and shared among all MS4 Permittees located within the drainage area to the receiving water.

dry weather as of the effective date of the revised Malibu Creek and Lagoon Bacteria TMDL and during wet weather no later than July 15, 2021:

| Time Period | Annual Allowable Exceedance Days of the Single Sample Objective (days) | |
|--|--|-----------------|
| | Daily Sampling | Weekly Sampling |
| Dry-Weather (Year-round) | 5 | 1 |
| Wet Weather ¹⁴ (Year-round) | 15 | 2 |

- iii. Section D.1.c.i above shall not be applicable upon the effective date of the revised Malibu Creek and Lagoon Bacteria TMDL (Attachment A of Resolution No. R12-009). Upon the effective date of the revised Malibu Creek and Lagoon Bacteria TMDL, Permittees shall comply with the following grouped¹⁵ final single sample bacteria receiving water limitations for each monitoring location within Malibu Lagoon during dry weather as of the effective date of the revised Malibu Creek and Lagoon Bacteria TMDL and during wet weather no later than July 15, 2021:

| Time Period | Annual Allowable Exceedance Days of the Single Sample Objective (days) | |
|---|--|-----------------|
| | Daily Sampling | Weekly Sampling |
| Summer Dry-Weather (April 1 to October 31) | 0 | 0 |
| Winter Dry-Weather (November 1 to March 31) | 9 | 2 |
| Wet Weather ¹⁶ (Year-round) | 17 | 3 |

- iv. Permittees shall comply with the following geometric mean receiving water limitations for discharges to Malibu Lagoon during dry weather as of the effective date of this Order, and during wet weather no later than July 15, 2021:

| Constituent | Geometric Mean (MPN or cfu) |
|----------------|-----------------------------|
| Total coliform | 1,000/100 mL |
| Fecal coliform | 200/100 mL |
| Enterococcus | 35/100 mL |

- v. Section D.1.c.iv above shall not be applicable upon the effective date of the revised Malibu Creek and Lagoon Bacteria TMDL (Attachment A of

¹⁴ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

¹⁵ The final receiving water limitations are group-based and shared among all MS4 Permittees located within the drainage area to the receiving water.

¹⁶ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

Resolution No. R12-009). Upon the effective date of the revised Malibu Creek and Lagoon Bacteria TMDL, Permittees shall comply with the following geometric mean receiving water limitations for discharges to Malibu Lagoon, calculated as defined in the revised Malibu Creek and Lagoon Bacteria TMDL, no later than July 15, 2021:

| Constituent | Geometric Mean (MPN or cfu) |
|----------------|-----------------------------|
| Total coliform | 1,000/100 mL |
| Fecal coliform | 200/100 mL |
| Enterococcus | 35/100 mL |

- vi. Permittees shall comply with the following geometric mean receiving water limitation for discharges to Malibu Creek and its tributaries during dry weather as of the effective date of this Order, and during wet weather no later than July 15, 2021:

| Constituent | Geometric Mean (MPN or cfu) |
|----------------|-----------------------------|
| <i>E. coli</i> | 126/100 mL |

- vii. Section D.1.c.vi above shall not be applicable upon the effective date of the revised Malibu Creek and Lagoon Bacteria TMDL (Attachment A of Resolution No. R12-009). Upon the effective date of the revised Malibu Creek and Lagoon Bacteria TMDL, Permittees shall comply with the following geometric mean receiving water limitations for discharges to Malibu Creek and its tributaries, calculated as defined in the revised Malibu Creek and Lagoon Bacteria TMDL, no later than July 15, 2021:

| Constituent | Geometric Mean (MPN or cfu) |
|----------------|-----------------------------|
| <i>E. coli</i> | 126/100 mL |

2. Malibu Creek Watershed Trash TMDL

- a. Permittees subject to the provisions below are identified in Attachment K, Table K-2.
- b. Permittees shall comply with the final water quality-based effluent limitation of zero trash discharged to Malibu Creek from Malibu Lagoon to Malibou Lake, Malibu Lagoon, Malibou Lake, Medea Creek, Lindero Creek, Lake Lindero, and Las Virgenes Creek in the Malibu Creek Watershed no later than July 7, 2017 and every year thereafter.
- c. Permittees shall comply with interim and final water quality-based effluent limitations for trash discharged to the Malibu Creek, per the schedule below:

| Permittees | Baseline | July 7, 2013 (80%) | July 7, 2014 (60%) | July 7, 2015 (40%) | July 7, 2016 (20%) | July 7, 2017 (0%) |
|--------------------|----------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|----------------------|
| | Annual Trash Discharge (gals/yr) | | | | | |
| Agoura Hills | 1810 | 1448 | 1086 | 724 | 362 | 0 |
| Calabasas | 673 | 539 | 404 | 269 | 135 | 0 |
| Hidden Hills | 71 | 57 | 43 | 28 | 14 | 0 |
| Los Angeles County | 1117 | 894 | 670 | 447 | 223 | 0 |
| Malibu | 226 | 181 | 136 | 91 | 45 | 0 |
| Westlake Village | 143 | 114 | 86 | 57 | 29 | 0 |

d. Permittees shall comply with the interim and final water quality-based effluent limitations for trash in D.2.b and D.2.c above per the provisions in Part VI.E.5.

3. Malibu Creek Watershed Nutrients TMDL (USEPA established)

a. Permittees subject to the provisions below are identified in Attachment K, Table K-2.

b. Permittees shall comply with the following grouped¹⁷ WLAs per the provisions in Part VI.E.3 for discharges to Westlake Lake, Lake Lindero, Lindero Creek, Las Virgenes Creek, Medea Creek, Malibu Lake, Malibu Creek and Malibu Lagoon and its tributaries. Tributaries to Malibu Creek and Lagoon, include the following upstream water bodies; Triunfo Creek, Palo Comado Creek, Cheesebro Creek, Strokes Creek and Cold Creek.

| Time Period | WLA | |
|--|--|------------------|
| | Nitrate as Nitrogen plus Nitrite as Nitrogen | Total Phosphorus |
| | Daily Maximum | Daily Maximum |
| Summer (April 15 to November 15) ¹⁸ | 8 lbs/day | 0.8 lbs/day |
| Winter (November 16 to April 14) | 8 mg/L | n/a |

E. TMDLs in the Ballona Creek Subwatershed

1. Ballona Creek Trash TMDL

a. Permittees subject to the provisions below are identified in Attachment K, Table K-3.

¹⁷ USEPA was unable to specifically distinguish the amounts of pollutant loads from allocation categories associated with areas regulated by the storm water permits. Therefore, allocations for storm water permits are grouped.

¹⁸ The mass-based summer WLAs are calculated as the sum of the allocations for “runoff from developed areas” and “dry weather urban runoff.”

- b. Permittees shall comply with the final water quality-based effluent limitation of zero trash discharged to Ballona Creek no later than September 30, 2015 and every year thereafter.
- c. Permittees shall comply with the interim and final water quality-based effluent limitations for trash discharged to Ballona Creek, per the schedule below:

**Ballona Creek Subwatershed Trash Effluent Limitations per Storm Year¹⁹
(pounds of drip-dry trash)**

| Permittees | Baseline | Sept 30, 2012 (20%) | Sept 30, 2013 (10%) | Sept 30, 2014 (3.3%) | Sept 30, 2015 ²⁰ (0%) |
|---------------------------|----------|--|---------------------------|----------------------------|--|
| | | Annual Trash Discharge (pounds of trash) | | | |
| Beverly Hills | 70,712 | 14,142 | 7,071 | 2,333 | 0 |
| Culver City | 37,271 | 7,454 | 3,727 | 1,230 | 0 |
| Inglewood | 22,324 | 4,465 | 2,232 | 737 | 0 |
| Los Angeles, City of | 942,720 | 188,544 | 94,272 | 31,110 | 0 |
| Los Angeles, County of | 52,693 | 10,539 | 5,269 | 1,739 | 0 |
| Santa Monica | 2,579 | 516 | 258 | 85 | 0 |
| West Hollywood | 13,411 | 2,682 | 1,341 | 443 | 0 |

**Ballona Creek Subwatershed Trash Effluent Limitations per Storm Year¹⁹
(gallons of uncompressed trash)**

| Permittees | Baseline | Sept 30, 2012 (20%) | Sept 30, 2013 (10%) | Sept 30, 2014 (3.3%) | Sept 30, 2015 ²⁰ (0%) |
|---------------------------|----------|--|---------------------------|----------------------------|--|
| | | Annual Trash Discharge (gallons of uncompressed trash) | | | |
| Beverly Hills | 45,336 | 9,067 | 4,534 | 1,496 | 0 |
| Culver City | 25,081 | 5,016 | 2,508 | 828 | 0 |
| Inglewood | 14,717 | 2,943 | 1,472 | 486 | 0 |
| Los Angeles, City of | 602,068 | 120,414 | 60,207 | 19,868 | 0 |
| Los Angeles, County of | 32,679 | 6,536 | 3,268 | 1,078 | 0 |
| Santa Monica | 1,749 | 350 | 175 | 58 | 0 |
| West Hollywood | 9,360 | 1,872 | 936 | 309 | 0 |

- d. Permittees shall comply with the interim and final water quality-based effluent limitations for trash in E.1.b and E.1.c above per the provisions in Part VI.E.5.

¹⁹ For purposes of the provisions in this subpart, a storm year is defined as October 1 to September 30.

²⁰ Permittees shall achieve their final water quality-based effluent limitation of zero trash discharged for the 2014-2015 storm year and every year thereafter.

2. Ballona Creek Estuary Toxic Pollutants TMDL

- a. Permittees subject to the provisions below are identified in Attachment K, Table K-3.
- b. Permittees shall comply with the following final water quality-based effluent limitations no later than January 11, 2021, expressed as an annual loading of sediment-bound pollutants deposited to Ballona Creek Estuary:

| Constituent | Effluent Limitations | |
|-------------|----------------------|-------|
| | Annual | Units |
| Cadmium | 8.0 | kg/yr |
| Copper | 227.3 | kg/yr |
| Lead | 312.3 | kg/yr |
| Silver | 6.69 | kg/yr |
| Zinc | 1003 | kg/yr |
| Chlordane | 3.34 | g/yr |
| DDTs | 10.56 | g/yr |
| Total PCBs | 152 | g/yr |
| Total PAHs | 26,900 | g/yr |

- c. Permittees shall comply with interim and final water quality-based effluent limitations for sediment-bound pollutant loads deposited to Ballona Creek Estuary, per the schedule below:

| Deadline | Total Drainage Area Served by the MS4 required to meet the water quality-based effluent limitations (%) |
|------------------|---|
| January 11, 2013 | 25 |
| January 11, 2015 | 50 |
| January 11, 2017 | 75 |
| January 11, 2021 | 100 |

- d. Permittees shall be deemed in compliance with the water quality-based effluent limitations in Part E.2.b by demonstrating any one of the following:
 - i. Final water quality-based effluent limitations for sediment-bound pollutants deposited to Ballona Creek Estuary are met; or
 - ii. The sediment numeric targets as defined in the TMDL are met in bed sediments; or
 - iii. Concentrations of sediments discharged meet the numeric targets for sediment as defined in the TMDL.

- 3. Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL**
- a.** Permittees subject to the provisions below are identified in Attachment K, Table K-3.
- b. Water Quality-Based Effluent Limitations**
- i.** Permittees shall comply with the following final water quality-based effluent limitations for discharges to Ballona Creek Estuary during dry weather no later than April 27, 2013, and during wet weather no later than July 15, 2021:

| Constituent | Effluent Limitations (MPN or cfu) | |
|---------------------|-----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform* | 10,000/100 mL | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| <i>Enterococcus</i> | 104/100 mL | 35/100 mL |

* Total coliform density shall not exceed a daily maximum of 1,000/100 mL, if the ratio of fecal-to-total coliform exceeds 0.1.

- ii.** Section E.3.b.i above shall not be applicable upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL (Attachment A of Resolution No. R12-008). Upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL, Permittees shall comply with the following daily maximum final water quality-based effluent limitations for discharges to Ballona Creek Estuary during dry weather no later than April 27, 2013, and during wet weather no later than July 15, 2021. Permittees shall comply with the following geometric mean final water quality-based effluent limitations for each monitoring location, calculated as defined in the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL, no later than July 15, 2021.

| Constituent | Effluent Limitations (MPN or cfu) | |
|---------------------|-----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform* | 10,000/100 mL | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| <i>Enterococcus</i> | 104/100 mL | 35/100 mL |

* Total coliform density shall not exceed a daily maximum of 1,000/100 mL, if the ratio of fecal-to-total coliform exceeds 0.1.

- iii.** Permittees shall comply with the following final water quality-based effluent limitations for discharges to Sepulveda Channel during dry weather no later than April 27, 2013, and during wet weather no later than July 15, 2021:

| Constituent | Effluent Limitation (MPN or cfu) | |
|----------------|----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| <i>E. coli</i> | 235/100 mL | 126/100 mL |

- iv.** Section E.3.b.iii above shall not be applicable upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria

TMDL (Attachment A of Resolution No. R12-008). Upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL, Permittees shall comply with the following daily maximum final water quality-based effluent limitations for discharges to Sepulveda Channel during dry weather no later than April 27, 2013, and during wet weather no later than July 15, 2021. Permittees shall comply with the following geometric mean final water quality-based effluent limitations for each monitoring location, calculated as defined in the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL, no later than July 15, 2021.

| Constituent | Effluent Limitation (MPN or cfu) | |
|----------------|----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| <i>E. coli</i> | 235/100 mL | 126/100 mL |

- v. Permittees shall comply with the following final water quality-based effluent limitations for discharges to Ballona Creek Reach 2 during dry weather no later than April 27, 2013, and during wet weather no later than July 15, 2021:

| Constituent | Effluent Limitation (MPN or cfu) | |
|----------------|----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| <i>E. coli</i> | 576/100 mL | 126/100 mL |

- vi. Section E.3.b.v above shall not be applicable upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL (Attachment A of Resolution No. R12-008). Upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL, Permittees shall comply with the following daily maximum final water quality-based effluent limitations for discharges to Ballona Creek Reach 2 during dry weather no later than April 27, 2013, and during wet weather no later than July 15, 2021. Permittees shall comply with the following geometric mean final water quality-based effluent limitations for each monitoring location, calculated as defined in the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL, no later than July 15, 2021.

| Constituent | Effluent Limitation (MPN or cfu) | |
|----------------|----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| <i>E. coli</i> | 576/100 mL | 126/100 mL |

- vii. Permittees shall comply with the following final water quality-based effluent limitations for discharges to Ballona Creek Reach 1 during dry weather no later than April 27, 2013, and during wet weather no later than July 15, 2021:

| Constituent | Effluent Limitation (MPN or cfu) | |
|----------------|----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Fecal coliform | 4000/100 mL | 2000/100 mL |

viii. Section E.3.b.vii above shall not be applicable upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL (Attachment A of Resolution No. R12-008). Upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL, Permittees shall comply with the following daily maximum final water quality-based effluent limitations for discharges to Ballona Creek Reach 1 during dry weather no later than April 27, 2013, and during wet weather no later than July 15, 2021. Permittees shall comply with the following geometric mean final water quality-based effluent limitations for each monitoring location, calculated as defined in the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL, no later than July 15, 2021.

| Constituent | Effluent Limitation (MPN or cfu) | |
|----------------|----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Fecal coliform | 4000/100 mL | 2000/100 mL |

c. Receiving Water Limitations

i. Permittees shall comply with the following grouped²¹ single sample bacteria receiving water limitations for Ballona Creek Estuary; Ballona Creek Reach 2 at the confluence with Ballona Creek Estuary; Centinela Creek at the confluence with Ballona Creek Estuary; Ballona Creek Reach 2; Ballona Creek Reach 1 at the confluence with Reach 2; Benedict Canyon Channel at the confluence with Ballona Creek Reach 2; and Sepulveda Channel:

| Time Period | Annual Allowable Exceedance Days of the Single Sample Objective* | | Deadline |
|---|--|-----------------|----------------|
| | Daily Sampling | Weekly Sampling | |
| Summer Dry-Weather (April 1 to October 31) | 0 | 0 | April 27, 2013 |
| Winter Dry-Weather (November 1 to March 31) | 3 | 1 | April 27, 2013 |
| Wet Weather ²² (Year-round) | 17** | 3 | July 15, 2021 |

* Exceedance days for Ballona Creek Estuary and at the confluence with Ballona Creek Estuary based on REC-1 marine water single sample bacteria water quality objectives (WQO). Exceedance days for Ballona Creek Reach 2 and at the confluence with Ballona Creek Reach 2 based on LREC-1 freshwater single sample bacteria WQO. Exceedance days for Sepulveda Channel based on REC-1 freshwater single sample bacteria WQO.

** In Ballona Creek Reach 2 and at the confluence with Reach 2, the greater of the allowable exceedance days under the reference system approach or high flow suspension shall apply.

ii. Section E.3.c.i above shall not be applicable upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL (Attachment A of Resolution No. R12-008). Upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria

²¹ The final receiving water limitations are group-based and shared among all MS4 Permittees located within the drainage area.

²² Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

TMDL, Permittees shall comply with the following grouped²³ single sample bacteria receiving water limitations for Ballona Creek Estuary; Ballona Creek Reach 2 at the confluence with Ballona Creek Estuary; and Centinela Creek at the confluence with Ballona Creek Estuary:

| Time Period | Annual Allowable Exceedance Days of the REC-1 Marine Water Single Sample Bacteria Water Quality Objectives | | Deadline |
|---|--|-----------------|----------------|
| | Daily Sampling | Weekly Sampling | |
| Summer Dry-Weather (April 1 to October 31) | 0 | 0 | April 27, 2013 |
| Winter Dry-Weather (November 1 to March 31) | 9 | 2 | April 27, 2013 |
| Wet Weather ²⁴ (Year-round) | 17 | 3 | July 15, 2021 |

iii. Section E.3.c.i above shall not be applicable upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL (Attachment A of Resolution No. R12-008). Upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL, Permittees shall comply with the following grouped²⁵ single sample bacteria receiving water limitations for Sepulveda Channel:

| Time Period | Annual Allowable Exceedance Days of the REC-1 Fresh Water Single Sample Bacteria Water Quality Objectives | | Deadline |
|---------------------------|---|-----------------|----------------|
| | Daily Sampling | Weekly Sampling | |
| Dry-Weather | 5 | 1 | April 27, 2013 |
| Wet Weather ²⁶ | 15 | 2 | July 15, 2021 |

iv. Section E.3.c.i above shall not be applicable upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL (Attachment A of Resolution No. R12-008). Upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL, Permittees shall comply with the following grouped²⁷ single sample bacteria receiving water limitations for Ballona Creek Reach 2; Ballona Creek Reach 1 at the confluence with Reach 2; and Benedict Canyon Channel at the confluence with Ballona Creek Reach 2:

²³ The final receiving water limitations are group-based and shared among all MS4 Permittees located within the drainage area.

²⁴ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

²⁵ The final receiving water limitations are group-based and shared among all MS4 Permittees located within the drainage area.

²⁶ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

²⁷ The final receiving water limitations are group-based and shared among all MS4 Permittees located within the drainage area.

| Time Period | Annual Allowable Exceedance Days of the LREC-1 Fresh Water Single Sample Bacteria Water Quality Objectives | | Deadline |
|---------------------------|--|-----------------|----------------|
| | Daily Sampling | Weekly Sampling | |
| Dry-Weather | 5 | 1 | April 27, 2013 |
| Wet Weather ²⁸ | 15* | 2 | July 15, 2021 |

* In Ballona Creek Reach 2 and at the confluence with Reach 2, the greater of the allowable exceedance days under the reference system approach or high flow suspension shall apply.

- v. Permittees shall not exceed the single sample bacteria objective of 4000/100 ml in more than 10% of the samples collected from Ballona Creek Reach 1 during any 30-day period. Permittees shall achieve compliance with this receiving water limitation during dry weather no later than April 27, 2013, and during wet weather no later than July 15, 2021.
- vi. Permittees shall comply with the following geometric mean receiving water limitations for discharges to Ballona Creek Estuary; Ballona Creek Reach 2 at the confluence with Ballona Creek Estuary; and Centinela Creek at the confluence with Ballona Creek Estuary during dry weather no later than April 27, 2013, and during wet weather no later than July 15, 2021:

| Constituent | Geometric Mean (MPN or cfu) |
|---------------------|-----------------------------|
| Total coliform | 1,000/100 mL |
| Fecal coliform | 200/100 mL |
| <i>Enterococcus</i> | 35/100 mL |

- vii. Section E.3.c.vi above shall not be applicable upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL (Attachment A of Resolution No. R12-008). Upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL, Permittees shall comply with the following geometric mean receiving water limitations for discharges to Ballona Creek Estuary; Ballona Creek Reach 2 at the confluence with Ballona Creek Estuary; and Centinela Creek at the confluence with Ballona Creek Estuary, calculated as defined in the revised TMDL, no later than July 15, 2021:

| Constituent | Geometric Mean (MPN or cfu) |
|---------------------|-----------------------------|
| Total coliform | 1,000/100 mL |
| Fecal coliform | 200/100 mL |
| <i>Enterococcus</i> | 35/100 mL |

- viii. Permittees shall comply with the following geometric mean receiving water limitation for discharges to Ballona Creek Reach 2; Ballona Creek Reach 1 at

²⁸ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

the confluence with Ballona Creek Reach 2; Benedict Canyon Channel at the confluence with Ballona Creek Reach 2; and Sepulveda Channel during dry weather no later than April 27, 2013, and during wet weather no later than July 15, 2021:

| Constituent | Geometric Mean (MPN or cfu) |
|----------------|-----------------------------|
| <i>E. coli</i> | 126/100 mL |

- ix. Section E.3.c.viii above shall not be applicable upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL (Attachment A of Resolution No. R12-008). Upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL, Permittees shall comply with the following geometric mean receiving water limitation for discharges to Ballona Creek Reach 2; Ballona Creek Reach 1 at the confluence with Ballona Creek Reach 2; Benedict Canyon Channel at the confluence with Ballona Creek Reach 2; and Sepulveda Channel, calculated as defined in the revised TMDL, no later than July 15, 2021:

| Constituent | Geometric Mean (MPN or cfu) |
|----------------|-----------------------------|
| <i>E. coli</i> | 126/100 mL |

- x. Permittees shall comply with the following geometric mean receiving water limitation for discharges to Ballona Creek Reach 1 during dry weather no later than April 27, 2013, and during wet weather no later than July 15, 2021:

| Constituent | Geometric Mean (MPN or cfu) |
|----------------|-----------------------------|
| Fecal coliform | 2000/100 mL |

- xi. Section E.3.c.x above shall not be applicable upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL (Attachment A of Resolution No. R12-008). Upon the effective date of the revised Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL, Permittees shall comply with the following geometric mean receiving water limitation for discharges to Ballona Creek Reach 1, calculated as defined in the revised TMDL, no later than July 15, 2021:

| Constituent | Geometric Mean (MPN or cfu) |
|----------------|-----------------------------|
| Fecal coliform | 2000/100 mL |

4. Ballona Creek Metals TMDL

- a. Permittees subject to the provisions below are identified in Attachment K, Table K-3.
- b. Final Water Quality-Based Effluent Limitations

- i. Permittees shall comply with the following dry weather²⁹ water quality-based effluent limitations no later than January 11, 2016, expressed as total recoverable metals discharged to Ballona Creek and Sepulveda Channel:

| Constituent | Effluent Limitation Daily Maximum (g/day) | |
|-------------|---|----------------------|
| | Ballona Creek | Sepulveda Channel |
| Copper | 807.7 | 365.6 |
| Lead | 432.6 | 196.1 |
| Selenium | 169 | 76 |
| Zinc | 10,273.1 | 4,646.4 |

- ii. In lieu of calculating loads, Permittees may demonstrate compliance with the following concentration-based water quality-based effluent limitations during dry weather³⁰ no later than January 11, 2016, expressed as total recoverable metals discharged to Ballona Creek and Sepulveda Channel:

| Constituent | Effluent Limitation Daily Maximum (µg/L) |
|-------------|---|
| Copper | 24 |
| Lead | 13 |
| Selenium | 5 |
| Zinc | 304 |

- iii. Permittees shall comply with the following wet weather³¹ water quality-based effluent limitations no later than January 11, 2021, expressed as total recoverable metals discharged to Ballona Creek and its tributaries:

| Constituent | Effluent Limitation Daily Maximum (g/day) |
|-------------|---|
| Copper | $1.70 \times 10^{-5} \times$ daily storm volume (L) |
| Lead | $5.58 \times 10^{-5} \times$ daily storm volume (L) |
| Selenium | $4.73 \times 10^{-6} \times$ daily storm volume (L) |
| Zinc | $1.13 \times 10^{-4} \times$ daily storm volume (L) |

²⁹ Dry weather is defined as any day when the maximum daily flow in Ballona Creek is less than 40 cubic feet per second (cfs) measured at Sawtelle Avenue.

³⁰ Ibid.

³¹ Wet weather is defined as any day when the maximum daily flow in Ballona Creek is equal to or greater than 40 cfs measured at Sawtelle Avenue.

- c. Permittees shall comply with interim and final water quality-based effluent limitations for metals discharged to Ballona Creek and its tributaries, per the schedule below:

| Deadline | Total Drainage Area Served by the MS4 required to meet the water quality-based effluent limitations (%) | |
|------------------|---|-------------|
| | Dry weather | Wet weather |
| January 11, 2012 | 50 | 25 |
| January 11, 2014 | 75 | -- |
| January 11, 2016 | 100 | 50 |
| January 11, 2021 | 100 | 100 |

5. Ballona Creek Wetlands TMDL for Sediment and Invasive Exotic Vegetation (*USEPA established*)
- a. Permittees subject to the provisions below are identified in Attachment K, Table K-3.
- b. Permittees shall comply with the following grouped³² WLA per the provisions in Part VI.E.3 for discharges of sediment into Ballona Creek Wetlands:

| Constituent | Annual WLA ³³ (m ³ /yr) |
|--|---|
| Total Sediment (suspended sediment plus sediment bed load) | 44,615 |

F. TMDLs in Marina del Rey Subwatershed

1. Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL
- a. Permittees subject to the provisions below are identified in Attachment K, Table K-3.
- b. Permittees shall comply with the following final water quality-based effluent limitations for discharges to Marina del Rey Harbor Beach and Back Basins D, E, and F during dry weather as of the effective date of this Order, and during wet weather no later than July 15, 2021:

| Constituent | Effluent Limitations (MPN or cfu) | |
|-----------------|-----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform* | 10,000/100 mL | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| Enterococcus | 104/100 mL | 35/100 mL |

* Total coliform density shall not exceed a daily maximum of 1,000/100 mL, if the ratio of fecal-to-total coliform exceeds 0.1.

³² The WLA is group-based and shared among all MS4 Permittees located within the drainage area.

³³ The WLA is applied as a 3-year average.

- c. Section F.1.b above shall not be applicable upon the effective date of the revised Marina del Rey Harbor Mothers’ Beach and Back Basins Bacteria TMDL (Attachment B of Resolution No. R12-007). Upon the effective date of the revised Marina del Rey Harbor Mothers’ Beach and Back Basins Bacteria TMDL, Permittees shall comply with the following daily maximum final water quality-based effluent limitations for discharges to Marina del Rey Harbor Beach and Back Basins D, E, and F during dry weather as of the effective date of the revised Marina del Rey Harbor Mothers’ Beach and Back Basins Bacteria TMDL and during wet weather no later than July 15, 2021. Permittees shall comply with the following geometric mean final water quality-based effluent limitations for each monitoring location, calculated as defined in the revised Marina del Rey Harbor Mothers’ Beach and Back Basins Bacteria TMDL, no later than July 15, 2021.

| Constituent | Effluent Limitations (MPN or cfu) | |
|-----------------|-----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform* | 10,000/100 mL | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| Enterococcus | 104/100 mL | 35/100 mL |

* Total coliform density shall not exceed a daily maximum of 1,000/100 mL, if the ratio of fecal-to-total coliform exceeds 0.1.

d. Receiving Water Limitations

- i. Permittees shall comply with the following grouped³⁴ final single sample bacteria receiving water limitations for all monitoring stations at Marina Beach and Basins D, E, and F, except for those monitoring stations subject to the antidegradation implementation provision in the TMDL and identified in subpart iii. below, during dry weather as of the effective date of this Order and during wet weather no later than July 15, 2021.

| Time Period | Annual Allowable Exceedance Days of the Single Sample Objective (days) | |
|---|--|-----------------|
| | Daily Sampling | Weekly Sampling |
| Summer Dry-Weather (April 1 to October 31) | 0 | 0 |
| Winter Dry-Weather (November 1 to March 31) | 3 | 1 |
| Wet Weather ³⁵ (Year-round) | 17 | 3 |

- ii. Section F.1.d.i above shall not be applicable upon the effective date of the revised Marina del Rey Harbor Mothers’ Beach and Back Basins Bacteria TMDL (Attachment B of Resolution No. R12-007). Upon the effective date of the revised Marina del Rey Harbor Mothers’ Beach and Back Basins Bacteria

³⁴ The final receiving water limitations are group-based and shared among all MS4 Permittees located within the drainage area.

³⁵ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

TMDL, Permittees shall comply with the following grouped³⁶ final single sample bacteria receiving water limitations for all monitoring stations at Marina Beach and Basins D, E, and F, except for those monitoring stations subject to the antidegradation implementation provision in the TMDL and identified in subpart iv. below, during dry weather as of the effective date of the revised Marina del Rey Harbor Mothers’ Beach and Back Basins Bacteria TMDL and during wet weather no later than July 15, 2021.

| Time Period | Annual Allowable Exceedance Days of the Single Sample Objective (days) | |
|---|--|-----------------|
| | Daily Sampling | Weekly Sampling |
| Summer Dry-Weather (April 1 to October 31) | 0 | 0 |
| Winter Dry-Weather (November 1 to March 31) | 9 | 2 |
| Wet Weather ³⁷ (Year-round) | 17 | 3 |

iii. Permittees shall comply with the following grouped³⁸ final single sample bacteria receiving water limitations for monitoring stations in Marina del Rey subject to the antidegradation implementation provision in the TMDL as of the effective date of this Order:

| | | Annual Allowable Exceedance Days of the Single Sample Objective (days) | | | | | |
|------------|--------------------------|--|-----------------|--|-----------------|--------------------------|-----------------|
| Station ID | Monitoring Location | Summer Dry-Weather (April 1 to October 31) | | Winter Dry Weather (November 1 – March 31) | | Wet Weather (Year-round) | |
| | | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling |
| MdRH-9 | Basin F, center of basin | 0 | 0 | 3 | 1 | 8 | 1 |

iv. Section F.1.d.iii above shall not be applicable upon the effective date of the revised Marina del Rey Harbor Mothers’ Beach and Back Basins Bacteria TMDL (Attachment B of Resolution No. R12-007). Upon the effective date of the revised Marina del Rey Harbor Mothers’ Beach and Back Basins Bacteria TMDL, Permittees shall comply with the following grouped³⁹ final single sample bacteria receiving water limitations for monitoring stations in Marina del Rey subject to the antidegradation implementation provision in the TMDL as of the effective date of the revised Marina del Rey Harbor Mothers’ Beach and Back Basins Bacteria TMDL:

³⁶ The final receiving water limitations are group-based and shared among all MS4 Permittees located within the drainage area.
³⁷ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.
³⁸ The final receiving water limitations are group-based and shared among all MS4 Permittees located within the drainage area.
³⁹ The final receiving water limitations are group-based and shared among all MS4 Permittees located within the drainage area.

| | | Annual Allowable Exceedance Days of the Single Sample Objective (days) | | | | | |
|------------|-----------------------------|---|-----------------|---|-----------------|-----------------------------|-----------------|
| Station ID | Monitoring Location | Summer Dry-Weather (April 1 to October 31) | | Winter Dry Weather (November 1 – March 31) | | Wet Weather (Year-round) | |
| | | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling | Daily Sampling | Weekly Sampling |
| MdRH-9 | Basin F, center of basin | 0 | 0 | 9 | 2 | 8 | 1 |

- v. Permittees shall comply with the following geometric mean receiving water limitations for monitoring stations at Marina Beach and Basins D, E, and F during dry weather as of the effective date of this Order, and during wet weather no later than July 15, 2021:

| Constituent | Geometric Mean (MPN or cfu) |
|----------------|-----------------------------|
| Total coliform | 1,000/100 mL |
| Fecal coliform | 200/100 mL |
| Enterococcus | 35/100 mL |

- vi. Section F.1.d.v above shall not be applicable upon the effective date of the revised Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL (Attachment B of Resolution No. R12-007). Upon the effective date of the revised Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL, Permittees shall comply with the following geometric mean receiving water limitations for monitoring stations at Marina Beach and Basins D, E, and F, calculated as defined in the revised Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL, no later than July 15, 2021:

| Constituent | Geometric Mean (MPN or cfu) |
|----------------|-----------------------------|
| Total coliform | 1,000/100 mL |
| Fecal coliform | 200/100 mL |
| Enterococcus | 35/100 mL |

2. Marina del Rey Harbor Toxic Pollutants TMDL

- a. Permittees subject to the provisions below are identified in Attachment K, Table K-3.
- b. Permittees shall comply with the following final water quality-based effluent limitations no later than March 22, 2016⁴⁰, expressed as an annual loading of pollutants associated with total suspended solids (TSS) discharged to Marina del Rey Harbor Back Basins D, E, and F:

⁴⁰ If an Integrated Water Resources Approach is approved by the Regional Water Board and implemented then the Permittees shall comply with the final water quality-based effluent limitations no later than March 22, 2021.

| Constituent | Effluent Limitations | |
|-------------|----------------------|-------|
| | Annual | Units |
| Copper | 2.01 | kg/yr |
| Lead | 2.75 | kg/yr |
| Zinc | 8.85 | kg/yr |
| Chlordane | 0.0295 | g/yr |
| Total PCBs | 1.34 | g/yr |

- c. Permittees shall comply with interim and final water quality-based effluent limitations for pollutant loads associated with TSS discharged to Marina del Rey Harbor Back Basins D, E, and F, per the schedule below:

| Deadline | Total Drainage Area Served by the MS4 required to meet the effluent limitations (%) |
|----------------|---|
| March 22, 2014 | 50 |
| March 22, 2016 | 100 |

- d. If an approved Integrated Water Resources Approach is implemented, Permittees shall comply with interim and final water quality-based effluent limitations for pollutant loads associated with TSS discharged to Marina del Rey Harbor Back Basins D, E, and F, per the schedule below:

| Deadline | Total Drainage Area Served by the MS4 required to meet the effluent limitations (%) |
|----------------|---|
| March 22, 2013 | 25 |
| March 22, 2015 | 50 |
| March 22, 2017 | 75 |
| March 22, 2021 | 100 |

- e. Permittees shall be deemed in compliance with the water quality-based effluent limitations in Part F.2.b by demonstrating any one of the following:
- i. Final water quality-based effluent limitations for pollutants associated with TSS discharged to Marina del Rey Harbor Back Basins D, E, and F are met; or
 - ii. The sediment numeric targets as defined in the TMDL are met in bed sediments; or
 - iii. Pollutant concentrations associated with TSS discharged meet the numeric targets for sediment as defined in the TMDL.

**ATTACHMENT N. TMDLs IN DOMINGUEZ CHANNEL AND GREATER HARBOR WATERS
WATERSHED MANAGEMENT AREA**

A. Los Angeles Harbor Bacteria TMDL (Inner Cabrillo Beach and Main Ship Channel)

1. Permittees subject to the provisions below are identified in Attachment K, Table K-4.
2. Permittees shall comply with the following final water quality-based effluent limitations for discharges to the Los Angeles Harbor Main Ship Channel, Los Angeles and Long Beach Inner Harbor, and Inner Cabrillo Beach as of the effective date of this Order:

| Constituent | Effluent Limitations (MPN or cfu) | |
|---------------------|-----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform* | 10,000/100 mL | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| <i>Enterococcus</i> | 104/100 mL | 35/100 mL |

* Total coliform density shall not exceed a daily maximum of 1,000/100 mL, if the ratio of fecal-to-total coliform exceeds 0.1.

3. Receiving Water Limitations

- a. Permittees shall comply with the following final single sample bacteria receiving water limitations for the Los Angeles Harbor Main Ship Channel and Inner Cabrillo Beach as of the effective date of this Order:

| Time Period | Receiving Water | Compliance Monitoring Location | Annual Allowable Exceedance Days of the Single Sample Objective (days) | |
|--|----------------------|--------------------------------|--|-----------------|
| | | | Daily sampling | Weekly sampling |
| Summer Dry-Weather (April 1 to October 31) | Inner Cabrillo Beach | CB1 & CB2 | 0 | 0 |
| | Main Ship Channel | HW07 | 0 | 0 |
| Winter Dry-Weather (November 1 to March 31) | Inner Cabrillo Beach | CB1 & CB2 | 0 | 0 |
| | Main Ship Channel | HW07 | 3 | 1 |
| Wet Weather ¹ (Year-round) | Inner Cabrillo Beach | CB1 & CB2 | 0 | 0 |
| | Main Ship Channel | HW07 | 15 | 3 |

- b. Section A.3.a above shall not be applicable upon the effective date of the revised Los Angeles Harbor Bacteria TMDL (Attachment C of Resolution No. R12-007). Upon the effective date of the revised Los Angeles Harbor Bacteria TMDL, Permittees shall comply with the following final single sample bacteria receiving water limitations for the Los Angeles Harbor Main Ship Channel and Inner Cabrillo Beach as of the effective date of the revised Los Angeles Harbor Bacteria TMDL:

¹ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

| Time Period | Receiving Water | Compliance Monitoring Location | Annual Allowable Exceedance Days of the Single Sample Objective (days) | |
|--|----------------------|--------------------------------|--|-----------------|
| | | | Daily sampling | Weekly sampling |
| Summer Dry-Weather (April 1 to October 31) | Inner Cabrillo Beach | CB1 & CB2 | 0 | 0 |
| | Main Ship Channel | HW07 | 0 | 0 |
| Winter Dry-Weather (November 1 to March 31) | Inner Cabrillo Beach | CB1 & CB2 | 0 | 0 |
| | Main Ship Channel | HW07 | 8 | 1 |
| Wet Weather ² (Year-round) | Inner Cabrillo Beach | CB1 & CB2 | 0 | 0 |
| | Main Ship Channel | HW07 | 15 | 3 |

- c. Permittees shall comply with the following geometric mean receiving water limitations for the Los Angeles Harbor Main Ship Channel, Los Angeles and Long Beach Inner Harbor, and Inner Cabrillo Beach as of the effective date of this Order:

| Constituent | Geometric Mean |
|---------------------|------------------|
| Total coliform | 1,000 MPN/100 mL |
| Fecal coliform | 200 MPN/100 mL |
| <i>Enterococcus</i> | 35 MPN/100 mL |

B. Machado Lake Trash TMDL

1. Permittees subject to the provisions below are identified in Attachment K, Table K-4.
2. Permittees shall comply with the final water quality-based effluent limitation of zero trash discharged to Machado Lake no later than March 6, 2016, and every year thereafter.
3. Permittees shall comply with interim and final water quality-based effluent limitations for trash discharged to Machado Lake, per the schedule below:

**Machado Lake Trash Water Quality-Based Effluent Limitations
(gallons of uncompressed trash per year)**

| Permittees | Baseline ³ | 3/6/2012 (80%) | 3/6/2013 (60%) | 3/6/2014 (40%) | 3/6/2015 (20%) | 3/6/2016 ⁴ (0%) |
|---------------------|-----------------------|-------------------------------------|-------------------|-------------------|-------------------|-------------------------------|
| | | Annual Trash Discharge (gallons/yr) | | | | |
| Carson | 8141 | 6513 | 4885 | 3257 | 1628 | 0 |
| Lomita | 9393 | 7514 | 5636 | 3757 | 1879 | 0 |
| City of Los Angeles | 12331 | 9865 | 7399 | 4932 | 2466 | 0 |
| Los Angeles County | 8304 | 6643 | 4982 | 3322 | 1661 | 0 |

² Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

³ The Regional Water Board calculated the baseline water quality-based effluent limitations for the Permittees based on the estimated trash generation rate of 5334 gallons of uncompressed trash per square mile per year.

⁴ Permittees shall achieve their final effluent limitation of zero trash discharge for the 2015-2016 storm year and every year thereafter.

| | | | | | | |
|---|-------|-------|-------|-------|------|---|
| Los Angeles County Flood Control District | 16 | 13 | 10 | 7 | 3 | 0 |
| Palos Verdes Estates | 1976 | 1581 | 1186 | 791 | 395 | 0 |
| Rancho Palos Verdes | 5227 | 4181 | 3136 | 2091 | 1045 | 0 |
| Redondo Beach | 18 | 15 | 11 | 7 | 4 | 0 |
| Rolling Hills | 7004 | 5603 | 4202 | 2801 | 1401 | 0 |
| Rolling Hills Estates | 14722 | 11777 | 8833 | 5889 | 2944 | 0 |
| Torrance | 34809 | 27847 | 20885 | 13924 | 6962 | 0 |

4. If a Permittee opts to derive a site specific trash generation rate through its Trash Monitoring and Reporting Plan (TMRP), the baseline limitation will be calculated by multiplying the point source area(s) by the derived trash generation rate(s).
5. Permittees shall comply with the interim and final water quality-based effluent limitations for trash in B.2 and B.3 above per the provisions in Part VI.E.5.

C. Machado Lake Nutrient TMDL

1. Permittees subject to the provisions below are identified in Attachment K, Table K-4.
2. Permittees shall comply with the following interim and final water quality-based effluent limitations for discharges to Machado Lake:

| Deadline | Interim and Final Effluent Limitations | |
|--|---|---|
| | Monthly Average Total Phosphorus (mg/L) | Monthly Average Total Nitrogen (TKN+NO ₃ -N+NO ₂ -N) (mg/L) |
| As of the effective date of this Order | 1.25 | 3.5 |
| March 11, 2014 | 1.25 | 2.45 |
| September 11, 2018 | 0.10 | 1.0 |

3. Compliance Determination
 - a. Permittees may be deemed in compliance with the water quality-based effluent limitations by actively participating in a Lake Water Quality Management Plan (LWQMP) and attaining the receiving water limitations for Machado Lake. The City of Los Angeles has entered into a Memorandum of Agreement with the Regional Water Board to implement the LWQMP and reduce external nutrient loading to attain the following receiving water limitations:

| Deadline | Interim and Final Receiving Water Limitations | |
|--|---|---|
| | Monthly Average Total Phosphorus (mg/L) | Monthly Average Total Nitrogen (TKN+NO ₃ -N+NO ₂ -N) (mg/L) |
| As of the effective date of this Order | 1.25 | 3.5 |
| March 11, 2014 | 1.25 | 2.45 |
| September 11, 2018 | 0.10 | 1.0 |

- b. Permittees may be deemed in compliance with water quality-based effluent limitations by demonstrating reduction of total nitrogen and total phosphorous on an annual mass basis measured at the storm drain outfall of the Permittee’s drainage area where approved by the Regional Water Board Executive Officer based on the results of a special study by the Permittee.⁵
- i. The County of Los Angeles submitted a special study work plan, which was approved by the Regional Water Board Executive Officer, and established the following annual mass-based water quality based effluent limitations:

| Deadline | Interim and Final Effluent Limitations | |
|--------------------|---|--|
| | Annual Load Total Phosphorus (kg) | Annual Load Total Nitrogen (TKN+NO ₃ -N+NO ₂ -N) (kg) |
| March 11, 2014 | 887 | 1739 |
| September 11, 2018 | 71 | 710 |

- ii. The City of Torrance submitted a special study work plan, which was approved by the Regional Water Board Executive Officer, and established the following annual mass-based water quality based effluent limitations:

| Deadline | Interim and Final Effluent Limitations | |
|--------------------|---|--|
| | Annual Load Total Phosphorus (kg) | Annual Load Total Nitrogen (TKN+NO ₃ -N+NO ₂ -N) (kg) |
| March 11, 2014 | 3,760 | 7,370 |
| September 11, 2018 | 301 | 3008 |

D. Machado Lake Pesticides and PCBs TMDL

- 1. Permittees subject to the provisions below are identified in Attachment K, Table K-4.
- 2. Permittees shall comply with the following water quality-based effluent limitations for discharges of suspended sediments to Machado Lake, applied as a 3-year average no later than September 30, 2019:

| Pollutant | Effluent Limitations for Suspended Sediment-Associated Contaminants (µg/kg dry weight) |
|---------------------|--|
| Total PCBs | 59.8 |
| DDT (all congeners) | 4.16 |
| DDE (all congeners) | 3.16 |
| DDD (all congeners) | 4.88 |
| Total DDT | 5.28 |
| Chlordane | 3.24 |
| Dieldrin | 1.9 |

⁵ The annual mass-based allocation shall be equivalent to a monthly average concentration of 0.1 mg/L total phosphorus and 1.0 mg/L total nitrogen based on approved flow conditions.

**E. Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters
Toxic Pollutants TMDL**

1. Permittees subject to the provisions below are identified in Attachment K, Tables K-4 and K-13.
2. Permittees shall comply with the interim water quality-based effluent limitations listed below, as of the effective date of this Order:
 - a. Permittees shall comply with the following interim water quality-based effluent limitations for discharges to Dominguez Channel freshwater during wet weather:
 - i. The freshwater toxicity interim water quality-based effluent limitation is 2 TUc. The freshwater interim effluent limitation shall be implemented as a trigger requiring initiation and implementation of the TRE/TIE process as outlined in US EPA’s “Understanding and Accounting for Method Variability in Whole Effluent Toxicity Applications Under the National Pollutant Discharge Elimination System Program” (2000).
 - ii. Permittees shall comply with the following interim metals water quality-based effluent limitations for discharges to the Dominguez Channel freshwater and Torrance Lateral during wet weather:

| Metals | Interim Effluent Limitation Daily Maximum (µg/L) |
|--------------|---|
| Total Copper | 207.51 |
| Total Lead | 122.88 |
| Total Zinc | 898.87 |

- b. Permittees shall comply with the following interim concentration-based water quality-based effluent limitations for pollutant concentrations in the sediment discharged to the Dominguez Channel Estuary and Greater Los Angeles and Long Beach Harbor Waters:

| Water Body | Interim Effluent Limitations Daily Maximum (mg/kg sediment) | | | | | |
|--|--|--------|--------|-------|--------|-------|
| | Copper | Lead | Zinc | DDT | PAHs | PCBs |
| Dominguez Channel Estuary (below Vermont Avenue) | 220.0 | 510.0 | 789.0 | 1.727 | 31.60 | 1.490 |
| Long Beach Inner Harbor | 142.3 | 50.4 | 240.6 | 0.070 | 4.58 | 0.060 |
| Los Angeles Inner Harbor | 154.1 | 145.5 | 362.0 | 0.341 | 90.30 | 2.107 |
| Long Beach Outer Harbor (inside breakwater) | 67.3 | 46.7 | 150 | 0.075 | 4.022 | 0.248 |
| Los Angeles Outer Harbor (inside breakwater) | 104.1 | 46.7 | 150 | 0.097 | 4.022 | 0.310 |
| Los Angeles River Estuary | 53.0 | 46.7 | 183.5 | 0.254 | 4.36 | 0.683 |
| San Pedro Bay Near/Off Shore Zones | 76.9 | 66.6 | 263.1 | 0.057 | 4.022 | 0.193 |
| Los Angeles Harbor - Cabrillo Marina | 367.6 | 72.6 | 281.8 | 0.186 | 36.12 | 0.199 |
| Los Angeles Harbor - Consolidated Slip | 1470.0 | 1100.0 | 1705.0 | 1.724 | 386.00 | 1.920 |
| Los Angeles Harbor - Inner Cabrillo Beach Area | 129.7 | 46.7 | 163.1 | 0.145 | 4.022 | 0.033 |
| Fish Harbor | 558.6 | 116.5 | 430.5 | 40.5 | 2102.7 | 36.6 |

3. Permittees shall comply with the final water quality-based effluent limitations as listed below no later than March 23, 2032, and every year thereafter:

a. Dominguez Channel Freshwater – Wet Weather

- i. Freshwater Toxicity Effluent Limitation shall not exceed the monthly median of 1 TUc.**
- ii. Permittees shall comply with the following final metals water quality-based effluent limitations for discharges to Dominguez Channel and all upstream reaches and tributaries of Dominguez Channel above Vermont Avenue:**

| Metals | Water Column Mass-Based Final Effluent Limitation Daily Maximum⁶ (g/day) |
|---------------|--|
| Total Copper | 1,300.3 |
| Total Lead | 5,733.7 |
| Total Zinc | 9,355.5 |

b. Torrance Lateral Freshwater and Sediment – Wet Weather

- i. Permittees shall comply with the following final metals water quality-based effluent limitations for discharges to the Torrance Lateral:**

| Metals | Water Column Effluent Limitation Daily Maximum⁷ (unfiltered, µg/L) |
|---------------|--|
| Total Copper | 9.7 |
| Total Lead | 42.7 |
| Total Zinc | 69.7 |

- ii. Permittees shall comply with the following final concentration-based water quality-based effluent limitations for pollutant concentrations in the sediment discharged to the Torrance Lateral:**

| Metals | Concentration-Based Effluent Limitation Daily Maximum (mg/kg dry) |
|---------------|--|
| Total Copper | 31.6 |
| Total Lead | 35.8 |
| Total Zinc | 121 |

⁶ Effluent limitations are based on a hardness of 50 mg/L, and 90th percentile of annual flow rates (62.7 cfs) in Dominguez Channel. Recalculated mass-based effluent limitations using ambient hardness and flow rate at the time of sampling are consistent with the assumptions and requirements of the TMDL. In addition to the effluent limitations above, samples collected during flow conditions less than the 90th percentile of annual flow rates must demonstrate that the acute and chronic hardness dependent water quality criteria provided in the California Toxics Rule (CTR) are achieved.

⁷ Effluent limitations are based on a hardness of 50 mg/L. Recalculated concentration-based effluent limitations using ambient hardness at the time of sampling are consistent with the assumptions and requirements of the TMDL. In addition to the effluent limitations above, samples collected during flow conditions less than the 90th percentile of annual flow rates must demonstrate that the acute and chronic hardness dependent water quality criteria provided in the CTR are achieved.

- c. Dominguez Channel Estuary and Greater Los Angeles and Long Beach Harbor Waters
- i. Permittees shall comply with the following final mass-based water quality-based effluent limitations, expressed as an annual loading of pollutants in the sediment deposited to Dominguez Channel Estuary, Los Angeles River Estuary, and the Greater Los Angeles and Long Beach Harbor Waters:

| Water Body | Final Effluent Limitations Annual (kg/yr) | | | |
|---------------------------|--|----------|----------|------------|
| | Total Cu | Total Pb | Total Zn | Total PAHs |
| Dominguez Channel Estuary | 22.4 | 54.2 | 271.8 | 0.134 |
| Consolidated Slip | 2.73 | 3.63 | 28.7 | 0.0058 |
| Inner Harbor | 1.7 | 34.0 | 115.9 | 0.088 |
| Outer Harbor | 0.91 | 26.1 | 81.5 | 0.105 |
| Fish Harbor (POLA) | 0.00017 | 0.54 | 1.62 | 0.007 |
| Cabrillo Marina (POLA) | 0.0196 | 0.289 | 0.74 | 0.00016 |
| San Pedro Bay | 20.3 | 54.7 | 213.1 | 1.76 |
| LA River Estuary | 35.3 | 65.7 | 242.0 | 2.31 |

- ii. Permittees shall comply with the following final concentration-based water quality-based effluent limitations for pollutant concentrations in the sediments discharged to the Dominguez Channel Estuary, Consolidated Slip, and Fish Harbor:

| Water Body | Effluent Limitations Daily Maximum (mg/kg dry sediment) | | |
|---------------------------|---|----------|---------|
| | Cadmium | Chromium | Mercury |
| Dominguez Channel Estuary | 1.2 | -- | -- |
| Consolidated Slip | 1.2 | 81 | 0.15 |
| Fish Harbor | -- | -- | 0.15 |

- d. Permittees shall comply with the following final mass-based water quality-based effluent limitations, expressed as an annual loading of total DDT and total PCBs in the sediment deposited to Dominguez Channel Estuary, Los Angeles River Estuary, and the Greater Los Angeles and Long Beach Harbor Waters:

| Water Body | Final Effluent Limitations Annual (g/yr) | |
|---------------------------|--|------------|
| | Total DDTs | Total PCBs |
| Dominguez Channel Estuary | 0.250 | 0.207 |
| Consolidated Slip | 0.009 | 0.004 |
| Inner Harbor | 0.051 | 0.059 |
| Outer Harbor | 0.005 | 0.020 |
| Fish Harbor | 0.0003 | 0.0019 |
| Cabrillo Marina | 0.000028 | 0.000025 |
| Inner Cabrillo Beach | 0.0001 | 0.0003 |
| San Pedro Bay | 0.049 | 0.44 |
| LA River Estuary | 0.100 | 0.324 |

4. Compliance Determination

- a. Permittees shall be deemed in compliance with the interim concentration-based water quality-based effluent limitations for pollutant concentrations in the sediment as listed above in part E.2.b by meeting any one of the following methods:
 - i. Demonstrate that the sediment quality condition of *Unimpacted* or *Likely Unimpacted* via the interpretation and integration of multiple lines of evidence as defined in the Sediment Quality Objectives (SQO) Part 1, is met; or
 - ii. Meet the interim water quality-based effluent limitations in bed sediment over a three-year averaging period; or
 - iii. Meet the interim water quality-based effluent limitations in the discharge over a three-year averaging period.
- b. Permittees shall be deemed in compliance with the final fresh water metals water quality-based effluent limitations for discharges to Dominguez Channel and Torrance Lateral as listed above in parts E.3.a.ii and E.3.b.i by meeting any one of the following methods:
 - i. Final metals water quality-based effluent limitations are met; or
 - ii. CTR total metals criteria are met instream; or
 - iii. CTR total metals criteria are met in the discharge.
- c. Permittees shall be deemed in compliance with the final water quality-based effluent limitations for pollutants in the sediment as listed above in parts E.3.c.i and E.3.c.ii by meeting any one of the following methods:
 - i. Final water quality-based effluent limitations for pollutants in the sediment are met; or
 - ii. The qualitative sediment condition of *Unimpacted* or *Likely Unimpacted* via the interpretation and integration of multiple lines of evidence as defined in the SQO Part 1, is met, with the exception of chromium, which is not included in the SQO Part 1; or
 - iii. Sediment numeric targets are met in bed sediments over a three-year averaging period.
- d. Permittees shall be deemed in compliance with the final water quality-based effluent limitations for total DDT and total PCBs in the sediment as listed above in part E.3.d by meeting any one of the following methods:
 - i. Fish tissue targets are met in species resident to the specified water bodies⁸; or
 - ii. Final water quality-based effluent limitations for pollutants in the sediment are met; or

⁸ A site-specific study to determine resident species shall be submitted to the Regional Water Board Executive Officer for approval.

- iii.** Sediment numeric targets to protect fish tissue are met in bed sediments over a three-year averaging period; or
- iv.** Demonstrate that the sediment quality condition protective of fish tissue is achieved per the State Water Board's Statewide Enclosed Bays and Estuaries Plan.

ATTACHMENT O. TMDLs IN LOS ANGELES RIVER WATERSHED MANAGEMENT AREA

A. Los Angeles River Watershed Trash TMDL

1. Permittees subject to the provisions below are identified in Attachment K, Table K-5.
2. 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, 2016 and every year thereafter.
3. Permittees shall comply with interim and final water quality-based effluent limitations for trash discharged to the Los Angeles River, per the schedule below:

**Los Angeles River Watershed Trash Effluent Limitations¹ per Storm Year²
(gallons of uncompressed trash)**

| Permittees | Baseline | 2012 (30%) | 2013 (20%) | 2014 (10%) | 2015 (3.3%) | 2016 ³ (0%) |
|----------------------|----------|---------------|---------------|---------------|----------------|---------------------------|
| Alhambra | 39903 | 11971 | 7981 | 3990 | 1317 | 0 |
| Arcadia | 50108 | 15032 | 10022 | 5011 | 1654 | 0 |
| Bell | 16026 | 4808 | 3205 | 1603 | 529 | 0 |
| Bell Gardens | 13500 | 4050 | 2700 | 1350 | 446 | 0 |
| Bradbury | 4277 | 1283 | 855 | 428 | 141 | 0 |
| Burbank | 92590 | 27777 | 18518 | 9259 | 3055 | 0 |
| Calabasas | 22505 | 6752 | 4501 | 2251 | 743 | 0 |
| Carson | 6832 | 2050 | 1366 | 683 | 225 | 0 |
| Commerce | 58733 | 17620 | 11747 | 5873 | 1938 | 0 |
| Compton | 53191 | 15957 | 10638 | 5319 | 1755 | 0 |
| Cudahy | 5935 | 1781 | 1187 | 594 | 196 | 0 |
| Downey | 39063 | 11719 | 7813 | 3906 | 1289 | 0 |
| Duarte | 12210 | 3663 | 2442 | 1221 | 403 | 0 |
| El Monte | 42208 | 12662 | 8442 | 4221 | 1393 | 0 |
| Glendale | 140314 | 42094 | 28063 | 14031 | 4630 | 0 |
| Hidden Hills | 3663 | 1099 | 733 | 366 | 121 | 0 |
| Huntington Park | 19159 | 5748 | 3832 | 1916 | 632 | 0 |
| Irwindale | 12352 | 3706 | 2470 | 1235 | 408 | 0 |
| La Cañada Flintridge | 33496 | 10049 | 6699 | 3350 | 1105 | 0 |
| Los Angeles | 1374845 | 412454 | 274969 | 137485 | 45370 | 0 |
| Los Angeles County | 310223 | 93067 | 62045 | 31022 | 10237 | 0 |
| Lynwood | 28201 | 8460 | 5640 | 2820 | 931 | 0 |
| Maywood | 6129 | 1839 | 1226 | 613 | 202 | 0 |
| Monrovia | 46687 | 14006 | 9337 | 4669 | 1541 | 0 |
| Montebello | 50369 | 15111 | 10074 | 5037 | 1662 | 0 |
| Monterey Park | 38899 | 11670 | 7780 | 3890 | 1284 | 0 |
| Paramount | 27452 | 8236 | 5490 | 2745 | 906 | 0 |
| Pasadena | 111998 | 33599 | 22400 | 11200 | 3696 | 0 |
| Pico Rivera | 13953 | 4186 | 2791 | 1395 | 460 | 0 |
| Rosemead | 27305 | 8192 | 5461 | 2731 | 901 | 0 |
| San Fernando | 13947 | 4184 | 2789 | 1395 | 460 | 0 |
| San Gabriel | 20343 | 6103 | 4069 | 2034 | 671 | 0 |

¹ Effluent limitations are expressed as allowable trash discharge relative to baseline Waste Load Allocations specified in Table 7-2.2 of the Basin Plan.
² Storm year is defined as October 1 to September 30 herein.
³ Permittees shall achieve their final effluent limitation of zero trash discharge for the 2015-2016 storm year and every year thereafter.

| Permittees | Baseline | 2012 (30%) | 2013 (20%) | 2014 (10%) | 2015 (3.3%) | 2016 ³ (0%) |
|----------------|----------|---------------|---------------|---------------|----------------|---------------------------|
| San Marino | 14391 | 4317 | 2878 | 1439 | 475 | 0 |
| Sierra Madre | 11611 | 3483 | 2322 | 1161 | 383 | 0 |
| Signal Hill | 9434 | 2830 | 1887 | 943 | 311 | 0 |
| Simi Valley | 137 | 41 | 27 | 14 | 5 | 0 |
| South El Monte | 15999 | 4800 | 3200 | 1600 | 528 | 0 |
| South Gate | 43904 | 13171 | 8781 | 4390 | 1449 | 0 |
| South Pasadena | 14907 | 4472 | 2981 | 1491 | 492 | 0 |
| Temple City | 17572 | 5272 | 3514 | 1757 | 580 | 0 |
| Vernon | 47203 | 14161 | 9441 | 4720 | 1558 | 0 |

**Los Angeles River Watershed Trash Effluent Limitations⁴ per Storm Year⁵
(pounds of drip-dry trash)**

| Permittees | Baseline | 2012 (30%) | 2013 (20%) | 2014 (10%) | 2015 (3.3%) | 2016 ⁶ (0%) |
|----------------------|----------|---------------|---------------|---------------|----------------|---------------------------|
| Alhambra | 68761 | 20628 | 13752 | 6876 | 2269 | 0 |
| Arcadia | 93036 | 27911 | 18607 | 9304 | 3070 | 0 |
| Bell | 25337 | 7601 | 5067 | 2534 | 836 | 0 |
| Bell Gardens | 23371 | 7011 | 4674 | 2337 | 771 | 0 |
| Bradbury | 12160 | 3648 | 2432 | 1216 | 401 | 0 |
| Burbank | 170389 | 51117 | 34078 | 17039 | 5623 | 0 |
| Calabasas | 52230 | 15669 | 10446 | 5223 | 1724 | 0 |
| Carson | 10208 | 3062 | 2042 | 1021 | 337 | 0 |
| Commerce | 85481 | 25644 | 17096 | 8548 | 2821 | 0 |
| Compton | 86356 | 25907 | 17271 | 8636 | 2850 | 0 |
| Cudahy | 10061 | 3018 | 2012 | 1006 | 332 | 0 |
| Downey | 68507 | 20552 | 13701 | 6851 | 2261 | 0 |
| Duarte | 23687 | 7106 | 4737 | 2369 | 782 | 0 |
| El Monte | 68267 | 20480 | 13653 | 6827 | 2253 | 0 |
| Glendale | 293498 | 88049 | 58700 | 29350 | 9685 | 0 |
| Hidden Hills | 10821 | 3246 | 2164 | 1082 | 357 | 0 |
| Huntington Park | 30929 | 9279 | 6186 | 3093 | 1021 | 0 |
| Irwindale | 17911 | 5373 | 3582 | 1791 | 591 | 0 |
| La Cañada Flintridge | 73747 | 22124 | 14749 | 7375 | 2434 | 0 |
| Los Angeles | 2572500 | 771750 | 514500 | 257250 | 84893 | 0 |
| Los Angeles County | 651806 | 195542 | 130361 | 65181 | 21510 | 0 |
| Lynwood | 46467 | 13940 | 9293 | 4647 | 1533 | 0 |
| Maywood | 10549 | 3165 | 2110 | 1055 | 348 | 0 |
| Monrovia | 100988 | 30296 | 20198 | 10099 | 3333 | 0 |
| Montebello | 83707 | 25112 | 16741 | 8371 | 2762 | 0 |
| Monterey Park | 70456 | 21137 | 14091 | 7046 | 2325 | 0 |
| Paramount | 44490 | 13347 | 8898 | 4449 | 1468 | 0 |
| Pasadena | 207514 | 62254 | 41503 | 20751 | 6848 | 0 |
| Pico Rivera | 22549 | 6765 | 4510 | 2255 | 744 | 0 |
| Rosemead | 47378 | 14213 | 9476 | 4738 | 1563 | 0 |
| San Fernando | 23077 | 6923 | 4615 | 2308 | 762 | 0 |
| San Gabriel | 36437 | 10931 | 7287 | 3644 | 1202 | 0 |
| San Marino | 29147 | 8744 | 5829 | 2915 | 962 | 0 |

⁴ Effluent limitations are expressed as allowable trash discharge relative to baseline Waste Load Allocations specified in Table 7-2.2 of the Basin Plan.

⁵ Storm year is defined as October 1 to September 30 herein.

⁶ Permittees shall achieve their final effluent limitation of zero trash discharge for the 2015-2016 storm year and every year thereafter.

| Permittees | Baseline | 2012 (30%) | 2013 (20%) | 2014 (10%) | 2015 (3.3%) | 2016 ⁶ (0%) |
|----------------|----------|---------------|---------------|---------------|----------------|---------------------------|
| Sierra Madre | 25192 | 7558 | 5038 | 2519 | 831 | 0 |
| Signal Hill | 14220 | 4266 | 2844 | 1422 | 469 | 0 |
| Simi Valley | 344 | 103 | 69 | 34 | 11 | 0 |
| South El Monte | 24319 | 7296 | 4864 | 2432 | 803 | 0 |
| South Gate | 72333 | 21700 | 14467 | 7233 | 2387 | 0 |
| South Pasadena | 28357 | 8507 | 5671 | 2836 | 936 | 0 |
| Temple City | 31819 | 9546 | 6364 | 3182 | 1050 | 0 |
| Vernon | 66814 | 20044 | 13363 | 6681 | 2205 | 0 |

- Permittees shall comply with the interim and final water quality-based effluent limitations for trash in A.2 and A.3 above per the provisions in Part VI.E.5.

B. Los Angeles River Nitrogen Compounds and Related Effects TMDL

- Permittees subject to the provisions below are identified in Attachment K, Table K-5.
- Permittees shall comply with the following water quality-based effluent limitations as of the effective date of this Order:

| Water Body | NH ₃ -N (mg/L) | | NO ₃ -N (mg/L) | NO ₂ -N (mg/L) | NO ₃ -N+NO ₂ -N (mg/L) |
|--|---------------------------|--------------------|---------------------------|---------------------------|--|
| | One-hour Average | Thirty-day Average | Thirty-day Average | Thirty-day Average | Thirty-day Average |
| Los Angeles River above Los Angeles-Glendale WRP (LAG) | 4.7 | 1.6 | 8.0 | 1.0 | 8.0 |
| Los Angeles River below LAG | 8.7 | 2.4 | 8.0 | 1.0 | 8.0 |
| Los Angeles Tributaries | 10.1 | 2.3 | 8.0 | 1.0 | 8.0 |

C. Los Angeles River and Tributaries Metals TMDL

- Permittees subject to the provisions below are identified in Attachment K, Table K-5.
- Final Water Quality-Based Effluent Limitations
 - The watershed is divided into five jurisdictional groups based on the subwatersheds of the tributaries that drain to each reach of the river. Each jurisdictional group shall achieve compliance in prescribed percentages of its subwatershed(s). Jurisdictional groups can be reorganized or subdivided upon approval by the Regional Water Board Executive Officer.
 - Permittees shall comply with the following grouped⁷ dry weather⁸ water quality-based effluent limitations no later than January 11, 2024, expressed as total recoverable metals.⁹

| Waterbody | Effluent Limitations Daily Maximum (kg/day) |
|-----------|---|
|-----------|---|

⁷ The dry weather water quality-based effluent limitations are grouped-based and shared by the MS4 Permittees that are located within the drainage area.
⁸ Dry weather is defined as any day when the maximum daily flow in the Los Angeles River is less than 500 cfs measured at the Wardlow gage station.
⁹ Dry weather effluent limitations are equal to storm drain flows (critical flows minus median POTW flows minus median open space flows) multiplied by reach specific numeric targets, minus the contribution from direct air deposition.

| | Copper | Lead | Zinc |
|-------------------|--------------------------|---------------------------|-------------------------|
| LA River Reach 6 | WER ¹ x 0.53 | WER ¹ x 0.33 | --- |
| LA River Reach 5 | WER ¹ x 0.05 | WER ¹ x 0.03 | --- |
| LA River Reach 4 | WER ¹ x 0.32 | WER ¹ x 0.12 | --- |
| LA River Reach 3 | WER ¹ x 0.06 | WER ¹ x 0.03 | --- |
| LA River Reach 2 | WER ¹ x 0.13 | WER ¹ x 0.07 | --- |
| LA River Reach 1 | WER ¹ x 0.14 | WER ¹ x 0.07 | --- |
| Bell Creek | WER ¹ x 0.06 | WER ¹ x 0.04 | --- |
| Tujunga Wash | WER ¹ x 0.001 | WER ¹ x 0.0002 | --- |
| Burbank Channel | WER ¹ x 0.15 | WER ¹ x 0.07 | --- |
| Verdugo Wash | WER ¹ x 0.18 | WER ¹ x 0.10 | --- |
| Arroyo Seco | WER ¹ x 0.01 | WER ¹ x 0.01 | --- |
| Rio Hondo Reach 1 | WER ¹ x 0.01 | WER ¹ x 0.006 | WER ¹ x 0.16 |
| Compton Creek | WER ¹ x 0.04 | WER ¹ x 0.02 | --- |

¹WER(s) have a default value of 1.0 unless site-specific WER(s) are approved via the Basin Plan Amendment process.

- c. In lieu of calculating loads, Permittees may demonstrate compliance with the following concentration-based water quality-based effluent limitations during dry weather no later than January 11, 2024, expressed as total recoverable metals:

| Waterbody | Effluent Limitations Daily Maximum (µg total recoverable metals/L) | | |
|---|--|------------------------|------------------------|
| | Copper | Lead | Zinc |
| LA River Reach 5, 6 and Bell Creek | WER ¹ x 30 | WER ¹ x 19 | --- |
| LA River Reach 4 | WER ¹ x 26 | WER ¹ x 10 | --- |
| LA River Reach 3 above LA-Glendale WRP and Verdugo Wash | WER ¹ x 23 | WER ¹ x 12 | --- |
| LA River Reach 3 below LA-Glendale WRP | WER ¹ x 26 | WER ¹ x 12 | --- |
| Burbank Western Channel (above WRP) | WER ¹ x 26 | WER ¹ x 14 | --- |
| Burbank Western Channel (below WRP) | WER ¹ x 19 | WER ¹ x 9.1 | --- |
| LA River Reach 2 and Arroyo Seco | WER ¹ x 22 | WER ¹ x 11 | --- |
| LA River Reach 1 | WER ¹ x 23 | WER ¹ x 12 | --- |
| Compton Creek | WER ¹ x 19 | WER ¹ x 8.9 | --- |
| Rio Hondo Reach 1 | WER ¹ x 13 | WER ¹ x 5.0 | WER ¹ x 131 |

¹ WER(s) have a default value of 1.0 unless site-specific WER(s) are approved via the Basin Plan Amendment process.

- d. Permittees shall comply with the following grouped¹⁰ wet weather¹¹ water quality-based effluent limitations no later than January 11, 2028, expressed as total

¹⁰ The wet weather water quality-based effluent limitations are grouped-based and shared among all MS4 Permittees located within the drainage area.

recoverable metals discharged to all reaches of the Los Angeles River and its tributaries.

| Constituent | Effluent Limitation Daily Maximum (kg/day) |
|-------------|---|
| Cadmium | $WER^1 \times 2.8 \times 10^{-9} \times \text{daily volume (L)} - 1.8$ |
| Copper | $WER^1 \times 1.5 \times 10^{-8} \times \text{daily volume (L)} - 9.5$ |
| Lead | $WER^1 \times 5.6 \times 10^{-8} \times \text{daily volume (L)} - 3.85$ |
| Zinc | $WER^1 \times 1.4 \times 10^{-7} \times \text{daily volume (L)} - 83$ |

¹ WER(s) have a default value of 1.0 unless site-specific WER(s) are approved via the Basin Plan Amendment process.

3. Permittees shall comply with interim and final water quality-based effluent limitations for metals discharged to the Los Angeles River and its tributaries, per the schedule below:

| Deadline | Total Drainage Area Served by the MS4 required to meet the water quality-based effluent limitations (%) | |
|------------------|---|-------------|
| | Dry weather | Wet weather |
| January 11, 2012 | 50 | 25 |
| January 11, 2020 | 75 | -- |
| January 11, 2024 | 100 | 50 |
| January 11, 2028 | 100 | 100 |

D. Los Angeles River Watershed Bacteria TMDL

1. Permittees subject to the provisions below are identified in Attachment K, Table K-5.
2. Permittees shall comply with the following final water quality-based effluent limitations for discharges to the Los Angeles River and its tributaries during dry weather according to the schedule in Table O-1, and during wet weather no later than March 23, 2037:

| Constituent | Effluent Limitation (MPN or cfu) | |
|----------------|----------------------------------|----------------|
| | Daily Maximum | Geometric Mean |
| <i>E. coli</i> | 235/100 mL | 126/100 mL |

3. Permittees shall comply with the following grouped¹² interim dry weather single sample bacteria water quality-based effluent limitations for specific river segments and tributaries as listed in the table, below, according to the schedule in Table O-1:

¹¹ Wet weather is defined as any day when the maximum daily flow in the Los Angeles River is equal to or greater than 500 cfs measured at the Wardlow gage station.

¹² The interim dry weather water quality-based effluent limitations are group-based and shared among all MS4 Permittees located within the drainage area. However, the interim dry weather water quality-based effluent limitations may be distributed based on proportional drainage area, upon approval of the Regional Water Board Executive Officer.

| River Segment or Tributary | Daily Maximum <i>E. coli</i> Load (10 ⁹ MPN/Day) |
|---|---|
| Los Angeles River Segment A (Willow to Rosecrans) | 301 |
| Los Angeles River Segment B (Rosecrans to Figueroa) | 518 |
| Los Angeles River Segment C (Figueroa to Tujunga) | 463 |
| Los Angeles River Segment D (Tujunga to Balboa) | 454 |
| Los Angeles River Segment E (Balboa to headwaters) | 32 |
| Aliso Canyon Wash | 23 |
| Arroyo Seco | 24 |
| Bell Creek | 14 |
| Bull Creek | 9 |
| Burbank Western Channel | 86 |
| Compton Creek | 7 |
| Dry Canyon | 7 |
| McCoy Canyon | 7 |
| Rio Hondo | 2 |
| Tujunga Wash | 10 |
| Verdugo Wash | 51 |

- a. Unexpectedly high-loading outfalls may be excluded from interim compliance calculations under the following circumstances: If an outfall which was 1) loading *E. coli* at a rate less than the 25th percentile of outfalls during the monitoring events used to develop the “MS4 Load Reduction Strategy” (LRS), but, at the time of compliance monitoring, is 2) loading *E. coli* at a rate greater than the 90th percentile of outfalls, and 3) actions are taken prior to the end of the first phase (i.e. 10 years after the beginning of the segment or tributary specific phase) such that the outfall is returned to a loading less than the 50th percentile of the outfalls at compliance monitoring, then the 90th percentile data from the outfall can be excluded from the compliance loading calculations.
- b. Likewise, if an outfall which was 1) the subject of a dry weather diversion is found, at the time of compliance monitoring, to be 2) contributing greater than the 90th percentile loading rate, and 3) actions are taken such that the outfall is returned to a loading less than the 50th percentile of the outfalls at compliance monitoring, and a maintenance schedule for the diversion is submitted with the compliance report, then the 90th percentile data from the outfall can be excluded from the compliance loading calculations.

4. Receiving Water Limitations

- a. Permittees shall comply with the following grouped¹³ final single sample bacteria receiving water limitations for discharges to the Los Angeles River and its tributaries during dry weather according to the schedule in Table O-1, and during wet weather no later than March 23, 2037:

| Time Period | Annual Allowable Exceedance Days of the Single Sample Objective (days) | |
|---|--|----------------------------|
| | Daily Sampling | Weekly Sampling |
| Dry Weather | 5 | 1 |
| Non-HFS ¹⁴ Waterbodies Wet Weather | 15 | 2 |
| HFS Waterbodies Wet Weather | 10 (not including HSF days) | 2 (not including HSF days) |

- b. Permittees shall comply with the following geometric mean receiving water limitation for discharges to the Los Angeles River and its tributaries during dry weather according to the schedule in Table O-1, and during wet weather no later than March 23, 2037:

| Constituent | Geometric Mean (MPN or cfu) |
|-------------|-----------------------------|
| E. coli | 126/100 mL |

Table O-1. Los Angeles River Bacteria Implementation Schedule for Dry Weather

Italics in this Table refer to Permittees using an alternative compliance plan instead of an LRS.

| Implementation Action | Responsible Parties | Deadline |
|---|--|-----------------------|
| SEGMENT B (upper and middle Reach 2 – Figueroa Street to Rosecrans Avenue) | | |
| First phase – Segment B | | |
| Submit a Load Reduction Strategy (LRS) for Segment B (<i>or submit an alternative compliance plan</i>) | MS4 Permittees discharging to Segment B | September 23, 2014 |
| Complete implementation of LRS | MS4 Permittees discharging to Segment B, if using LRS | March 23, 2019 |
| Achieve interim (or final) water quality-based effluent limitations and submit report to Regional Water Board | MS4 Permittees discharging to Segment B, if using LRS | March 23, 2022 |
| <i>Achieve final water quality-based effluent limitations or demonstrate that non-compliance is due to upstream contributions and submit report to Regional Water Board</i> | <i>MS4 Permittees discharging to Segment B, if using alternative compliance plan</i> | <i>March 23, 2022</i> |

¹³ The final receiving water limitations are group-based and shared among all MS4 Permittees, which includes LA MS4, Long Beach MS4, and Caltrans.

¹⁴ HFS stands for high flow suspension as defined in Chapter 2 of the Basin Plan.

| Implementation Action | Responsible Parties | Deadline |
|--|--|---------------------------|
| Second phase, if necessary – Segment B for LRS approach only | | |
| Submit a new LRS | MS4 Permittees discharging to Segment B | March 23, 2023 |
| Complete implementation of LRS | MS4 Permittees discharging to Segment B, if using LRS | September 23, 2026 |
| Achieve final water quality-based effluent limitations in Segment B or demonstrate that non-compliance is only due to upstream contributions and submit report to Regional Water Board | MS4 Permittees discharging to Segment B, if using LRS | September 23, 2028 |
| SEGMENT B TRIBUTARIES (Rio Hondo and Arroyo Seco) | | |
| First phase – Segment B Tributaries (Rio Hondo and Arroyo Seco) | | |
| Submit a Load Reduction Strategy (LRS) for Segment B tributaries (<i>or submit an alternative compliance plan</i>) | MS4 Permittees discharging to Segment B tributaries | March 23, 2016 |
| Complete implementation of LRS | MS4 Permittees discharging to Segment B tributaries, if using LRS | September 23, 2020 |
| Achieve interim (or final) water quality-based effluent limitations and submit report to Regional Water Board | MS4 Permittees discharging to Segment B tributaries, if using LRS | September 23, 2023 |
| <i>Achieve final water quality-based effluent limitations or demonstrate that non-compliance is only due to upstream contributions and submit report to Regional Water Board</i> | <i>MS4 Permittees discharging to Segment B tributaries, if using alternative compliance plan</i> | <i>September 23, 2023</i> |
| Second phase, if necessary – Segment B Tributaries (Rio Hondo and Arroyo Seco) for LRS approach only | | |
| Submit a new LRS | MS4 Permittees discharging to Segment B tributaries | September 23, 2024 |
| Complete implementation of LRS | MS4 Permittees discharging to Segment B tributaries, if using LRS | March 23, 2028 |
| Achieve final water quality-based effluent limitations Segment B tributaries or demonstrate that non-compliance is due to upstream contributions and submit report to Regional Water Board | MS4 Permittees discharging to Segment B tributaries, if using LRS | March 23, 2030 |
| SEGMENT A (lower Reach 2 and Reach 1 – Rosecrans Avenue to Willow Street) | | |
| First phase – Segment A | | |

| Implementation Action | Responsible Parties | Deadline |
|---|--|---------------------------|
| Submit a Load Reduction Strategy (LRS) for Segment A (or submit an alternative compliance plan) | MS4 Permittees discharging to Segment A | September 23, 2016 |
| Complete implementation of LRS | MS4 Permittees discharging to Segment A, if using LRS | March 23, 2021 |
| Achieve interim (or final) water quality-based effluent limitations and submit report to Regional Water Board | MS4 Permittees discharging to Segment A, if using LRS | March 23, 2024 |
| <i>Achieve final water quality-based effluent limitations or demonstrate that non-compliance is due to upstream contributions and submit report to Regional Water Board</i> | <i>MS4 Permittees discharging to Segment A, if using alternative compliance plan</i> | <i>March 23, 2024</i> |
| Second phase, if necessary – Segment A for LRS approach only | | |
| Submit a new LRS | MS4 Permittees discharging to Segment A | March 23, 2025 |
| Complete implementation of LRS | MS4 Permittees discharging to Segment A, if using LRS | September 23, 2029 |
| Achieve final water quality-based effluent limitations in Segment A or demonstrate that non-compliance is due to upstream contributions and submit report to Regional Water Board | MS4 Permittees discharging to Segment A, if using LRS | September 23, 2031 |
| SEGMENT A TRIBUTARY (Compton Creek) | | |
| First phase – Segment A Tributary | | |
| Submit a Load Reduction Strategy (LRS) for Segment A tributary (or submit an alternative compliance plan) | MS4 Permittees discharging to Segment A tributary | March 23, 2018 |
| Complete implementation of LRS | MS4 Permittees discharging to Segment A tributary if using LRS | September 23, 2022 |
| Achieve interim (or final) water quality-based effluent limitations and submit report to Regional Water Board | MS4 Permittees discharging to Segment A tributary if using LRS | September 23, 2025 |
| <i>Achieve final water quality-based effluent limitations or demonstrate that non-compliance is due to upstream contributions and submit report to Regional Water Board</i> | <i>MS4 Permittees discharging to Segment A tributary, if using alternative compliance plan</i> | <i>September 23, 2025</i> |
| Second phase, if necessary – Segment A Tributary for LRS approach only | | |

| Implementation Action | Responsible Parties | Deadline |
|---|--|-----------------------|
| Submit a new LRS | MS4 Permittees discharging to Segment A tributary | September 23, 2026 |
| Complete implementation of LRS | MS4 Permittees discharging to Segment A tributary, if using LRS | March 23, 2030 |
| Achieve final water quality-based effluent limitations in Segment A tributary or demonstrate that non-compliance is due to upstream contributions and submit report to Regional Water Board | MS4 Permittees discharging to Segment A tributary, if using LRS | March 23, 2032 |
| SEGMENT E (Reach 6 – LA River headwaters [confluence with Bell Creek and Calabasas Creek] to Balboa Boulevard) | | |
| First phase – Segment E | | |
| Submit a Load Reduction Strategy (LRS) for Segment E (<i>or submit an alternative compliance plan</i>) | MS4 Permittees discharging to Segment E | September 23, 2017 |
| Complete implementation of LRS | MS4 Permittees discharging to Segment E, if using LRS | March 23, 2022 |
| Achieve interim (or final) water quality-based effluent limitations and submit report to Regional Water Board | MS4 Permittees discharging to Segment E, if using LRS | March 23, 2025 |
| <i>Achieve final water quality-based effluent limitations or demonstrate that non-compliance is due to upstream contributions and submit report to Regional Water Board</i> | <i>MS4 Permittees discharging to Segment E, if using alternative compliance plan</i> | <i>March 23, 2025</i> |
| Second phase, if necessary –Segment E for LRS approach only | | |
| Submit a new LRS | MS4 Permittees discharging to Segment E | March 23, 2026 |
| Complete implementation of LRS | MS4 Permittees discharging to Segment E, if using LRS | September 23, 2029 |
| Achieve final Water quality-based effluent limitations in Segment E or demonstrate that non-compliance is due to upstream contributions and submit report to Regional Water Board | MS4 Permittees discharging to Segment E, if using LRS | September 23, 2031 |
| SEGMENT E TRIBUTARIES (Dry Canyon Creek, McCoy Creek, Bell Creek, and Aliso Canyon Wash) | | |
| First phase – Segment E Tributaries | | |
| Submit a Load Reduction Strategy (LRS) for Segment E tributaries (<i>or submit an alternative compliance plan</i>) | MS4 Permittees discharging to Segment E tributaries | September 23, 2021 |

| Implementation Action | Responsible Parties | Deadline |
|--|---|---------------------------|
| Complete implementation of LRS | MS4 Permittees discharging to Segment E tributaries if using LRS | March 23, 2026 |
| Achieve interim (or final) water quality-based effluent limitations and submit report to Regional Water Board | MS4 Permittees discharging to Segment E tributaries, if using LRS | March 23, 2029 |
| <i>Achieve final water quality-based effluent limitations or demonstrate that non-compliance is due to upstream contributions and submit report to Regional Water Board</i> | <i>MS4 Permittees discharging to Segment E tributaries, if using alternative compliance plan</i> | <i>March 23, 2029</i> |
| Second phase, if necessary – Segment E Tributaries for LRS approach only | | |
| Submit a new LRS | MS4 Permittees discharging to Segment E tributaries | March 23, 2030 |
| Complete implementation of LRS | MS4 Permittees discharging to Segment E tributaries, if using LRS | September 23, 2033 |
| Achieve final water quality-based effluent limitations in Segment E tributaries or demonstrate that non-compliance is due to upstream contributions and submit report to Regional Water Board | MS4 Permittees discharging to Segment E tributaries, if using LRS | September 23, 2035 |
| SEGMENT C (lower Reach 4 and Reach 3 – Tujunga Avenue to Figueroa Street) SEGMENT C TRIBUTARIES (Tujunga Wash, Burbank Western Channel, and Verdugo Wash) SEGMENT D (Reach 5 and upper Reach 4 – Balboa Boulevard to Tujunga Avenue) SEGMENT D TRIBUTARIES (Bull Creek) | | |
| First phase – Segment C, Segment C Tributaries, Segment D, Segment D tributaries | | |
| Submit a Load Reduction Strategies (LRS) for Segment C, Segment C tributaries, Segment D, Segment D tributaries (<i>or submit an alternative compliance plan</i>) | MS4 Permittees discharging to Segment C, Segment C tributaries, Segment D, Segment D tributaries | March 23, 2023 |
| Complete implementation of LRS | MS4 Permittees discharging to Segment C, Segment C tributaries, Segment D, Segment D tributaries, if using LRS | September 23, 2027 |
| Achieve interim (or final) water quality-based effluent limitations and submit report to Regional Water Board | MS4 Permittees discharging to Segment C, Segment C tributaries, Segment D, Segment D tributaries, if using LRS | September 23, 2030 |
| <i>Achieve final water quality-based effluent limitations or demonstrate that non-compliance is due to upstream contributions and submit report to Regional Water Board</i> | <i>MS4 Permittees discharging to Segment C, Segment C tributaries, Segment D, Segment D tributaries, if using alternative compliance plan</i> | <i>September 23, 2030</i> |
| Second phase, if necessary - Segment C, Segment C Tributaries, Segment D, Segment D Tributaries for LRS approach only | | |

| Implementation Action | Responsible Parties | Deadline |
|--|---|--------------------|
| Submit a new LRS | MS4 Permittees discharging to Segment C, Segment C tributaries, Segment D, Segment D tributaries | September 23, 2031 |
| Complete implementation of LRS | MS4 Permittees discharging to Segment C, Segment C tributaries, Segment D, Segment D tributaries if using LRS | March 23, 2035 |
| Achieve final water quality-based effluent limitations in Segment C, Segment C tributaries, Segment D, Segment D tributaries or demonstrate that non-compliance is due to upstream contributions and submit report to Regional Water Board | MS4 Permittees discharging to Segment C, Segment C tributaries, Segment D, Segment D tributaries if using LRS | March 23, 2037 |

5. Compliance

- a.** Permittees may demonstrate compliance with the final dry weather limitations by demonstrating that final receiving water limitations are met in the receiving waters or by demonstrating one of the following conditions at outfalls to the receiving waters:
 - i.** Flow-weighted concentration of *E. coli* in MS4 discharges during dry weather is less than or equal to 235 MPN/100mL, based on a weighted-average using flow rates from all measured outfalls; or
 - ii.** Zero discharge during dry weather.
- b.** In addition, individual Permittees or subgroups of Permittees may differentiate their dry weather discharges from other dischargers or upstream contributions by demonstrating one of the following conditions at outfalls to the receiving waters or at segment, tributary or jurisdictional boundaries:
 - i.** The flow-weighted concentration of *E. coli* in a Permittee’s individual discharge or in a group of Permittees’ collective discharge during dry weather is less than or equal to 235 MPN/100mL, based on a weighted-average using flow rates from all measured outfalls; or
 - ii.** Zero discharge from a Permittee’s individual outfall(s) or from a group of Permittees’ outfall(s) during dry weather; or
 - iii.** Demonstration that the MS4 loading of *E. coli* to the segment or tributary during dry weather is less than or equal to the calculated loading rate that would not cause or contribute to exceedances based on the loading capacity representative of conditions in the River at the time of compliance.
- c.** The interim dry weather water quality-based effluent limitations are group-based, shared among all MS4 Permittees that drain to a segment or tributary. However, the interim dry weather water quality-based effluent limitations may be distributed

based on proportional drainage area, upon approval of the Regional Water Board Executive Officer.

E. Legg Lake Trash TMDL

1. Permittees subject to the provisions below are identified in Attachment K, Table K-5.
2. Permittees shall comply with the final water quality-based effluent limitation of zero trash discharged to Legg Lake no later than March 6, 2016, and every year thereafter.
3. Permittees that choose to comply via a full capture compliance strategy must demonstrate a phased implementation of full capture devices attaining interim effluent limitations over the following 8-year period until the final effluent limitation of zero is attained:

| Deadline | Effluent Limitation |
|---------------|---|
| | Drainage Area covered by Full Capture Systems (%) |
| March 6, 2008 | 0 |
| March 6, 2012 | 20 |
| March 6, 2013 | 40 |
| March 6, 2014 | 60 |
| March 6, 2015 | 80 |
| March 6, 2016 | 100 |

Legg Lake Trash Effluent Limitations¹⁵ (gallons of uncompressed trash per year)

| Permittees | Baseline ¹⁶ (100%) | 3/6/2012 (80%) | 3/6/2013 (60%) | 3/6/2014 (40%) | 3/6/2015 (20%) | 3/6/2016 ¹⁷ (0%) |
|---|-------------------------------|----------------|----------------|----------------|----------------|-----------------------------|
| Los Angeles County | 2400.03 | 1920.02 | 1440.02 | 960.01 | 480.01 | 0 |
| Los Angeles County Flood Control District | 24.05 | 19.24 | 14.43 | 9.62 | 4.81 | 0 |
| City of El Monte | 509.48 | 407.58 | 305.69 | 203.79 | 101.90 | 0 |

¹⁵ Water quality-based effluent limitations are expressed as allowable trash discharge relative to baseline Waste Load Allocations.

¹⁶ The Regional Water Board calculated the baseline water quality-based effluent limitations for the Permittees based on the estimated trash generation rate of 5334 gallons of uncompressed trash per square mile per year.

¹⁷ Permittees shall achieve their final effluent limitation of zero trash discharged for the year and every year thereafter.

| Permittees | Baseline ¹⁶ (100%) | 3/6/2012 (80%) | 3/6/2013 (60%) | 3/6/2014 (40%) | 3/6/2015 (20%) | 3/6/2016 ¹⁷ (0%) |
|------------------------|----------------------------------|-------------------|-------------------|-------------------|-------------------|--------------------------------|
| City of South El Monte | 3896.76 | 3117.41 | 2338.06 | 1558.70 | 779.35 | 0 |

4. Permittees shall comply with the interim and final water quality-based effluent limitations for trash in E.2 and E.3 above per the provisions in Part VI.E.5.
5. If a Permittee opts to derive site specific trash generation rates through its Trash Monitoring and Reporting Plan (TMRP), the baseline limitation shall be calculated by multiplying the point source area(s) by the derived trash generation rate(s).
6. Permittees shall comply with the interim and final water quality-based effluent limitations for trash in E.2 and E.3 above per the provisions in Part VI.E.5.

F. Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDL (USEPA established)

1. Permittees subject to the provisions below are identified in Attachment K, Table K-5.
2. Permittees shall comply with the following final WLAs for discharges to the Los Angeles River Estuary per the provisions in Part VI.E.3:

| Constituent | WLA (MPN or cfu) | |
|-----------------|------------------|----------------|
| | Daily Maximum | Geometric Mean |
| Total coliform* | 10,000/100 mL | 1,000/100 mL |
| Fecal coliform | 400/100 mL | 200/100 mL |
| Enterococcus | 104/100 mL | 35/100 mL |

* Total coliform density shall not exceed a daily maximum of 1,000/100 mL, if the ratio of fecal-to-total coliform exceeds 0.1.

3. Receiving Water Limitations

- a. Permittees shall comply with the following grouped¹⁸ final single sample bacteria WLAs for the Los Angeles River Estuary per the provisions in Part VI.E.3:

| Time Period | Annual Allowable Exceedance Days of the Single Sample Objective (days) | |
|---|--|-----------------|
| | Daily sampling | Weekly sampling |
| Summer Dry-Weather (April 1 to October 31) | 0 | 0 |
| Winter Dry-Weather (November 1 to March 31) | 9 | 2 |
| Wet Weather ¹⁹ | 17 | 3 |

- b. Permittees shall comply with the following geometric mean receiving water limitations for all monitoring stations in the Los Angeles River Estuary per the provisions in Part VI.E.3:

¹⁸ The final receiving water limitations are group-based and shared among all MS4 Permittees located within the drainage area.

¹⁹ Wet weather is defined as days with 0.1 inch of rain or greater and the three days following the rain event.

| Constituent | Geometric Mean (MPN or cfu) |
|----------------|-----------------------------|
| Total coliform | 1,000/100 mL |
| Fecal coliform | 200/100 mL |
| Enterococcus | 35/100 mL |

4. Compliance Determination

- a. Permittees may demonstrate compliance with the final dry or weather WLAs by demonstrating that final WLAs expressed as allowable exceedance days are met in the receiving waters or by demonstrating one of the following conditions at outfalls to the receiving waters:
 - i. Flow-weighted concentration of bacterial indicators in MS4 discharges during dry or wet weather is less than or equal to the WLAs in part E.2 above, based on a weighted-average using flow rates from all measured outfalls; or
 - ii. Zero discharge during dry weather.
- b. In addition, individual Permittees or subgroups of Permittees may differentiate their dry or wet weather discharges from other dischargers or upstream contributions by demonstrating one of the following conditions at outfalls to the receiving waters or at segment, tributary or jurisdictional boundaries:
 - i. The flow-weighted concentration of bacterial indicators in a Permittee’s individual discharge or in a group of Permittees’ collective discharge during dry or wet weather is less than or equal to the WLAs in part E.2 above, based on a weighted-average using flow rates from all measured outfalls; or
 - ii. Zero discharge from a Permittee’s individual outfall(s) or from a group of Permittees’ outfall(s) during dry weather.

G. Los Angeles Area Lakes TMDLs²⁰ (USEPA established)

1. Lake Calabasas Nutrient TMDL

- a. Permittees subject to the provisions below are identified in Attachment K, Table K-5.
- b. Permittees shall comply with the following WLAs per the provisions in Part VI.E.3.
- c. Permittees shall comply with the following annual mass-based allocations based on current flow conditions:

| Permittee | Total Phosphorus (lb-P/yr) | Total Nitrogen (lb-N/yr) |
|-------------------|----------------------------|--------------------------|
| City of Calabasas | 48.5 | 220 |

Measured at the point of discharge. The mass-based allocations are equivalent to existing concentrations of 0.066 mg/L total phosphorus as a summer average (May-September) and annual average, and 0.66 mg/L total nitrogen as a summer

²⁰ Los Angeles Area Lakes TMDL includes multiple watershed management areas.

average (May-September) and annual average based on approved flow conditions.

- d. The following concentration-based WLAs shall apply during both wet and dry weather if:
 - i. The Regional Water Board Executive Officer approves a request by the Permittee that the concentration-based WLAs apply, and the USEPA does not object to the Executive Officer’s decision within 60 days of receiving notice.
 - ii. The Permittee shall submit a request to both the Regional Water Board and USEPA and shall include as part of the request a Lake Management Plan, describing actions that will be implemented to ensure that the applicable water quality objectives for ammonia, dissolved oxygen, and pH are achieved and the chlorophyll *a* target of 20 µg/L measured as a summer average (May-September) and as an annual average is met.
 - iii. If the applicable water quality objectives for ammonia, dissolved oxygen, pH are achieved, and the chlorophyll *a* target is met, then the total phosphorus and total nitrogen concentration-based WLAs shall be considered attained.

| Permittee | Total Phosphorus (mg-P/L) | Total Nitrogen (mg-N/L) |
|-------------------|---------------------------|-------------------------|
| City of Calabasas | 0.1 | 1.0 |

Measured as in-lake concentration and applied as a summer average (May-September) and an annual average.

2. Echo Park Lake Nutrient TMDL

- a. Permittees subject to the provisions below are identified in Attachment K, Table K-5.
- b. Permittees shall comply with the following WLAs per the provisions in Part VI.E.3.

- c. Permittees shall comply with the following annual mass-based allocations based on current flow conditions:

| Subwatershed | Permittee | Total Phosphorus (lb-P/yr) | Total Nitrogen (lb-N/yr) |
|--------------|---------------------|----------------------------|--------------------------|
| Northern | City of Los Angeles | 24.7 | 156 |
| Southern | City of Los Angeles | 7.129 | 49.69 |

Measured at the point of discharge using a three-year average. The mass-based allocations are equivalent to existing concentrations of 0.12 mg/L total phosphorus as a summer average (May-September) and annual average, and 1.2 mg/L total nitrogen as a summer average (May-September) and annual average based on approved flow conditions.

- d. In assessing compliance with WLAs, Permittees assigned both northern and southern subwatershed allocations may have their allocations combined.
- e. If the applicable water quality objectives for ammonia, dissolved oxygen, and pH are achieved, and the chlorophyll a target of 20 µg/L as a summer average (May-September) and as an annual average is met, in the lake then the total phosphorus and total nitrogen concentration-based WLAs shall be considered attained.
3. Echo Park Lake PCBs TMDL

- a. Permittees subject to the provisions below are identified in Attachment K, Table K-5.
- b. Permittees shall comply with the following WLAs per the provisions in Part VI.E.3.
- c. Permittees shall comply with the following WLAs:

| Subwatershed | Permittee | Total PCBs associated with Suspended Sediment (µg/kg dry weight) | Total PCBs in the Water Column (ng/L) |
|--------------|---------------------|--|---------------------------------------|
| Northern | City of Los Angeles | 1.77 | 0.17 |
| Southern | City of Los Angeles | 1.77 | 0.17 |

Measured at the point of discharge. Applied as an annual average.

- d. Permittees may comply with the following alternative WLAs upon approval by the Regional Water Board Executive Officer based upon documentation that the fish tissue target of 3.6 ppb wet weight has been met for the preceding three or more years. A demonstration that the fish tissue target has been met in any given year must at a minimum include a composite sample of skin of fillets from at least five common carp each measuring at least 350 mm in length. Documentation shall be submitted to the Regional Water Board and USEPA. Compliance may be demonstrated based on the alternative WLAs upon approval by the Executive Officer, so long as USEPA does not object within 60 days of receiving notice.

| Subwatershed | Permittee | Total PCBs associated with Suspended Sediment (µg/kg dry weight) ^{*,**} | Total PCBs in the Water Column (ng/L) ^{*,***} |
|--------------|---------------------|--|--|
| Northern | City of Los Angeles | 59.8 | 0.17 |
| Southern | City of Los Angeles | 59.8 | 0.17 |

*Measured at the point of discharge.

**Applied as a three-year average.

***Applied as an annual average.

4. Echo Park Lake Chlordane TMDL

- a. Permittees subject to the provisions below are identified in Attachment K, Table K-5.
- b. Permittees shall comply with the following WLAs per the provisions in Part VI.E.3.
- c. Permittees shall comply with the following WLAs:

| Subwatershed | Permittee | Total Chlordane associated with Suspended Sediment (µg/kg dry weight) | Total Chlordane in the Water Column (ng/L) |
|--------------|---------------------|---|--|
| Northern | City of Los Angeles | 2.10 | 0.59 |
| Southern | City of Los Angeles | 2.10 | 0.59 |

Measured at the point of discharge. Applied as an annual average.

- d. Permittees may comply with the following alternative WLAs upon approval by the Regional Water Board Executive Officer based upon documentation that the fish tissue target of 5.6 ppb wet weight has been met for the preceding three or more years. A demonstration that the fish tissue target has been met in any given year must at a minimum include a composite sample of skin of fillets from at least five common carp each measuring at least 350 mm in length. Documentation shall be submitted to the Regional Water Board and USEPA. Compliance may be demonstrated based on the alternative WLAs upon approval by the Executive Officer, so long as USEPA does not object within 60 days of receiving notice.

| Subwatershed | Permittee | Total Chlordane associated with Suspended Sediment (µg/kg dry weight) ^{*,**} | Total Chlordane in the Water Column (ng/L) ^{*,***} |
|--------------|---------------------|---|---|
| Northern | City of Los Angeles | 3.24 | 0.59 |
| Southern | City of Los Angeles | 3.24 | 0.59 |

*Measured at the point of discharge.

**Applied as a three-year average.

***Applied as an annual average.

5. Echo Park Lake Dieldrin TMDL

- a. Permittees subject to the provisions below are identified in Attachment K, Table K-5.

b. Permittees shall comply with the following WLAs per the provisions in Part VI.E.3.

c. Permittees shall comply with the following WLAs:

| Subwatershed | Permittee | Dieldrin associated with Suspended Sediment (µg/kg dry weight) | Dieldrin in the Water Column (ng/L) |
|--------------|---------------------|--|-------------------------------------|
| Northern | City of Los Angeles | 0.80 | 0.14 |
| Southern | City of Los Angeles | 0.80 | 0.14 |

Measured at the point of discharge. Applied as an annual average.

d. Permittees may comply with the following alternative WLAs upon approval by the Regional Water Board Executive Officer based upon documentation that the fish tissue target of 0.46 ppb wet weight has been met for the preceding three or more years. A demonstration that the fish tissue target has been met in any given year must at a minimum include a composite sample of skin of fillets from at least five common carp each measuring at least 350 mm in length. Documentation shall be submitted to the Regional Water Board and USEPA. Compliance may be demonstrated based on the alternative WLAs upon approval by the Executive Officer, so long as USEPA does not object within 60 days of receiving notice:

| Subwatershed | Permittee | Dieldrin associated with Suspended Sediment (µg/kg dry weight) ^{*,**} | Dieldrin in the Water Column (ng/L) ^{*,***} |
|--------------|---------------------|--|--|
| Northern | City of Los Angeles | 1.90 | 0.14 |
| Southern | City of Los Angeles | 1.90 | 0.14 |

*Measured at the point of discharge.

**Applied as a three-year average.

***Applied as an annual average.

6. Echo Park Lake Trash TMDL

a. Permittees subject to the provisions below are identified in Attachment K, Table K-5.

b. Permittees shall comply with the following WLAs per the provisions in Parts VI.E.3 and VI.E.5.

c. Permittees shall comply with the following WLA:

| Permittee | Trash (Gal/year) |
|---------------------|------------------|
| City of Los Angeles | 0 |

7. Legg Lake System Nutrient TMDL

a. Permittees subject to the provisions below are identified in Attachment K, Table K-5.

b. Permittees shall comply with the following WLAs per the provisions in Part VI.E.3.

- c. Permittees shall comply with the following annual mass-based allocations based on current flow conditions:

| Subwatershed | Permittee | Flow (ac-ft/yr) | Total Phosphorus (lb-P/yr) | Total Nitrogen (lb-N/yr) |
|--------------|-----------------------|-----------------|----------------------------|--------------------------|
| Northwestern | County of Los Angeles | 33.5 | 53.6 | 148.7 |
| Northwestern | South El Monte | 308 | 526.3 | 1,500.6 |
| Northeastern | El Monte | 122 | 226.6 | 590.3 |
| Northeastern | County of Los Angeles | 8.18 | 12.8 | 39.2 |
| Northeastern | South El Monte | 287 | 498.7 | 1,394.8 |

Measured at the point of discharge. The mass-based allocations are equivalent to existing concentrations of 0.065 mg/L total phosphorus as a summer average (May-September) and annual average, and 0.65 mg/L total nitrogen as a summer average (May-September) and annual average based on approved flow conditions.

- d. The following concentration-based WLAs shall apply during both wet and dry weather if:
- i. The Regional Water Board Executive Officer approves a request by a Permittee that the concentration-based WLAs apply, and the USEPA does not object to the Executive Officer’s decision within 60 days of receiving notice.
 - ii. Permittees shall submit a request to both the Regional Water Board and USEPA and shall include as part of the request a Lake Management Plan, describing actions that will be implemented to ensure that the applicable water quality objectives for ammonia, dissolved oxygen, and pH are achieved, and the chlorophyll *a* target of 20 µg/L as a summer average (May-September) and an annual average is met, in the lake.
 - iii. If the applicable water quality objectives for ammonia, dissolved oxygen, and pH are achieved, and the chlorophyll *a* target is met, in the lake then the total phosphorus and total nitrogen concentration-based WLAs shall be considered attained.

| Subwatershed | Permittee | Total Phosphorus (mg-P/L) | Total Nitrogen (mg-N/L) |
|--------------|-----------------------|---------------------------|-------------------------|
| Northwestern | County of Los Angeles | 0.1 | 1.0 |
| Northwestern | South El Monte | 0.1 | 1.0 |
| Northeastern | El Monte | 0.1 | 1.0 |
| Northeastern | County of Los Angeles | 0.1 | 1.0 |
| Northeastern | South El Monte | 0.1 | 1.0 |

Measured as an in-lake concentration. Applied as a summer average (May-September) and an annual average.

8. Peck Road Park Lake Nutrient TMDL

- a. Permittees subject to the provisions below are identified in Attachment K, Table K-5.

- b. Permittees shall comply with the following WLAs per the provisions in Part VI.E.3.
- c. Permittees shall comply with the following annual mass-based allocations based on current flow conditions:

| Subwatershed | Permittee | Total Phosphorus (lb-P/yr) | Total Nitrogen (lb-N/yr) |
|--------------|-----------------------|----------------------------|--------------------------|
| Eastern | Arcadia | 383 | 2,320 |
| Eastern | Bradbury | 497 | 3,223 |
| Eastern | Duarte | 1,540 | 9,616 |
| Eastern | Irwindale | 496 | 3,487 |
| Eastern | County of Los Angles | 924 | 5,532 |
| Eastern | Monrovia | 6,243 | 38,736 |
| Near Lake | Arcadia | 158 | 1,115 |
| Near Lake | El Monte | 96.2 | 602 |
| Near Lake | Irwindale | 28.2 | 207 |
| Near Lake | County of Los Angeles | 129 | 773 |
| Near Lake | Monrovia | 60.4 | 415 |
| Western | Arcadia | 2,840 | 16,334 |
| Western | County of Los Angeles | 467 | 2,818 |
| Western | Monrovia | 425 | 2,678 |
| Western | Sierra Madre | 695 | 4,254 |

Measured at the point of discharge using a three-year average. The mass-based allocations are equivalent to existing concentrations of 0.076 mg/L total phosphorus as a summer average (May-September) and annual average, and 0.76 mg/L total nitrogen as a summer average (May-September) and annual average based on approved flow conditions.

- d. If the applicable water quality objectives for ammonia, dissolved oxygen, and pH are achieved, and the chlorophyll a target of 20 µg/L as a summer average (May-September) and as an annual average is met, in the lake then the total phosphorus and total nitrogen concentration-based WLAs shall be considered attained.

9. Peck Road Park Lake PCBs TMDL

- a. Permittees subject to the provisions below are identified in Attachment K, Table K-5.
- b. Permittees shall comply with the following WLAs per the provisions in Part VI.E.3.
- c. Permittees shall comply with the following WLAs:

| Subwatershed | Permittee | Total PCBs associated with Suspended Sediment (µg/kg dry weight) | Total PCBs in the Water Column (ng/L) |
|--------------|-----------|--|---------------------------------------|
| Eastern | Arcadia | 1.29 | 0.17 |
| Eastern | Bradbury | 1.29 | 0.17 |
| Eastern | Duarte | 1.29 | 0.17 |
| Eastern | Irwindale | 1.29 | 0.17 |
| Eastern | County of | 1.29 | 0.17 |

| Subwatershed | Permittee | Total PCBs associated with Suspended Sediment (µg/kg dry weight) | Total PCBs in the Water Column (ng/L) |
|--------------|-----------------------|--|---------------------------------------|
| | Los Angeles | | |
| Eastern | Monrovia | 1.29 | 0.17 |
| Near Lake | Arcadia | 1.29 | 0.17 |
| Near Lake | El Monte | 1.29 | 0.17 |
| Near Lake | Irwindale | 1.29 | 0.17 |
| Near Lake | County of Los Angeles | 1.29 | 0.17 |
| Near Lake | Monrovia | 1.29 | 0.17 |
| Western | Arcadia | 1.29 | 0.17 |
| Western | County of Los Angeles | 1.29 | 0.17 |
| Western | Monrovia | 1.29 | 0.17 |
| Western | Sierra Madre | 1.29 | 0.17 |

Measured at the point of discharge. Applied as an annual average.

- d. Permittees may comply with the following alternative WLAs upon approval by the Regional Water Board Executive Officer based upon documentation that the fish tissue target of 3.6 ppb wet weight has been met for the preceding three or more years. A demonstration that the fish tissue target has been met in any given year must at a minimum include a composite sample of skin of fillets from at least five largemouth bass each measuring at least 350 mm in length. Documentation shall be submitted to the Regional Water Board and USEPA. Compliance may be demonstrated based on the alternative WLAs upon approval by the Executive Officer, so long as USEPA does not object within 60 days of receiving notice.

| Subwatershed | Permittee | Total PCBs associated with Suspended Sediment (µg/kg dry weight) ^{*,**} | Total PCBs in the Water Column (ng/L) ^{*,***} |
|--------------|-----------------------|--|--|
| Eastern | Arcadia | 59.8 | 0.17 |
| Eastern | Bradbury | 59.8 | 0.17 |
| Eastern | Duarte | 59.8 | 0.17 |
| Eastern | Irwindale | 59.8 | 0.17 |
| Eastern | County of Los Angeles | 59.8 | 0.17 |
| Eastern | Monrovia | 59.8 | 0.17 |
| Near Lake | Arcadia | 59.8 | 0.17 |
| Near Lake | El Monte | 59.8 | 0.17 |
| Near Lake | Irwindale | 59.8 | 0.17 |
| Near Lake | County of Los Angeles | 59.8 | 0.17 |
| Near Lake | Monrovia | 59.8 | 0.17 |
| Western | Arcadia | 59.8 | 0.17 |
| Western | County of Los Angeles | 59.8 | 0.17 |
| Western | Monrovia | 59.8 | 0.17 |
| Western | Sierra Madre | 59.8 | 0.17 |

*Measured at the point of discharge.

**Applied as a three-year average.

***Applied as an annual average.

10. Peck Road Park Lake Chlordane TMDL

- a. Permittees subject to the provisions below are identified in Attachment K, Table K-5.
- b. Permittees shall comply with the following WLAs per the provisions in Part VI.E.3.
- c. Permittees shall comply with the following WLAs:

| Subwatershed | Permittee | Total Chlordane associated with Suspended Sediment (µg/kg dry weight) | Total Chlordane in the Water Column (ng/L) |
|--------------|-----------------------|---|--|
| Eastern | Arcadia | 1.73 | 0.59 |
| Eastern | Bradbury | 1.73 | 0.59 |
| Eastern | Duarte | 1.73 | 0.59 |
| Eastern | Irwindale | 1.73 | 0.59 |
| Eastern | County of Los Angeles | 1.73 | 0.59 |
| Eastern | Monrovia | 1.73 | 0.59 |
| Near Lake | Arcadia | 1.73 | 0.59 |
| Near Lake | El Monte | 1.73 | 0.59 |
| Near Lake | Irwindale | 1.73 | 0.59 |
| Near Lake | County of Los Angeles | 1.73 | 0.59 |
| Near Lake | Monrovia | 1.73 | 0.59 |
| Western | Arcadia | 1.73 | 0.59 |
| Western | County of Los Angeles | 1.73 | 0.59 |
| Western | Monrovia | 1.73 | 0.59 |
| Western | Sierra Madre | 1.73 | 0.59 |

Measured at the point of discharge. Applied as an annual average.

- d. Permittees may comply with the following alternative WLAs upon approval by the Regional Water Board Executive Officer based upon documentation that the fish tissue target of 5.6 ppb wet weight has been met for the preceding three or more years. A demonstration that the fish tissue target has been met in any given year must at a minimum include a composite sample of skin of fillets from at least five largemouth bass each measuring at least 350 mm in length. Documentation shall be submitted to the Regional Water Board and USEPA. Compliance may be demonstrated based on the alternative WLAs upon approval by the Executive Officer, so long as USEPA does not object within 60 days of receiving notice:

| Subwatershed | Permittee | Total Chlordane associated with Suspended Sediment (µg/kg dry weight) ^{*,**} | Total Chlordane in the Water Column (ng/L) ^{*,***} |
|--------------|-----------------------|---|---|
| Eastern | Arcadia | 3.24 | 0.59 |
| Eastern | Bradbury | 3.24 | 0.59 |
| Eastern | Duarte | 3.24 | 0.59 |
| Eastern | Irwindale | 3.24 | 0.59 |
| Eastern | County of Los Angeles | 3.24 | 0.59 |
| Eastern | Monrovia | 3.24 | 0.59 |
| Near Lake | Arcadia | 3.24 | 0.59 |

| Subwatershed | Permittee | Total Chlordane associated with Suspended Sediment (µg/kg dry weight) ^{*,**} | Total Chlordane in the Water Column (ng/L) ^{*,***} |
|--------------|-----------------------|---|---|
| Near Lake | El Monte | 3.24 | 0.59 |
| Near Lake | Irwindale | 3.24 | 0.59 |
| Near Lake | County of Los Angeles | 3.24 | 0.59 |
| Near Lake | Monrovia | 3.24 | 0.59 |
| Western | Arcadia | 3.24 | 0.59 |
| Western | County of Los Angeles | 3.24 | 0.59 |
| Western | Monrovia | 3.24 | 0.59 |
| Western | Sierra Madre | 3.24 | 0.59 |

*Measured at the point of discharge.

**Applied as a three-year average.

***Applied as an annual average.

11. Peck Road Park DDT TMDL

- a. Permittees subject to the provisions below are identified in Attachment K, Table K-5.
- b. Permittees shall comply with the following WLAs per the provisions in Part VI.E.3.
- c. Permittees shall comply with the following WLAs:

| Subwatershed | Permittee | Total DDT associated with Suspended Sediment (µg/kg dry weight) | 4-4' DDT in the Water Column (ng/L) |
|--------------|-----------------------|---|-------------------------------------|
| Eastern | Arcadia | 5.28 | 0.59 |
| Eastern | Bradbury | 5.28 | 0.59 |
| Eastern | Duarte | 5.28 | 0.59 |
| Eastern | Irwindale | 5.28 | 0.59 |
| Eastern | County of Los Angeles | 5.28 | 0.59 |
| Eastern | Monrovia | 5.28 | 0.59 |
| Near Lake | Arcadia | 5.28 | 0.59 |
| Near Lake | El Monte | 5.28 | 0.59 |
| Near Lake | Irwindale | 5.28 | 0.59 |
| Near Lake | County of Los Angeles | 5.28 | 0.59 |
| Near Lake | Monrovia | 5.28 | 0.59 |
| Western | Arcadia | 5.28 | 0.59 |
| Western | County of Los Angeles | 5.28 | 0.59 |
| Western | Monrovia | 5.28 | 0.59 |
| Western | Sierra Madre | 5.28 | 0.59 |

Measured at the point of discharge. Applied as an annual average.

12. Peck Road Park Lake Dieldrin TMDL

- a. Permittees subject to the provisions below are identified in Attachment K, Table K-5.

- b. Permittees shall comply with the following WLAs per the provisions in Part VI.E.3.
- c. Permittees shall comply with the following WLAs:

| Subwatershed | Permittee | Dieldrin associated with Suspended Sediment (µg/kg dry weight) | Dieldrin in the Water Column (ng/L) |
|--------------|-----------------------|--|-------------------------------------|
| Eastern | Arcadia | 0.43 | 0.14 |
| Eastern | Bradbury | 0.43 | 0.14 |
| Eastern | Duarte | 0.43 | 0.14 |
| Eastern | Irwindale | 0.43 | 0.14 |
| Eastern | County of Los Angeles | 0.43 | 0.14 |
| Eastern | Monrovia | 0.43 | 0.14 |
| Near Lake | Arcadia | 0.43 | 0.14 |
| Near Lake | El Monte | 0.43 | 0.14 |
| Near Lake | Irwindale | 0.43 | 0.14 |
| Near Lake | County of Los Angeles | 0.43 | 0.14 |
| Near Lake | Monrovia | 0.43 | 0.14 |
| Western | Arcadia | 0.43 | 0.14 |
| Western | County of Los Angeles | 0.43 | 0.14 |
| Western | Monrovia | 0.43 | 0.14 |
| Western | Sierra Madre | 0.43 | 0.14 |

Measured at the point of discharge. Applied as an annual average.

- d. Permittees may comply with the following alternative WLAs upon approval by the Regional Water Board Executive Officer based upon documentation that the fish tissue target of 0.46 ppb wet weight has been met for the preceding three or more years. A demonstration that the fish tissue target has been met in any given year must at a minimum include a composite sample of skin of fillets from at least five largemouth bass each measuring at least 350 mm in length. Documentation shall be submitted to the Regional Water Board and USEPA. Compliance may be demonstrated based on the alternative WLAs upon approval by the Executive Officer, so long as USEPA does not object within 60 days of receiving notice:

| Subwatershed | Permittee | Dieldrin associated with Suspended Sediment (µg/kg dry weight) ^{*,**} | Dieldrin in the Water Column (ng/L) ^{*,***} |
|--------------|-----------------------|--|--|
| Eastern | Arcadia | 1.90 | 0.14 |
| Eastern | Bradbury | 1.90 | 0.14 |
| Eastern | Duarte | 1.90 | 0.14 |
| Eastern | Irwindale | 1.90 | 0.14 |
| Eastern | County of Los Angeles | 1.90 | 0.14 |
| Eastern | Monrovia | 1.90 | 0.14 |
| Near Lake | Arcadia | 1.90 | 0.14 |
| Near Lake | El Monte | 1.90 | 0.14 |
| Near Lake | Irwindale | 1.90 | 0.14 |
| Near Lake | County of | 1.90 | 0.14 |

| Subwatershed | Permittee | Dieldrin associated with Suspended Sediment (µg/kg dry weight) ^{*,**} | Dieldrin in the Water Column (ng/L) ^{*,***} |
|--------------|-----------------------|--|--|
| | Los Angeles | | |
| Near Lake | Monrovia | 1.90 | 0.14 |
| Western | Arcadia | 1.90 | 0.14 |
| Western | County of Los Angeles | 1.90 | 0.14 |
| Western | Monrovia | 1.90 | 0.14 |
| Western | Sierra Madre | 1.90 | 0.14 |

*Measured at the point of discharge.

**Applied as a three-year average.

***Applied as an annual average.

13. Peck Road Park Lake Trash TMDL

- a. Permittees subject to the provisions below are identified in Attachment K, Table K-5.
- b. Permittees shall comply with the following WLAs per the provisions in Parts VI.E.3 and VI.E.5.
- c. Permittees shall comply with the following WLA:

| Permittee | Trash (gal/year) |
|-----------------------|------------------|
| Arcadia | 0 |
| Bradbury | 0 |
| Duarte | 0 |
| El Monte | 0 |
| Irwindale | 0 |
| County of Los Angeles | 0 |
| Monrovia | 0 |
| Sierra Madre | 0 |

ATTACHMENT P. TMDLs IN SAN GABRIEL RIVER WATERSHED MANAGEMENT AREA

A. San Gabriel River Metals and Impaired Tributaries Metals and Selenium TMDL (USEPA established)

1. Permittees subject to the provisions below are identified in Attachment K, Table K-6.
2. Permittees shall comply with the following grouped¹ wet weather² WLAs, expressed as total recoverable metals discharged to all upstream reaches and tributaries of the San Gabriel River Reach 2 and Coyote Creek per the provisions in Part VI.E.3:

| Water Body | WLA Daily Maximum (kg/day) | | |
|---------------------|-------------------------------------|-------------------------------------|--------------------------------------|
| | Copper | Lead | Zinc |
| San Gabriel Reach 2 | --- | 81.34 µg/L x daily storm volume (L) | --- |
| Coyote Creek | 24.71 µg/L x daily storm volume (L) | 96.99 µg/L x daily storm volume (L) | 144.57 µg/L x daily storm volume (L) |

3. Permittees shall comply with the following grouped¹ dry weather WLAs, expressed as total recoverable metals discharged to San Gabriel River Reach 1, Coyote Creek, San Gabriel River Estuary, and San Jose Creek Reach 1 and Reach 2 per the provisions in Part VI.E.3:

| Water Body | WLA Daily Maximum | |
|------------------------------|----------------------|----------|
| | Copper | Selenium |
| San Gabriel Reach 1 | 18 µg/L | --- |
| Coyote Creek | 0.941 kg/day* | --- |
| San Gabriel River Estuary | 3.7 µg/L | --- |
| San Jose Creek Reach 1 and 2 | --- | 5 µg/L |

*Calculated based upon the median flow at LACDPW Station F354-R of 19 cfs multiplied by the numeric target of 20 µg/L, minus direct air deposition of 0.002 kg/d.

4. Permittees may convert the grouped mass-based WLAs into individual WLAs based on the percentage of the watershed and land uses within the Permittee’s jurisdiction, upon approval of the Regional Water Board Executive Officer.

B. Los Angeles Area Lakes TMDLs³ (USEPA established)

1. Puddingstone Reservoir Nutrient TMDL
 - a. Permittees subject to the provisions below are identified in Attachment K, Table K-6.
 - b. Permittees shall comply with the following WLAs per the provisions in Part VI.E.3.

¹ The wet weather and dry weather water WLAs are group-based and shared among all MS4 Permittees, which includes LA MS4 Permittees, the City of Long Beach, and Orange County MS4 Permittees located within the drainage area and Caltrans.

² In San Gabriel River Reach 2, wet weather TMDLs apply when the maximum daily flow of the river is equal to or greater than 260 cfs as measured at USGS station 11085000, located at the bottom of Reach 3 just above the Whittier Narrows Dam. In Coyote Creek, wet weather TMDLs apply when the maximum daily flow in the creek is equal to or greater than 156 cfs as measured at LACDPW flow gauge station F354-R, located at the bottom of the creek, just above the Long Beach WRP.

³ Los Angeles Area Lakes TMDL includes multiple watershed management areas.

- c. Permittees shall comply with the following annual mass-based allocations based on current flow conditions:

| Subwatershed | Permittee | Total Phosphorus (lb-P/yr) | Total Nitrogen (lb-N/yr) |
|--------------|-----------------------|----------------------------|--------------------------|
| Northern | Claremont | 169 | 829 |
| Northern | County of Los Angeles | 741 | 3,390 |
| Northern | La Verne | 2,772 | 11,766 |
| Northern | Pomona | 6.30 | 28.3 |
| Northern | San Dimas | 31.1 | 137 |

Measured at the point of discharge. The mass-based allocations are equivalent to existing concentrations of 0.071 mg/L total phosphorus as a summer average (May-September) and annual average, and 0.71 mg/L total nitrogen as a summer average (May-September) and annual average based on approved flow conditions.

- d. The following concentration-based WLAs shall apply during both wet and dry weather if:
- i. The Regional Water Board Executive Officer approves a request by a Permittee that the concentration-based WLAs apply, and the USEPA does not object to the Executive Officer’s decision within 60 days of receiving notice.
 - ii. Permittees shall submit a request to both the Regional Water Board and USEPA and shall include as part of the request a Lake Management Plan, describing actions that will be implemented to ensure that the applicable water quality objectives for ammonia, dissolved oxygen, and pH are achieved and the chlorophyll *a* target of 20 µg/L as a summer average (May-September) and an annual average is met, in the lake.
 - iii. If the applicable water quality objectives for ammonia, dissolved oxygen, and pH are achieved, and the chlorophyll *a* target is met, in the lake then the total phosphorus and total nitrogen concentration-based WLAs shall be considered attained.

| Subwatershed | Permittee | Total Phosphorus (mg-P/L) | Total Nitrogen (mg-N/L) |
|--------------|-----------------------|---------------------------|-------------------------|
| Northern | Claremont | 0.1 | 1.0 |
| Northern | County of Los Angeles | 0.1 | 1.0 |
| Northern | La Verne | 0.1 | 1.0 |
| Northern | Pomona | 0.1 | 1.0 |
| Northern | San Dimas | 0.1 | 1.0 |

Measured as an in-lake concentration. Applied as a summer average (May-September) and an annual average.

2. Puddingstone Reservoir Mercury TMDL

- a. Permittees subject to the provisions below are identified in Attachment K, Table K-6.
- b. Permittees shall comply with the following WLAs per the provisions in Part VI.E.3.

- c. Permittees shall comply with the following WLAs during both wet and dry weather:

| Subwatershed | Permittee | Total Mercury (g-Hg/yr) |
|--------------|-----------------------|-------------------------|
| Northern | Claremont | 0.674 |
| Northern | County of Los Angeles | 2.79 |
| Northern | La Verne | 10.6 |
| Northern | Pomona | 0.026 |
| Northern | San Dimas | 0.109 |

Measured at the point of discharge.

3. Puddingstone Reservoir PCBs TMDL

- a. Permittees subject to the provisions below are identified in Attachment K, Table K-6.
- b. Permittees shall comply with the following WLAs per the provisions in Part VI.E.3.
- c. Permittees shall comply with the following WLAs:

| Subwatershed | Permittee | Total PCBs associated with Suspended Sediment (µg/kg dry weight) | Total PCBs in the Water Column (ng/L) |
|--------------|-----------------------|--|---------------------------------------|
| Northern | Claremont | 0.59 | 0.17 |
| Northern | County of Los Angeles | 0.59 | 0.17 |
| Northern | La Verne | 0.59 | 0.17 |
| Northern | Pomona | 0.59 | 0.17 |
| Northern | San Dimas | 0.59 | 0.17 |

Measured at the point of discharge. Applied as an annual average.

- d. Permittees may comply with the following alternative WLAs upon approval by the Regional Water Board Executive Officer based upon documentation that the fish tissue target of 3.6 ppb wet weight has been met for the preceding three or more years. A demonstration that the fish tissue target has been met in any given year must at a minimum include a composite sample of skin of fillets from at least five common carp each measuring at least 350 mm in length. Documentation shall be submitted to the Regional Water Board and USEPA. Compliance may be demonstrated based on the alternative WLAs upon approval by the Executive Officer, so long as USEPA does not object within 60 days of receiving notice.

| Subwatershed | Permittee | Total PCBs associated with Suspended Sediment (µg/kg dry weight) ^{*,**} | Total PCBs in the Water Column (ng/L) ^{*,***} |
|--------------|-----------------------|--|--|
| Northern | Claremont | 59.8 | 0.17 |
| Northern | County of Los Angeles | 59.8 | 0.17 |
| Northern | La Verne | 59.8 | 0.17 |
| Northern | Pomona | 59.8 | 0.17 |
| Northern | San Dimas | 59.8 | 0.17 |

*Measured at the point of discharge.

**Applied as a three-year average.

***Applied as an annual average.

4. Puddingstone Reservoir Chlordane TMDL

- a. Permittees subject to the provisions below are identified in Attachment K, Table K-6.
- b. Permittees shall comply with the following WLAs per the provisions in Part VI.E.3.
- c. Permittees shall comply with the following WLAs:

| Subwatershed | Permittee | Total Chlordane associated with Suspended Sediment (µg/kg dry weight) | Total Chlordane in the Water Column (ng/L) |
|--------------|-----------------------|---|--|
| Northern | Claremont | 0.75 | 0.57 |
| Northern | County of Los Angeles | 0.75 | 0.57 |
| Northern | La Verne | 0.75 | 0.57 |
| Northern | Pomona | 0.75 | 0.57 |
| Northern | San Dimas | 0.75 | 0.57 |

Measured at the point of discharge. Applied as an annual average.

- d. Permittees may comply with the following alternative WLAs upon approval by the Regional Water Board Executive Officer based upon documentation that the fish tissue target of 5.6 ppb wet weight has been met for the preceding three or more years. A demonstration that the fish tissue target has been met in any given year must at a minimum include a composite sample of skin of fillets from at least five common carp each measuring at least 350 mm in length. Documentation shall be submitted to the Regional Water Board and USEPA. Compliance may be demonstrated based on the alternative WLAs upon approval by the Executive Officer, so long as USEPA does not object within 60 days of receiving notice.

| Subwatershed | Permittee | Total Chlordane associated with Suspended Sediment (µg/kg dry weight) ^{*,**} | Total Chlordane in the Water Column (ng/L) ^{*,***} |
|--------------|-----------------------|---|---|
| Northern | Claremont | 3.24 | 0.57 |
| Northern | County of Los Angeles | 3.24 | 0.57 |
| Northern | La Verne | 3.24 | 0.57 |
| Northern | Pomona | 3.24 | 0.57 |
| Northern | San Dimas | 3.24 | 0.57 |

*Measured at the point of discharge.

**Applied as a three-year average.

***Applied as an annual average.

5. Puddingstone Reservoir Dieldrin TMDL

- a. Permittees subject to the provisions below are identified in Attachment K, Table K-6.
- b. Permittees shall comply with the following WLAs per the provisions in Part VI.E.3.
- c. Permittees shall comply with the following WLAs:

| Subwatershed | Permittee | Dieldrin associated with Suspended Sediment (µg/kg dry weight) | Dieldrin in the Water Column (ng/L) |
|--------------|-----------------------|--|-------------------------------------|
| Northern | Claremont | 0.22 | 0.14 |
| Northern | County of Los Angeles | 0.22 | 0.14 |
| Northern | La Verne | 0.22 | 0.14 |
| Northern | Pomona | 0.22 | 0.14 |
| Northern | San Dimas | 0.22 | 0.14 |

Measured at the point of discharge. Applied as an annual average.

- d. Permittees may comply with the following alternative WLAs upon approval by the Regional Water Board Executive Officer based upon documentation that the fish tissue target of 0.46 ppb wet weight has been met for the preceding three or more years. A demonstration that the fish tissue target has been met in any given year must at a minimum include a composite sample of skin of fillets from at least five common carp each measuring at least 350 mm in length. Documentation shall be submitted to the Regional Water Board and USEPA. Compliance may be demonstrated based on the alternative WLAs upon approval by the Executive Officer, so long as USEPA does not object within 60 days of receiving notice.

| Subwatershed | Permittee | Dieldrin associated with Suspended Sediment (µg/kg dry weight) ^{*,**} | Dieldrin in the Water Column (ng/L) ^{*,***} |
|--------------|-----------------------|--|--|
| Northern | Claremont | 1.90 | 0.14 |
| Northern | County of Los Angeles | 1.90 | 0.14 |
| Northern | La Verne | 1.90 | 0.14 |
| Northern | Pomona | 1.90 | 0.14 |
| Northern | San Dimas | 1.90 | 0.14 |

*Measured at the point of discharge.

**Applied as a three-year average.

***Applied as an annual average.

6. Puddingstone Reservoir DDT TMDL

- a. Permittees subject to the provisions below are identified in Attachment K, Table K-6.
- b. Permittees shall comply with the following WLAs per the provisions in Part VI.E.3.
- c. Permittees shall comply with the following WLAs:

| Subwatershed | Permittee | Total DDT associated with Suspended Sediment (µg/kg dry weight) | 4-4' DDT in the Water Column (ng/L) |
|--------------|-----------------------|---|-------------------------------------|
| Northern | Claremont | 3.94 | 0.59 |
| Northern | County of Los Angeles | 3.94 | 0.59 |
| Northern | La Verne | 3.94 | 0.59 |
| Northern | Pomona | 3.94 | 0.59 |
| Northern | San Dimas | 3.94 | 0.59 |

Measured at the point of discharge. Applied as an annual average.

- d. Permittees may comply with the following alternative WLAs upon approval by the Regional Water Board Executive Officer based upon documentation that the fish tissue target of 21 ppb wet weight has been met for the preceding three or more years. A demonstration that the fish tissue target has been met in any given year must at a minimum include a composite sample of skin of fillets from at least five common carp each measuring at least 350 mm in length. Documentation shall be submitted to the Regional Water Board and USEPA. Compliance may be demonstrated based on the alternative WLAs upon approval by the Executive Officer, so long as USEPA does not object within 60 days of receiving notice.

| Subwatershed | Permittee | Total DDT associated with Suspended Sediment (µg/kg dry weight) ^{*,**} | 4-4' DDT in the Water Column (ng/L) ^{*,***} |
|--------------|-----------------------|---|--|
| Northern | Claremont | 5.28 | 0.59 |
| Northern | County of Los Angeles | 5.28 | 0.59 |
| Northern | La Verne | 5.28 | 0.59 |
| Northern | Pomona | 5.28 | 0.59 |
| Northern | San Dimas | 5.28 | 0.59 |

*Measured at the point of discharge.

**Applied as a three-year average.

***Applied as an annual average.

**ATTACHMENT Q. TMDLs IN LOS CERRITOS CHANNEL AND ALAMITOS BAY
WATERSHED MANAGEMENT AREA**

A. Los Cerritos Channel Metals TMDL (USEPA established)

1. Permittees subject to the provisions below are identified in Attachment K, Table K-7.
2. Permittees shall comply with the following dry weather¹ WLAs, expressed as total recoverable metals discharged to Los Cerritos Channel, per the provisions in Part VI.E.3:

| Constituent | WLA Daily Maximum (g/day) |
|-------------|------------------------------|
| Copper | 67.2 |

3. Permittees shall comply with the following wet weather² WLA, expressed as total recoverable metals discharged to Los Cerritos Channel, per the provisions in Part VI.E.3:

| Constituent | WLA Daily Maximum (g/day) |
|-------------|---|
| Copper | $4.709 \times 10^{-6} \times$ daily storm volume (L) |
| Lead | $26.852 \times 10^{-6} \times$ daily storm volume (L) |
| Zinc | $46.027 \times 10^{-6} \times$ daily storm volume (L) |

B. Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals TMDL

1. Permittees subject to the provisions below are identified in Attachment K, Table K-7.
2. Permittees shall comply with the following interim water quality-based effluent limitations as of the effective date of this Order, for sediments within Colorado Lagoon:

| Constituent | Interim Concentration-based Effluent Limitations Monthly Average (µg/dry kg) |
|-------------|---|
| Chlordane | 129.65 |
| Dieldrin | 26.20 |
| Lead | 399,500 |
| Zinc | 565,000 |
| PAHs | 4,022 |
| PCBs | 89.90 |
| DDT | 149.80 |

¹ Dry weather is defined as any day when the maximum daily flow in Los Cerritos Channel is less than 23 cubic feet per second (cfs) measured at Stearns Street Monitoring Station.

² Wet weather is defined as any day when the maximum daily flow in Los Cerritos Channel is equal to or greater than 23 cfs measured at Stearns Street Monitoring Station.

3. Permittees shall comply with the following final water quality-based effluent limitations no later than July 28, 2018, for sediments within Colorado Lagoon:

| Constituent | Final Concentration Based Effluent Limitations Monthly Average (µg/dry kg) |
|-------------|---|
| Chlordane | 0.50 |
| Dieldrin | 0.02 |
| Lead | 46,700 |
| Zinc | 150,000 |
| PAHs | 4,022 |
| PCBs | 22.70 |
| DDT | 1.58 |

4. The mass-based water quality-based effluent limitations are shared by the MS4 Permittees, which includes the LACFCD, City of Long Beach and Caltrans. Permittees shall comply with the following grouped final water quality-based effluent limitations no later than July 28, 2018, expressed as an annual discharge of sediment to Colorado Lagoon:

| Constituent | Annual Mass-based Effluent Limitations (mg/yr) | | | | |
|-------------|--|--------------|--------------|------------|------------|
| | Project 452 | Line I | Termino Ave | Line K | Line M |
| Chlordane | 5.10 | 3.65 | 12.15 | 1.94 | 0.73 |
| Dieldrin | 0.20 | 0.15 | 0.49 | 0.08 | 0.03 |
| Lead | 476,646.68 | 340,455.99 | 1,134,867.12 | 181,573.76 | 68,116.09 |
| Zinc | 1,530,985.05 | 1,093,541.72 | 3,645,183.47 | 583,213.37 | 218,788.29 |
| PAHs | 41,050.81 | 29,321.50 | 97,739.52 | 15,637.89 | 5,866.44 |
| PCBs | 231.69 | 165.49 | 551.64 | 88.26 | 33.11 |
| DDT | 16.13 | 11.52 | 38.40 | 6.14 | 2.30 |

5. Compliance with the concentration-based water quality-based effluent limitations shall be determined by pollutant concentrations in the sediment in Colorado Lagoon at points in the West Arm, North Arm and Central Arm that represent the cumulative inputs from the MS4 drainage to the lagoon.

**ATTACHMENT Q. TMDLs IN LOS CERRITOS CHANNEL AND ALAMITOS BAY
WATERSHED MANAGEMENT AREA**

A. Los Cerritos Channel Metals TMDL (USEPA established)

1. Permittees subject to the provisions below are identified in Attachment K, Table K-7.
2. Permittees shall comply with the following dry weather¹ WLAs, expressed as total recoverable metals discharged to Los Cerritos Channel, per the provisions in Part VI.E.3:

| Constituent | WLA Daily Maximum (g/day) |
|-------------|------------------------------|
| Copper | 67.2 |

3. Permittees shall comply with the following wet weather² WLA, expressed as total recoverable metals discharged to Los Cerritos Channel, per the provisions in Part VI.E.3:

| Constituent | WLA Daily Maximum (g/day) |
|-------------|---|
| Copper | $4.709 \times 10^{-6} \times$ daily storm volume (L) |
| Lead | $26.852 \times 10^{-6} \times$ daily storm volume (L) |
| Zinc | $46.027 \times 10^{-6} \times$ daily storm volume (L) |

B. Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals TMDL

1. Permittees subject to the provisions below are identified in Attachment K, Table K-7.
2. Permittees shall comply with the following interim water quality-based effluent limitations as of the effective date of this Order, for sediments within Colorado Lagoon:

| Constituent | Interim Concentration-based Effluent Limitations Monthly Average (µg/dry kg) |
|-------------|---|
| Chlordane | 129.65 |
| Dieldrin | 26.20 |
| Lead | 399,500 |
| Zinc | 565,000 |
| PAHs | 4,022 |
| PCBs | 89.90 |
| DDT | 149.80 |

¹ Dry weather is defined as any day when the maximum daily flow in Los Cerritos Channel is less than 23 cubic feet per second (cfs) measured at Stearns Street Monitoring Station.

² Wet weather is defined as any day when the maximum daily flow in Los Cerritos Channel is equal to or greater than 23 cfs measured at Stearns Street Monitoring Station.

3. Permittees shall comply with the following final water quality-based effluent limitations no later than July 28, 2018, for sediments within Colorado Lagoon:

| Constituent | Final Concentration Based Effluent Limitations Monthly Average (µg/dry kg) |
|--------------------|---|
| Chlordane | 0.50 |
| Dieldrin | 0.02 |
| Lead | 46,700 |
| Zinc | 150,000 |
| PAHs | 4,022 |
| PCBs | 22.70 |
| DDT | 1.58 |

4. The mass-based water quality-based effluent limitations are shared by the MS4 Permittees, which includes the LACFCD, City of Long Beach and Caltrans. Permittees shall comply with the following grouped final water quality-based effluent limitations no later than July 28, 2018, expressed as an annual discharge of sediment to Colorado Lagoon:

| Constituent | Annual Mass-based Effluent Limitations (mg/yr) | | | | |
|--------------------|---|---------------|--------------------|---------------|---------------|
| | Project 452 | Line I | Termino Ave | Line K | Line M |
| Chlordane | 5.10 | 3.65 | 12.15 | 1.94 | 0.73 |
| Dieldrin | 0.20 | 0.15 | 0.49 | 0.08 | 0.03 |
| Lead | 476,646.68 | 340,455.99 | 1,134,867.12 | 181,573.76 | 68,116.09 |
| Zinc | 1,530,985.05 | 1,093,541.72 | 3,645,183.47 | 583,213.37 | 218,788.29 |
| PAHs | 41,050.81 | 29,321.50 | 97,739.52 | 15,637.89 | 5,866.44 |
| PCBs | 231.69 | 165.49 | 551.64 | 88.26 | 33.11 |
| DDT | 16.13 | 11.52 | 38.40 | 6.14 | 2.30 |

5. Compliance with the concentration-based water quality-based effluent limitations shall be determined by pollutant concentrations in the sediment in Colorado Lagoon at points in the West Arm, North Arm and Central Arm that represent the cumulative inputs from the MS4 drainage to the lagoon.

ATTACHMENT R. TMDLs IN THE MIDDLE SANTA ANA RIVER WATERSHED MANAGEMENT AREA (SANTA ANA REGION TMDL)

A. Middle Santa Ana River Watershed Bacterial Indicator TMDLs

1. Permittees subject to the provisions below are identified in Attachment K, Table K-8.
2. Permittees shall comply with the following final water quality-based effluent limitations for discharges to San Antonio Creek and Chino Creek during dry weather no later than December 31, 2015, and during wet weather no later than December 31, 2025:
 - a. Fecal coliform¹: geometric mean less than 180 organisms/100 mL based on five or more samples during any 30-day period, and not more than 10% of the samples exceed 360 organisms/100 mL during any 30-day period.
 - b. *E. coli*: geometric mean less than 113 organisms/100 mL based on five or more samples during any 30-day period, and not more than 10% of the samples exceed 212 organisms/100 mL during any 30-day period.
3. Permittees shall comply with the following receiving water limitations for discharges to San Antonio Creek and Chino Creek during dry weather no later than December 31, 2015, and during wet weather no later than December 31, 2025:
 - a. Fecal coliform²: geometric mean less than 200 organisms/100 mL based on 5 samples during any 30-day period, and not more than 10% of the samples exceed 400 organisms/100 mL during any 30-day period.
 - b. *E. coli*: geometric mean less than 126 organisms/100 mL based on 5 samples during any 30-day period, and not more than 10% of the samples exceed 235 organisms/100 mL during any 30-day period.

B. Section A of this Attachment R, and Parts V and VI.C of this Order, shall not be applicable to discharges of bacteria through MS4s of the Permittees identified in Attachment K, Table K-8, to receiving waters within the Middle Santa Ana River Watershed that are addressed by the Middle Santa Ana River Watershed Bacterial Indication TMDLs, Resolution No. R8-2005-0001, established by the Regional Water Quality Control Board, Santa Ana Region (Santa Ana Regional Board), during the effective dates of any NPDES permit that is issued by the Santa Ana Regional Board:

1. Pursuant to a valid and enforceable designation agreement between this Regional Water Board and the Santa Ana Regional Board under Water Code section 13228, that is applicable to MS4 discharges by the Permittees identified in Attachment K, Table K-8; and
2. The designation agreement delegates the Santa Ana Regional Board as the regulator of MS4 discharges by the Permittees identified in Attachment K, Table K-8, to ensure compliance with the Middle Santa Ana River Watershed Bacterial Indicator

¹ The fecal coliform water quality-based effluent limitations become ineffective upon the replacement of the REC-1 fecal coliform water quality objectives with REC-1 *E. coli* water quality objectives in the Santa Ana Region Basin Plan.

² The fecal coliform receiving water limitations become ineffective upon the replacement of the REC-1 fecal coliform water quality objectives with REC-1 *E. coli* water quality objectives in the Santa Ana Region Basin Plan.

TMDLs, Resolution No. R8-2005-0001, in satisfaction of the requirements of 40 CFR section 122.44(d)(1)(vii)(B).

EXHIBIT C
FEDERAL STATUTES AND
REGULATIONS

33 USCS § 1311

Current through Public Law 117-159, approved June 25, 2022.

United States Code Service > TITLE 33. NAVIGATION AND NAVIGABLE WATERS (Chs. 1 — 55) > CHAPTER 26. WATER POLLUTION PREVENTION AND CONTROL (§§ 1251 — 1389) > STANDARDS AND ENFORCEMENT (§§ 1311 — 1330)

§ 1311. Effluent limitations

(a) Illegality of pollutant discharges except in compliance with law. Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 USCS §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful.

(b) Timetable for achievement of objectives. In order to carry out the objective of this Act there shall be achieved—

(1)

(A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 304(b) of this Act [33 USCS § 1314(b)], or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 307 of this Act [33 USCS § 1317]; and

(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 203 of this Act [33 USCS § 1283] prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 304(d)(1) of this Act [33 USCS § 1314(d)(1)]; or,

(C) not later than July 1, 1977, 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 510 [33 USCS § 1370]) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this Act.

(2)

(A) for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which (i) shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(2) of this Act [33 USCS § 1314(b)(2)], which such effluent limitations shall require the

33 USCS § 1313

Current through Public Law 117-159, approved June 25, 2022.

United States Code Service > TITLE 33. NAVIGATION AND NAVIGABLE WATERS (Chs. 1 — 55) >
CHAPTER 26. WATER POLLUTION PREVENTION AND CONTROL (§§ 1251 — 1389) >
STANDARDS AND ENFORCEMENT (§§ 1311 — 1330)

§ 1313. Water quality standards and implementation plans

(a) Existing water quality standards.

(1) In order to carry out the purpose of this Act [33 USCS §§ 1251 et seq.], any water quality standard applicable to interstate waters which was adopted by any State and submitted to, and approved by, or is awaiting approval by, the Administrator pursuant to this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 [enacted Oct. 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 the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 [enacted Oct. 18, 1972]. If the Administrator makes such a determination he shall, within three months after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 [enacted Oct. 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 the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 [enacted Oct. 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 the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 [enacted Oct. 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 Act [33 USCS §§ 1251 et seq.] unless the Administrator determines that such standard is inconsistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 [enacted Oct. 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 the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 [enacted Oct. 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 the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 [enacted Oct. 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 the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 [enacted Oct. 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 the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 [enacted Oct. 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 the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 [enacted Oct. 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 the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 [enacted Oct. 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 Act [33 USCS §§ 1251 et seq.]. 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 307(a)(1) of this Act [33 USCS § 1317(a)(1)] for which criteria have been published under section 304(a) [33 USCS § 1314(a)], 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 304(a)(8) [33 USCS § 1314(a)(8)]. 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 Act [33 USCS §§ 1251 et seq.], 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 Act [33 USCS §§ 1251 et seq.], 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 Act [33 USCS §§ 1251 et seq.], or

(B) in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this Act [33 USCS §§ 1251 et seq.].

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 Act [33 USCS §§ 1251 et seq.].

(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 301(b)(1)(A) and section 301(b)(1)(B) [33 USCS § 1311(b)(1)(A), (B)] 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 301 [33 USCS § 1311] 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 304(a)(2) [33 USCS § 1314(a)(2)] 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 304(a)(2)(D) [33 USCS § 1314(a)(2)(D)], 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 304(a)(2) [33 USCS § 1314(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.

(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 Act [33 USCS §§ 1251 et seq.].

(2) Each State shall submit not later than 120 days after the date of the enactment of the Water Pollution Control Amendments of 1972 [enacted Oct. 18, 1972] to the Administrator for his approval a proposed continuing planning process which is consistent with this Act [33 USCS §§ 1251 et seq.]. 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 Act [33 USCS §§ 1251 et seq.]. The Administrator shall not approve any State permit program under title IV of this Act [33 USCS §§ 1341 et seq.] 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 301(b)(1), section 301(b)(2), section 306, and section 307 [33 USCS §§ 1311(b)(1), (2), 1316, 1317], 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 208 [33 USCS § 1288], and applicable basin plans under section 209 of this Act [33 USCS § 1289];

(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 301 and 302 [33 USCS §§ 1311, 1312].

(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 301(b)(1) and 301(b)(2) [33 USCS § 1311(b)(1), (2)] 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 316 of this Act [33 USCS § 1326].

(h) Thermal water quality standards. For the purposes of this Act [33 USCS §§ 1251 et seq.] 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 the date of the enactment of this subsection [enacted Oct. 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 304(a) [33 USCS § 1314(a)].

(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 304(a)(9) [33 USCS § 1314(a)(9)], 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

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or new standard under this subsection not later than 42 months after the date of the enactment of this subsection [enacted Oct. 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.

History

HISTORY:

June 30, 1948, ch 758, Title III, § 303, as added Oct. 18, 1972, P. L. 92-500, § 2, 86 Stat. 846; Feb. 4, 1987, P. L. 100-4, Title III, § 308(d), Title IV, § 404(b), 101 Stat. 39, 68; Oct. 10, 2000, P. L. 106-284, § 2, 114 Stat. 870.

United States Code Service

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End of Document

33 USCS § 1342

Current through Public Law 117-159, approved June 25, 2022.

United States Code Service > TITLE 33. NAVIGATION AND NAVIGABLE WATERS (Chs. 1 — 55) > CHAPTER 26. WATER POLLUTION PREVENTION AND CONTROL (§§ 1251 — 1389) > PERMITS AND LICENSES (§§ 1341 — 1346)

§ 1342. National pollutant discharge elimination system

(a) Permits for discharge of pollutants.

(1) Except as provided in sections 318 and 404 of this Act [33 USCS §§ 1328, 1344], the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 301(a) [33 USCS § 1311(a)], upon condition that such discharge will meet either (A) all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act [33 USCS §§ 1311, 1312, 1316, 1317, 1318, 1343], (B) or 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 Act [33 USCS §§ 1251 et seq.].

(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 13 of the Act of March 3, 1899 [33 USCS § 407], shall be deemed to be permits issued under this title [33 USCS §§ 1341 et seq.], and permits issued under this title [33 USCS §§ 1341 et seq.] shall be deemed to be permits issued under section 13 of the Act of March 3, 1899 [33 USCS § 407], and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this Act [33 USCS §§ 1251 et seq.].

(5) No permit for a discharge into the navigable waters shall be issued under section 13 of the Act of March 3, 1899 [33 USCS § 407], after the date of enactment of this title [enacted Oct. 18, 1972]. Each application for a permit under section 13 of the Act of March 3, 1899 [33 USCS § 407], pending on the date of enactment of this Act [enacted Oct. 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 objective of this Act [33 USCS §§ 1251 et seq.], 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 the date of enactment of this Act [enacted Oct. 18, 1972] and ends either on the ninetieth day

after the date of the first promulgation of guidelines required by section 304(h)(2) [304(i)(2)] of this Act [33 USCS § 1314(i)(2)], 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 Act [33 USCS §§ 1251 et seq.]. 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 (h)(2) of section 304 [304(i)(2)] of this Act [33 USCS § 1314(i)(2)], 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 such 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 301, 302, 306, 307, and 403 [33 USCS §§ 1311, 1312, 1316, 1317, 1343];

(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 308 of this Act [33 USCS § 1318] or

(B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 308 of this Act [33 USCS § 1318];

(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 307(b) of this Act [33 USCS § 1317(b)] 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 306 [33 USCS § 1316] if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 301 [33 USCS § 1311] 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 204(b), 307, and 308 [33 USCS §§ 1284(b), 1317, 1318].

(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 304(h)(2) [304(i)(2)] of this Act [33 USCS § 1314(i)(2)]. 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 304(h)(2) [304(i)(2)] of this Act [33 USCS § 1314(i)(2)].

(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 Act [33 USCS §§ 1251 et seq.]. 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 the date of enactment of this paragraph [enacted Dec. 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 Act [33 USCS §§ 1251 et seq.].

(e) Waiver of notification requirement. In accordance with guidelines promulgated pursuant to subsection (h)(2) of section 304 [304(i)(2)] of this Act [33 USCS § 1314(i)(2)], 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 212 of this Act [33 USCS § 1292]) 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 309(a) of this Act [33 USCS § 1319(a)] 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 309 of this Act [33 USCS § 1319].

(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 309 and 505 [33 USCS §§ 1319, 1365], with sections 301, 302, 306, 307, and 403 [33 USCS §§ 1311, 1312, 1316, 1317, 1343], except any standard imposed under section 307 [33 USCS § 1317] 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 301, 306, or 402 of this Act [33 USCS § 1311, 1316, or 1342], or (2) section 13 of the Act of March 3, 1899 [33 USCS § 407], 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 the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 [enacted Oct. 18, 1972], in the case of any point source discharging any pollutant or combination of pollutants immediately prior to such date of enactment which source is not subject to section 13 of the Act of March 3, 1899 [33 USCS § 407], the discharge by such source shall not be a violation of this Act [33 USCS §§ 1251 et seq.] 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 404 [33 USCS § 1344], existing permitting requirements under section 402 [33 USCS § 1342], or from any other federal law.

(C) The authorization provided in Section 505(a) [33 USCS § 1365(a)] does not apply to any non-permitting program established under 402(p)(6) [33 USCS § 1342(p)(6)] for the silviculture activities listed in 402(l)(3)(A) [33 USCS § 1342(l)(3)(A)], or to any other limitations that might be deemed to apply to the silviculture activities listed in 402(l)(3)(A) [33 USCS § 1342(l)(3)(A)].

(m) Additional pretreatment of conventional pollutants not required. To the extent a treatment works (as defined in section 212 of this Act [33 USCS § 1292]) 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 304(a)(4) of this Act [33 USCS § 1314(a)(4)] into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 307(b)(1) of this Act [33 USCS § 1317(b)(1)]. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act [33 USCS §§ 1317, 1319], affect State and local authority under sections 307(b)(4) and 510 of this Act [33 USCS §§ 1317(b)(4), 1370], relieve such treatment works of its obligations to meet requirements established under this Act [33 USCS §§ 1251 et seq.], 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 or 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 304(b) [33 USCS § 1314(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. In the case of effluent limitations established on the basis of section 301(b)(1)(C) or section 303 (d) or (e) [33 USCS § 1311(b)(1)(C) or 1313(d) or (e)], 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 303(d)(4) [33 USCS § 1313(d)(4)].
- (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 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a) [33 USCS § 1311(c), (g), (h), (i), (k), (n), or 1326(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).

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 Act [33 USCS §§ 1251 et seq.] 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 303 [33 USCS § 1313] 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 section 402 of this Act [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 the date of the enactment of this subsection [enacted Feb. 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 301 [33 USCS § 1311].

(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 the date of the enactment of this subsection [enacted Feb. 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 such date of enactment [enacted Feb. 4, 1987]. Not later than 4 years after such date of enactment [enacted Feb. 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 the date of the enactment of this subsection [enacted Feb. 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 such date of enactment [enacted Feb. 4, 1987]. Not later than 6 years after such date of enactment [enacted Feb. 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 Act [33 USCS §§ 1251 et seq.] after the date of enactment of this subsection [enacted Dec. 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 Act [33 USCS §§ 1251 et seq.] 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.

(s) Integrated plans.

(1) Definition of integrated plan. In this subsection, the term ‘integrated plan’ means a plan developed in accordance with the Integrated Municipal Stormwater and Wastewater Planning Approach Framework, issued by the Environmental Protection Agency and dated June 5, 2012.

(2) In general. The Administrator (or a State, in the case of a permit program approved by the Administrator) shall inform municipalities of the opportunity to develop an integrated plan that may be incorporated into a permit under this section.

(3) Scope.

(A) Scope of permit incorporating integrated plan. A permit issued under this section that incorporates an integrated plan may integrate all requirements under this Act [33 USCS §§ 1251 et seq.] addressed in the integrated plan, including requirements relating to—

- (i) a combined sewer overflow;
- (ii) a capacity, management, operation, and maintenance program for sanitary sewer collection systems;
- (iii) a municipal stormwater discharge;
- (iv) a municipal wastewater discharge; and
- (v) a water quality-based effluent limitation to implement an applicable wasteload allocation in a total maximum daily load.

(B) Inclusions in integrated plan. An integrated plan incorporated into a permit issued under this section may include the implementation of—

- (i) projects, including innovative projects, to reclaim, recycle, or reuse water; and
- (ii) green infrastructure.

(4) Compliance schedules.

(A) In general. A permit issued under this section that incorporates an integrated plan may include a schedule of compliance, under which actions taken to meet any applicable water quality-based effluent limitation may be implemented over more than 1 permit term if the schedule of compliance—

- (i) is authorized by State water quality standards; and
- (ii) meets the requirements of section 122.47 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subsection).

(B) Time for compliance. For purposes of subparagraph (A)(ii), the requirement of section 122.47 of title 40, Code of Federal Regulations, for compliance by an applicable statutory deadline under this Act [33 USCS §§ 1251 et seq.] does not prohibit implementation of an applicable water quality-based effluent limitation over more than 1 permit term.

(C) Review. A schedule of compliance incorporated into a permit issued under this section may be reviewed at the time the permit is renewed to determine whether the schedule should be modified.

(5) Existing authorities retained.

(A) Applicable standards. Nothing in this subsection modifies any obligation to comply with applicable technology and water quality-based effluent limitations under this Act [33 USCS §§ 1251 et seq.].

(B) Flexibility. Nothing in this subsection reduces or eliminates any flexibility available under this Act [33 USCS §§ 1251 et seq.], including the authority of a State to revise a water quality standard after a use attainability analysis under section 131.10(g) of title 40, Code of Federal Regulations (or a successor regulation), subject to the approval of the Administrator under section 303(c) [33 USCS § 1313(c)].

(6) Clarification of state authority.

(A) In general. Nothing in section 301(b)(1)(C) [33 USCS § 1311(b)(1)(C)] precludes a State from authorizing in the water quality standards of the State the issuance of a schedule of compliance to meet water quality-based effluent limitations in permits that incorporate provisions of an integrated plan.

(B) Transition rule. In any case in which a discharge is subject to a judicial order or consent decree, as of the date of enactment of this subsection, resolving an enforcement action under this Act [33 USCS §§ 1251 et seq.], any schedule of compliance issued pursuant to an authorization in a State water quality standard may not revise a schedule of compliance in that order or decree to be less stringent, unless the order or decree is modified by agreement of the parties and the court.

History

HISTORY:

June 30, 1948, ch 758, Title IV, § 402, as added Oct. 18, 1972, P. L. 92-500, § 2, 86 Stat. 880; Dec. 27, 1977, P. L. 95-217, §§ 33(c), 54(c)(1), 65, 66, 91 Stat. 1577, 1591, 1599, 1600; Feb. 4, 1987, P. L. 100-4, Title IV, §§ 401–403, 404(a), (c) [(d)], 405, 101 Stat. 65–69; Oct. 31, 1992, P. L. 102-580, Title III, § 364, 106 Stat. 4862; Dec. 21, 1995, P. L. 104-66, Title II, Subtitle B, § 2021(e)(2), 109 Stat. 727; Dec. 21, 2000, P. L. 106-554, § 1(a)(4), 114 Stat. 2763; July 30, 2008, P. L. 110-288, § 2, 122 Stat. 2650; Feb. 7, 2014, P. L. 113-79, Title XII, Subtitle C, § 12313, 128 Stat. 992; Jan. 14, 2019, P.L. 115-436, § 3(a), 132 Stat. 5558.

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33 USCS § 1370

Current through Public Law 117-159, approved June 25, 2022.

United States Code Service > TITLE 33. NAVIGATION AND NAVIGABLE WATERS (Chs. 1 — 55) > CHAPTER 26. WATER POLLUTION PREVENTION AND CONTROL (§§ 1251 — 1389) > GENERAL PROVISIONS (§§ 1361 — 1377a)

§ 1370. State authority

Except as expressly provided in this Act [[33 USCS §§ 1251 et seq.](#)], nothing in this Act [[33 USCS §§ 1251 et seq.](#)] 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 Act [[33 USCS §§ 1251 et seq.](#)], 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 Act [[33 USCS §§ 1251 et seq.](#)]; 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.

History

HISTORY:

June 30, 1948, ch. 758, Title V, § 510, as added, Oct. 18, 1972, [P. L. 92-500](#), § 2, [86 Stat. 893](#).

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40 CFR 122.26

This document is current through the July 19, 2022 issue of the Federal Register.

Code of Federal Regulations > Title 40 Protection of Environment > Chapter I — Environmental Protection Agency > Subchapter D — Water Programs > Part 122 — EPA Administered Permit Programs: the National Pollutant Discharge Elimination System > Subpart B — Permit Application and Special NPDES Program Requirements

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(a) Permit requirement. (1) Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except:

- (i)** A discharge with respect to which a permit has been issued prior to February 4, 1987;
- (ii)** A discharge associated with industrial activity (see § 122.26(a)(4));
- (iii)** A discharge from a large municipal separate storm sewer system;
- (iv)** A discharge from a medium municipal separate storm sewer system;
- (v)** A discharge which the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under paragraph (a)(2) of this section or agricultural storm water runoff which is exempted from the definition of point source at § 122.2.

The Director may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Director may consider the following factors:

- (A)** The location of the discharge with respect to waters of the United States as defined at 40 CFR 122.2.
- (B)** The size of the discharge;
- (C)** The quantity and nature of the pollutants discharged to waters of the United States; and
- (D)** Other relevant factors.

(2) The Director may not require a permit for discharges of storm water runoff from the following:

- (i)** Mining operations 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 that have not come into contact with, any overburden, raw material,

intermediate products, finished product, byproduct, or waste products located on the site of such operations, except in accordance with paragraph (c)(1)(iv) of this section.

(ii) All field activities or operations associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities, except in accordance with paragraph (c)(1)(iii) of this section. Discharges of sediment from construction activities associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities are not subject to the provisions of paragraph (c)(1)(iii)(C) of this section.

Note to paragraph (a)(2)(ii): EPA encourages operators of oil and gas field activities or operations to implement and maintain Best Management Practices (BMPs) to minimize discharges of pollutants, including sediment, in storm water both during and after construction activities to help ensure protection of surface water quality during storm events. Appropriate controls would be those suitable to the site conditions and consistent with generally accepted engineering design criteria and manufacturer specifications. Selection of BMPs could also be affected by seasonal or climate conditions.

(3) Large and medium municipal separate storm sewer systems.

(i) Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

(ii) The Director may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

(iii) The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must either:

(A) Participate in a permit application (to be a permittee or a co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system;

(B) Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible; or

(C) A regional authority may be responsible for submitting a permit application under the following guidelines:

(1) The regional authority together with co-applicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time part 1 of the application is due;

- (2) The permit applicant or co-applicants shall establish their ability to make a timely submission of part 1 and part 2 of the municipal application;
- (3) Each of the operators of municipal separate storm sewers within the systems described in paragraphs (b)(4) (i), (ii), and (iii) or (b)(7) (i), (ii), and (iii) of this section, that are under the purview of the designated regional authority, shall comply with the application requirements of paragraph (d) of this section.
- (iv) One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The Director may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.
- (v) Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.
- (vi) Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.
- (4) Discharges through large and medium municipal separate storm sewer systems. In addition to meeting the requirements of paragraph (c) of this section, an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing NPDES permit number.
- (5) Other municipal separate storm sewers. The Director may issue permits for municipal separate storm sewers that are designated under paragraph (a)(1)(v) of this section on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.
- (6) Non-municipal separate storm sewers. For storm water discharges associated with industrial activity from point sources which discharge through a non-municipal or non-publicly owned separate storm sewer system, the Director, in his discretion, may issue: a single NPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into waters of the United States; or, individual permits to each discharger of storm water associated with industrial activity through the non-municipal conveyance system.
- (i) All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that

discharges to waters of the United States, with each discharger to the non-municipal conveyance a co-permittee to that permit.

(ii) Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

(iii) Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

(7) Combined sewer systems. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain NPDES permits in accordance with the procedures of § 122.21 and are not subject to the provisions of this section.

(8) Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this section shall have no bearing on whether the owner or operator of the discharge is eligible for funding under title II, title III or title VI of the Clean Water Act. See 40 CFR part 35, subpart I, appendix A(b)H.2.j.

(9)

(i) On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by paragraph (a)(1) of this section to obtain a permit, operators shall be required to obtain a NPDES permit only if:

(A) The discharge is from a small MS4 required to be regulated pursuant to § 122.32;

(B) The discharge is a storm water discharge associated with small construction activity pursuant to paragraph (b)(15) of this section;

(C) The Director, or in States with approved NPDES programs either the Director or the EPA Regional Administrator, determines that storm water controls are needed for the discharge based on wasteload allocations that are part of “total maximum daily loads” (TMDLs) that address the pollutant(s) of concern; or

(D) The Director, or in States with approved NPDES programs either the Director or the EPA Regional Administrator, determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(ii) Operators of small MS4s designated pursuant to paragraphs (a)(9)(i)(A), (a)(9)(i)(C), and (a)(9)(i)(D) of this section shall seek coverage under an NPDES permit in accordance with §§ 122.33 through 122.35. Operators of non-municipal sources designated pursuant to paragraphs (a)(9)(i)(B), (a)(9)(i)(C), and (a)(9)(i)(D) of this section shall seek coverage under an NPDES permit in accordance with paragraph (c)(1) of this section.

(iii) Operators of storm water discharges designated pursuant to paragraphs (a)(9)(i)(C) and (a)(9)(i)(D) of this section shall apply to the Director for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the Director (see § 124.52(c) of this chapter).

(b) Definitions.

- (1) Co-permittee means a permittee to a NPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.
- (2) Illicit discharge means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.
- (3) Incorporated place means the District of Columbia, or a city, town, township, or village that is incorporated under the laws of the State in which it is located.
- (4) Large municipal separate storm sewer system means all municipal separate storm sewers that are either:
- (i) Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census (Appendix F of this part); or
 - (ii) Located in the counties listed in appendix H, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or
 - (iii) Owned or operated by a municipality other than those described in paragraph (b)(4)(i) or (ii) of this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(4)(i) or (ii) of this section. In making this determination the Director may consider the following factors:
 - (A) Physical interconnections between the municipal separate storm sewers;
 - (B) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (b)(4)(i) of this section;
 - (C) The quantity and nature of pollutants discharged to waters of the United States;
 - (D) The nature of the receiving waters; and
 - (E) Other relevant factors; or
 - (iv) The Director may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraph (b)(4)(i), (ii), (iii) of this section.
- (5) Major municipal separate storm sewer outfall (or “major outfall”) means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

- (6)** Major outfall means a major municipal separate storm sewer outfall.
- (7)** Medium municipal separate storm sewer system means all municipal separate storm sewers that are either:
- (i)** Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census (Appendix G of this part); or
 - (ii)** Located in the counties listed in appendix I, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or
 - (iii)** Owned or operated by a municipality other than those described in paragraph (b)(7)(i) or (ii) of this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(7)(i) or (ii) of this section. In making this determination the Director may consider the following factors:
 - (A)** Physical interconnections between the municipal separate storm sewers;
 - (B)** The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (b)(7)(i) of this section;
 - (C)** The quantity and nature of pollutants discharged to waters of the United States;
 - (D)** The nature of the receiving waters; or
 - (E)** Other relevant factors; or
 - (iv)** The Director may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraphs (b)(7)(i), (ii), (iii) of this section.
- (8)** Municipal separate storm sewer means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, 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, 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 a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;
 - (ii)** Designed or used for collecting or conveying storm water;
 - (iii)** Which is not a combined sewer; and
 - (iv)** Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

(9) Outfall means a point source as defined by 40 CFR 122.2 at 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.

(10) Overburden means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

(11) Runoff coefficient means the fraction of total rainfall that will appear at a conveyance as runoff.

(12) Significant materials includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

(13) Storm water means storm water runoff, snow melt runoff, and surface runoff and drainage.

(14) Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under this part 122. For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at part 401 of this chapter); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, State, or municipally owned or operated that meet the description of the facilities listed in paragraphs (b)(14)(i) through (xi) of this section) include those facilities designated under the provisions of paragraph (a)(1)(v) of this section. The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14):

- (i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) in paragraph (b)(14) of this section);
- (ii) Facilities classified within Standard Industrial Classification 24, Industry Group 241 that are rock crushing, gravel washing, log sorting, or log storage facilities operated in connection with silvicultural activities defined in 40 CFR 122.27(b)(2)-(3) and Industry Groups 242 through 249; 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373; (not included are all other types of silviculture facilities);
- (iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);
- (iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;
- (v) Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;
- (vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;
- (vii) Steam electric power generating facilities, including coal handling sites;
- (viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (b)(14) (i)-(vii) or (ix)-(xi) of this section are associated with industrial activity;
- (ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of

municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR part 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the CWA;

(x) Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25;

(15) Storm water discharge associated with small construction activity means the discharge of storm water from:

(i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Director may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where:

(A) The value of the rainfall erosivity factor (“R” in the Revised Universal Soil Loss Equation) is less than five during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning with the Revised Universal Soil Loss Equation (RUSLE), pages 21-64, dated January 1997. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at EPA’s Water Docket, 1200 Pennsylvania Avenue NW, Washington, DC 20460. For information on the availability of this material at National Archives and Records Administration, call 202-741-6030, or go to:

<http://www.archives.gov/federal/register/code-of-federal-regulations/ibr/locations.html>. An operator must certify to the Director that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five; or

(B) Storm water controls are not needed based on a “total maximum daily load” (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that

determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this paragraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the Director that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

(C) As of December 21, 2025 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all certifications submitted in compliance with paragraphs (b)(15)(i)(A) and (B) of this section must be submitted electronically by the owner or operator 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. 40 CFR part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR part 127, owners or operators may be required to report electronically if specified by a particular permit or if required to do so by state law.

(ii) Any other construction activity designated by the Director, or in States with approved NPDES programs either the Director or the EPA Regional Administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States.

**EXHIBIT 1 TO §
122.26(b)(15).—
SUMMARY OF
COVERAGE**

**OF "STORM
WATER
DISCHARGES
ASSOCIATED WITH
SMALL**

**CONSTRUCTION
ACTIVITY" UNDER
THE NPDES STORM
WATER PROGRAM**

| | |
|------------------------|---|
| Automatic Designation: | • Construction activities that result in a |
| Required Nationwide | land disturbance of equal to or greater |
| Coverage | than one acre and less than five acres. |
| | • Construction activities disturbing less |
| | than one acre if part of a larger common |
| | plan of development or sale with a planned |
| | disturbance of equal to or greater than one |
| | acre and less than five acres. (see § |
| | 122.26(b)(15)(i).) |

**EXHIBIT 1 TO §
122.26(b)(15).—
SUMMARY OF
COVERAGE**

**OF "STORM
WATER
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ASSOCIATED WITH
SMALL**

**CONSTRUCTION
ACTIVITY" UNDER
THE NPDES STORM
WATER PROGRAM**

| | |
|-------------------------|---|
| Potential Designation: | • Construction activities that result in a |
| Optional Evaluation and | land disturbance of less than one acre |
| Designation by the | based on the potential for contribution to |
| NPDES Permitting | a violation of a water quality standard or |
| Authority or EPA | for significant contribution of pollutants. |
| Regional Administrator. | (see § 122.26(b)(15)(ii).) |
| Potential Waiver: | Any automatically designated construction |
| Waiver from | activity where the operator certifies: (1) |
| Requirements as | A rainfall erosivity factor of less than |
| Determined by the | five, or (2) That the activity will occur |
| NPDES | |
| Permitting Authority. | within an area where controls are not |
| | needed based on a TMDL or, for non-impaired |
| | waters that do not require a TMDL, an |
| | equivalent analysis for the pollutant(s) of |
| | concern. (see § 122.26(b)(15)(i).) |

(16) Small municipal separate storm sewer system means all separate storm sewers that are:

(i) Owned or operated by the United States, 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, 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 a 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 pursuant to paragraphs (b)(4) and (b)(7) of this section, or designated under paragraph (a)(1)(v) of this section.

(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.

(17) Small MS4 means a small municipal separate storm sewer system.

(18) Municipal separate storm sewer system means all separate storm sewers that are defined as “large” or “medium” or “small” municipal separate storm sewer systems pursuant to paragraphs (b)(4), (b)(7), and (b)(16) of this section, or designated under paragraph (a)(1)(v) of this section.

(19) MS4 means a municipal separate storm sewer system.

(20) Uncontrolled sanitary landfill means a landfill or open dump, whether in operation or closed, that does not meet the requirements for runoff or runoff controls established pursuant to subtitle D of the Solid Waste Disposal Act.

(c) Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity —

(1) Individual application. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the Director is evaluating for designation (see 124.52(c) of this chapter) under paragraph (a)(1)(v) of this section and is not a municipal storm sewer, shall submit an NPDES application in accordance with the requirements of § 122.21 as modified and supplemented by the provisions of this paragraph.

(i) Except as provided in § 122.26(c)(1)(ii)-(iv), the operator of a storm water discharge associated with industrial activity subject to this section shall provide:

(A) A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR 262.34); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

(B) An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the

location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

(C) A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by a NPDES permit; tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

(D) Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

(E) Quantitative data based on samples collected during storm events and collected in accordance with § 122.21 of this part from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

(1) Any pollutant limited in an effluent guideline to which the facility is subject;

(2) Any pollutant listed in the facility's NPDES permit for its process wastewater (if the facility is operating under an existing NPDES permit);

(3) Oil and grease, pH, BOD₅, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

(4) Any information on the discharge required under § 122.21(g)(7) (vi) and (vii);

(5) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

(6) The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

(F) Operators of a discharge which is composed entirely of storm water are exempt from the requirements of § 122.21 (g)(2), (g)(3), (g)(4), (g)(5), (g)(7)(iii), (g)(7)(iv), (g)(7)(v), and (g)(7)(viii); and

(G) Operators of new sources or new discharges (as defined in § 122.2 of this part) which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in paragraph (c)(1)(i)(E) of this section instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in paragraph (c)(1)(i)(E) of this section within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the NPDES permit for the discharge. Operators of a new

source or new discharge which is composed entirely of storm water are exempt from the requirements of § 122.21 (k)(3)(ii), (k)(3)(iii), and (k)(5).

(ii) An operator of an existing or new storm water discharge that is associated with industrial activity solely under paragraph (b)(14)(x) of this section or is associated with small construction activity solely under paragraph (b)(15) of this section, is exempt from the requirements of § 122.21(g) and paragraph (c)(1)(i) of this section. Such operator shall provide a narrative description of:

- (A)** The location (including a map) and the nature of the construction activity;
- (B)** The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;
- (C)** Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements;
- (D)** Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements;
- (E)** An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and
- (F)** The name of the receiving water.

(iii) The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with paragraph (c)(1)(i) of this section, unless the facility:

- (A)** Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at anytime since November 16, 1987; or
- (B)** Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or
- (C)** Contributes to a violation of a water quality standard.

(iv) The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

(v) Applicants shall provide such other information the Director may reasonably require under § 122.21(g)(13) of this part to determine whether to issue a permit and may require any facility subject to paragraph (c)(1)(ii) of this section to comply with paragraph (c)(1)(i) of this section.

(2) [Reserved]

(d) Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under paragraph (a)(1)(v) of this section, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under paragraph (a)(1)(v) of this section shall include;

(1) Part 1. Part 1 of the application shall consist of;

(i) General information. The applicants' name, address, telephone number of contact person, ownership status and status as a State or local government entity.

(ii) Legal authority. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in paragraph (d)(2)(i) of this section, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria.

(iii) Source identification. **(A)** A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any Publicly Owned Treatment Works serving the same area as the municipal separate storm sewer system.

(B) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

(1) The location of known municipal storm sewer system outfalls discharging to waters of the United States;

(2) A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agricultural and industrial uses) accompanied with estimates of population densities and projected growth for a ten year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;

(3) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

(4) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a NPDES permit;

(5) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and

(6) The identification of publicly owned parks, recreational areas, and other open lands.

(iv) Discharge characterization. **(A)** Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

(B) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

(C) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

- (1)** Assessed and reported in section 305(b) reports submitted by the State, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act (CWA) goals (fishable and swimmable waters), and causes of nonsupport of designated uses;
- (2)** Listed under section 304(l)(1)(A)(i), section 304(l)(1)(A)(ii), or section 304(l)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;
- (3)** Listed in State Nonpoint Source Assessments required by section 319(a) of the CWA that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);
- (4)** Identified and classified according to eutrophic condition of publicly owned lakes listed in State reports required under section 314(a) of the CWA (include the following: A description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);
- (5)** Areas of concern of the Great Lakes identified by the International Joint Commission;
- (6)** Designated estuaries under the National Estuary Program under section 320 of the CWA;
- (7)** Recognized by the applicant as highly valued or sensitive waters;
- (8)** Defined by the State or U.S. Fish and Wildlife Services's National Wetlands Inventory as wetlands; and
- (9)** Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

(D) Field screening. Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative

description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR part 136, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

- (1) A grid system consisting of perpendicular north-south and east-west lines spaced $\frac{1}{4}$ mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;
- (2) All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;
- (3) Field screening points should be located downstream of any sources of suspected illegal or illicit activity;
- (4) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;
- (5) Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; and land use types;
- (6) For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and
- (7) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in paragraphs (d)(1)(iv)(D) (1) through (6) of this section, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if less); in such circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced $\frac{1}{4}$ mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

(E) Characterization plan. Information and a proposed program to meet the requirements of paragraph (d)(2)(iii) of this section. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under paragraph (d)(2)(iii)(A) of this section, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (see paragraph (d)(1)(iv)(C) of this section) to the extent practicable.

(v) Management programs. **(A)** A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to: Procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under State law as well as local requirements.

(B) A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented.

(vi) Fiscal resources. **(A)** A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs.

(2) Part 2. Part 2 of the application shall consist of:

(i) Adequate legal authority. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:

(A) Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

(B) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

(C) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;

(D) Control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

(E) Require compliance with conditions in ordinances, permits, contracts or orders; and

(F) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

(ii) Source identification. The location of any major outfall that discharges to waters of the United States that was not reported under paragraph (d)(1)(iii)(B)(1) of this section. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity;

(iii) Characterization data. When “quantitative data” for a pollutant are required under paragraph (d)(2)(iii)(A)(3) of this section, the applicant must collect a sample of effluent in accordance with § 122.21(g)(7) and analyze it for the pollutant in accordance with analytical methods approved under part 136 of this chapter. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

(A) Quantitative data from representative outfalls designated by the Director (based on information received in part 1 of the application, the Director shall designate between five and ten outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls covered in the application, the Director shall designate all outfalls) developed as follows:

(1) For each outfall or field screening point designated under this subparagraph, samples shall be collected of storm water discharges from three storm events occurring at least one month apart in accordance with the requirements at § 122.21(g)(7) (the Director may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

(2) A narrative description shall be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

(3) For samples collected and described under paragraphs (d)(2)(iii) (A)(1) and (A)(2) of this section, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of appendix D of 40 CFR part 122, and for the following pollutants:

Total suspended solids (TSS)

Total dissolved solids (TDS)

COD

BOD[5]

Oil and grease

Fecal coliform

Fecal streptococcus

pH

Total Kjeldahl nitrogen

Nitrate plus nitrite

Dissolved phosphorus

Total ammonia plus organic nitrogen

Total phosphorus

(4) Additional limited quantitative data required by the Director for determining permit conditions (the Director may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representativeness);

(B) Estimates of the annual pollutant load of the cumulative discharges to waters of the United States from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the United States from all identified municipal outfalls during a storm event (as described under § 122.21(c)(7)) for BOD₅, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods;

(C) A proposed schedule to provide estimates for each major outfall identified in either paragraph (d)(2)(ii) or (d)(1)(iii)(B)(1) of this section of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under paragraph (d)(2)(iii)(A) of this section; and

(D) A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.

(iv) Proposed management program. A proposed management program covers the duration of the permit. It 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. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

(A) 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. At a minimum, the description shall include:

- (1) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;
- (2) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. (Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in paragraph (d)(2)(iv)(D) of this section;
- (3) 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;
- (4) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible;
- (5) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under paragraph (d)(2)(iv)(C) of this section); and
- (6) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.
 - (B) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:
 - (1) 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; this program description shall address all types of illicit discharges, however the following category of non-storm water discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the United States: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl

space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from fire fighting only where such discharges or flows are identified as significant sources of pollutants to waters of the United States);

(2) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

(3) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

(4) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

(5) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

(6) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

(7) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

(C) 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. The program shall:

(1) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges;

(2) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in paragraph (d)(2)(iv)(C) of this section, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: Any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing NPDES permit for a facility; oil and grease, COD, pH, BOD₅, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under § 122.21(g)(7) (vi) and (vii).

(D) A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

- (1)** A description of procedures for site planning which incorporate consideration of potential water quality impacts;
- (2)** A description of requirements for nonstructural and structural best management practices;
- (3)** 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; and
- (4)** A description of appropriate educational and training measures for construction site operators.

(v) Assessment of controls. Estimated 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.

(vi) Fiscal analysis. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under paragraphs (d)(2)(iii) and (iv) of this section. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.

(vii) Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination.

(viii) Where requirements under paragraph (d)(1)(iv)(E), (d)(2)(ii), (d)(2)(iii)(B) and (d)(2)(iv) of this section are not practicable or are not applicable, the Director may exclude any operator of a discharge from a municipal separate storm sewer which is designated under paragraph (a)(1)(v), (b)(4)(ii) or (b)(7)(ii) of this section from such requirements. The Director shall not exclude the operator of a discharge from a municipal separate storm sewer identified in appendix F, G, H or I of part 122, from any of the permit application requirements under this paragraph except where authorized under this section.

(e) Application deadlines. Any operator of a point source required to obtain a permit under this section that does not have an effective NPDES permit authorizing discharges from its storm water outfalls shall submit an application in accordance with the following deadlines:

(1) Storm water discharges associated with industrial activity.

(i) Except as provided in paragraph (e)(1)(ii) of this section, for any storm water discharge associated with industrial activity identified in paragraphs (b)(14)(i) through (xi) of this section, that is not part of a group application as described in paragraph (c)(2) of this section or that is not authorized by a storm water general permit, a permit application made pursuant to paragraph (c) of this section must be submitted to the Director by October 1, 1992;

(ii) For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, powerplant, or

uncontrolled sanitary landfill, the permit application must be submitted to the Director by March 10, 2003.

(2) For any group application submitted in accordance with paragraph (c)(2) of this section:

(i) Part 1. (A) Except as provided in paragraph (e)(2)(i)(B) of this section, part 1 of the application shall be submitted to the Director, Office of Wastewater Enforcement and Compliance by September 30, 1991;

(B) Any municipality with a population of less than 250,000 shall not be required to submit a part 1 application before May 18, 1992.

(C) For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, powerplant, or uncontrolled sanitary landfill, permit applications requirements are reserved.

(ii) Based on information in the part 1 application, the Director will approve or deny the members in the group application within 60 days after receiving part 1 of the group application.

(iii) Part 2. (A) Except as provided in paragraph (e)(2)(iii)(B) of this section, part 2 of the application shall be submitted to the Director, Office of Wastewater Enforcement and Compliance by October 1, 1992;

(B) Any municipality with a population of less than 250,000 shall not be required to submit a part 1 application before May 17, 1993.

(C) For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, powerplant, or uncontrolled sanitary landfill, permit applications requirements are reserved.

(iv) Rejected facilities. (A) Except as provided in paragraph (e)(2)(iv)(B) of this section, facilities that are rejected as members of the group shall submit an individual application (or obtain coverage under an applicable general permit) no later than 12 months after the date of receipt of the notice of rejection or October 1, 1992, whichever comes first.

(B) Facilities that are owned or operated by a municipality and that are rejected as members of part 1 group application shall submit an individual application no later than 180 days after the date of receipt of the notice of rejection or October 1, 1992, whichever is later.

(v) A facility listed under paragraph (b)(14) (i)-(xi) of this section may add on to a group application submitted in accordance with paragraph (e)(2)(i) of this section at the discretion of the Office of Water Enforcement and Permits, and only upon a showing of good cause by the facility and the group applicant; the request for the addition of the facility shall be made no later than February 18, 1992; the addition of the facility shall not cause the percentage of the facilities that are required to submit quantitative data to be less than 10%, unless there are over 100 facilities in the group that are submitting quantitative data; approval to become part of group application must be obtained from the group or the trade association representing the individual facilities.

- (3)** For any discharge from a large municipal separate storm sewer system;
- (i)** Part 1 of the application shall be submitted to the Director by November 18, 1991;
 - (ii)** Based on information received in the part 1 application the Director will approve or deny a sampling plan under paragraph (d)(1)(iv)(E) of this section within 90 days after receiving the part 1 application;
 - (iii)** Part 2 of the application shall be submitted to the Director by November 16, 1992.
- (4)** For any discharge from a medium municipal separate storm sewer system;
- (i)** Part 1 of the application shall be submitted to the Director by May 18, 1992.
 - (ii)** Based on information received in the part 1 application the Director will approve or deny a sampling plan under paragraph (d)(1)(iv)(E) of this section within 90 days after receiving the part 1 application.
 - (iii)** Part 2 of the application shall be submitted to the Director by May 17, 1993.
- (5)** A permit application shall be submitted to the Director within 180 days of notice, unless permission for a later date is granted by the Director (see § 124.52(c) of this chapter), for:
- (i)** A storm water discharge that the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States (see paragraphs (a)(1)(v) and (b)(15)(ii) of this section);
 - (ii)** A storm water discharge subject to paragraph (c)(1)(v) of this section.
- (6)** Facilities with existing NPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. Facilities with permits for storm water discharges associated with industrial activity which expire on or after May 18, 1992 shall submit a new application in accordance with the requirements of 40 CFR 122.21 and 40 CFR 122.26(c) (Form 1, Form 2F, and other applicable Forms) 180 days before the expiration of such permits.
- (7)** The Director shall issue or deny permits for discharges composed entirely of storm water under this section in accordance with the following schedule:
- (i)**
 - (A)** Except as provided in paragraph (e)(7)(i)(B) of this section, the Director shall issue or deny permits for storm water discharges associated with industrial activity no later than October 1, 1993, or, for new sources or existing sources which fail to submit a complete permit application by October 1, 1992, one year after receipt of a complete permit application;
 - (B)** For any municipality with a population of less than 250,000 which submits a timely Part I group application under paragraph (e)(2)(i)(B) of this section, the Director shall issue or deny permits for storm water discharges associated with industrial activity no later than May 17, 1994, or, for any such municipality which fails to submit a complete Part II group permit application by May 17, 1993, one year after receipt of a complete permit application;

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- (ii) The Director shall issue or deny permits for large municipal separate storm sewer systems no later than November 16, 1993, or, for new sources or existing sources which fail to submit a complete permit application by November 16, 1992, one year after receipt of a complete permit application;
- (iii) The Director shall issue or deny permits for medium municipal separate storm sewer systems no later than May 17, 1994, or, for new sources or existing sources which fail to submit a complete permit application by May 17, 1993, one year after receipt of a complete permit application.
- (8) For any storm water discharge associated with small construction activities identified in paragraph (b)(15)(i) of this section, see § 122.21(c)(1). Discharges from these sources require permit authorization by March 10, 2003, unless designated for coverage before then.
- (9) For any discharge from a regulated small MS4, the permit application made under § 122.33 must be submitted to the Director by:

 - (i) March 10, 2003 if designated under § 122.32(a)(1) unless your MS4 serves a jurisdiction with a population under 10,000 and the NPDES permitting authority has established a phasing schedule under § 123.35(d)(3) (see § 122.33(c)(1)); or
 - (ii) Within 180 days of notice, unless the NPDES permitting authority grants a later date, if designated under § 122.32(a)(2) (see § 122.33(c)(2)).

(f) Petitions.

- (1) Any operator of a municipal separate storm sewer system may petition the Director to require a separate NPDES permit (or a permit issued under an approved NPDES State program) for any discharge into the municipal separate storm sewer system.
- (2) Any person may petition the Director to require a NPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.
- (3) The owner or operator of a municipal separate storm sewer system may petition the Director to reduce the Census estimates of the population served by such separate system to account for storm water discharged to combined sewers as defined by 40 CFR 35.2005(b)(11) that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the NPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.
- (4) Any person may petition the Director for the designation of a large, medium, or small municipal separate storm sewer system as defined by paragraph (b)(4)(iv), (b)(7)(iv), or (b)(16) of this section.
- (5) The Director shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small

MS4 in which case the Director shall make a final determination on the petition within 180 days after its receipt.

(g) Conditional exclusion for “no exposure” of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is “no exposure” of industrial materials and activities to rain, snow, snowmelt and/or runoff, and the discharger satisfies the conditions in paragraphs (g)(1) through (g)(4) of this section. “No exposure” means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

(1) Qualification. To qualify for this exclusion, the operator of the discharge must:

- (i)** Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and runoff;
- (ii)** Complete and sign (according to § 122.22) a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in paragraph (g)(2) of this section;
- (iii)** Submit the signed certification to the NPDES permitting authority once every five years. As of December 21, 2025 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all certifications submitted in compliance with this section must be submitted electronically by the owner or operator 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. 40 CFR part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR part 127, owners or operators may be required to report electronically if specified by a particular permit or if required to do so by state law.
- (iv)** Allow the Director to inspect the facility to determine compliance with the “no exposure” conditions;
- (v)** Allow the Director to make any “no exposure” inspection reports available to the public upon request; and
- (vi)** For facilities that discharge through an MS4, upon request, submit a copy of the certification of “no exposure” to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

(2) Industrial materials and activities not requiring storm resistant shelter. To qualify for this exclusion, storm resistant shelter is not required for:

- (i)** Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak (“Sealed” means banded or otherwise secured and without operational taps or valves);
- (ii)** Adequately maintained vehicles used in material handling; and

(iii) Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

(3) Limitations.

(i) Storm water discharges from construction activities identified in paragraphs (b)(14)(x) and (b)(15) are not eligible for this conditional exclusion.

(ii) This conditional exclusion from the requirement for an NPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be “no exposure” discharges, individual permit requirements should be adjusted accordingly.

(iii) If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, and/or runoff, the conditions for this exclusion no longer apply. In such cases, the discharge becomes subject to enforcement for un-permitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.

(iv) Notwithstanding the provisions of this paragraph, the NPDES permitting authority retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

(4) Certification. The no exposure certification must require the submission of the following information, at a minimum, to aid the NPDES permitting authority in determining if the facility qualifies for the no exposure exclusion:

(i) The legal name, address and phone number of the discharger (see § 122.21(b));

(ii) The facility name and address, the county name and the latitude and longitude where the facility is located;

(iii) The certification must indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

(A) Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;

(B) Materials or residuals on the ground or in storm water inlets from spills/leaks;

(C) Materials or products from past industrial activity;

(D) Material handling equipment (except adequately maintained vehicles);

(E) Materials or products during loading/unloading or transporting activities;

(F) Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutants);

(G) Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

(H) Materials or products handled/stored on roads or railways owned or maintained by the discharger;

(I) Waste material (except waste in covered, non-leaking containers, e.g., dumpsters);

(J) Application or disposal of process wastewater (unless otherwise permitted); and

(K) Particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow;

(iv) All “no exposure” certifications must include the following certification statement, and be signed in accordance with the signatory requirements of § 122.22: “I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of “no exposure” and obtaining an exclusion from NPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under paragraph (g)(2)) of this section. I understand that I am obligated to submit a no exposure certification form once every five years to the NPDES permitting authority and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the NPDES permitting authority, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under an NPDES permit prior to any point source discharge of storm water from the facility. 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 gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

History

[55 FR 48063, Nov. 16, 1990, as amended at 56 FR 12100, Mar. 21, 1991; 56 FR 56554, Nov. 5, 1991; 57 FR 11412, Apr. 2, 1992; 57 FR 60447, Dec. 18, 1992; 60 FR 40235, Aug. 7, 1995; 64 FR 68722, 68838, Dec. 8, 1999; 65 FR 30886, 30907, May 15, 2000; 68 FR 11325, 11329, Mar. 10, 2003; 70 FR 11560, 11563, Mar. 9, 2005; 71 FR 33628, 33639, June 12, 2006; 77 FR 72970, 72974, Dec. 7, 2012; 80 FR 64064, 64096, Oct. 22, 2015; 85 FR 69189, 69196, Nov. 2, 2020]

Annotations

Notes

[EFFECTIVE DATE NOTE:

77 FR 72970 , 72974, Dec. 7, 2012, revised paragraph (b)(14)(ii), effective Jan. 7, 2013; 80 FR 64064 , 64096, Oct. 22, 2015, revised paragraphs (b)(15)(i)(A) and (g)(1)(iii) and added paragraph (b)(15)(i)(C), effective Dec. 21, 2015; 85 FR 69189, 69196, Nov. 2, 2020, revised paragraphs (b)(15)(i)(C) and (g)(1)(iii), effective Jan. 4, 2021.]

Notes to Decisions

Constitutional Law: Congressional Duties & Powers: Reserved Powers

Energy & Utilities Law: Mining Industry: Coal: General Overview

Energy & Utilities Law: Mining Industry: Surface Mining Control & Reclamation

Energy & Utilities Law: Mining Industry: Surface Mining Control & Reclamation Act: General Overview

Energy & Utilities Law: Oil, Gas & Mineral Interests: General Overview

Energy & Utilities Law: Utility Companies: General Overview

Environmental Law: Hazardous Wastes & Toxic Substances: Resource Conservation & Recovery Act: General Overview

Environmental Law: Hazardous Wastes & Toxic Substances: Resource Conservation & Recovery Act: Identification & Listing of Hazardous Wastes

Environmental Law: Hazardous Wastes & Toxic Substances: Toxic Substances

Environmental Law: Natural Resources & Public Lands: Wetlands Management

Environmental Law: Solid Wastes: Permits: General Overview

Environmental Law: Solid Wastes: Resource Recovery & Recycling

Environmental Law: Water Quality: General Overview

Environmental Law: Water Quality: Clean Water Act: Coverage & Definitions

Environmental Law: Water Quality: Clean Water Act: Coverage & Definitions: General Overview

Environmental Law: Water Quality: Clean Water Act: Coverage & Definitions: Discharges

Environmental Law: Water Quality: Clean Water Act: Coverage & Definitions: Navigable Waters

Environmental Law: Water Quality: Clean Water Act: Coverage & Definitions: Point Sources

Environmental Law: Water Quality: Clean Water Act: Discharge Permits: General Overview

Environmental Law: Water Quality: Clean Water Act: Discharge Permits: Effluent Limitations

Environmental Law: Water Quality: Clean Water Act: Discharge Permits: General Permits

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This document is current through the July 19, 2022 issue of the Federal Register.

Code of Federal Regulations > Title 40 Protection of Environment > Chapter I — Environmental Protection Agency > Subchapter D — Water Programs > Part 123 — State Program Requirements > Subpart A — General

§ 123.1 Purpose and scope.

(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.

Statutory Authority

Authority Note Applicable to 40 CFR Ch. I, Subch. D, Pt. 123

History

[48 FR 14178, Apr. 1, 1983, as amended at 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 45114, 45122, Aug. 24, 1998]

Annotations

Notes

[EFFECTIVE DATE NOTE:

63 FR 45114, 45122, Aug. 24, 1998, revised paragraphs (a) and (c), effective Sept. 23, 1998.]

Notes to Decisions

Administrative Law: Agency Rulemaking: Rule Application & Interpretation: General Overview

Environmental Law: Litigation & Administrative Proceedings: Jurisdiction & Procedure

Environmental Law: Natural Resources & Public Lands: Fish & Wildlife Protection

Environmental Law: Water Quality: Clean Water Act: Coverage & Definitions: General Overview

Environmental Law: Water Quality: Clean Water Act: Discharge Permits: General Overview

Environmental Law: Water Quality: Clean Water Act: Discharge Permits: Effluent Limitations

Environmental Law: Water Quality: Clean Water Act: Discharge Permits: State Water Quality Certifications

Environmental Law: Water Quality: Clean Water Act: Enforcement: General Overview

Environmental Law: Water Quality: Clean Water Act: Enforcement: Citizen Suits: General Overview

Environmental Law: Water Quality: Clean Water Act: Recordkeeping & Reporting

Administrative Law: Agency Rulemaking: Rule Application & Interpretation: General Overview

Riverkeeper, Inc. v. United States EPA, 358 F.3d 174, 57 Env't Rep. Cas. (BNA) 1961, 34 Env'tl. L. Rep. 20017, 2004 U.S. App. LEXIS 1626 (2d Cir. 2004).

Overview: *Except for a provision allowing compliance through "restoration measures," most of a clean water regulation designed to protect fish and other wildlife from harm by structures that withdrew cooling water from the nation's waterbodies was upheld.*

- The National Pollution Discharge Elimination System is the permitting process through which the requirements of the Clean Water Act (CWA) (and its progeny of regulations) are enforced at each point source. Under the Act, the Environmental Protection Agency (EPA) is the default permitting

40 CFR 123.22

This document is current through the July 19, 2022 issue of the Federal Register.

Code of Federal Regulations > Title 40 Protection of Environment > Chapter I — Environmental Protection Agency > Subchapter D — Water Programs > Part 123 — State Program Requirements > Subpart B — State Program Submissions

§ 123.22 Program description.

Any State that seeks to administer a program under this part shall submit a description of the program it proposes to administer in lieu of the Federal program under State law or under an interstate compact. The program description shall include:

- (a) A description in narrative form of the scope, structure, coverage and processes of the State program.
- (b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including the information listed below. If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency may be designated as a “lead agency” to facilitate communications between EPA and the State agencies having program responsibility. If the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the Federally required portion of the program.
 - (1) A description of the State agency staff who will carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.
 - (2) An itemization of the estimated costs of establishing and administering the program for the first two years after approval, including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support.
 - (3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director for the first two years after approval to meet the costs listed in paragraph (b)(2) of this section, identifying any restrictions or limitations upon this funding.
- (c) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures;
- (d) Copies of the permit form(s), application form(s), and reporting form(s) the State intends to employ in its program. Forms used by States need not be identical to the forms used by EPA but should require the same basic information, except that State NPDES programs are required

40 CFR 123.22

to use standard Discharge Monitoring Reports (DMR). The State need not provide copies of uniform national forms it intends to use but should note its intention to use such forms.

NOTE: States are encouraged to use uniform national forms established by the Administrator. If uniform national forms are used, they may be modified to include the State Agency's name, address, logo, and other similar information, as appropriate, in place of EPA's.

(e) A complete description of the State's compliance tracking and enforcement program.

(f) In the case of Indian Tribes eligible for treatment as a State under § 123.33(b), if a State has been authorized by EPA to issue permits on the Federal Indian reservation in accordance with § 123.23(b), a description of how responsibility for pending permit applications, existing permits, and supporting files will be transferred from the State to the eligible Indian Tribe. To the maximum extent practicable, this should include a Memorandum of Agreement negotiated between the State and the Indian Tribe addressing the arrangements for such transfer.

(g) A state, tribe, or territory that newly seeks to implement an NPDES program after March 21, 2016 must describe whether the state, tribe, or territory will be the initial recipient of electronic NPDES information from NPDES-regulated facilities for specific NPDES data groups (see 40 CFR 127.2(c) and 127.27). In this program description, the state, tribe, or territory must identify the specific NPDES data groups for which the state, tribe, or territory will be the initial recipient of electronic NPDES information from NPDES-regulated facilities and how the electronic data system of the state, tribe, or territory will be compliant with 40 CFR part 3 (including, in all cases, subpart D to part 3), § 123.26, and 40 CFR part 127.

Statutory Authority

Authority Note Applicable to 40 CFR Ch. I, Subch. D, Pt. 123

History

[48 FR 14178, Apr. 1, 1983; 50 FR 6941, Feb. 19, 1985, as amended at 54 FR 18784, May 2, 1989; 58 FR 67981, Dec. 22, 1993; 59 FR 64343, Dec. 14, 1994; 63 FR 45114, 45122, Aug. 24, 1998; 80 FR 64064, 64099, Oct. 22, 2015]

Annotations

Notes

[EFFECTIVE DATE NOTE:

63 FR 45114, 45122, Aug. 24, 1998, removed paragraph (f) and redesignated paragraph (g) as paragraph (f), effective Sept. 23, 1998; 80 FR 64064, 64099, Oct. 22, 2015, added paragraph (g), effective Dec. 21, 2015.]

Research References & Practice Aids



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 22 2002

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs

FROM: Robert H. Wayland, III, Director
Office of Wetlands, Oceans and Watersheds

Handwritten signature of Robert H. Wayland, III in black ink.

James A. Hanlon, Director
Office of Wastewater Management

Handwritten signature of James A. Hanlon in black ink.

TO: Water Division Directors
Regions 1 - 10

This memorandum clarifies existing EPA regulatory requirements for, and provides guidance on, establishing wasteload allocations (WLAs) for storm water discharges in total maximum daily loads (TMDLs) approved or established by EPA. It also addresses the establishment of water quality-based effluent limits (WQBELs) and conditions in National Pollutant Discharge Elimination System (NPDES) permits based on the WLAs for storm water discharges in TMDLs. The key points presented in this memorandum are as follows:

NPDES-regulated storm water discharges must be addressed by the wasteload allocation component of a TMDL. See 40 C.F.R. § 130.2(h).

NPDES-regulated storm water discharges may not be addressed by the load allocation (LA) component of a TMDL. See 40 C.F.R. § 130.2 (g) & (h).

Storm water discharges from sources that are not currently subject to NPDES regulation may be addressed by the load allocation component of a TMDL. See 40 C.F.R. § 130.2(g).

It may be reasonable to express allocations for NPDES-regulated storm water discharges from multiple point sources as a single categorical wasteload allocation when data and information are insufficient to assign each source or outfall individual WLAs. See 40 C.F.R. § 130.2(i). In cases where wasteload allocations

are developed for categories of discharges, these categories should be defined as narrowly as available information allows.

The WLAs and LAs are to be expressed in numeric form in the TMDL. See 40 C.F.R. § 130.2(h) & (i). EPA expects TMDL authorities to make separate allocations to NPDES-regulated storm water discharges (in the form of WLAs) and unregulated storm water (in the form of LAs). EPA recognizes that these allocations might be fairly rudimentary because of data limitations and variability in the system.

NPDES permit conditions must be consistent with the assumptions and requirements of available WLAs. See 40 C.F.R. § 122.44(d)(1)(vii)(B).

WQBELs for NPDES-regulated storm water discharges that implement WLAs in TMDLs may be expressed in the form of best management practices (BMPs) under specified circumstances. See 33 U.S.C. §1342(p)(3)(B)(iii); 40 C.F.R. §122.44(k)(2)&(3). If BMPs alone adequately implement the WLAs, then additional controls are not necessary.

EPA expects that most WQBELs for NPDES-regulated municipal and small construction storm water discharges will be in the form of BMPs, and that numeric limits will be used only in rare instances.

When a non-numeric water quality-based effluent limit is imposed, the permit's administrative record, including the fact sheet when one is required, needs to support that the BMPs are expected to be sufficient to implement the WLA in the TMDL. See 40 C.F.R. §§ 124.8, 124.9 & 124.18.

The NPDES permit must also specify the monitoring necessary to determine compliance with effluent limitations. See 40 C.F.R. § 122.44(i). Where effluent limits are specified as BMPs, the permit should also specify the monitoring necessary to assess if the expected load reductions attributed to BMP implementation are achieved (e.g., BMP performance data).

The permit should also provide a mechanism to make adjustments to the required BMPs as necessary to ensure their adequate performance.

This memorandum is organized as follows:

- (I). Regulatory basis for including NPDES-regulated storm water discharges in WLAs in TMDLs;
- (II). Options for addressing storm water in TMDLs; and

(III). Determining effluent limits in NPDES permits for storm water discharges consistent with the WLA

(I). Regulatory Basis for Including NPDES-regulated Storm Water Discharges in WLAs in TMDLs

As part of the 1987 amendments to the CWA, Congress added Section 402(p) to the Act to cover discharges composed entirely of storm water. Section 402(p)(2) of the Act requires permit coverage for discharges associated with industrial activity and discharges from large and medium municipal separate storm sewer systems (MS4), *i.e.*, systems serving a population over 250,000 or systems serving a population between 100,000 and 250,000, respectively. These discharges are referred to as Phase I MS4 discharges.

In addition, the Administrator was directed to study and issue regulations that designate additional storm water discharges, other than those regulated under Phase I, to be regulated in order to protect water quality. EPA issued regulations on December 8, 1999 (64 FR 68722), expanding the NPDES storm water program to include discharges from smaller MS4s (including all systems within “urbanized areas” and other systems serving populations less than 100,000) and storm water discharges from construction sites that disturb one to five acres, with opportunities for area-specific exclusions. This program expansion is referred to as Phase II.

Section 402(p) also specifies the levels of control to be incorporated into NPDES storm water permits depending on the source (industrial versus municipal storm water). Permits for storm water discharges associated with industrial activity are to require compliance with all applicable provisions of Sections 301 and 402 of the CWA, *i.e.*, all technology-based and water quality-based requirements. *See* 33 U.S.C. §1342(p)(3)(A). Permits for discharges from MS4s, however, “shall require controls to reduce the discharge of pollutants to the maximum extent practicable ... and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.” *See* 33 U.S.C. §1342(p)(3)(B)(iii).

Storm water discharges that are regulated under Phase I or Phase II of the NPDES storm water program are point sources that must be included in the WLA portion of a TMDL. *See* 40 C.F.R. § 130.2(h). Storm water discharges that are not currently subject to Phase I or Phase II of the NPDES storm water program are not required to obtain NPDES permits. 33 U.S.C. §1342(p)(1) & (p)(6). Therefore, for regulatory purposes, they are analogous to nonpoint sources and may be included in the LA portion of a TMDL. *See* 40 C.F.R. § 130.2(g).

(II). Options for Addressing Storm Water in TMDLs

Decisions about allocations of pollutant loads within a TMDL are driven by the quantity and quality of existing and readily available water quality data. The amount of storm water data available for a TMDL varies from location to location. Nevertheless, EPA expects TMDL authorities will make separate aggregate allocations to NPDES-regulated storm water discharges

(in the form of WLAs) and unregulated storm water (in the form of LAs). It may be reasonable to quantify the allocations through estimates or extrapolations, based either on knowledge of land use patterns and associated literature values for pollutant loadings or on actual, albeit limited, loading information. EPA recognizes that these allocations might be fairly rudimentary because of data limitations.

EPA also recognizes that the available data and information usually are not detailed enough to determine waste load allocations for NPDES-regulated storm water discharges on an outfall-specific basis. In this situation, EPA recommends expressing the wasteload allocation in the TMDL as either a single number for all NPDES-regulated storm water discharges, or when information allows, as different WLAs for different identifiable categories, e.g., municipal storm water as distinguished from storm water discharges from construction sites or municipal storm water discharges from City A as distinguished from City B. These categories should be defined as narrowly as available information allows (e.g., for municipalities, separate WLAs for each municipality and for industrial sources, separate WLAs for different types of industrial storm water sources or dischargers).

(III). Determining Effluent Limits in NPDES Permits for Storm Water Discharges Consistent with the WLA

Where a TMDL has been approved, NPDES permits must contain effluent limits and conditions consistent with the requirements and assumptions of the wasteload allocations in the TMDL. See 40 CFR § 122.44(d)(1)(vii)(B). Effluent limitations to control the discharge of pollutants generally are expressed in numerical form. However, in light of 33 U.S.C. §1342(p)(3)(B)(iii), EPA recommends that for NPDES-regulated municipal and small construction storm water discharges effluent limits should be expressed as best management practices (BMPs) or other similar requirements, rather than as numeric effluent limits. See *Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits*, 61 FR 43761 (Aug. 26, 1996). The Interim Permitting Approach Policy recognizes the need for an iterative approach to control pollutants in storm water discharges. Specifically, the policy anticipates that a suite of BMPs will be used in the initial rounds of permits and that these BMPs will be tailored in subsequent rounds.

EPA's policy recognizes that because storm water discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare cases will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges. The variability in the system and minimal data generally available make it difficult to determine with precision or certainty actual and projected loadings for individual dischargers or groups of dischargers. Therefore, EPA believes that in these situations, permit limits typically can be expressed as BMPs, and that numeric limits will be used only in rare instances.

Under certain circumstances, BMPs are an appropriate form of effluent limits to control pollutants in storm water. See 40 CFR § 122.44(k)(2) & (3). If it is determined that a BMP approach (including an iterative BMP approach) is appropriate to meet the storm water component of the TMDL, EPA recommends that the TMDL reflect this.

EPA expects that the NPDES permitting authority will review the information provided by the TMDL, see 40 C.F.R. § 122.44(d)(1)(vii)(B), and determine whether the effluent limit is appropriately expressed using a BMP approach (including an iterative BMP approach) or a numeric limit. Where BMPs are used, EPA recommends that the permit provide a mechanism to require use of expanded or better-tailored BMPs when monitoring demonstrates they are necessary to implement the WLA and protect water quality.

Where the NPDES permitting authority allows for a choice of BMPs, a discussion of the BMP selection and assumptions needs to be included in the permit's administrative record, including the fact sheet when one is required. 40 C.F.R. §§ 124.8, 124.9 & 124.18. For general permits, this may be included in the storm water pollution prevention plan required by the permit. See 40 C.F.R. § 122.28. Permitting authorities may require the permittee to provide supporting information, such as how the permittee designed its management plan to address the WLA(s). See 40 C.F.R. § 122.28. The NPDES permit must require the monitoring necessary to assure compliance with permit limitations, although the permitting authority has the discretion under EPA's regulations to decide the frequency of such monitoring. See 40 CFR § 122.44(i). EPA recommends that such permits require collecting data on the actual performance of the BMPs. These additional data may provide a basis for revised management measures. The monitoring data are likely to have other uses as well. For example, the monitoring data might indicate if it is necessary to adjust the BMPs. Any monitoring for storm water required as part of the permit should be consistent with the state's overall assessment and monitoring strategy.

The policy outlined in this memorandum affirms the appropriateness of an iterative, adaptive management BMP approach, whereby permits include effluent limits (e.g., a combination of structural and non-structural BMPs) that address storm water discharges, implement mechanisms to evaluate the performance of such controls, and make adjustments (i.e., more stringent controls or specific BMPs) as necessary to protect water quality. This approach is further supported by the recent report from the National Research Council (NRC), *Assessing the TMDL Approach to Water Quality Management* (National Academy Press, 2001). The NRC report recommends an approach that includes "adaptive implementation," i.e., "a cyclical process in which TMDL plans are periodically assessed for their achievement of water quality standards" . . . and adjustments made as necessary. *NRC Report* at ES-5.

This memorandum discusses existing requirements of the Clean Water Act (CWA) and codified in the TMDL and NPDES implementing regulations. Those CWA provisions and regulations contain legally binding requirements. This document describes these requirements; it does not substitute for those provisions or regulations. The recommendations in this memorandum are not binding; indeed, there may be other approaches that would be appropriate

in particular situations. When EPA makes a TMDL or permitting decision, it will make each decision on a case-by-case basis and will be guided by the applicable requirements of the CWA and implementing regulations, taking into account comments and information presented at that time by interested persons regarding the appropriateness of applying these recommendations to the particular situation. EPA may change this guidance in the future.

If you have any questions please feel free to contact us or Linda Boornazian, Director of the Water Permits Division or Charles Sutfin, Director of the Assessment and Watershed Protection Division.

cc:

Water Quality Branch Chiefs
Regions 1 - 10

Permit Branch Chiefs
Regions 1 - 10



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 12 2010

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs"

FROM: James A. Hanlon, Director
Office of Wastewater Management

Denise Keehner, Director
Office of Wetlands, Oceans and Watersheds

TO: Water Management Division Directors
Regions 1 - 10

This memorandum updates aspects of EPA's November 22, 2002 memorandum from Robert H. Wayland, III, Director of the Office of Wetlands, Oceans and Watersheds, and James A. Hanlon, Director of the Office of Wastewater Management, on the subject of "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs" (hereafter "2002 memorandum").

Background

Section III of the 2002 memorandum "affirm[ed] the appropriateness of an iterative, adaptive management best management practices (BMP) approach" for improving stormwater management over time as permitting agencies, the regulated community, and other involved stakeholders gain more experience and knowledge. Since 2002, States and EPA have obtained considerable experience in developing TMDLs and WLAs that address stormwater sources. The technical capacity to monitor stormwater and its impacts on water quality has increased. In many areas, monitoring of the impacts of stormwater on water quality has become more sophisticated and widespread. Better information on the effectiveness of stormwater controls to reduce pollutant loadings and address water quality impairments is now available. In many parts of the country, permitting agencies have issued several rounds of permits for Phase I municipal separate storm sewer systems (MS4s), Phase II MS4s, and stormwater discharges associated with industrial activity, including stormwater from construction activities. Notwithstanding these developments, stormwater discharges remain a significant cause of water quality

impairment in many places, highlighting a continuing need for more useful WLAs and better NPDES permit provisions to restore impaired waters to their beneficial uses.

With this additional experience in mind, EPA is updating and revising the following four elements of the 2002 memorandum to better reflect current practices and trends in permits and WLAs for stormwater discharges:

- Providing numeric water quality-based effluent limitations in NPDES permits for stormwater discharges;
- Disaggregating stormwater sources in a WLA;
- Using surrogates for pollutant parameters when establishing targets for TMDL loading capacity; and
- Designating additional stormwater sources to regulate and treating load allocations as wasteload allocations for newly regulated stormwater sources.

EPA is currently reviewing other elements of the 2002 memorandum and will consider making appropriate revisions in the future.

Providing Numeric Water Quality-Based Effluent Limitations in NPDES Permits for Stormwater Discharges

In today's memorandum, EPA is revising the 2002 memorandum with respect to water quality-based effluent limitations (WQBELs) in stormwater permits. Since 2002, many NPDES authorities have documented the contributions of stormwater discharges to water quality impairment and have identified the need to include clearer permit requirements in order to address these impairments. Numeric WQBELs in stormwater permits can clarify permit requirements and improve accountability and enforceability. For the purpose of this memorandum, numeric WQBELs use numeric parameters such as pollutant concentrations, pollutant loads, or numeric parameters acting as surrogates for pollutants, such as stormwater flow volume or percentage or amount of impervious cover.

The CWA provides that stormwater permits for MS4 discharges shall contain controls to reduce the discharge of pollutants to the "maximum extent practicable" and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. CWA section 402(p)(3)(B)(iii). Under this provision, the NPDES permitting authority has the discretion to include requirements for reducing pollutants in stormwater discharges as necessary for compliance with water quality standards. *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166 (9th Cir. 1999).

Where the NPDES authority determines that MS4 discharges have the reasonable potential to cause or contribute to a water quality standard excursion, EPA recommends that, where feasible, the NPDES permitting authority exercise its discretion to include numeric effluent limitations as necessary to meet water quality standards. The 2002

memorandum stated “EPA expects that most WQBELs for NPDES-regulated municipal and small construction stormwater discharges will be in the form of BMPs, and that numeric limitations will be used only in rare instances.” Those expectations have changed as the stormwater permit program has matured. EPA now recognizes that where the NPDES authority determines that MS4 discharges and/or small construction stormwater discharges have the reasonable potential to cause or contribute to water quality standards excursions, permits for MS4s and/or small construction stormwater discharges should contain numeric effluent limitations where feasible to do so. EPA recommends that NPDES permitting authorities use numeric effluent limitations where feasible as these types of effluent limitations create objective and accountable means for controlling stormwater discharges.

The Clean Water Act (CWA) requires that permits for stormwater discharges associated with industrial activity comply with section 301 of the Act, including the requirement under section 301(b)(1)(C) to contain WQBELs for any discharge that the permitting authority determines has the reasonable potential to cause or contribute to a water quality standard excursion. CWA section 402(p)(3)(A), 40 CFR 122.44(d)(1)(iii). When the permitting authority determines, using the procedures specified at 40 CFR 122.44(d)(1)(ii) that the discharge causes or has the reasonable potential to cause or contribute to an in-stream excursion of the water quality standards, the permit must contain effluent limits for that pollutant. EPA recommends that NPDES permitting authorities use numeric effluent limitations where feasible as these types of effluent limitations create objective and accountable means for controlling stormwater discharges.

Where WQBELs in permits for stormwater discharges from MS4s, small construction sites or industrial sites are expressed in the form of BMPs, the permit should contain objective and measurable elements (e.g., schedule for BMP installation or level of BMP performance). The objective and measurable elements should be included in permits as enforceable provisions. Permitting authorities should consider including numeric benchmarks for BMPs and associated monitoring protocols or specific protocols for estimating BMP effectiveness in stormwater permits. These benchmarks could be used as thresholds that would require the permittee to take additional action specified in the permit, such as evaluating the effectiveness of the BMPs, implementing and/or modifying BMPs, or providing additional measures to protect water quality.

If the State or EPA has established a TMDL for an impaired water that includes WLAs for stormwater discharges, permits for either industrial stormwater discharges or MS4 discharges must contain effluent limits and conditions consistent with the requirements and assumptions of the WLAs in the TMDL. See 40 CFR § 122.44(d)(1)(vii)(B). Where the WLA of a TMDL is expressed in terms of a surrogate pollutant parameter, then the corresponding permit can generally use the surrogate pollutant parameter in the WQBEL as well. Where the TMDL includes WLAs for stormwater sources that provide numeric pollutant load or numeric surrogate pollutant parameter objectives, the WLA should, where feasible, be translated into numeric WQBELs in the applicable stormwater permits.

The permitting authority's decision as to how to express the WQBEL(s), either as numeric effluent limitations or BMPs, including BMPs accompanied by numeric benchmarks, should be based on an analysis of the specific facts and circumstances surrounding the permit, and/or the underlying WLA, including the nature of the stormwater discharge, available data, modeling results or other relevant information. As discussed in the 2002 memorandum, the permit's administrative record needs to provide an adequate demonstration that, where a BMP-based approach to permit limitations is selected, the BMPs required by the permit will be sufficient to implement applicable WLAs. Improved knowledge of BMP effectiveness gained since 2002 should be reflected in the demonstration and supporting rationale that implementation of the BMPs will attain water quality standards and WLAs.

EPA's regulations at 40 CFR § 122.47 govern the use of compliance schedules in NPDES permits. Central among the requirements is that the effluent limitation(s) must be met "as soon as possible." 40 CFR 122.47(a)(1). EPA expects the permitting authority to include in the permit record a sound rationale for determining that any compliance schedule meets this requirement. Where a TMDL has been established and there is an accompanying implementation plan that provides a schedule for an MS4 to implement the TMDL, the permitting authority should consider the schedule as it decides whether and how to establish enforceable interim requirements and interim dates in the permit.

Lastly, NPDES permits must specify monitoring requirements necessary to determine compliance with effluent limitations. See CWA section 402(a)(2); 40 C.F.R. 122.44(i). Where WQBELs are expressed as BMPs, the permit must require adequate monitoring to determine if the BMPs are performing as necessary. When developing monitoring requirements, the NPDES authority should consider the variable nature of stormwater as well the availability of reliable and applicable field data describing the treatment efficiencies of the BMPs required and supporting modeling analysis.

Disaggregating Stormwater Sources in a WLA

As stated in the 2002 memorandum, EPA expects TMDL authorities will make separate aggregate allocations to NPDES-regulated storm water discharges (in the form of WLAs) and unregulated storm water (in the form of LAs). EPA also recognized that the available data and information usually are not detailed enough to determine waste load allocations for NPDES-regulated storm water discharges on an outfall-specific basis.

EPA still recognizes that decisions about allocations of pollutant loads within a TMDL are driven by quantity and quality of existing and readily available water quality data. However, today, TMDL writers may have better data or better access to data and, over time, may have gained more experience since 2002 in developing TMDLs and WLAs in a less aggregated manner. Moreover, since 2002, EPA has noted the difficulty of establishing clear, effective, and enforceable NPDES permit limitations for sources covered by WLAs that are expressed as single categorical or aggregated wasteload allocations.

Accordingly, for all these reasons, EPA recommends that WLAs for NPDES-regulated stormwater discharges should be disaggregated into specific categories (e.g., separate WLAs for MS4 and industrial stormwater discharges) to the extent feasible based on available data and/or modeling projections. In addition, these disaggregated WLAs should be defined as narrowly as available information allows (e.g., for MS4s, separate WLAs for each one; and, for industrial sources, separate WLAs for different sources or types of industrial sources or discharges.)

Where appropriate, EPA encourages permit writers to assign specific shares of the wasteload allocation to specific permittees during the permitting process.

Using Surrogate for Pollutant Parameters When Establishing Targets for TMDL Loading Capacity

Many waterbodies affected by stormwater discharges are listed as impaired under Section 303(d) due to biological degradation or habitat alteration, rather than for specific pollutants (e.g., metals, pathogens, sediment). Impairment can be due to pollutants where hydrologic changes such as quantity of flow and variation in flow regimes are important factors in their transport. Since the stormwater-source impairment is usually the result of the cumulative impact of multiple pollutants and physical effects, it may be difficult to identify a specific pollutant (or pollutants) causing the impairment. Using a surrogate parameter in developing wasteload allocations for waters impaired by stormwater sources may, at times, be the appropriate approach for restoring the waterbodies.

In the 2009 report *Urban Stormwater Management in the United States*, the National Research Council suggests: “A more straightforward way to regulate stormwater contributions to waterbody impairment would be to use flow or a surrogate, like impervious cover, as a measure of stormwater loading . . . Efforts to reduce stormwater flow will automatically achieve reductions in pollutant loading. Moreover, flow is itself responsible for additional erosion and sedimentation that adversely impacts surface water quality.”

Therefore, when developing TMDLs for receiving waters where stormwater sources are the primary source of impairment, it may be suitable to establish a numeric target for a surrogate pollutant parameter, such as stormwater flow volume or impervious cover, that would be expected to provide attainment of water quality standards. This is consistent with the TMDL regulations that specify that TMDLs can be expressed in terms of mass per time, toxicity or other appropriate measure (40 C.F.R. §130.2(i)).

Where a surrogate parameter is used, the TMDL document must demonstrate the linkage between the surrogate parameter and the documented impairment (e.g., biological degradation). In addition, the TMDL should provide supporting documentation to indicate that the surrogate pollutant parameter appropriately represents stormwater pollutant loadings. Monitoring is an essential undertaking to ensure that compliance with the effluent limitations occurs.

Recent examples of TMDLs using flow or impervious cover as surrogates for pollutants in setting TMDL loading targets include: the Eagleville Brook (CT) TMDL and the Barberry Creek (ME) TMDL which used impervious cover as a surrogate; and, the Potash Brook (VT) TMDL which used stormwater flow volume as a surrogate.

Designating Additional Stormwater Sources to Regulate and Treating Load Allocations as Wasteload Allocations for Newly Regulated Stormwater Sources

The 2002 memorandum states that “stormwater discharges from sources that are not currently subject to NPDES regulation may be addressed by the load allocation component of a TMDL.” Section 402(p)(2) of the Clean Water Act (CWA) requires industrial stormwater sources, certain municipal separate storm sewer systems, and other designated sources to be subject to NPDES permits. Section 402(p)(6) provides EPA with authority to identify additional stormwater discharges as needing a permit.

In addition to the stormwater discharges specifically identified as needing an NPDES permit, the CWA and the NPDES regulations allow for EPA and NPDES authorized States to designate, additional stormwater discharges for regulation. See 40 CFR 122.26 (a)(9)(i)(C), (a)(9)(i)(D), (b)(4)(iii), (b)(7)(iii), (b)(15)(ii) and 122.32(a)(2). Since 2002, EPA has become concerned that NPDES authorities have generally not adequately considered exercising these authorities to designate for NPDES permitting stormwater discharges that are currently not required to obtain permit coverage but that are significant enough to be identified in the load allocation component of a TMDL. Accordingly, EPA encourages permitting authorities to consider designation of stormwater sources in situations where coverage under NPDES permits would afford a more effective mechanism to reduce pollutants in stormwater discharges than available nonpoint source control methods.

In situations where a stormwater source addressed in a TMDL’s load allocation is not currently regulated by an NPDES permit but may be required to obtain an NPDES permit in the future, the TMDL writer should consider including language in the TMDL explaining that the allocation for the stormwater source is expressed in the TMDL as a “load allocation” contingent on the source remaining unpermitted, but that the “load allocation” would later be deemed a “wasteload allocation” if the stormwater discharge from the source were required to obtain NPDES permit coverage. Such language, while not legally required, would help ensure that the allocation is properly characterized by the permit writer should the source’s regulatory status change. This will help ensure that effluent limitations in a NPDES permit applicable to the newly permitted source are consistent with the requirements and assumptions of the TMDL’s allocation to that source.

Such recharacterization of a load allocation as a wasteload allocation would not automatically require resubmission of the TMDL to EPA for approval. However, if the TMDL’s allocation for the newly permitted source had been part of a single aggregated or gross load allocation for all unregulated stormwater sources, it may be appropriate for the NPDES permit authority to determine a wasteload allocation and corresponding

effluent limitation specific to the newly permitted stormwater source. Any additional analysis used to refine the allocation should be included in the administrative record for the permit. In such cases, the record should describe the basis for

- (1) recharacterizing the load allocation as a wasteload allocation for this source and
- (2) determining that the permit's effluent limitations are consistent with the assumptions and requirements of this recharacterized wasteload allocation. For purposes of this discussion, it is assumed that the permit writer's additional analysis or recharacterization of the load allocation as a wasteload allocation does not change the TMDL's overall loading cap. Any change in a TMDL loading cap would have to be resubmitted for EPA approval.

If you have any questions please feel free to contact us or Linda Boornazian, Director of the Water Permits Division or Benita Best-Wong, Director of the Assessment and Watershed Protection Division.

cc: Association of State and Interstate Water Pollution Control Administrators
Water Quality Branch Chiefs, Regions 1 – 10
Permits Branch Chiefs, Regions 1 – 10



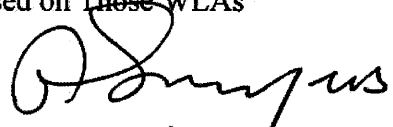

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 26 2014

OFFICE OF WATER

MEMORANDUM

SUBJECT: Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs"

FROM: Andrew D. Sawyers, Director
Office of Wastewater Management 
Benita Best-Wong, Director
Office of Wetlands, Oceans and Watersheds 

TO: Water Division Directors
Regions 1 - 10

This memorandum updates aspects of EPA's November 22, 2002 memorandum from Robert H. Wayland, III, Director of the Office of Wetlands, Oceans and Watersheds, and James A. Hanlon, Director of the Office of Wastewater Management, on the subject of "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs" (hereafter "2002 memorandum"). Today's memorandum replaces the November 12, 2010, memorandum on the same subject; the Water Division Directors should no longer refer to that memorandum for guidance.

This memorandum is guidance. It is not a regulation and does not impose legally binding requirements on EPA or States. EPA and state regulatory authorities should continue to make permitting and TMDL decisions on a case-by-case basis considering the particular facts and circumstances and consistent with applicable statutes, regulations, and case law. The recommendations in this guidance may not be applicable to a particular situation. EPA may change or revoke this guidance at any time.

Background

Stormwater discharges are a significant contributor to water quality impairment in this country, and the challenges from these discharges are growing as more land is developed and more impervious surface is created. Stormwater discharges cause beach closures and contaminate shellfish and surface drinking water supplies. The increased volume and velocity of stormwater discharges causes streambank erosion, flooding, sewer overflows, and basement backups. The decreased natural infiltration of rainwater reduces groundwater recharge, depleting

our underground sources of drinking water.¹ There are stormwater management solutions, such as green infrastructure, that can protect our waterbodies from stormwater discharges and, at the same time, offer many other benefits to communities.

Section III of the 2002 memorandum recommended that for NPDES-regulated municipal and small construction stormwater discharges, effluent limits be expressed as best management practices (BMPs) or other similar requirements, rather than as numeric effluent limits. The 2002 memorandum went on to provide guidance on using “an iterative, adaptive management BMP approach” for improving stormwater management over time as permitting agencies, the regulated community, and other involved stakeholders gain more experience and knowledge. EPA continues to support use of an iterative approach, but with greater emphasis on clear, specific, and measurable permit requirements and, where feasible, numeric NPDES permit provisions, as discussed below.

Since 2002, States and EPA have obtained considerable experience in developing TMDLs and WLAs that address stormwater sources (see Box 1 in the attachment for specific examples). Monitoring of the impacts of stormwater discharges on water quality has become more sophisticated and widespread.² The experience gained during this time has provided better information on the effectiveness of stormwater controls to reduce pollutant loadings and address water quality impairments. In many parts of the country, permitting agencies have issued several rounds of stormwater permits. Notwithstanding these developments, stormwater discharges remain a significant cause of water quality impairment in many places, highlighting a continuing need for more meaningful WLAs and more clear, specific, and measurable NPDES permit provisions to help restore impaired waters to their beneficial uses.

With this additional experience in mind, on November 12, 2010, EPA issued a memorandum updating and revising elements of the 2002 memorandum to better reflect current practices and trends in permits and WLAs for stormwater discharges. On March 17, 2011, EPA sought public comment on the November 2010 memorandum and, earlier this year, completed a nationwide review of current practices used in MS4 permits³ and industrial and construction stormwater discharge permits. As a result of comments received and informed by the reviews of EPA and state-issued stormwater permits, EPA is in this memorandum replacing the

¹ See generally *Urban Stormwater Management in the United States* (National Research Council, 2009), particularly the discussion in Chapter 3, *Hydrologic, Geomorphic, and Biological Effects of Urbanization on Watersheds*.

² Stormwater discharge monitoring programs have expanded the types pollutants and other indices (e.g., biologic integrity) being evaluated. This information is being used to help target priority areas for cleanup and to assess the effectiveness of stormwater BMPs. There are a number of noteworthy monitoring programs that are ongoing, including for example those being carried out by Duluth, MN, Capitol Region Watershed District, MN, Honolulu, HI, Baltimore or Montgomery County, MD, Puget Sound, WA, Los Angeles County, CA, and the Alabama Dept. of Transportation, among many others. See also Section 4.2 (Monitoring/Modeling Requirements) of EPA’s *Municipal Separate Storm Sewer System Permits: Post-Construction Performance Standards & Water Quality-Based Requirements – A Compendium of Permitting Approaches* (EPA, June 2014), or “MS4 Compendium” available at http://water.epa.gov/polwaste/npdes/stormwater/upload/sw_ms4_compendium.pdf, for other examples of note.

³ See EPA’s MS4 Permit Compendium, referenced in the above footnote.

November 2010 memorandum, updating aspects of the 2002 memorandum and providing additional information in the following areas:

- Including clear, specific, and measurable permit requirements and, where feasible, numeric effluent limitations in NPDES permits for stormwater discharges;
- Disaggregating stormwater sources in a WLA; and
- Designating additional stormwater sources to regulate and developing permit limits for such sources.

Including Clear, Specific, and Measurable Permit Requirements and, Where Feasible, Numeric Effluent Limitations in NPDES Permits for Stormwater Discharges

At the outset of both the Phase I and Phase II stormwater permit programs, EPA provided guidance on the type of water quality-based effluent limits (WQBELs) that were considered most appropriate for stormwater permits. See Interim Permitting Policy for Water Quality-Based Limitations in Storm Water Permits [61 FR 43761 (August 26, 1996) and 61 FR 57425 (November 6, 1996)] and the Phase II rulemaking preamble 64 FR 68753 (December 8, 1999). Under the approach discussed in these documents, EPA envisioned that in the first two to three rounds of permit issuance, stormwater permits typically would require implementation of increasingly more effective best management practices (BMPs). In subsequent stormwater permit terms, if the BMPs used during prior years were shown to be inadequate to meet the requirements of the Clean Water Act (CWA), including attainment of applicable water quality standards, the permit would need to contain more specific conditions or limitations.

There are many ways to include more effective WQBELs in permits. In the spring of 2014, EPA published the results of a nationwide review of current practices used in MS4 permits in *Municipal Separate Storm Sewer Systems Permits: Post-Construction Performance Standards & Water Quality-Based Requirements – A Compendium of Permitting Approaches* (June 2014). This MS4 Compendium demonstrates how NPDES authorities have been able to effectively establish permit requirements that are more specifically tied to a measurable water quality target, and includes examples of permit requirements expressed in both numeric and non-numeric form. These approaches, while appropriately permit-specific, each share the attribute of being expressed in a clear, specific, and measurable way. For example, EPA found a number of permits that employ numeric, retention-based performance standards for post-construction discharges, as well as instances where permits have effectively incorporated numeric effluent limits or other quantifiable measures to address water quality impairment (see the attachment to this memorandum).

EPA has also found examples where the applicable WLAs have been translated into BMPs, which are required to be implemented during the permit term to reflect reasonable further progress towards meeting the applicable water quality standard (WQS). Incorporating greater specificity and clarity echoes the approach first advanced by EPA in the 1996 Interim Permitting Policy, which anticipated that where necessary to address water quality concerns, permits would be modified in subsequent terms to include “more specific conditions or limitations [which] may include an integrated suite of BMPs, performance objectives, narrative standards, monitoring triggers, numeric WQBELs, action levels, etc.”

EPA also recently completed a review of state-issued NPDES industrial and construction permits, which also revealed a number of examples where WQBELs are expressed using clear, specific, and measurable terms. Permits are exhibiting a number of different approaches, not unlike the types of provisions shown in the MS4 Compendium. For example, some permits are requiring as an effluent limitation compliance with a numeric or narrative WQS, while others require the implementation of specific BMPs that reduce the discharge of the pollutant of concern as necessary to meet applicable WQS or to implement a WLA and/or are requiring their permittees to conduct stormwater monitoring to ensure the effectiveness of those BMPs. EPA intends to publish a compendium of permitting approaches in state-issued industrial and construction stormwater permits in early 2015.

Permits for MS4 Discharges

The CWA provides that stormwater permits for MS4 discharges “shall require controls to reduce the discharge of pollutants to the maximum extent practicable ... and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.” CWA section 402(p)(3)(B)(iii). Under this provision, the NPDES permitting authority has the discretion to include requirements for reducing pollutants in stormwater discharges as necessary for compliance with water quality standards. *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166 (9th Cir. 1999).

The 2002 memorandum stated “EPA expects that most WQBELs for NPDES-regulated municipal and small construction stormwater discharges will be in the form of BMPs, and that numeric limitations will be used only in rare instances.” As demonstrated in the MS4 Compendium, NPDES permitting authorities are using various forms of clear, specific, and measurable requirements, and, where feasible, numeric effluent limitations in order to establish a more objective and accountable means for reducing pollutant discharges that contribute to water quality problems.⁴ Where the NPDES authority determines that MS4 discharges have the reasonable potential to cause or contribute to a water quality standard excursion, EPA recommends that the NPDES permitting authority exercise its discretion to include clear, specific, and measurable permit requirements and, where feasible, numeric effluent limitations⁵ as necessary to meet water quality standards.

NPDES authorities have significant flexibility in how they express WQBELs in MS4 permits (see examples in Box 1 of the attachment). WQBELs in MS4 permits can be expressed as system-wide requirements rather than as individual discharge location requirements such as

⁴ The MS4 Compendium presents examples of different permitting approaches that EPA has found during a nationwide review of state MS4 permits. Examples of different WQBEL approaches in the MS4 Compendium include permits that have (1) a list of applicable TMDLs, WLAs, and the affected MS4s; (2) numeric limits and other quantifiable approaches for specific pollutants of concern; (3) requirements to implement specific stormwater controls or management measures to meet the applicable WLA; (4) permitting authority review and approval of TMDL plans; (5) specific impaired waters monitoring and modeling requirements; and (6) requirements for discharges to impaired waters prior to TMDL approval.

⁵ For the purpose of this memorandum, and in the context of NPDES permits for stormwater discharges, “numeric” effluent limitations refer to limitations with a quantifiable or measurable parameter related to a pollutant (or pollutants). Numeric WQBELs may include other types of numeric limits in addition to end-of-pipe limits. Numeric WQBELs may include, among others, limits on pollutant discharges by specifying parameters such as on-site stormwater retention volume or percentage or amount of effective impervious cover, as well as the more traditional pollutant concentration limits and pollutant loads in the discharge.

effluent limitations on discharges from individual outfalls. Moreover, the inclusion of numeric limitations in an MS4 permit does not, by itself, mandate the type of controls that a permittee will use to meet the limitation.

EPA recommends that NPDES permitting authorities establish clear, specific, and measurable permit requirements to implement the minimum control measures in MS4 permits. With respect to requirements for post-construction stormwater management, consistent with guidance in the 1999 Phase II Rule, EPA recommends, where feasible and appropriate, numeric requirements that attempt to maintain pre-development runoff conditions (40 CFR § 122.34(b)(5)) be incorporated into MS4 permits. EPA's MS4 Compendium features examples from 17 states and the District of Columbia that have already implemented retention performance standards for newly developed and redeveloped sites. See Box 2 of the attachment for examples.

Permits for Industrial Stormwater Discharges

The CWA requires that permits for stormwater discharges associated with industrial activity comply with section 301 of the Act, including the requirement under section 301(b)(1)(C) to contain WQBELs to achieve water quality standards for any discharge that the permitting authority determines has the reasonable potential to cause or contribute to a water quality standard excursion. CWA section 402(p)(3)(A), 40 CFR § 122.44(d)(1)(iii). When the permitting authority determines, using the procedures specified at 40 CFR § 122.44(d)(1)(ii), that the discharge causes or has the reasonable potential to cause or contribute to an in-stream excursion of the water quality standards, the permit must contain WQBELs as stringent as necessary to meet any applicable water quality standard for that pollutant. EPA recommends that NPDES permitting authorities use the experience gained in developing WQBELs to design effective permit conditions to create objective and accountable means for controlling stormwater discharges. See box 3 in the attachment for examples.

Permits should contain clear, specific, and measurable elements associated with BMP implementation (*e.g.*, schedule for BMP installation, frequency of a practice, or level of BMP performance), as appropriate, and should be supported by documentation that implementation of selected BMPs will result in achievement of water quality standards. Permitting authorities should also consider including numeric benchmarks for BMPs and associated monitoring protocols for estimating BMP effectiveness in stormwater permits. Benchmarks can support an adaptive approach to meeting applicable water quality standards. While exceeding the benchmark is not generally a permit violation, exceeding the benchmark would typically require the permittee to take additional action, such as evaluating the effectiveness of the BMPs, implementing and/or modifying BMPs, or providing additional measures to protect water quality.⁶ Permitting authorities should consider structuring the permit to clarify that failure to implement required corrective action, including a corrective action for exceeding a benchmark, is a permit violation. EPA notes that, as many stormwater discharges are authorized under a general

⁶ For example, Part 6.2.1 of EPA's 2008 MSGP provides: "This permit stipulates pollutant benchmark concentrations that may be applicable to your discharge. The benchmark concentrations are not effluent limitations; a benchmark exceedance, therefore, is not a permit violation. Benchmark monitoring data are primarily for your use to determine the overall effectiveness of your control measures and to assist you in knowing when additional corrective action(s) may be necessary to comply with the effluent limitations ..."

permit, NPDES authorities may find it more appropriate where resources allow to issue individual permits that are better tailored to meeting water quality standards for large industrial stormwater discharges with more complex stormwater management features, such as multiple outfalls and multiple entities responsible for permit compliance.

All Permitted Stormwater Discharges

As stated in the 2002 memorandum, where a State or EPA has established a TMDL, NPDES permits must contain effluent limits and conditions consistent with the assumptions and requirements of the WLAs in the TMDL. See 40 CFR § 122.44(d)(1)(vii)(B). Where the TMDL includes WLAs for stormwater sources that provide numeric pollutant loads, the WLA should, where feasible, be translated into effective, measurable WQBELs that will achieve this objective. This could take the form of a numeric limit, or of a measurable, objective BMP-based limit that is projected to achieve the WLA. For MS4 discharges, CWA section 402(p)(3)(B)(iii) provides flexibility for NPDES authorities to set appropriate deadlines for meeting WQBELs consistent with the requirements for compliance schedules in NPDES permits set forth in 40 CFR § 122.47.

The permitting authority's decision as to how to express the WQBEL(s), either as numeric effluent limitations or as BMPs, with clear, specific, and measurable elements, should be based on an analysis of the specific facts and circumstances surrounding the permit, and/or the underlying WLA, including the nature of the stormwater discharge, available data, modeling results, and other relevant information. As discussed in the 2002 memorandum, the permit's administrative record needs to provide an adequate demonstration that, where a BMP-based approach to permit limitations is selected, the BMPs required by the permit will be sufficient to implement applicable WLAs. Permits should also include milestones or other mechanisms where needed to ensure that the progress of implementing BMPs can be tracked. Improved knowledge of BMP effectiveness gained since 2002⁷ should be reflected in the demonstration and supporting rationale that implementation of the BMPs will attain water quality standards and be consistent with WLAs.

EPA's regulations at 40 CFR § 122.47 govern the use of compliance schedules in NPDES permits. Central among the requirements is that the effluent limitation(s) must be met "as soon as possible." 40 CFR § 122.47(a)(1). As previously discussed, by providing discretion to include "such other provisions" as deemed appropriate, CWA section 402(p)(3)(B)(iii) provides flexibility for NPDES authorities to set appropriate deadlines towards meeting WQBELs in MS4 permits consistent with the requirements for compliance schedules in NPDES permits set forth in 40 CFR § 122.47. See *Defenders of Wildlife v Browner*, 191 F.3d at 1166. EPA expects the permitting authority to document in the permit record the basis for determining that the compliance schedule is "appropriate" and consistent with the CWA and 40 CFR § 122.47. Where a TMDL has been established and there is an accompanying implementation plan that provides a schedule for an MS4 to implement the TMDL, or where a comprehensive, integrated plan addressing a municipal government's wastewater and stormwater obligations under the NPDES program has been developed, the permitting authority should consider such

⁷ See compilation of current BMP databases and summary reports available at http://water.epa.gov/infrastructure/greeninfrastructure/gi_performance.cfm, which has compiled current BMP databases and summary reports.

schedules as it decides whether and how to establish enforceable interim requirements and interim dates in the permit.

EPA notes that many permitted stormwater discharges are covered by general permits. Permitting authorities should consider and build into general permits requirements to ensure that permittees take actions necessary to meet the WLAs in approved TMDLs and address impaired waters. A general permit can, for example, identify permittees subject to applicable TMDLs in an appendix, and prescribe the activities that are required to meet an applicable WLA.

Lastly, NPDES permits must specify monitoring requirements necessary to determine compliance with effluent limitations. See CWA section 402(a)(2); 40 CFR 122.44(i). The permit could specify actions that the permittee must take if the BMPs are not performing properly or meeting expected load reductions. When developing monitoring requirements, the NPDES authority should consider the variable nature of stormwater as well as the availability of reliable and applicable field data describing the treatment efficiencies of the BMPs required and supporting modeling analysis.

Disaggregating Stormwater Sources in a WLA

In the 2002 memorandum, EPA said it “may be reasonable to express allocations for NPDES-regulated stormwater discharges from multiple point sources as a single categorical wasteload allocation when data and information are insufficient to assign each source or outfall individual WLAs.” EPA also said that, “[i]n cases where wasteload allocations are developed for categories of discharges, these categories should be defined as narrowly as available information allows.” Furthermore, EPA said it “recognizes that the available data and information usually are not detailed enough to determine waste load allocations for NPDES-regulated stormwater discharges on an outfall-specific basis.”

EPA still recognizes that “[d]ecisions about allocations of pollutant loads within a TMDL are driven by the quantity and quality of existing and readily available water quality data,” but has noted the difficulty of establishing clear, specific, and measurable NPDES permit limitations for sources covered by WLAs that are expressed as single categorical or aggregated wasteload allocations. Today, TMDL writers may have more information—such as more ambient monitoring data, better spatial and temporal representation of stormwater sources, and/or more permit-generated data—than they did in 2002 to develop more disaggregated TMDL WLAs.

Accordingly, for all these reasons, EPA is again recommending that, “when information allows,” WLAs for NPDES-regulated stormwater discharges be expressed “as different WLAs for different identifiable categories” (e.g., separate WLAs for MS4 and industrial stormwater discharges). In addition, as EPA said in 2002, “[t]hese categories should be defined as narrowly as available information allows (e.g., for municipalities, separate WLAs for each municipality and for industrial sources, separate WLAs for different types of industrial stormwater sources or dischargers).” EPA does not expect states to assign WLAs to individual MS4 outfalls; however, some states may choose to do so to support their implementation efforts. These recommendations are consistent with the decision in *Anacostia Riverkeeper, Inc. v. Jackson*, 2011 U.S. Dist. Lexis 80316 (July 25, 2011).

In general, states are encouraged to disaggregate the WLA when circumstances allow to facilitate implementation. TMDL writers may want to consult with permit writers and local authorities to collect additional information such as sewer locations, MS4 jurisdictional boundaries, land use and growth projections, and locations of stormwater controls and infrastructure, to facilitate disaggregation. TMDLs have used different approaches to disaggregate stormwater to facilitate MS4 permit development that is consistent with the assumptions and requirements of the WLA. For example, some TMDLs have used a geographic approach and developed individual WLAs by subwatershed⁸ or MS4 boundary (*i.e.*, the WLA is subdivided by the relative estimated load contribution to the subwatershed or the area served by the MS4). TMDLs have also assigned percent reductions⁹ of the loading based on the estimated wasteload contribution from each MS4 permit holder. Where appropriate, EPA encourages permit writers to identify specific shares of an applicable wasteload allocation for specific permittees during the permitting process, as permit writers may have more detailed information than TMDL writers to effectively identify reductions for specific sources.

Designating Additional Stormwater Sources to Regulate and Developing Permit Limits for Such Sources

The 2002 memorandum states that “stormwater discharges from sources that are not currently subject to NPDES regulation may be addressed by the load allocation component of a TMDL.” Section 402(p)(2) of the Clean Water Act (CWA) requires industrial stormwater sources, certain municipal separate storm sewer systems, and other designated sources to be subject to NPDES permits. Section 402(p)(6) provides EPA with authority to identify additional stormwater discharges as needing a permit.

In addition to the stormwater discharges specifically identified as needing an NPDES permit, the CWA and the NPDES regulations allow for EPA and NPDES authorized States to designate additional stormwater discharges for regulation. See: 40 CFR §§122.26 (a)(9)(i)(C), (a)(9)(i)(D), (b)(4)(iii), (b)(7)(iii), (b)(15)(ii) and 122.32(a)(2). Accordingly, EPA encourages permitting authorities to consider designation of stormwater sources in situations where coverage under NPDES permits would, in the reasonable judgment of the permitting authority and, considering the facts and circumstances in the waterbody, provide the most appropriate mechanism for implementing the pollution controls needed within a watershed to attain and maintain applicable water quality standards.

If a TMDL had previously included a newly permitted source as part of a single aggregated or gross load allocation for all unregulated stormwater sources, or all unregulated sources in a specific category, the NPDES permit authority could identify an appropriate allocation share and include a corresponding limitation specific to the newly permitted stormwater source. EPA recommends that any additional analysis used to identify that share and develop the corresponding limit be included in the administrative record for the permit. The

⁸ Wissahickon Creek Siltation TMDL (Pennsylvania) www.epa.gov/reg3wapd/tmdl/pa_tmdl/wissahickon/index.htm.

⁹ Liberty Bay Watershed Fecal Coliform Bacteria TMDL (Washington). <https://fortress.wa.gov/ecy/publications/SummaryPages/1310014.html> and Upper Minnehaha Creek Watershed Nutrients and Bacteria TMDL (Minnesota) <http://www.pca.state.mn.us/index.php/view-document.html?gid=20792>

permit writer's additional analysis would not change the TMDL, including its overall loading cap.

In situations where a stormwater source addressed in a TMDL's load allocation is not currently regulated by an NPDES permit but may be required to obtain an NPDES permit in the future, the TMDL writer should consider including language in the TMDL explaining that the allocation for the stormwater source is expressed in the TMDL as a "load allocation" contingent on the source remaining unpermitted, but that the "load allocation" would later be deemed a "wasteload allocation" if the stormwater discharge from the source were required to obtain NPDES permit coverage. Such language would help ensure that the allocation is properly characterized by the permit writer should the source's regulatory status change. This will help the permit writer develop limitations for the NPDES permit applicable to the newly permitted source that are consistent with the assumptions and requirements of the TMDL's allocation to that source.

If you have any questions please feel free to contact us or Deborah Nagle, Director of the Water Permits Division, or Tom Wall, Director of the Assessment and Watershed Protection Division.

cc: Association of Clean Water Administrators
TMDL Program Branch Chiefs, Regions 1 – 10
NPDES Permits Branch Chiefs, Regions 1 – 10

Attachment: MS4 and Industrial Stormwater Permit Examples

ATTACHMENT: MS4 and Industrial Stormwater Permit Examples

BOX 1. Examples of WQBELs in MS4 Permits:

1. Numeric expression of the WQBEL: The MS4 Permit includes a specific, quantifiable performance requirement that must be achieved within a set timeframe. For example:
 - Reduce fine sediment particles, total phosphorus, and total nitrogen loads by 10 percent, 7 percent, and 8 percent, respectively, by September 30, 2016 (2011 Lake Tahoe, CA MS4 permit)
 - Restore within the 5-year permit term 20 percent of the previously developed impervious land (2014 Prince George's County, MD MS4 permit)
 - Achieve a minimum net annual planting rate of 4,150 planting annually within the MS4 area, with the objective of an MS4-wide urban tree canopy of 40 percent by 2035 (2011 Washington, DC MS4 permit)
 - Discharges from the MS4 must not cause or contribute to exceedances of receiving water limits for Diazinon of 0.08µg/L for acute exposure (1 hr averaging period) or 0.05µg/L for chronic exposure (4-day averaging period), OR must not exceed Diazinon discharge limits of 0.072 µg/L for acute exposure or 0.045µg/L for chronic exposure (2013 San Diego, CA Regional MS4 permit)

2. Non-numeric expressions of the WQBEL: The MS4 Permit establishes individualized, watershed-based requirements that require each affected MS4 to implement specific BMPs within the permit term, which will ensure reasonable further progress towards meeting applicable water quality standards.
 - To implement the corrective action recommendations of the Issaquah Creek Basin Water Cleanup Plan for Fecal Coliform Bacteria (part of the approved Fecal Coliform Bacteria TMDL for the Issaquah Creek Basin), King County is required during the permit term to install and maintain animal waste education and/or collection stations at municipal parks and other permittee owned and operated lands reasonably expected to have substantial domestic animal use and the potential for stormwater pollution. The County is also required to complete IDDE screening for bacteria sources in 50 percent of the MS4 subbasins, including rural MS4 subbasins, by February 2, 2017 and implement the activities identified in the Phase I permit for responding to any illicit discharges found (2013 Western Washington Small MS4 General Permit)
 - For discharges to Segment 14 of the Upper South Platte River Basin associated with WLAs from the approved *E. coli* TMDL, the MS4 must identify outfalls with dry weather flows; monitor priority outfalls for flow rates and *E. coli* densities; implement a system maintenance program for listed priority basins (which includes storm sewer cleaning and sanitary sewer investigations); install markers on at least 90% of storm drain inlets in areas with public access; and conduct a public outreach program focused on sources that contribute *E. coli* loads to the MS4. By November 30, 2018, dry weather discharges from MS4 outfalls of concern must not contribute to an exceedance of the *E. coli* standard (126 cfu per 100 ml for a geometric mean of all samples collected at a specific outfall in a 30-day period) (2009 Denver, CO MS4 Permit)

3. Hybrid approach with both numeric and non-numeric expressions of the WQBEL:
 - Discharges of trash from the MS4 to the LA River must be reduced to zero by Sept. 2016. Permittees also have the option of complying via the installation of defined "full capture systems" to prevent trash from entering the MS4 (2012 Los Angeles County, CA MS4 Permit).
 - To attain the shared, load allocation of 27,000 metric tons/year of sediment in the Napa River sediment TMDL, municipalities shall determine opportunities to retrofit and/or reconstruction of road crossings to minimize road-related sediment delivery (≤ 500 cubic yards/mile per 20-year period) to stream channels (2013 CA Small MS4 General Permit).

Box 2. Examples of Retention Post Construction Standards for New and Redevelopment in MS4 Permits

- 2009 WV small MS4 permit: Keep and manage on site the first one inch of rainfall from a 24-hour storm preceded by 48 hours of no measurable precipitation.
- 2011 DC Phase I MS4 permit: Achieve on-site retention of 1.2" of stormwater from a 24-hour storm with a 72-hour antecedent dry period through evapotranspiration, infiltration and/or stormwater harvesting.
- 2012 Albuquerque, NM Phase I MS4 permit: Capture the 90th percentile storm event runoff to mimic the predevelopment hydrology of the previously undeveloped site.
- 2010 Anchorage, AK Phase I MS4 permit: Keep and manage the runoff generated from the first 0.52 inches of rainfall from a 24 hour event preceded by 48 hours of no measureable precipitation.
- 2013 Western WA small MS4 permit: Implement low impact development performance standards to match developed discharge durations to pre-developed durations for the range of pre-developed discharge rates from 8% of the 2-year flow to 50% of the 2-year flow.

BOX 3. Examples of QBELs in Industrial (including Construction) Stormwater Permits:

1. Numeric expression of the QBEL: The permit includes a specific, quantifiable performance requirement that must be achieved:
 - Pollutant concentrations shall not exceed the stormwater discharge limits specified in the permit (based on state WQS), including (for example): Cadmium-0.003 mg/l; Mercury-0.0024 mg/l; Selenium-0.02 mg/l (2013 Hawaii MSGP)
 - Beginning July 1, 2010, permittees discharging to impaired waters without an EPA-approved TMDL shall comply with the following effluent limits (based on state WQS), including (for example): Turbidity-25 NTU; TSS-30 mg/l; Mercury-0.0021 mg/l; Phosphorus, Ammonia, Lead, Copper, Zinc-site-specific limits to be determined at time of permit coverage (2010 Washington MSGP)
 - If discharging to waters on the 303(d) list (Category 5) impaired for turbidity, fine sediment, or phosphorus, the discharge must comply with the following effluent limit for turbidity: 25 NTU (at the point of discharge from the site), or no more than 5 NTU above background turbidity when the background turbidity is 50 NTU or less, or no more than a 10% increase in turbidity when background turbidity is more than 50 NTU. Discharges to waterbodies on the 303(d) list (Category 5) for high pH must comply with the numeric effluent limit of pH 6.5 to 8.5 su (2010 Washington CGP) (2010 Washington CGP)
2. Narrative expression of the QBEL: The permit includes narrative effluent limits based on applicable WQS:
 - New discharges or new dischargers to an impaired water are not eligible for permit coverage, unless documentation or data exists to show that (1) all exposure of the pollutant(s) of concern to stormwater is prevented; or (2) the pollutant(s) of concern are not present at the facility; or (3) the discharge of the pollutant(s) of concern will meet instream water quality criteria at the point of discharge (for waters without an EPA-approved TMDL), or there is sufficient remaining WLAs in an EPA-approved TMDL to allow the discharge and that existing dischargers are subject to compliance schedules to bring the waterbody into attainment with WQS (2011 Vermont MSGP; similar requirements in RI, NY, MD, VA, WV, SC, AR, TX, KS, NE, AZ, CA, AK, OR, and WA permits)
 - In addition to other applicable QBELs, there shall be no discharge that causes visible oil sheen, and no discharge of floating solids or persistent foam in other than trace amounts. Persistent foam is foam that does not dissipate within one half hour of point of discharge (2014 Maryland MSGP)
3. Requirement to implement additional practices or procedures for discharges to impaired waters:
 - For sediment-impaired waters (without an approved TMDL), the permittee is required to maintain a minimum 50-foot buffer zone between any disturbance and all edges of the receiving water (2009 Kentucky CGP)
 - For discharges to impaired waters, implement the following: (1) stabilization of all exposed soil areas immediately, but in no case later than 7 days after the construction activity in that portion of the site has temporarily or permanently ceased (as compared to 14 days for no-impaired waters); (2) temporary sediment basins must meet specified design standards if they will serve an area of 5 or more acres (as compared to 10 or more acres for other sites); (3) retain a water quality volume of 1 inch of runoff from the new impervious surfaces created by the project (though this volume reduction requirement is for discharges to all waters, not just impaired waters) (2013 Minnesota CGP).
 - If the site discharges to a water impaired for sediment or turbidity, or to a water subject to an EPA-approved TMDL, the permittee must implement one or more of the following practices: (1) compost berms, compost blankets, or compost socks; (2) erosion control mats; (3) tackifiers used with a perimeter control BMP; (4) a natural buffer of 50 feet (horizontally) plus 25 feet (horizontally) for 5 degrees of slope; (5) water treatment by electro-coagulation, flocculation, or filtration; and/or (6) other substantially equivalent sediment or turbidity BMP approved by the state (2010 Oregon CGP)

EXHIBIT D
CALIFORNIA CONSTITUTION AND
STATUTES

Cal Const, Art. XIII B § 6

Deering's California Codes are current through all 770 Chapters of the 2021 Regular Session.

**Deering's California Constitution Annotated > CONSTITUTION OF THE STATE OF CALIFORNIA >
Article XIII B GOVERNMENT SPENDING LIMITATION**

§ 6. Reimbursement for new programs and services

(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.

History

Adopted November 6, 1979. Amendment approved by voters, Prop. 1A, effective November 3, 2004; amendment approved by voters, Prop. 42, effective June 4, 2014.

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Cal Const, Art. XIII C § 1

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**Deering's California Constitution Annotated > CONSTITUTION OF THE STATE OF CALIFORNIA >
Article XIII C [VOTER APPROVAL FOR LOCAL TAX LEVIES]**

§ 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

Cal Const, Art. XIII C § 1

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.

History

Adopted by voters, Prop. 218 § 3, effective November 6, 1996. Amendment approved by voters, Prop. 26 § 3, effective November 3, 2010.

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Cal Const, Art. XIII C § 2

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Deering's California Constitution Annotated > CONSTITUTION OF THE STATE OF CALIFORNIA > Article XIII C [VOTER APPROVAL FOR LOCAL TAX LEVIES]

§ 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.

History

Adopted by voters, Prop. 218 § 3, effective November 6, 1996.

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Cal Const, Art. XIII D § 2

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Deering's California Constitution Annotated > CONSTITUTION OF THE STATE OF CALIFORNIA > Article XIII D [ASSESSMENT AND PROPERTY RELATED FEE REFORM]

§ 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."

History

Adopted by voters, Prop. 218 § 4, effective November 6, 1996.

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Cal Const, Art. XIII D § 3

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Deering's California Constitution Annotated > CONSTITUTION OF THE STATE OF CALIFORNIA > Article XIII D [ASSESSMENT AND PROPERTY RELATED FEE REFORM]

§ 3. Limitation of property taxes, assessments, fees and charges

(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.

History

Adopted by voters, Prop. 218 § 4, effective November 6, 1996.

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Cal Const, Art. XIII D § 6

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**Deering's California Constitution Annotated > CONSTITUTION OF THE STATE OF CALIFORNIA >
Article XIII D [ASSESSMENT AND PROPERTY RELATED FEE REFORM]**

§ 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.

History

Adopted by voters, Prop. 218 § 4, effective November 6, 1996.

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Cal Gov Code § 17514

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Deering's California Codes Annotated > GOVERNMENT CODE (§§ 1 — 500000–500049) > Title 2 Government of the State of California (Divs. 1 — 5) > Division 4 Fiscal Affairs (Pts. 1 — 8) > Part 7 State-Mandated Local Costs (Chs. 1 — 6) > Chapter 2 General Provisions (§§ 17510 — 17524)

§ 17514. “Costs mandated by the state”

“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 XIII B of the California Constitution.

History

Added Stats 1984 ch 1459 § 1.

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Cal Gov Code § 17516

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**Deering's California Codes Annotated > GOVERNMENT CODE (§§ 1 — 500000–500049) > Title 2
Government of the State of California (Divs. 1 — 5) > Division 4 Fiscal Affairs (Pts. 1 — 8) > Part 7 State-
Mandated Local Costs (Chs. 1 — 6) > Chapter 2 General Provisions (§§ 17510 — 17524)**

§ 17516. “Executive order”

“Executive order” means an order, plan, requirement, rule, or regulation issued by any of the following:

- (a) The Governor.
- (b) An officer or official serving at the pleasure of the Governor.
- (c) An agency, department, board, or commission of state government.

History

Added Stats 1984 ch 1459 § 1. Amended Stats 2010 ch 288 § 1 (SB 1169), effective January 1, 2011.

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Cal Gov Code § 17556

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§ 17556. Criteria for not finding costs mandated by state

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.

History

Added Stats 1984 ch 1459 § 1. Amended Stats 1986 ch 879 § 4; Stats 1989 ch 589 § 1; Stats 2004 ch 895 § 14 (AB 2855); Stats 2005 ch 72 § 7 (AB 138), effective July 19, 2005; Stats 2006 ch 538 § 279 (SB 1852), effective January 1, 2007; Stats 2010 ch 719 § 31 (SB 856), effective October 19, 2010.

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Cal Wat Code § 13001

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Deering's California Codes Annotated > WATER CODE (§§ 1 — 150010) > Division 7 Water Quality (Chs. 1 — 27) > Chapter 1 Policy (§§ 13000 — 13002)

§ 13001. Power and duty of state board and regional boards

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.

History

Added Stats 1969 ch 482 § 18, operative January 1, 1970.

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Cal Wat Code § 13260

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Deering's California Codes Annotated > WATER CODE (§§ 1 — 150010) > Division 7 Water Quality (Chs. 1 — 27) > Chapter 4 Regional Water Quality Control (Arts. 1 — 5) > Article 4 Waste Discharge Requirements (§§ 13260 — 13276)

§ 13260. Reports; Fees; Recoverable Costs; Waiver; Exemptions

(a) Each of the following persons shall file with the appropriate regional board a report of the discharge, containing the information that may be required by the regional board:

(1) A person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.

(2) A person who is a citizen, domiciliary, or political agency or entity of this state discharging waste, or proposing to discharge waste, outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.

(3) A person operating, or proposing to construct, an injection well.

(b) No report of waste discharge need be filed pursuant to subdivision (a) if the requirement is waived pursuant to Section 13269.

(c) Each person subject to subdivision (a) shall file with the appropriate regional board a report of waste discharge relative to any material change or proposed change in the character, location, or volume of the discharge.

(d)

(1)

(A) Each person who is subject to subdivision (a) or (c) shall submit an annual fee according to a fee schedule established by the state board.

(B) The total amount of annual fees collected pursuant to this section shall equal that amount necessary to recover costs incurred in connection with the issuance, administration, reviewing, monitoring, and enforcement of waste discharge requirements and waivers of waste discharge requirements.

(C) Recoverable costs may include, but are not limited to, costs incurred in reviewing waste discharge reports, prescribing terms of waste discharge requirements and monitoring requirements, enforcing and evaluating compliance with waste discharge requirements and waiver requirements, conducting surface water and groundwater monitoring and modeling, analyzing laboratory samples, adopting, reviewing, and revising water quality control plans and state policies for water quality control, and reviewing documents prepared for the purpose of regulating the discharge of waste, and administrative costs incurred in connection with carrying out these actions.

(D) In establishing the amount of a fee that may be imposed on a confined animal feeding and holding operation pursuant to this section, including, but not limited to, a dairy farm, the state board shall consider all of the following factors:

(i) The size of the operation.

(ii) Whether the operation has been issued a permit to operate pursuant to Section 1342 of Title 33 of the United States Code.

(iii) Any applicable waste discharge requirement or conditional waiver of a waste discharge requirement.

(iv) The type and amount of discharge from the operation.

(v) The pricing mechanism of the commodity produced.

(vi) Any compliance costs borne by the operation pursuant to state and federal water quality regulations.

(vii) Whether the operation participates in a quality assurance program certified by a regional water quality control board, the state board, or a federal water quality control agency.

(2)

(A) Subject to subparagraph (B), the fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund, which is hereby created. The money in the fund is available for expenditure by the state board, upon appropriation by the Legislature, solely for the purposes of carrying out this division.

(B)

(i) Notwithstanding subparagraph (A), the fees collected pursuant to this section from stormwater dischargers that are subject to a general industrial or construction stormwater permit under the national pollutant discharge elimination system (NPDES) shall be separately accounted for in the Waste Discharge Permit Fund.

(ii) Not less than 50 percent of the money in the Waste Discharge Permit Fund that is separately accounted for pursuant to clause (i) is available, upon appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out stormwater programs in the region.

(iii) Each regional board that receives money pursuant to clause (ii) shall spend not less than 50 percent of that money solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs.

(3) A person who would be required to pay the annual fee prescribed by paragraph (1) for waste discharge requirements applicable to discharges of solid waste, as defined in Section 40191 of the Public Resources Code, at a waste management unit that is also regulated under Division 30 (commencing with Section 40000) of the Public Resources Code, shall be entitled to a waiver of the annual fee for the discharge of solid waste at the waste management unit imposed by paragraph (1) upon verification by the state board of payment of the fee imposed by Section 48000 of the Public Resources Code, and provided that the fee established pursuant

to Section 48000 of the Public Resources Code generates revenues sufficient to fund the programs specified in Section 48004 of the Public Resources Code and the amount appropriated by the Legislature for those purposes is not reduced.

(e) Each person that discharges waste in a manner regulated by this section shall pay an annual fee to the state board. The state board shall establish, by regulation, a timetable for the payment of the annual fee. If the state board or a regional board determines that the discharge will not affect, or have the potential to affect, the quality of the waters of the state, all or part of the annual fee shall be refunded.

(f)

(1) The state board shall adopt, by emergency regulations, a schedule of fees authorized under subdivision (d). The total revenue collected each year through annual fees shall be set at an amount equal to the revenue levels set forth in the Budget Act for this activity. The state board shall automatically adjust the annual fees each fiscal year to conform with the revenue levels set forth in the Budget Act for this activity. If the state board determines that the revenue collected during the preceding year was greater than, or less than, the revenue levels set forth in the Budget Act, the state board may further adjust the annual fees to compensate for the over and under collection of revenue.

(2) The emergency regulations adopted pursuant to this subdivision, any amendment thereto, or subsequent adjustments to the annual fees, shall be adopted by the state board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the state board, or adjustments to the annual fees made by the state board pursuant to this section, shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised by the state board.

(g) The state board shall adopt regulations setting forth reasonable time limits within which the regional board shall determine the adequacy of a report of waste discharge submitted under this section.

(h) Each report submitted under this section shall be sworn to, or submitted under penalty of perjury.

(i) The regulations adopted by the state board pursuant to subdivision (f) shall include a provision that annual fees shall not be imposed on those who pay fees under the national pollutant discharge elimination system until the time when those fees are again due, at which time the fees shall become due on an annual basis.

(j) A person operating or proposing to construct an oil, gas, or geothermal injection well subject to paragraph (3) of subdivision (a) shall not be required to pay a fee pursuant to subdivision (d) if the injection well is regulated by the Division of Oil and Gas of the Department of Conservation, in lieu of the appropriate California regional water quality control board, pursuant to the memorandum of understanding, entered into between the state board and the Department of Conservation on May 19, 1988. This subdivision shall remain operative until the memorandum of understanding is revoked by the state board or the Department of Conservation.

(k) In addition to the report required by subdivision (a), before a person discharges mining waste, the person shall first submit both of the following to the regional board:

(1) A report on the physical and chemical characteristics of the waste that could affect its potential to cause pollution or contamination. The report shall include the results of all tests required by regulations adopted by the board, any test adopted by the Department of Toxic Substances Control pursuant to Section 25141 of the Health and Safety Code for extractable, persistent, and bioaccumulative toxic substances in a waste or other material, and any other tests that the state board or regional board may require, including, but not limited to, tests needed to determine the acid-generating potential of the mining waste or the extent to which hazardous substances may persist in the waste after disposal.

(2) A report that evaluates the potential of the discharge of the mining waste to produce, over the long term, acid mine drainage, the discharge or leaching of heavy metals, or the release of other hazardous substances.

(l) Except upon the written request of the regional board, a report of waste discharge need not be filed pursuant to subdivision (a) or (c) by a user of recycled water that is being supplied by a supplier or distributor of recycled water for whom a master recycling permit has been issued pursuant to Section 13523.1.

History

Added Stats 1969 ch 482 § 18, operative January 1, 1970. Amended Stats 1980 ch 656 § 1; Stats 1984 ch 268 § 32.8, effective June 30, 1984; Stats 1985 ch 653 § 1, ch 1591 § 4; Stats 1986 ch 31 § 1, effective March 21, 1986, ch 1013 § 5, effective September 23, 1986; Stats 1988 ch 1026 § 1; Stats 1989 ch 627 § 1, ch 642 § 5. Supplemented by the Governor's Reorganization Plan No. 1 of 1991 § 194, effective July 17, 1991; Amended Stats 1992 ch 211 § 2 (AB 3012); Stats 1993 ch 656 § 57 (AB 1220), effective October 1, 1993; Stats 1995 ch 28 § 20 (AB 1247); Stats 1997 ch 775 § 1 (AB 1186); Stats 2002 ch 1124 § 56 (AB 3000), effective September 30, 2002; Stats 2003–2004 1st Ex Sess ch 1 § 3 (ABX1 10), effective October 28, 2003; Stats 2011 ch 2 § 28 (AB 95), effective March 24, 2011.

Deering's California Codes Annotated
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Cal Wat Code § 13263

Deering's California Codes are current through Chapter 27 with the exception of Chapter 21 of the 2022 Regular Session.

Deering's California Codes Annotated > WATER CODE (§§ 1 — 150010) > Division 7 Water Quality (Chs. 1 — 27) > Chapter 4 Regional Water Quality Control (Arts. 1 — 5) > Article 4 Waste Discharge Requirements (§§ 13260 — 13276)

§ 13263. Requirements prescribed by board; Review, revision, and notice; Absence of vested right to discharge waste

- (a) The regional board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area or receiving waters upon, or into which, the discharge is made or proposed. 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.
- (b) A regional board, in prescribing requirements, need not authorize the utilization of the full waste assimilation capacities of the receiving waters.
- (c) The requirements may contain a time schedule, subject to revision in the discretion of the board.
- (d) The regional board may prescribe requirements although no discharge report has been filed.
- (e) Upon application by any affected person, or on its own motion, the regional board may review and revise requirements. All requirements shall be reviewed periodically.
- (f) The regional board shall notify in writing the person making or proposing the discharge or the change therein of the discharge requirements to be met. After receipt of the notice, the person so notified shall provide adequate means to meet the requirements.
- (g) No discharge of waste into the waters of the state, whether or not the discharge is made pursuant to waste discharge requirements, shall create a vested right to continue the discharge. All discharges of waste into waters of the state are privileges, not rights.
- (h) The regional board may incorporate the requirements prescribed pursuant to this section into a master recycling permit for either a supplier or distributor, or both, of recycled water.
- (i) The state board or a regional board may prescribe general waste discharge requirements for a category of discharges if the state board or that regional board finds or determines that all of the following criteria apply to the discharges in that category:
 - (1) The discharges are produced by the same or similar operations.
 - (2) The discharges involve the same or similar types of waste.

Cal Wat Code § 13263

- (3) The discharges require the same or similar treatment standards.
- (4) The discharges are more appropriately regulated under general discharge requirements than individual discharge requirements.
- (j) The state board, after any necessary hearing, may prescribe waste discharge requirements in accordance with this section.

History

Added Stats 1969 ch 482 § 18, operative January 1, 1970. Amended Stats 1992 ch 211 § 3 (AB 3012); Stats 1995 ch 28 § 21 (AB 1247), ch 421 § 2 (SB 572).

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Cal Wat Code § 13377

Deering's California Codes are current through Chapter 27 with the exception of Chapter 21 of the 2022 Regular Session.

Deering's California Codes Annotated > WATER CODE (§§ 1 — 150010) > Division 7 Water Quality (Chs. 1 — 27) > Chapter 5.5 Compliance With the Provisions of the Federal Water Pollution Control Act as Amended in 1972 (§§ 13370 — 13389)

§ 13377. Boards' issuance of requirements pursuant to federal act

Notwithstanding any other provision of this division, the state board or the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge requirements and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, 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.

History

Added Stats 1972 ch 1256 § 1, effective December 19, 1972. Amended Stats 1978 ch 746 § 3.

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EXHIBIT E
FEDERAL AND CALIFORNIA CASE
AUTHORITY

California v. United States Dep't of Navy

United States Court of Appeals for the Ninth Circuit

April 14, 1987, Argued, April 6, 1988, Submitted ; April 27, 1988, Filed

No. 86-1972

Reporter

845 F.2d 222 *; 1988 U.S. App. LEXIS 5651 **; 18 ELR 20863; 27 ERC (BNA) 1569

State of California, Plaintiff-Appellant, v. United States Department of the Navy, Does one through ten, Defendant-Appellee

Prior History: [**1] Appeal from the United States District Court for the Northern District of California, Marilyn Hall Patel, District Judge, Presiding, D.C. No. CV-85-3830-HMP.

Disposition: Affirmed.

Core Terms

civil penalty, authorize, violations, legislative history, provisions, outlines

Case Summary

Procedural Posture

State sought review of an order from the United States District Court for the Northern District of California, which granted appellee Department of Navy's motion to dismiss the state's case brought under the Clean Water Act based on lack of subject matter jurisdiction.

Overview

The court affirmed the lower court order that granted appellee, Department of Navy's motion to dismiss the state's action for alleged violations of the state water pollution discharge permit because the lower court lacked subject matter jurisdiction under § 505(a) of the Clean Water Act. The court held that the state was not a "citizen" within the meaning of § 505(a) and that 33 U.S.C.S. § 1323 did not create an independent jurisdictional ground

for a state to seek civil penalties against a federal entity. The court concluded that both the structure and legislative history of the Clean Water Act only authorized the Administrator of the Environmental Protection Agency to seek penalties against a federal entity except to the extent that § 505(a) authorized a citizen to step into the shoes of the Administrator through 33 U.S.C.S. § 1319(d). The court held that the lower court properly dismissed the state's claim because it lacked subject matter jurisdiction under the Clean Water Act as congress had specifically contemplated that states would seek both civil and criminal penalties for violations in state court under state law.

Outcome

The court affirmed the dismissal of the state's claim against appellee, Department of Navy, for alleged violations of the state water pollution discharge permit because the state was not a "citizen" within the meaning of the Clean Water Act and, therefore, the lower court did not have subject matter jurisdiction.

LexisNexis® Headnotes

Administrative Law > Judicial Review > Reviewability > Questions of Law

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over

Actions > General Overview

HN1 [↓] **Reviewability, Questions of Law**

An appellate court reviews de novo the district court's conclusion that it lacked subject matter jurisdiction.

Environmental Law > ... > Clean Water Act > Enforcement > General Overview

Environmental Law > Water Quality > General Overview

Environmental Law > ... > Enforcement > Discharge Permits > General Overview

HN2 [↓] **Clean Water Act, Enforcement**

The Clean Water Act authorizes a permit system, the National Pollutant Discharge Elimination System (NPDES), for the enforcement of pollution discharge limitations. Although the Administrator of the Environmental Protection Agency is authorized to issue NPDES permits directly, each state may also establish and administer its own permit program. 33 U.S.C.S. § 1342(a), (b).

Environmental Law > Water Quality > General Overview

HN3 [↓] **Environmental Law, Water Quality**

State permit programs require the Administrator of the Environmental Protection Agency's approval, but the Administrator must approve any state system unless he or she determines that the state does not have "adequate authority" to enforce the Act. 33 U.S.C.S. § 1342(b).

Environmental Law > Water Quality > General Overview

HN4 [↓] **Environmental Law, Water Quality**

Section 313 of the Clean Water Act requires all federal facilities to comply with state National Pollutant Discharge Elimination System permit requirements. 33 U.S.C.S. § 1323(a).

Business & Corporate Compliance > ... > Clean Water Act > Enforcement > Civil Penalties

Environmental Law > Water Quality > General Overview

HN5 [↓] **Enforcement, Civil Penalties**

Section 309(d) of the Clean Water Act declares that any person who violates a state-issued permit shall be subject to a civil penalty not to exceed \$ 10,000 per day of such violation. 33 U.S.C.S. § 1319(d).

Business & Corporate Compliance > ... > Clean Water Act > Enforcement > Civil Penalties

Environmental Law > Water Quality > General Overview

HN6 [↓] **Enforcement, Civil Penalties**

Section 309(a), (b), and (f) of the Clean Water Act (Act) specifically authorize the Administrator of the Environmental Protection Agency to bring various compliance actions, and § 309(e) of the Act outlines a procedural requirement in terms which suggest that actions under § 309 of the Act will be brought by the Administrator. 33 U.S.C.S. § 1319.

Business & Corporate Compliance > ... > Clean Water Act > Enforcement > Civil Penalties

Governments > State & Territorial Governments > Licenses

Environmental Law > Water Quality > General Overview

HN7[↓] Enforcement, Civil Penalties

33 U.S.C.S. § 1342(b)(7) states that in order to obtain approval of a National Pollutant Discharge Elimination System program, a state must have adequate authority to abate violations of the permit program, including civil and criminal penalties.

Environmental Law > Water Quality > General Overview

HN8[↓] Environmental Law, Water Quality

33 U.S.C.S. § 1342(b) requires a state to submit to the Administrator of the Environmental Protection Agency a description of the program it intends to administer under state law.

Counsel: Roderick E. Walston, Allene C. Zanger, Deputy Attorneys General, San Francisco, California for the Plaintiff-Appellant.

Robert L. Klarquist, J. Carol Williams, Dept. of Justice, Washington, District of Columbia, for the Defendant-Appellee.

James Thornton, Natural Resources Defense Council, New York, New York; Michael Axline, John Bonine, Eugene, Oregon, for the Amicus Curiae.

Judges: Herbert Y. C. Choy, Alfred T. Goodwin and Thomas Tang, Circuit Judges.

Opinion by: CHOY

Opinion

[*223] CHOY, Circuit Judge:

The State of California ("California") brought this action against the United States Department of the Navy ("Navy") for alleged violations of a state water pollution discharge permit. The complaint alleges that the Navy violated the terms and conditions of its permit from October 1983 through

July 1984 by discharging waste that was not properly treated into the San Francisco Bay. The complaint sought recovery of civil penalties under §§ 505(a)(1) and 309(d) of the Clean Water Act ("CWA"), [*2] 33 U.S.C. §§ 1365(a)(1), 1319(d), and Cal. Water Code §§ 13385 and 13386.

The Navy filed a motion to dismiss under both Fed. R. Civ. P. 12(b)(1) and 12(b)(6), alleging that the district court lacked subject matter jurisdiction and that California had failed to state an actionable claim. On April 2, 1986, the district court granted the Navy's motion. California v. Department of the Navy, 631 F. Supp. 584 (N.D. Cal. 1986). The court held that a state is not a "citizen" within the meaning of § 505(a) of the CWA, and that § 309(d), in conjunction with § 313, 33 U.S.C. § 1323, does not create an independent jurisdictional ground for a state to seek civil penalties against a federal entity. 631 F. Supp. at 590-92. California timely appeals.¹

[**3] **HN1[↑]**

We review *de novo* the district court's conclusion that it lacked subject matter jurisdiction. Carpenters Southern California Administrative Corp. v. Majestic Housing, 743 F.2d 1341, 1343 (9th Cir. 1984). We affirm.

¹ California's claim under the citizen suit provision of § 505 is no longer before us. The Supreme Court recently held that "§ 505 does not permit citizen suits for wholly past violations." Gwaltney of Smithfield v. Chesapeake Bay Foundation, Inc., 484 U.S. 49, 108 S. Ct. 376, 384-85, 98 L. Ed. 2d 306 (1987). On January 4, 1988, we granted California's motion to withdraw the appeal of its § 505 claim in light of Gwaltney. We thus express no opinion as to whether the district court correctly held that a state is not a "citizen" within the meaning of § 505(a).

The district court did not specifically address the cause of action brought under Cal. Water Code §§ 13385-86, for which California asserts jurisdiction under § 402(b)(7), 33 U.S.C. § 1342(b)(7). Indeed, although raised in its complaint, it is not clear that California pursued this claim before the district court. However, a federal appellate court may decide an issue not adjudicated below where the proper resolution of that issue is clear. Singleton v. Wulff, 428 U.S. 106, 121, 49 L. Ed. 2d 826, 96 S. Ct. 2868 (1976). This is such an issue.

STATUTORY BACKGROUND

The opinion below and prior decisions of this court have discussed the purpose and [*224] statutory background of the CWA. ² It is sufficient for our purposes to note that HN2[↑] the CWA authorizes a permit system—the National Pollutant Discharge Elimination System ("NPDES")—for the enforcement of pollution discharge limitations. Although the Administrator of the Environmental Protection Agency ("Administrator") is authorized to issue NPDES permits directly, each state may also establish and administer its own permit program. 33 U.S.C. § 1342(a), (b). HN3[↑] State programs require the Administrator's approval, but the Administrator must approve any state system unless he or she determines that the state does not have "adequate authority" to enforce the Act. 33 U.S.C. § 1342(b). The California program, which the Administrator authorized on May 14, 1983, is contained in Chapter 5.5 of [*4] the California Water Code. Cal. Water Code §§ 13370-13389.

Once a state permit program has been approved and implemented, the Act provides for an elaborate enforcement scheme involving the Administrator, the states, and citizens. The extent to which Congress intended the various enforcement mechanisms to interact is the issue presently before us.

DISCUSSION

I. Jurisdiction Under Section 309(d)

HN4[↑] Section 313 of the CWA requires all federal facilities to comply with state NPDES permit requirements. 33 U.S.C. § 1323(a). HN5[↑] Section 309(d) declares that any person who violates a state-issued permit "shall be subject to a civil penalty not to exceed \$ 10,000 per day of such violation." 33 U.S.C. § 1319(d). California thus argues that § 309(d) of the CWA, in conjunction with § 313, provides an independent

jurisdictional [**5] ground for a state to seek civil penalties against federal dischargers.

While § 309(d) does not explicitly indicate who is authorized to seek civil penalties, we agree with the district court's conclusion that Congress intended to authorize only the Administrator to seek such penalties.

Both the structure of § 309 and its legislative history indicate that the section is intended to outline the Administrator's enforcement powers under the CWA. HN6[↑] Section 309(a), (b), and (f) specifically authorize the *Administrator* to bring various compliance actions, and § 309(e) outlines a procedural requirement in terms which suggest that actions under § 309 will be brought by the Administrator. It is also significant that in the authorization of citizen suits under § 505(a), Congress felt it necessary to expressly provide for § 309(d) civil penalties. This further suggests that Congress intended to otherwise limit access to § 309(d).

The legislative history of § 309 also supports this conclusion. The House Report states that "the provisions of section 309 are supplemental to those of the State and are available to the Administrator in those cases where . . . State . . . enforcement [**6] agencies will not or cannot . . . enforce the requirements of this Act." H.R. Rep. No. 911, 92d Cong., 2d Sess. 115 (1972). The Senate Report refers to § 309 as the "federal enforcement" provision and states that it is intended to create federal enforcement powers *concurrent* with those of the states. S. Rep. No. 414, 92 Cong., 2d Sess., *reprinted in* 1972 U.S. Code Cong. & Admin. News 3668, 3729-30. The report similarly outlines the Senate Committee's intent that the authority granted in the *Administrator* by § 309 should be used judiciously. *Id.* See also 118 Cong. Rec. 33693 (1972) (statement by Senator Muskie outlining the Administrator's responsibilities under § 309, the "enforcement section" of the Act). The legislative history to the 1986 amendments to the CWA again refers to the remedies available to the

² See Shell Oil Co. v. Train, 585 F.2d 408, 409-10 (9th Cir. 1978); California, 631 F. Supp. at 586.

Administrator under § 309. H.R. Rep. No. 1004, 99th Cong., 2d Sess. 132 (1986).

We similarly reject California's suggestion that we find an implied cause of action under § 309(d). In *Middlesex County Sewerage Authority v. National Sea Clammers Association*, 453 U.S. 1, 13, 69 L. Ed. 2d 435, 101 S. Ct. 2615 (1981), the [*225] Court [**7] cautioned against unnecessary judicial activism in enforcement of the CWA, noting that the CWA contains "unusually elaborate enforcement provisions, conferring authority to sue . . . both on government officials and private citizens." In light of those provisions, "it cannot be assumed that Congress intended to authorize by implication additional judicial remedies." *Id.* at 14.

Finally, the Court in *Gwaltney* specifically differentiated between citizen suits under § 505(a) and the Administrator's authority to seek penalties for past violations under § 309(d). The Court stated that a comparison of the two sections supported its conclusion that "citizens, unlike the Administrator, may seek civil penalties only in a suit brought to enjoin or otherwise abate an ongoing violation." *Gwaltney*, 108 S. Ct. at 382. Further, the Court recognized that the Administrator's ability to secure compliance from a violator through a bargain in which the Administrator agreed not to seek § 309(d) penalties would be limited if citizens could later use § 505(a) to pursue those foregone penalties. *Id.* at 383. Permitting the state to seek penalties for past violations [**8] through § 309(d) would similarly frustrate the Administrator's ability to enforce the CWA in the public's best interest.

In short, we agree that Congress intended § 309 to be utilized solely by the Administrator, except to the extent that § 505 (a) expressly authorizes citizens to step into the shoes of the Administrator through § 309(d) to obtain civil penalties in citizen suits.³ We thus affirm the district court's dismissal

³ Having determined that the § 309 does not provide an independent jurisdictional ground for the State's suit, we need not decide whether the language of §§ 309(d) and 313 contains the requisite explicit waiver of sovereign immunity to allow an action against the Navy.

of California's § 309(d) claim.

II. Jurisdiction Under § 402(b)(7)

California also asserts federal jurisdiction under § 402(b) (7) of the CWA. HN7[↑] This provision states that in order to obtain approval of an NPDES program, a state must have adequate authority "to abate violations of the permit program, [**9] including civil and criminal penalties." 33 U.S.C. § 1342(b) (7). California has included civil penalty provisions in its NPDES program. See *Cal. Water Code* §§ 13385-86. California asserts that because these provisions were mandated by § 402(b)(7) and approved by the Administrator, they fall within § 313, which subjects federal dischargers to civil penalties "arising under" federal law. 33 U.S.C. § 1323(a). This argument is neither supported by the structure of the CWA nor its legislative history.

HN8[↑] Section 402(b) itself requires a state to submit to the Administrator a description of the program it intends to administer under *state* law. 33 U.S.C. § 1342(b). Further, *Cal. Water Code* § 13386, which outlines a portion of the requisite enforcement provisions, authorizes the State Attorney General to seek civil penalties in *state* superior court.

The legislative history clearly states that the state permit programs are "not a delegation of Federal authority," but instead are state programs which "function[] in lieu of the Federal program." H.R. Rep. No. 830, 95th Cong., 1st Sess. 104 (1977).

[**10] Finally, we decline the invitation to find a Congressional waiver of sovereign immunity without finding the requisite explicit Congressional intent. See *United States v. Mitchell*, 445 U.S. 535, 538, 63 L. Ed. 2d 607, 100 S. Ct. 1349 (1980). California's position would essentially nullify § 313(a)'s express limitation of civil penalties against federal agencies to those arising under federal law. Congress clearly did not intend such a result.

CONCLUSION

Congress specifically contemplated that states would seek both civil and criminal penalties for the violation of state NPDES permits in state court under state law. *See* 33 U.S.C. § 1342(b)(7). Thus, where Congress intended to grant states an active role in the enforcement process, "it knew how to do so and did so expressly." *Touche Ross & Co. v. Redington*, 442 U.S. 560, 572, [*226] 61 L. Ed. 2d 82, 99 S. Ct. 2479 (1979). In light of the extent to which Congress has delineated the respective roles of the Administrator, the states, and private individuals under the CWA, we are unwilling to broaden the scope of the overall enforcement scheme. *See Massachusetts Mutual Life Insurance Co. v. Russell*, 473 U.S. 134, 147, 87 L. Ed. 2d 96, 105 S. Ct. 3085 (1985). [**11] "Where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it." *Sea Clammers* 453 U.S. at 14-15 (quoting *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 19, 62 L. Ed. 2d 146, 100 S. Ct. 242 (1979)).

The district court's conclusion that it lacked subject matter jurisdiction to hear California's claims is AFFIRMED.

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Defenders of Wildlife v. Browner

United States Court of Appeals for the Ninth Circuit

August 11, 1999, Argued and Submitted, San Francisco, California ; September 15, 1999, Filed

No. 98-71080

Reporter

191 F.3d 1159 *; 1999 U.S. App. LEXIS 22212 **; 99 Cal. Daily Op. Service 7618; 99 Daily Journal DAR 9661; 30 ELR 20116

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.

Subsequent History: [**1] As Amended December 7, 1999.

Prior History: Petition to Review a Decision of the Environmental Protection Agency. EPA No. 97-3.

Disposition: PETITION DENIED.

Core Terms

discharges, municipal, storm water, permits, pollutants, water quality, water-quality, provisions, limitations, storm-sewer, regulation, strict compliance, compliance, industrial, storm-water, management practices, controls, water quality standards, Environmental, unambiguously, determines, quotation, numeric, sewers, marks

Case Summary

Procedural Posture

Petitioners appealed decision of the Environmental Appeals Board denying reconsideration of the Environmental Protection Agency's decision issuing five municipalities National Pollution Discharge System permits, without requiring

numeric limitations to ensure compliance with state water-quality standards.

Overview

The Environmental Protection Agency (EPA) issued permits to municipalities without requiring limitations on storm-sewer discharges. Petitioners alleged that the Water Quality Act (WQA), 33 U.S.C.S. § 1311(b)(1)(C), required municipalities to strictly comply with state water-quality standards. Court concluded that EPA's decision was not arbitrary or capricious. Court determined that WQA unambiguously expressed Congress' intent that municipal storm-sewer discharges did not have to strictly comply with WQA. Congress expressly put in provision for industrial storm-water discharges requiring compliance with WQA, but there was no similar provision in WQA for municipal storm-sewer discharges. The plain language of WQA thus exempted municipal storm-sewer discharges from strict compliance. Court found other provisions in WQA excluded certain discharges from permit altogether. Based on that fact, court concluded exemption of municipal storm-sewer discharges from strict compliance with WQA was not so unusual that the court should not interpret the statute as written.

Outcome

Court denied petition for reconsideration, because Environmental Protection Agency did not act arbitrarily or capriciously in issuing permits. In examining Water Quality Act, court determined that it was Congress' specific intent to exempt municipal storm-sewer discharges from strict

compliance with the statute.

LexisNexis® Headnotes

Environmental
Law > ... > Enforcement > Discharge
Permits > Public Participation

Environmental Law > Water Quality > General
Overview

Environmental
Law > ... > Enforcement > Discharge
Permits > General Overview

HN1[↓] Discharge Permits, Public Participation

26 U.S.C.S. § 1342(a)(1) authorizes the Environmental Protection Agency to issue National Pollution Discharge Elimination System permits, thereby allowing entities to discharge some pollutants.

Administrative Law > Judicial
Review > Reviewability > Standing

Civil Procedure > Preliminary
Considerations > Justiciability > General
Overview

Environmental Law > Administrative
Proceedings & Litigation > Judicial Review

Environmental
Law > ... > Enforcement > Discharge
Permits > Public Participation

HN2[↓] Reviewability, Standing

33 U.S.C.S. § 1369(b)(1)(F) authorizes any interested person to seek review in court of an Environmental Protection Agency decision issuing

or denying any permit under 26 U.S.C.S. § 1342(a)(1). Any interested person means any person that satisfies the injury-in-fact requirement for U.S. Const. art. III standing.

Environmental Law > Administrative
Proceedings & Litigation > Nuisances, Strict
Liability, & Trespasses

HN3[↓] Administrative Proceedings & Litigation, Nuisances, Strict Liability, & Trespasses

A plaintiff claiming injury from environmental damage must use the area affected by the challenged activity.

Administrative Law > Judicial
Review > Standards of Review > Abuse of
Discretion

Environmental Law > Administrative
Proceedings & Litigation > Judicial Review

Administrative Law > Judicial
Review > Standards of Review > General
Overview

Administrative Law > Judicial
Review > Standards of Review > Arbitrary &
Capricious Standard of Review

HN4[↓] Standards of Review, Abuse of Discretion

The Administrative Procedures Act, 5 U.S.C.S. § 701, et seq., provides the standard of review for the Environmental Protection Agency's decision to issue a permit. Under the Administrative Procedures Act, the court generally reviews such a decision to determine whether it was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

Administrative Law > Judicial
Review > Standards of Review > General
Overview

Governments > Legislation > Interpretation

Administrative Law > Agency
Rulemaking > Rule Application &
Interpretation > Validity

HN5 **Judicial Review, Standards of Review**

The court has established a two-step process for reviewing an agency's construction of a statute it administers. Under the first step, the court employs traditional tools of statutory construction to determine whether Congress has expressed its intent unambiguously on the question before the court. 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. If, instead, Congress has left a gap for the administrative agency to fill, the court proceeds to step two. At step two, the court must uphold the administrative regulation unless it is arbitrary, capricious, or manifestly contrary to the statute.

Environmental Law > ... > Clean Water
Act > Coverage & Definitions > Discharges

Environmental Law > Water Quality > General
Overview

Environmental
Law > ... > Enforcement > Discharge
Permits > Effluent Limitations

HN6 **Coverage & Definitions, Discharges**

The Clean Water Act, 33 U.S.C.S. § 1251, et seq., generally prohibits the discharge of any pollutant from a point source into the navigable waters of the United States. An entity can, however, obtain a National Pollution Discharge Elimination System permit that allows for the discharge of some

pollutants.

Business & Corporate Compliance > ... > Water
Quality > Clean Water Act > Water Quality
Standards

Environmental
Law > ... > Enforcement > Discharge
Permits > Effluent Limitations

Environmental Law > Water Quality > General
Overview

Environmental
Law > ... > Enforcement > Discharge
Permits > General Overview

HN7 **Clean Water Act, Water Quality Standards**

A National Pollution Discharge Elimination System permit imposes effluent limitations on discharges. First, a permit-holder shall achieve effluent limitations which shall require the application of the best practicable control technology currently available. Second, a permit-holder shall achieve 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.

Environmental
Law > ... > Enforcement > Discharge
Permits > Storm Water Discharges

Environmental Law > Water Quality > General
Overview

HN8 **Discharge Permits, Storm Water Discharges**

See 33 U.S.C.S. § 1342(p)(3).

Governments > Legislation > Interpretation

HN9 [↓] **Legislation, Interpretation**

Questions of congressional intent that can be answered with traditional tools of statutory construction are still firmly within the province of the courts. Using traditional tools of statutory construction, when interpreting a statute, the court looks first to the words that Congress used. Rather than focusing just on the word or phrase at issue, the court looks to the entire statute to determine congressional intent.

Governments > Legislation > Interpretation

HN10 [↓] **Legislation, Interpretation**

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.

Environmental
Law > ... > Enforcement > Discharge
Permits > Storm Water Discharges

Governments > Legislation > Interpretation

HN11 [↓] **Discharge Permits, Storm Water Discharges**

The court generally refuses to interpret a statute in a way that renders a provision superfluous.

Environmental
Law > ... > Enforcement > Discharge
Permits > Effluent Limitations

Governments > Local Governments > Licenses

Environmental Law > Water Quality > General Overview

Environmental

Law > ... > Enforcement > Discharge
Permits > General Overview

Environmental
Law > ... > Enforcement > Discharge
Permits > Storm Water Discharges

Governments > Legislation > Interpretation

HN12 [↓] **Discharge Permits, Effluent Limitations**

The Water Quality Act contains other provisions that undeniably exempt certain discharges from the permit requirement altogether, and therefore from 33 U.S.C.S. § 1311. For example, the Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture. 33 U.S.C.S. § 1342(1)(1). Similarly, a permit is not required for certain storm-water runoff from oil, gas, and mining operations. See 33 U.S.C.S. § 1342(1)(2).

Environmental
Law > ... > Enforcement > Discharge
Permits > Storm Water Discharges

Environmental Law > Water Quality > General Overview

HN13 [↓] **Discharge Permits, Storm Water Discharges**

Congress gave the administrator discretion to determine what controls are necessary. Under that discretionary provision, the Environmental Protection Agency (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.

Counsel: 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; and Harlan C. Agnew, Deputy County Attorney, Tucson, Arizona, for the intervenors-respondents.

David Burchmore, Squire, Sanders & Dempsey, Cleveland, Ohio, for the amici curiae.

Judges: Before: John T. Noonan, David R. Thompson, and Susan P. Graber, Circuit Judges. Opinion by Judge Graber.

Opinion by: SUSAN P. GRABER

Opinion

[*1161] AMENDED 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 [**2] 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 HN1[↑] 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 [**3] 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 [**4] 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 Intervenor. 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.

[**5] JURISDICTION

HN2 [↑] 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 "members 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, 119 L. Ed. 2d 351, 112 S. Ct. 2130 (1992) **HN3** [↑] ("[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 [**6] 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 Intervenor have been permitted to intervene in this action and to present their position fully. In the circumstances, Intervenor have suffered no injury.

DISCUSSION

A. Standard of Review

HN4 [↑] 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, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984). [**7] See *NRDC II*, 966 F.2d at 1297 (so holding). In *Chevron*, 467 U.S. at 842-44, 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 **HN5** [↑] 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. "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 (footnote omitted). If, instead, Congress has left a gap for the administrative agency to fill, we proceed to step two. *See id.* at 843. At step two, we must uphold the administrative regulation unless it is "arbitrary, capricious, or manifestly contrary to the statute." *Id.* at 844.

[**8] [*1163] B. Background

HN6 [↑] 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).

HN7 [↑] 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 . . . achieve . . . 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 . . . achieve . . . 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 [**9] (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, 117 L. Ed. 2d 239, 112 S. Ct. 1046 (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 [**10] the permit requirements of § 402 [33 U.S.C. § 1342]." *Natural Resources Defense Council, Inc. v. Costle*, 186 U.S. App. D.C. 147, 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).

[**11] 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 [****12**] 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.

HN8^(↑) 33 U.S.C. § 1342(p)(3) (emphasis added).

C. *Application of Chevron*

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 [****13**] manifestly contrary to the statute.") (citation and internal quotation marks omitted), *petition for cert. filed*, No. 99-243 (Aug. 10, 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

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.

comply **[**14]** 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.

"Questions **HN9**[↑] 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, 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* **[**15]** *provisions of this section and section 1311 of this title.*") (emphasis added). By incorporation, then, industrial **[*1165]** storm-water discharges "*shall . . . achieve . . . 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 **[**16]** 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).

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, "where **HN10**[↑] 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, 78 L. Ed. 2d 17, 104 S. Ct. 296 (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*, No. 98-323 (Aug. 23, 1999). Applying that familiar **[**17]** 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). **[**18]** 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 **HN11**^[↑] court generally refuses to interpret a statute in a way that renders a provision superfluous."), *as amended*, 1999 U.S. App. LEXIS 18691, 1999 WL 604218 (9th Cir. Aug. 12, 1999). Section 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. **HN12**^[↑] The Water Quality Act contains other provisions that undeniably exempt certain discharges from the permit requirement altogether (and therefore from **[**19]** § 1311). For example, "the 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 **[**20]** 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)*

We are left with Intervenors' contention that the EPA may not, under the CWA, require strict compliance with state water-quality **[**21]** 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 "permits 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 HN13 [↑] 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 ****22** 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.

End of Document

Building Industry Assn. of San Diego County v. State Water Resources Control Bd.

Court of Appeal of California, Fourth Appellate District, Division One

December 7, 2004, Filed

D042385

Reporter

124 Cal. App. 4th 866 *; 22 Cal. Rptr. 3d 128 **; 2004 Cal. App. LEXIS 2073 ***; 2004 Cal. Daily Op. Service 10694; 2004 Daily Journal DAR 14492; 34 ELR 20149

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.

Notice: As modified Jan. 4, 2005.

[***1] CERTIFIED FOR PARTIAL PUBLICATION ¹

Subsequent History: Modified by, Rehearing denied by Building Industry Assn. v. State Water Resources Control Bd., 2005 Cal. App. LEXIS 7 (Cal. App. 4th Dist., Jan. 4, 2005)

Time for Granting or Denying Review Extended Building Industry Assn. of San Diego v. Calif Regional Water Qlty Bd., 2005 Cal. LEXIS 2502 (Cal., Feb. 24, 2005)

Review denied by, Request denied by Building Industry Association of San Diego County v. California Regional Water Quality Control Board. 2005 Cal. LEXIS 3489 (Cal., Mar. 30, 2005)

Prior History: Superior Court of San Diego County, No. GIC 780263, Wayne L. Peterson, Judge.

Disposition: Affirmed.

Core Terms

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.

municipal, water quality standards, pollutants, storm sewer, practicable, provisions, maximum extent, discharges, water board, Industry's, Regional, state water, controls, federal law, permits, regulation, the Clean Water Act, compliance, water quality, challenging, runoff, state law, requirements, management practices, effluent limitation, permit requirement, stringent, amendments, stormwater, iterative

Case Summary

Procedural Posture

Plaintiff building industry association filed an administrative appeal with defendant California Water Resources Control Board (State Water Board) regarding the Board's issuance of a comprehensive municipal storm sewer permit. The Board denied the appeal. The association then petitioned for a writ of mandate, asserting numerous claims. The Superior Court of San Diego County, California, found the association failed to prove its claims.

Overview

The association argued that the permit violated federal law because it allowed the State Water Board and a regional water board to impose municipal storm sewer control measures more stringent than a federal standard known as "maximum extent practicable" set forth in 33 U.S.C.S. § 1342(p)(3)(B)(iii). The instant court held the language of § 1342(p)(3)(B)(iii) communicates the basic principle that the

Environmental Protection Agency, and/or a state approved to issue a National Pollution Discharge Elimination System (NPDES) permit, retains the discretion to impose "appropriate" water pollution controls in addition to those that come within the definition of "maximum extent practicable." The NPDES permit did not violate federal law. The water boards had the authority to include a permit provision requiring compliance with the more stringent state water quality standards.

Outcome

The judgment was affirmed.

LexisNexis® Headnotes

Environmental
Law > ... > Enforcement > Discharge
Permits > Effluent Limitations

Environmental Law > Water Quality > General
Overview

Environmental
Law > ... > Enforcement > Discharge
Permits > General Overview

HN1[↓] Effluent Limitations

The Clean Water Act employs the basic strategy of prohibiting pollutant emissions from "point sources" unless the party discharging the pollutants obtains a National Pollution Discharge Elimination System (NPDES) permit. It is unlawful for any person to discharge a pollutant without obtaining a permit and complying with its terms. 33 U.S.C.S. § 1311(a). An NPDES permit is issued by the Environmental Protection Agency or by a state that has a federally-approved water quality program. 33 U.S.C.S. § 1342(a), (b). Before an NPDES is issued, the federal or state regulatory agency must follow an extensive administrative hearing procedure. 40 C.F.R. §§ 124.3, 124.6, 124.8,

124.10. NPDES permits are valid for five years. 33 U.S.C.S. § 1342(b)(1)(B).

Environmental Law > ... > Clean Water
Act > Coverage & Definitions > Point Sources

Environmental Law > Water Quality > General
Overview

HN2[↓] Point Sources

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. 33 U.S.C.S. § 1362(14).

Real Property Law > Water Rights > Beneficial
Use

Environmental
Law > ... > Enforcement > Discharge
Permits > Effluent Limitations

Business & Corporate Compliance > ... > Water
Quality > Clean Water Act > Water Quality
Standards

Environmental Law > Water Quality > General
Overview

Environmental Law > ... > Clean Water
Act > Coverage & Definitions > General
Overview

Environmental
Law > ... > Enforcement > Discharge
Permits > General Overview

HN3[↓] Beneficial Use

Under the Clean Water Act, the proper scope of the

controls in a National Pollution Discharge Elimination System (NPDES) permit depends on the applicable state water quality standards for the affected water bodies. Each state is required to develop water quality standards that establish the desired condition of a waterway. 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. As enacted in 1972, the 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. 33 U.S.C.S. §§ 1311, 1362(11).

Governments > Local Governments > Licenses

Environmental

Law > ... > Enforcement > Discharge
Permits > Storm Water Discharges

Business & Corporate Compliance > ... > Water
Quality > Clean Water Act > Water Quality
Standards

Environmental Law > Water Quality > General
Overview

Environmental

Law > ... > Enforcement > Discharge
Permits > General Overview

Environmental

Law > ... > Enforcement > Discharge
Permits > Effluent Limitations

Governments > Federal Government > US
Congress

HN4[↓] Licenses

In 1987, Congress amended the Clean Water Act to add provisions that specifically concerned National Pollution Discharge Elimination System (NPDES)

permit requirements for storm sewer discharges. 33 U.S.C.S. § 1342(p). 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 municipal storm water discharges, Congress clarified that the Environmental Protection Agency 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. 33 U.S.C.S. § 1342(p)(3)(B)(iii).

Environmental

Law > ... > Enforcement > Discharge
Permits > Storm Water Discharges

Environmental Law > Water Quality > General
Overview

HN5[↓] Storm Water Discharges

See 33 U.S.C.S. § 1342(p)(3)(B)(iii).

Environmental

Law > ... > Enforcement > Discharge
Permits > Effluent Limitations

Environmental Law > Water Quality > General
Overview

HN6[↓] Effluent Limitations

See Cal. Water Code § 13377.

Real Property Law > Water Rights > Beneficial
Use

Environmental

Law > ... > Enforcement > Discharge
Permits > Effluent Limitations

Environmental Law > Water Quality > General
Overview

HN7[↓] Beneficial Use

See Cal. Water Code § 13374.

Governments > Local Governments > Licenses

Environmental

Law > ... > Enforcement > Discharge
Permits > Public Participation

Environmental Law > Water Quality > General
Overview

Environmental

Law > ... > Enforcement > Discharge
Permits > General Overview

HN8[↓] Licenses

The waste discharge requirements issued by the regional water boards ordinarily also serve as National Pollution Discharge Elimination System permits under federal law. Cal. Water Code § 13374.

Environmental Law > Water Quality > General
Overview

Administrative Law > Judicial
Review > Reviewability > Standing

Civil Procedure > ... > Writs > Common Law
Writs > Mandamus

HN9[↓] See Cal. Water Code § 13330(b).

Civil Procedure > ... > Writs > Common Law
Writs > Mandamus

Administrative Law > Judicial
Review > Reviewability > Standing

Evidence > ... > Presumptions > Particular
Presumptions > Regularity

Civil Procedure > Remedies > Writs > General
Overview

Environmental Law > Water Quality > General
Overview

HN10[↓] Mandamus

Where a party has been aggrieved by a final decision of a regional water board for which the California Water Resources Control Board denies review, Cal. Code Civ. Proc. § 1094.5 governs the writ of mandate proceedings, and the superior court must exercise its independent judgment in examining the evidence and resolving factual disputes. Cal. Water Code § 13330(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.

Civil Procedure > Appeals > Standards of
Review > De Novo Review

Administrative Law > Judicial
Review > Administrative Record > General
Overview

Administrative Law > Judicial
Review > Standards of Review > Substantial
Evidence

Civil Procedure > ... > Standards of
Review > Substantial Evidence > General
Overview

HN11[↓] De Novo Review

In reviewing the trial court's factual determinations on the administrative record, an appellate court applies a substantial evidence standard. However, in reviewing the trial court's legal determinations, an appellate court conducts a de novo review. Thus, the appellate court 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.

Environmental Law > Water Quality > General Overview

HN12[↓] 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, 33 U.S.C.S. § 1370, and California law specifically allows the imposition of controls more stringent than federal law, Cal. Water Code § 13377.

Environmental
Law > ... > Enforcement > Discharge
Permits > Storm Water Discharges

Environmental Law > Water Quality > General Overview

HN13[↓] Storm Water Discharges

The language of 33 U.S.C.S. § 1342(p)(3)(B)(iii) does communicate the basic principle that the Environmental Protection Agency (and/or a state approved to issue a National Pollution Discharge Elimination System permit) retains the discretion to impose "appropriate" water pollution controls in addition to those that come within the definition of "maximum extent practicable."

Governments > Legislation > Interpretation

Governments > Legislation > General Overview

HN14[↓] Interpretation

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. 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.

Environmental
Law > ... > Enforcement > Discharge
Permits > Effluent Limitations

Business & Corporate Compliance > ... > Water
Quality > Clean Water Act > Water Quality
Standards

Governments > Public Improvements > General
Overview

Environmental Law > Water Quality > General
Overview

Environmental
Law > ... > Enforcement > Discharge
Permits > Storm Water Discharges

HN15[↓] Effluent Limitations

With respect to National Pollution Discharge Elimination System (NPDES) permits, the legislative purpose underlying the Water Quality Act of 1987, and 33 U.S.C.S. § 1342(p) in particular, supports that Congress intended to provide the Environmental Protection Agency (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 that compliance will be achieved primarily through an iterative process.

Administrative Law > Judicial
Review > Standards of Review > Deference to

Agency Statutory Interpretation

Governments > Legislation > Interpretation

HN16 **Deference to Agency Statutory Interpretation**

A court is required to give substantial deference to an administrative interpretation of a statute.

Evidence > Inferences & Presumptions > General Overview

Civil Procedure > Appeals > Standards of Review > Reversible Errors

Civil Procedure > Appeals > Standards of Review > General Overview

HN17 All judgments and orders are presumed correct, and persons challenging them must affirmatively show reversible error.

Civil Procedure > Appeals > Appellate Briefs

HN18 **Appellate Briefs**

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.

Administrative Law > Judicial Review > Standards of Review > Abuse of Discretion

Business & Corporate Compliance > ... > Water Quality > Clean Water Act > Water Quality Standards

HN19 **Abuse of Discretion**

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.

Environmental Law > ... > Enforcement > Discharge Permits > Storm Water Discharges

Environmental Law > Water Quality > General Overview

HN20 **Storm Water Discharges**

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.

Headnotes/Summary

Summary

CALIFORNIA OFFICIAL REPORTS SUMMARY

A building industry association filed an administrative appeal with the State Water Resources Control Board regarding the board's issuance of a comprehensive municipal storm sewer permit. The board denied the appeal. The association then petitioned for a writ of mandate, asserting numerous claims. Three environmental groups intervened as defendants. The trial court found the association failed to prove its claims. The association argued that the permit violated federal law because it allowed the state water board and a regional water board to impose municipal storm sewer control measures more stringent than a federal standard known as "maximum extent practicable" under 33 U.S.C. § 1342(p)(3)(B)(iii). (Superior Court of San Diego County, No. GIC 780263, Wayne L. Peterson, Judge.)

The Court of Appeal affirmed. The court held the

language of § 1342(p)(3)(B)(iii) communicates the basic principle that the Environmental Protection Agency, and or a state approved to issue a National Pollution Discharge Elimination System (NPDES) permit, retains the discretion to impose “appropriate” water pollution controls in addition to those that come within the definition of “maximum extent practicable.” The NPDES permit did not violate federal law. The water boards had the authority to include a permit provision requiring compliance with the more stringent state water quality standards. (Opinion by Haller, J., with Benke, Acting P. J., and Aaron, J., concurring.) [*867]

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to California Digest of Official Reports

CA(1)[↓] (1)

Pollution and Conservation Laws § 5—Water Pollution—Clean Water Act—Regulatory Permit—Municipal Storm Sewer Control Measures.

A regulatory permit issued by the State Water Resources Control Board allowing it and a regional water board to impose municipal storm sewer control measures more stringent than a federal standard known as “maximum extent practicable,” set forth in 33 U.S.C. § 1342(p)(3)(B)(iii), did not violate federal law.

[4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, § 69.]

CA(2)[↓] (2)

Pollution and Conservation Laws § 5—Water Pollution—Clean Water Act—NPDES Permits.

The Clean Water Act (33 U.S.C. 1251 et seq.)

employs the basic strategy of prohibiting pollutant emissions from “point sources” unless the party discharging the pollutants obtains a National Pollution Discharge Elimination System (NPDES) permit. Pursuant to 33 U.S.C. § 1311(a), it is unlawful for any person to discharge a pollutant without obtaining a permit and complying with its terms. Pursuant to 33 U.S.C. § 1342(a) and (b) an NPDES permit is issued by the Environmental Protection Agency or by a state that has a federally-approved water quality program. Pursuant to 40 C.F.R. §§ 124.3, 124.6, 124.8, 124.10, before an NPDES is issued, the federal or state regulatory agency must follow an extensive administrative hearing procedure. Pursuant to 33 U.S.C. § 1342(b)(1)(B), NPDES permits are valid for five years.

CA(3)[↓] (3)

Pollution and Conservation Laws § 5—Water Pollution—Clean Water Act—NPDES Permits.

Under the Clean Water Act (33 U.S.C. § 1251 et seq.), the proper scope of the controls in a National Pollution Discharge Elimination System (NPDES) permit depends on the applicable state water quality standards for the affected water bodies. Each state is required to develop water quality standards that establish the desired condition of a waterway. 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. As enacted in 1972, 33 U.S.C. §§ 1311, 1362(11) of the 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.

[*868] CA(4)[↓] (4)

Pollution and Conservation Laws § 5—Water

Pollution—Clean Water Act—NPDES Permits.

In 1987, Congress amended the Clean Water Act (33 U.S.C. 1251 et seq.), to add provisions, specifically, 33 U.S.C. § 1342(p), that specifically concerned National Pollution Discharge Elimination System (NPDES) permit requirements for storm sewer discharges. In these amendments, enacted as part of the Water Quality Act of 1987 (33 U.S.C. § 251 et seq.), Congress distinguished between industrial and municipal storm water discharges. With respect to municipal storm water discharges, Congress clarified in 33 U.S.C. § 1342(p)(3)(B)(iii) that the Environmental Protection Agency 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.

CA(5)[↓] (5)**Pollution and Conservation Laws § 5—Water Pollution—Waste Discharge Requirements.**

Pursuant to Wat. Code, § 13374, the waste discharge requirements issued by the regional water boards ordinarily also serve as National Pollution Discharge Elimination System permits under federal law.

CA(6)[↓] (6)**Pollution and Conservation Laws § 5—Water Pollution—Writ of Mandate—Exercise of Independent Judgment.**

Where a party has been aggrieved by a final decision of a regional water board for which the State Water Resources Control Board denies review, Code Civ. Proc., § 1094.5, governs the writ of mandate proceedings, and the superior court must, pursuant to Wat. Code, § 13330, subd. (d), exercise its independent judgment in examining the

evidence and resolving factual disputes. 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.

CA(7)[↓] (7)**Appellate Review § 144—Scope of Review—Questions of Law and Fact—Factual Determinations—Substantial Evidence Standard—De Novo Review.**

In reviewing the trial court's factual determinations on the administrative record, an appellate court applies a substantial evidence standard. However, in reviewing the trial court's legal determinations, an appellate court conducts a de novo review. Thus, the appellate court 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.

[*869] CA(8)[↓] (8)**Pollution and Conservation Laws § 5—Water Pollution—Clean Water Act—More Stringent State Controls.**

It is well settled that the Clean Water Act (33 U.S.C. § 1251 et seq.) authorizes states to impose water quality controls that are more stringent than are required under federal law, 33 U.S.C. § 1370, and California law specifically allows the imposition of controls more stringent than federal law, Wat. Code, § 13377.

CA(9)[↓] (9)**Pollution and Conservation Laws § 5—Water**

Pollution—Clean Water Act—NPDES Permits.

The language of 33 U.S.C. § 1342(p)(3)(B)(iii) does communicate the basic principle that the Environmental Protection Agency (and/or a state approved to issue a National Pollution Discharge Elimination System permit) retains the discretion to impose “appropriate” water pollution controls in addition to those that come within the definition of “maximum extent practicable.”

CA(10)[↓] (10)**Statutes § 21—Construction—Legislative Intent.**

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. 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.

CA(11)[↓] (11)**Pollution and Conservation Laws § 5—Water Pollution—Clean Water Act—NPDES Permits.**

With respect to National Pollution Discharge Elimination System (NPDES) permits, the legislative purpose underlying the Water Quality Act of 1987 (33 U.S.C. § 251 et seq.), and 33 U.S.C. § 1342(p) in particular, supports that Congress intended to provide the Environmental Protection Agency (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 that compliance will be achieved primarily through an iterative process.

CA(12)[↓] (12)**Statutes § 44—Construction—Administrative—Judicial Deference.**

A court is required to give substantial deference to an administrative interpretation of a statute.

CA(13)[↓] (13)**Appellate Review § 135—Scope of Review—Presumptions.**

All judgments and orders are presumed correct, and persons challenging them must affirmatively show reversible error.

[*870] CA(14)[↓] (14)**Appellate Review § 108—Briefs—Requisites—Reference to Record—Party Challenging Sufficiency of Evidence—Summarization of All Material Evidence Required.**

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.

CA(15)[↓] (15)**Administrative Law § 116—Judicial Review and Relief—Scope of Review—Abuse of Discretion—Administrative Permit.**

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.

CA(16)[↓] (16)**Pollution and Conservation Laws § 5—Water Pollution—Industrial Storm Water Dischargers—**

Best Available Technology Economically Achievable.

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.

Counsel: Latham & Watkins, David L. Mulliken, Eric M. Katz, Paul N. Singarella, Kelly E. Richardson and Daniel P. Brunton for Plaintiffs and Appellants.

Bill Lockyer, Attorney General, Mary Hackenbracht, Assistant Attorney General, Carol A. Squire, David Robinson and Deborah Fletcher, Deputy Attorneys General, for Defendants and Respondents.

David S. Beckman, Heather L. Hoecherl, Anjali I. Jaiswal and Dan L. Gildor for Interveners and Respondents.

Marco Gonzalez for Intervener and Respondent San Diego BayKeeper.

Law Offices of Rory Wicks and Rory R. Wicks for Surfrider Foundation, Waterkeeper Alliance, The Ocean Conservancy, Heal the Bay, Environmental Defense Center, Santa Monica BayKeeper, Orange County CoastKeeper, Ventura CoastKeeper, Environmental Health Coalition, CalBeach Advocates, San Diego Audubon Society, Endangered Habitats League and Sierra Club as Amici Curiae on behalf [***2] of Defendants and Respondents and Interveners and Respondents.

Judges: Haller, J., with Benke, Acting P. J., and Aaron, J., concurring.

Opinion by: HALLER [*871]

Opinion

[**130] **HALLER, J.**—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 [***3] 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.

CA(1)[↑] (1) 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.” (33 U.S.C. §

1342(p)(3)(B)(iii).² [**131] In the published portion of this opinion, we reject this contention, and conclude the Water Boards had the authority to include [***4] 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

[***5] 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 [69 L. Ed. 2d 435, 101 S. Ct. 2615]; *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 [48 L. Ed. 2d 578, 96 S. Ct. 2022].) 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.) [***6] 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).)

HN1[↑] CA(2)[↑] (2) 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 NPDES⁵ permit. (See *EPA v. State Water Resources Control Board, supra*, 426 U.S. at p. 205.) It is "unlawful [*873] for any person to discharge a pollutant without obtaining a permit and complying with its terms." (*Ibid.*; see § 1311(a); *Costle, supra*, 568 [**132] 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.) 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* [***7] *Permit Application and*

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 **HN2[↑]** 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.

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).)

HN3 **CA(3)** (3) 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 [***8] 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.) [***9] 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*).)

CA(4) (4) Eventually, **HN4** in 1987, Congress amended the [***10] 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 [***11] storm sewers is at the center of this appeal, we quote the relevant portion of the statute in full:

“**HN5**[↑] (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 [***12] 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 “**HN6**[↑] shall, as required or authorized [***13] 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 “**HN7**[↑] [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].”

CA(5)[↑] (5) 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, **HN8**[↑]] 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 [***14] 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.

[**15] 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,

⁶ Under the Clean Water Act, entities responsible for NPDES permit conditions pertaining to their own discharges are referred to as "copermitees." (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,"

the Municipalities [**135] are 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.

[**16] [**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, [**17] slowing, retaining or absorbing pollutants produced by stormwater runoff. These best management practices include

"Regulatory Compliance," "Public Acceptance," "Cost," and "Technical Feasibility."

structural controls that minimize contact between pollutants and flows, and nonstructural 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 [***18] 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 [*878] Board modified the Permit to make clear that the iterative enforcement process applied to the Water Quality Standards provisions in the Permit. But the State Water Board did not delete the Permit's [**136] provision stating 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 [***19] 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), [***20] 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

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.

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 [***21] 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*

HN9[↑] **CA(6)**[↑] (6) 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).) **HN10**[↑] 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. [***22] (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].)

HN11[↑] **CA(7)**[↑] (7) 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.) 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.*)

[***23]

[*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

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 [81 L. Ed. 2d 694, 104 S. Ct. 2778] (*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.)

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.

[***24] 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 [***25] 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 [***26] not waive its rights to challenge the Permit under federal law.

CA(8)[↑] (8) Although **HN12[↑]** 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 [128 L. Ed. 2d 716, 114 S. Ct. 1900]; *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

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).

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. [***27]

B. The Water Quality Standards Requirement Does Not Violate Federal Law

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 [***28] 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 [***29] 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.

CA(9)[¶] (9) 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” [***30] 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, **HN13** [↑] the language of section 1342(p)(3)(B)(iii) does communicate the **[**140]** basic 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)

CA(10) [↑] **(10)** Further, “**HN14** [↑] [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 **[**31]** 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].)

HN15 [↑] **CA(11)** [↑] **(11)** 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; *PUD No. 1 of Jefferson Cty. v. Washington Dept. of Ecology, supra*, 511 U.S. at p. 715; **[**32]** *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; see also *Arkansas v. Oklahoma* (1992) 503 U.S. 91, 101 [117 L. Ed. 2d 239, 112 S. Ct. 1046].)

There **[**33]** 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 [***34] 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 [***36] (132 Cong.

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.

Rec. 32400 (Oct. 16, 1986); 133 Cong. Rec. S752 (daily [***35] 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 [***37] 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-

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).)

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

CA(12)[↑] (12) 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 [***38] maximum extent practicable, and where necessary water quality-based controls” (55 Fed.Reg. 47990, 47994 (Nov. 16, 1990), italics added.) **HN16[↑]** 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.)

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 [***39] demonstrates that Congress did not require [***143] 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 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 [***40] 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

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.

[***41] 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 [***42] 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

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.

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 [***43] 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.

CA(13)[↑] (13) 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. HN17[↑] All judgments and orders are presumed correct, and persons challenging them must affirmatively show reversible error. CA(14)[↑] (14) (Walling v. Kimball (1941) 17 Cal.2d 364, 373 [110 P.2d 58].) HN18[↑] 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 [***44] 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

[***45] CA(15)[↑] (15) 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. HN19[↑] 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; *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 [***46] 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.”

CA(16)[↑] (16) This argument is unpersuasive. The federal maximum extent practicable standard 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.) HN20[↑] BAT is an acronym [***47] 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

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.

the [Endangered Species Act] is not entirely clear, the term does not simply equate to ‘possible’ ”]; *Primavera Familienstiftung v. Askin* (S.D.N.Y. 1998) 178 F.R.D. [*890] 405, 409 [noting that “impracticability does not mean impossibility, but rather difficulty [***48] 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 [***49] 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 [***50] 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).) [***51]

III.–VII.* [NOT CERTIFIED FOR PUBLICATION]

DISPOSITION

Judgment affirmed. Appellants to pay respondents' costs on appeal.

Benke, Acting P. J., and Aaron, J., concurred.

A petition for a rehearing was denied January 4, 2005, and the opinion was modified to read as printed above. Appellants' petition for review by the Supreme Court was denied March 30, 2005.

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, *ante*, page 866.

Baxter, J., and Brown, J., were of the opinion that the petition should be granted. [***52]

End of Document

Carmel Valley Fire Protection Dist. v. State of California

Court of Appeal of California, Second Appellate District, Division Five

February 19, 1987

Nos. B006078, B011941, B011942

Reporter

190 Cal. App. 3d 521 *; 234 Cal. Rptr. 795 **; 1987 Cal. App. LEXIS 1266 ***

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

Subsequent History: [***1] As Modified March 10, 1987. A petition for a rehearing was denied March 17, 1987, and appellants' petition for review by the Supreme Court was denied May 14, 1987. Eagleson, J., did not participate therein.

Prior History: Superior Court of Los Angeles County, No. C437471, Norman L. Epstein, Judge; No. C514623 and No. C515319, Jack T. Ryburn, Judge.

Disposition: As modified, the judgment is affirmed. Respondents to recover costs on appeal.

Core Terms

reimbursement, appropriations, funds, costs, Budget, local agency, state-mandated, executive order, trial court, modified, parties, offset, collateral estoppel, writ of mandate, orders, state mandate, proceedings, account number, expenditures, compliance, invalid, reasonably available, appropriate fund, local government, new program, forfeitures, provisions, contends, deleted, fines

Case Summary

Procedural Posture

Appellant state challenged the judgments of the Superior Court of Los Angeles County (California), which ordered appellant to reimburse respondent county for state-mandated costs in three consolidated appeals.

Overview

Respondent county purchased protective clothing and equipment for firefighters within its employ as required by Cal. Code Regs. tit. 8, §§ 3401- 3409 (1978). Respondent argued that it was entitled to reimbursement from appellant state for these expenditures because they constituted a state-mandated "new program" or "higher level of service" under Cal. Rev. & Tax. Code §§ 2207 and 2231 and Cal. Const. art. XIII B, § 6. Respondent filed a test claim with the California State Board of Control (board) for these costs and the board determined that there was a state mandate and that respondent should have been reimbursed. Appellant did not seek judicial review of the decision and respondent filed a petition for writ of mandate and complaint for declaratory judgment. The trial court issued a writ of mandate and ordered appellant to pay the costs. On appeal, three cases were consolidated. The court affirmed with modifications and held that appellant had waived its right to challenge the board's findings and also was collaterally estopped from doing so. The court also held that the expenditures were pursuant to a new program within the meaning of Cal. Const. art. XIII B, § 6.

Outcome

The court affirmed the judgments, ordering appellant state to reimburse respondent county for state-mandated costs because appellant was collaterally estopped from challenging findings of the California State Board of Control and because the reimbursement was for a new program within the meaning of the California Constitution. The court modified the judgments primarily to command the comptroller to draw warrants if necessary.

LexisNexis® Headnotes

Governments > State & Territorial
Governments > Finance

HN1 [↓] State & Territorial Governments, Finance

See Cal. Rev. & Tax. Code § 2207.

Governments > State & Territorial
Governments > Finance

HN2 [↓] State & Territorial Governments, Finance

See Cal. Rev. & Tax. Code § 2231(a).

Governments > State & Territorial
Governments > Finance

HN3 [↓] State & Territorial Governments, Finance

See Cal. Const art. XIII B, § 6.

Governments > Local Governments > Finance

HN4 [↓] Local Governments, Finance

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. Cal. Rev. & Tax. §§ 2207, 2231.

Civil Procedure > ... > Responses > Defenses,
Demurrers & Objections > Waiver &
Preservation of Defenses

HN5 [↓] Defenses, Demurrers & Objections, Waiver & Preservation of Defenses

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.

Administrative Law > Agency
Adjudication > Decisions > Collateral Estoppel

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > Collateral Estoppel

Civil Procedure > Judgments > Preclusion of
Judgments > General Overview

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > General Overview

HN6 [↓] Decisions, Collateral Estoppel

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 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.

Administrative Law > Agency
Adjudication > Decisions > Collateral Estoppel

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > Collateral Estoppel

Criminal Law & Procedure > Commencement
of Criminal Proceedings > Double
Jeopardy > Collateral Estoppel

Administrative Law > Judicial
Review > Reviewability > General Overview

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > General Overview

HN7[↓] Decisions, Collateral Estoppel

The doctrine of collateral estoppel applies 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. Collateral estoppel applies to such prior adjudications where three requirements are met: (1) the administrative agency acts in a judicial capacity; (2) it resolves disputed issues properly before it; and (3) all parties are provided with the opportunity to fully and fairly litigate their claims.

Administrative Law > ... > Formal Adjudicatory
Procedure > Hearings > General Overview

Governments > Local
Governments > Administrative Boards

HN8[↓] Formal Adjudicatory Procedure, Hearings

The California State Board of Control (board) exercises quasi-judicial powers in adjudging the validity of claims against the State of California and is the sole administrative remedy available to local agencies seeking reimbursement for state-mandated costs. Cal. Rev. & Tax. Code § 2250. Board examiners have the power to administer oaths, examine witnesses, issue subpoenas, and

receive evidence. Cal. Gov't Code § 13911. The hearings are adversarial in nature and allow for the presentation of evidence by claimant, the Department of Finance, and any other affected agency. Cal. Rev. & Tax. Code § 2252.

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > Collateral Estoppel

HN9[↓] Estoppel, Collateral Estoppel

The 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.

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > Collateral Estoppel

HN10[↓] Estoppel, Collateral Estoppel

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 arise out of the same subject matter or transaction, and where holding the judgment to be conclusive will not result in an injustice.

Administrative Law > Agency
Adjudication > Decisions > Collateral Estoppel

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > Collateral Estoppel

Governments > Local Governments > Licenses

Civil Procedure > Judgments > Preclusion of
Judgments > General Overview

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > General Overview

HN11[↓] Decisions, Collateral Estoppel

There is no policy reason to limit the application of the collateral estoppel doctrine to successive court proceedings.

Administrative Law > Agency
Adjudication > Decisions > Collateral Estoppel

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > Collateral Estoppel

Civil Procedure > ... > Responses > Defenses,
Demurrers & Objections > Waiver &
Preservation of Defenses

Civil Procedure > Judgments > Preclusion of
Judgments > General Overview

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > General Overview

HN12[↓] Decisions, Collateral Estoppel

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.

Governments > Local Governments > Duties &
Powers

HN13[↓] Local Governments, Duties & Powers

Fire protection is a peculiarly governmental function. Police and fire protection are two of the most essential and basic functions of local government.

Governments > Legislation > Interpretation

HN14[↓] Legislation, Interpretation

A different interpretation of a word in a statute

must fall before a constitutional provision of similar import.

Governments > State & Territorial
Governments > Finance

HN15[↓] State & Territorial Governments, Finance

Cal. Const. art. XIII B, § 6 and Cal. Rev. & Tax. Code §§ 2207, 2231 are not appropriations measures.

Governments > State & Territorial
Governments > Employees & Officials

HN16[↓] State & Territorial Governments, Employees & Officials

See Cal. Const. art. III, § 3.

Governments > State & Territorial
Governments > Finance

HN17[↓] State & Territorial Governments, Finance

See Cal. Const. art. XVI, § 7.

Governments > State & Territorial
Governments > Finance

HN18[↓] State & Territorial Governments, Finance

Once 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 from such funds.

Constitutional Law > Separation of Powers

Governments > State & Territorial

Governments > Finance

HN23 **State & Territorial Governments, Finance**

See 1981 Cal. Stat. ch. 1090, § 3 at 4193.

HN19 **Constitutional Law, Separation of Powers**

As long as appropriated funds are 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.

Governments > State & Territorial

Governments > Finance

Governments > State & Territorial

Governments > Finance

HN20 **State & Territorial Governments, Finance**

The California Occupational Safety and Health Act, 1973 Cal. Stat. ch. 993 is modeled after federal law and is designed to assure safe working conditions for all California workers. A legislative disclaimer appears in 1973 Cal. Stat. ch. 993, § 106 at 1954.

HN24 **State & Territorial Governments, Finance**

California Budget Acts of 1981, 1983, and 1984 prohibit encumbering appropriations to reimburse costs incurred under the executive orders, except under certain limited circumstances. 1981 Cal. Stat. ch. 99, § 28.40 at 606; 1983 Cal. Stat. ch. 324, § 26.00 at 1504; 1984 Cal. Stat. ch. 258, § 26.00.

Governments > Local Governments > Finance

Governments > State & Territorial

Governments > Finance

Governments > State & Territorial

Governments > Finance

HN21 **State & Territorial Governments, Finance**

See 1973 Cal. Stat. ch. 993, § 106 at 1954.

Governments > State & Territorial

Governments > Finance

HN25 **Local Governments, Finance**

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 (Act), 1972 Cal. Stat. ch. 1406, § 1 at 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 new programs. However, under Cal. Rev. & Tax. Code § 2271, costs mandated by the federal government are not subject to reimbursement and local governments are permitted to levy taxes in addition to the maximum property tax rate to pay such costs.

HN22 **State & Territorial Governments, Finance**

See 1974 Cal. Stat. ch. 1284, § 106 at 2787.

Governments > Local Governments > Finance

Governments > State & Territorial

Governments > Finance

HN26 **Local Governments, Finance**

The limitation on local government's ability to raise

property taxes, and the duty of the state to reimburse for state-mandated costs, is a part of Cal. Const. art. XIII B, § 6, which directs state subvention similar in nature to that required by the preexisting provisions of Cal. Rev. & Tax. Code §§ 2207, 2231.

Governments > Local Governments > Finance

HN27[↓] Local Governments, Finance

Cal. Rev. & Tax. Code § 2206 defines 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.

Governments > Legislation > Interpretation

HN28[↓] Legislation, Interpretation

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.

Governments > Legislation > Interpretation

HN29[↓] Legislation, Interpretation

See Cal. Const. art. IV, § 9.

Governments > Legislation > Interpretation

HN30[↓] Legislation, Interpretation

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. 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.

Governments > Legislation > Effect & Operation > Operability

Governments > Legislation > Effect & Operation > General Overview

Governments > Legislation > Effect & Operation > Retrospective Operation

HN31[↓] Effect & Operation, Operability

A retroactive statute is one that 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.

Governments > State & Territorial Governments > Finance

HN32[↓] State & Territorial Governments, Finance

See 1981 Cal. Stat. ch. 99, § 28.40 at 606; 1983 Cal. Stat. ch. 324, § 26 at 1504; 1984 Cal. Stat. ch. 258, § 26.00.

Governments > State & Territorial
Governments > Finance

HN33[↓] State & Territorial Governments, Finance

Cal. Const. art. XIV, § 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 Cal. Rev. & Tax. Code §§ 2207, 2231, and Cal. Const. art. XIII B, § 6. Since these latter provisions do not effect a pro tanto repeal of the legislature's plenary power over workers' compensation law, they do not conflict with Cal. Const. art. XIV, § 4.

Governments > State & Territorial
Governments > Finance

HN34[↓] State & Territorial Governments, Finance

Under Cal. Const. art. XIII B, § 6(c), the 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 which is July 1, 1980. In other words, the amendment of article XIII B, § 6(c) operates on "window period" mandates even though the reimbursement process may not actually commence until later.

Governments > State & Territorial
Governments > Claims By & Against

Governments > Legislation > Statute of Limitations > General Overview

Governments > Legislation > Statute of Limitations > Time Limitations

HN35[↓] State & Territorial Governments, Claims By & Against

Cal. Civ. Proc. Code § 335 is a general introductory section to the statute of limitations for all matters except recovery of real property. Cal. Civ. Proc. Code § 338(1) requires an action upon a liability created by statute to be commenced within three years.

Administrative Law > Judicial Review > Reviewability > Exhaustion of Remedies

Civil Procedure > ... > Justiciability > Exhaustion of Remedies > Administrative Remedies

Labor & Employment Law > Collective Bargaining & Labor Relations > Enforcement of Bargaining Agreements > Exhaustion of Remedies

Civil Procedure > ... > Justiciability > Exhaustion of Remedies > General Overview

HN36[↓] Reviewability, Exhaustion of Remedies

A claimant does not exhaust its administrative remedies and cannot come under the court's jurisdiction until the legislative process is complete.

Governments > Local Governments > Claims By & Against

HN37[↓] Local Governments, Claims By & Against

See Cal. Gov't Code § 17612(b).

Governments > State & Territorial
Governments > Finance

190 Cal. App. 3d 521, *521; 234 Cal. Rptr. 795, **795; 1987 Cal. App. LEXIS 1266, ***1

HN38 [↓] **State & Territorial Governments, Finance**

The remedy under Cal. Gov't Code § 17612 is purely a discretionary course of action. By using the permissive word "may," the legislature does not intend to override Cal. Const. art. XIII B, § 6 and Cal. Rev. & Tax. Code §§ 2207 and 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. Cal. Civ. Proc. Code § 1085.

Governments > Legislation > Interpretation

HN39 [↓] **Legislation, Interpretation**

The Cal. Const. is supreme. Any statute in conflict therewith is invalid.

Governments > State & Territorial
Governments > Finance

HN40 [↓] **State & Territorial Governments, Finance**

Cal. Rev. & Tax. Code § 2255(c) cannot abrogate the constitutional directive to reimburse.

Civil Procedure > ... > Jury Trials > Right to Jury Trial > Actions in Equity

Governments > State & Territorial
Governments > Claims By & Against

HN41 [↓] **Right to Jury Trial, Actions in Equity**

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. Although this doctrine exists independent of statute, its governing principle has been partially codified. Cal. Civ. Proc. Code § 431.70. The doctrine has been applied in favor of a local agency against the state.

Governments > State & Territorial
Governments > Finance

HN42 [↓] **State & Territorial Governments, Finance**

See Cal. Gov't Code § 12419.5.

Governments > State & Territorial
Governments > Finance

HN43 [↓] **State & Territorial Governments, Finance**

See Cal. Gov't Code § 16304.1.

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview

Civil Procedure > Parties > Joinder of Parties > General Overview

Civil Procedure > ... > Joinder of Parties > Compulsory Joinder > Necessary Parties

HN44 [↓] **Subject Matter Jurisdiction, Jurisdiction Over Actions**

See Cal. Civ. Proc. Code § 389(a).

Governments > Local Governments > Duties & Powers

HN45 [↓] **Local Governments, Duties & Powers**

The Auditor Controller is an officer of the county and is subject to the direction and control of the county board of supervisors. Cal. Gov't Code §§ 24000(d), (e), 26880; L.A. County Code, § 2.10.010.

Civil Procedure > Remedies > Judgment Interest > General Overview

Governments > State & Territorial Governments > Claims By & Against

Governments > Local Governments > Finance

HN46[↓] Remedies, Judgment Interest

Cal. Civ. Code § 3287(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.

Civil Procedure > Remedies > Judgment Interest > General Overview

HN47[↓] Remedies, Judgment Interest

An invalid statute voluntarily enacted and promulgated by the state is not a defense to its obligation to pay interest under Cal. Civ. Code § 3287(a).

Civil Procedure > Appeals > Standards of Review > General Overview

HN48[↓] Appeals, Standards of Review

An appellate court is not limited by the interpretation of statutes given by the trial court.

Civil Procedure > ... > Joinder of

Parties > Compulsory Joinder > Necessary Parties

HN49[↓] Compulsory Joinder, Necessary Parties

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.

Governments > Courts > Authority to Adjudicate

HN50[↓] Courts, Authority to Adjudicate

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.

Headnotes/Summary

Summary

CALIFORNIA OFFICIAL REPORTS 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

CA(1a)[↓] (1a) CA(1b)[↓] (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.

CA(2)[↓] (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.

CA(3a)[↓] (3a) CA(3b)[↓] (3b) CA(3c)[↓] (3c) CA(3d)[↓] (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.

CA(4)[↓] (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.

CA(5)[↓] (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.

CA(6)[↓] (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.

CA(7)[↓] (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.

CA(8)[↓] (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.

CA(9)[↓] (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.

CA(10)[↓] (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.

CA(11)[↓] (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.

CA(12a)[↓] (12a) CA(12b)[↓] (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.

CA(13)[↓] (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.

CA(14a)[↓] (14a) CA(14b)[↓] (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.

CA(15)[↓] (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.

CA(16)[↓] (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.

CA(17)[↓] (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.

CA(18)[↓] (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.

CA(19)[↓] (19)

Constitutional Law § 7—Mandatory, Directory, and Self-executing Provisions—Subvention Provisions—County Reimbursement for Statemandated 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.

CA(20)[↓] (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.

CA(21)[↓] (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.

CA(22a)[↓] (22a) CA(22b)[↓] (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.

CA(23)[↓] (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).

CA(24)[↓] (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.

CA(25)[↓] (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.

CA(26)[↓] (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.

CA(27)[↓] (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.

CA(28)[↓] (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.

CA(29)[↓] (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.

CA(30)[↓] (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: John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, Marilyn K. Mayer and Carol Hunter, Deputy Attorneys General, for Defendants and Appellants.

De Witt Clinton, County Counsel, Amanda F. Susskind, Deputy County Counsel, Ross & Scott, William D. Ross and Diana P. Scott, for Plaintiffs and Respondents.

Judges: Opinion by Eagleson, J., with Ashby, Acting P. J., and Hastings, J., concurring.

Opinion by: EAGLESON

Opinion

[*529] [**799] 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 [***2] 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,

¹ 2d Civ. B006078: The petitioners below and respondents on appeal are Carmel Valley Fire Protection District, City of Anaheim, Aptos

we will refer to all appellants as the State and all respondents as the County unless otherwise indicated.

[***3] 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 [***4] and

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 HNI[↑] The pertinent parts of Revenue and Taxation Code section 2207 provide: "'Costs mandated by the state' means any increased costs which a local agency is required to incur as a result

former [*531] section 2231,³ and California Constitution, article XIII B, section 6⁴ to support its claim.

[***5] [**800] 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

of the following: [para.] (a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program; [para.] (b) Any executive order issued after January 1, 1973, which mandates a new program; [para.] (c) Any executive order issued 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 HN2 [↑] 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 HN3 [↑] 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: [para.] . . . [para.] (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.)

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 [***6] 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

⁶The 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 [Kenneth] 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 [1090], 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.

[***7] [*533] [**801] 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. HN4^[↑] 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

"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 [adjudges] 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.**"

⁸This 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.

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 [***8] of Los Angeles [**802] 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

CA(1a)[↑] (1a) We initially conclude that State has waived its right to contest the Board's findings. **CA(2)[↑] (2)** **HN5[↑]** Waiver occurs where there is an existing right; actual or constructive knowledge of its existence; and either an actual [***9] 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. (*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].)

CA(1b)[↑] (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 [***10] 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

CA(3a)[↑] (3a) We next conclude that State is collaterally estopped from attacking the Board's findings. **CA(4)[↑] (4)** Traditionally, **HN6[↑]** 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].)

HN7[↑] The doctrine was extended in *Sims* to apply to a final adjudication of an administrative agency of statutory [***11] 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.

CA(3b)[↑] (3b) **HN8[↑]** 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. & [**803] 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 [***12] 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.

CA(5)[↑] (5) HN9[↑] "[The] 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].) CA(3c)[↑] (3c) As we stated in our introduction of the parties [***13] 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. CA(6)[↑] (6) HN10[↑] 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

[***14] CA(3d)[↑] (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*

⁹ As it happened, the entire Board determination involved a question of law since the dollar amount of the claimed reimbursement was not disputed.

(1945) 25 Cal.2d 918, 921 [156 P.2d 1].)

HN11[↑] 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. [***15] 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 [***804] 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

CA(7)[↑] (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.

[***16] 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

¹⁰State is not precluded from raising this new issue on appeal.

HN12[↑] 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.

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.

CA(8)[↑] (8) First, **HN13**[↑] 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 [***17] 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 [***18] 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

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."

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 [**805] 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, HN14 [↑] a different interpretation must fall before a constitutional [***19] 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*

CA(9) [↑] (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]

¹² HN16 [↑] 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."

HN17 [↑] Article XVI, section 7 of the California Constitution provides: "Money may be drawn from the Treasury only through an

observes (and correctly so) that the relevant constitutional HN15 [↑] (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 [***20] 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, [para.] 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. [***21] 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

appropriation made by law and upon a Controller's duly drawn warrant."

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, para. 1, *ante*) that only funds already "*appropriated* by the Legislature for the State Department of Industrial Relations for the Prevention of Industrial Injuries [***22] and Deaths of California Workers within the Department's General Fund" [**806] 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. CA(10)[↑] (10) By simply ordering the State Controller to draw warrants and directing the State Treasurer to pay on already appropriated funds (fn. 7, para. 2, *ante*), the judgment permissibly compels performance of a ministerial duty: HN18[↑] "[Once] 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, para. 1, *ante*) were saddled with an unconstitutional restriction (fn. 7, para. 7, *ante*). However, *Mandel* establishes that such a restriction does not necessarily infect the entire appropriation. There, the Legislature had improperly prohibited [***23] the use of budget funds to pay a court-ordered and administratively approved attorney's fees award. The court reasoned that HN19[↑] 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 [***24] 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.

CA(11)[↑] (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 [***25] 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, para. 2, *ante*) identified funds in account numbers 8350-001-001, 8350-001-452, 8350-001-453 and [**807] 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 [***26] 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 HN20[↑] 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 [***27] legislative disclaimer appearing in HN21[↑] 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, HN22[↑] 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 [***28] 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 HN23[↑] "[the] 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,

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.

1983 and 1984 Budget Acts. HN24 (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 [***29] circumstances.

CA(12a) (12a) State first challenges the trial court's finding that expenditures mandated by the [***808] executive orders were not the result of a federally mandated program (fn. 7, para. 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, HN25 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 [***30] 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, HN26 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 HN27 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 [***31] 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. CA(13) (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

[***32] CA(12b) (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

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 HN28 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.)

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. . . . [para.] 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 [**809] 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 [***33] federally mandated.

CA(14a)[↑] (14a) The trial court also properly invalidated the budget control language in Statutes 1981, chapter 1090, section 3 (fn. 7, [para.] 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.

CA(15)[↑] (15) HN30[↑] 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 [***34] 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].)

CA(14b)[↑] (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 [***35] 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. "[The] 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

¹⁵ HN29[↑] 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."

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 [***36] 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 [**810] 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.

CA(16)[↑] (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 [***37] 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: **HN31[↑]** "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] CA(17)[↑] (17) Finally, the control language in section 28.40 of the 1981 Budget Act and section 26.00¹⁶ 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 [***38] State from its constitutionally and statutorily imposed obligation to reimburse County's state-mandated costs.

[***39] 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

¹⁶ **HN32[↑]** 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."

assistance to a local agency creditor seeking reimbursement for costs already incurred. section 4.

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, [***40] 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 [**811] 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*

CA(18)[↑] (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.

HN33[↑] Article XIV, section 4 concerns the power to enact workers' compensation statutes and regulations. [***41] 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,

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*

CA(19)[↑] (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 [***42] "window period" of nonreimbursement. This assertion emanates from section 6, subdivision (c), which states that the Legislature "[may], 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 HN34[↑] section 6, subdivision (c) as follows: "[The] 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 [***43] 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

CA(20)[↑] (20) State collaterally asserts that to the extent County bases its claims on Revenue and Taxation Code section 2207 and former [**812] 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.

HN35[↑] 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 "[an] action upon a liability created by statute" to be commenced within three years.

HN36[↑] 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 [**44] 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.)

[**45] [*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 HN37[↑] 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 [**46] 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. CA(21)[↑] (21) A party is not required to exhaust a remedy that was not in existence at the time the action was

¹⁷Technically, 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].)

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, **HN38**[↑] 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 **[**813]** costs. Once that determination is finally made, the State is under a clear and present ministerial duty to reimburse. In the absence of **[***47]** compliance, traditional mandamus lies. (Code Civ. Proc., § 1085.)¹⁸

[*550] G. *The Court's Order Properly Allows County the Right of Offset*

CA(22a)[↑] **(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, para. 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 [***48] 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 **[***49]** had no power to allow County to offset. State cites no authority for this contention.

CA(23)[↑] **(23)** **HN41**[↑] 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. [***50] IV, § 12, subd. (e).)

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. **HN39**[↑] 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, **HN40**[↑] 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).)

CA(22b)[↑] (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

CA(24)[↑] (24) State further contends that the trial court exceeded its jurisdiction by enjoining [*814] the exercise of State's statutory offset authority until County is fully reimbursed. (Fn. 7, para. 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. [***51]

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 [***52] of offset, the trial court was well within its authority to prevent this method of frustrating County's collection

²⁰ **HN42[↑]** 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].)

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

CA(25)[↑] (25) State continues that the order (fn. 7, para. 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.

[***53] 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

²¹ **HN43[↑]** 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. . . ."

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

CA(26)[↑] (26) CA(27)[↑] (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 [**815] parties. Failure to join them in the action or to serve them with process purportedly renders the trial court's order void [***54] 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.

HN45[↑] The Auditor Controller is an officer [***55] 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

CA(28)[↑] (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.

HN46[↑] Civil Code section 3287, subdivision (a) allows interest to any person "entitled to recover damages certain, or capable of being made certain by calculation . . . [***56] . ." 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.

HN47[↑] "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

²² HN44[↑] 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."

(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 [*816] 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 [*58] respondents for costs incurred in connection with the state-mandated program. (Fn. 7, para. 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

²³ Responding to the budget control language directing it to refuse to process these claims, the Board declined to hear these matters.

proceed is invalid.²⁴

[**59] 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 [*60] 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

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.

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 [**817] 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 [***61] 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. [***62] 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.

²⁵The 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.

CA(29)[↑] (29) State is correct in contending that HN48[↑] 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 [***63] 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, HN49[↑] 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, [***64] 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 [**818] 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 [***65] 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:

 [Go to table 1](#)

CA(30)[↑] (30) HN50[↑] An appellate court is [***66] 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] 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 [***67] for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."

[819]** (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.

Table1 ([Return to related document text](#))

| 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 |

Table1 ([Return to related document text](#))

End of Document

City of Burbank v. State Water Resources Control Bd.

Supreme Court of California

April 4, 2005, Filed

S119248

Reporter

35 Cal. 4th 613 *; 108 P.3d 862 **; 26 Cal. Rptr. 3d 304 ***; 2005 Cal. LEXIS 3486 ****; 2005 Cal. Daily Op. Service 2861; 2005 Daily Journal DAR 3870; 35 ELR 20071; 60 ERC (BNA) 1470

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.

compliance, stringent, economic factors, narrative, water quality control, factors, federal standard, Porter-Cologne Act, chemical, numeric, waters, River, water quality objectives, cost of compliance, navigable waters

Subsequent History: Time for Granting or Denying Rehearing Extended Burbank, City of v. State Water Resources Control Board, 2005 Cal. LEXIS 4271 (Cal., Apr. 21, 2005)

Rehearing denied by, Request denied by City of Burbank v. State Water Res. Control Bd., 2005 Cal. LEXIS 7185 (Cal., June 29, 2005)

Prior History: [****1] Superior Court of Los Angeles County, Nos. BS060960, BS060957, Dzintra I. Janavs, Judge. Court of Appeal, Second Dist., Div. Three, Nos. B150912, B151175 & B152562.

City of Burbank v. State Water Resources Control Bd., 111 Cal. App. 4th 245, 4 Cal. Rptr. 3d 27, 2003 Cal. App. LEXIS 1236 (Cal. App. 2d Dist., 2003)

Disposition: Judgment affirmed in part and remanded in part..

Core Terms

pollutant, regional board, wastewater, permits, clean water, water quality, water quality standards, federal law, effluent limitation, Plant, restrictions, basin, discharged, regional, limitations,

Case Summary

Procedural Posture

Plaintiff cities sought review of a judgment of the Court of Appeal of California, Second Appellate District, Division Three, holding that Cal. Water Code §§ 13241 and 13263 required a regional water control quality board to take into account economic considerations when it adopted water quality standards in a basin plan but not when the board set specific pollutant restrictions in wastewater discharge permits intended to satisfy those standards.

Overview

The cities owned three treatment plants that discharged wastewater under National Pollutant Discharge Elimination System permits issued by the regional board. The court held that whether the regional board should have complied with Cal. Water Code §§ 13263 and 13241 of California's Porter-Cologne Water Quality Control Act, Cal. Water Code § 13000 et seq., by taking into account "economic considerations," such as the costs the permit holder would incur to comply with the numeric pollutant restrictions set out in the permits depended on whether those restrictions met or exceeded the requirements of the federal Clean

Water Act, 33 U.S.C.S. § 1251 et seq. To comport with the principles of federal supremacy, California law could not authorize California's regional boards to allow the discharge of pollutants into the navigable waters of the United States in concentrations that would exceed the mandates of federal law. The federal Clean Water Act did not prohibit a state, when imposing effluent limitations that were more stringent than required by federal law, from taking into account the economic effects of doing so.

Outcome

The court affirmed the judgment of the court of appeal, reinstating the wastewater discharge permits to the extent that the specified numeric limitations on chemical pollutants were necessary to satisfy federal Clean Water Act requirements for treated wastewater. The court remanded for further proceedings to determine whether the pollutant limitations in the permits met or exceeded federal standards.

LexisNexis® Headnotes

Environmental Law > Water Quality > General Overview

Real Property Law > Water Rights > Beneficial Use

HN1[↓] Environmental Law, Water Quality

Whereas the State Water Resources Control Board establishes statewide policy for water quality control, Cal. Water Code § 13140, the regional boards formulate and adopt water quality control plans for all areas within a region. Cal. Water Code § 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. Cal. Water Code § 13050(j). Basin

plans must be consistent with state policy for water quality control. Cal. Water Code § 13240.

Environmental

Law > ... > Enforcement > Discharge Permits > Effluent Limitations

Environmental Law > Water Quality > General Overview

Environmental Law > Water Quality > Clean Water Act > General Overview

Environmental Law > ... > Clean Water Act > Enforcement > General Overview

HN2[↓] Discharge Permits, Effluent Limitations

Under the federal Clean Water Act, 33 U.S.C.S. § 1251 et seq., 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.S. § 1370.

Business & Corporate Compliance > ... > Water Quality > Clean Water Act > Water Quality Standards

Environmental

Law > ... > Enforcement > Discharge Permits > Effluent Limitations

Environmental Law > Water Quality > General Overview

HN3[↓] Clean Water Act, Water Quality Standards

The Clean Water Act, 33 U.S.C.S. § 1251 et seq., provides for two sets of water quality measures. Effluent limitations are promulgated by the Environmental Protection Agency and restrict the quantities, rates, and concentrations of specified substances which are discharged from point

sources. 33 U.S.C.S. §§ 1311, 1314. Water quality standards are, in general, promulgated by the states and establish the desired condition of a waterway. 33 U.S.C.S. § 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.

Environmental Law > ... > Clean Water Act > Coverage & Definitions > Point Sources

Environmental Law > Water Quality > General Overview

HN4 [down arrow] Coverage & Definitions, Point Sources

See 33 U.S.C.S. § 1362(14).

Business & Corporate Compliance > ... > Water Quality > Clean Water Act > Water Quality Standards

Environmental Law > Water Quality > General Overview

HN5 [down arrow] Clean Water Act, Water Quality Standards

The Environmental Protection Agency (EPA) provides states with substantial guidance in the drafting of water quality standards. Moreover, the Clean Water Act, 33 U.S.C.S. § 1251 et seq., 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.S. § 1313(c).

Environmental

Law > ... > Enforcement > Discharge Permits > Effluent Limitations

Environmental Law > Water Quality > General Overview

Environmental Law > Water Quality > Clean Water Act > General Overview

Environmental Law > ... > Enforcement > Discharge Permits > General Overview

Environmental Law > ... > Clean Water Act > Enforcement > General Overview

HN6 [down arrow] Discharge Permits, Effluent Limitations

Part of the federal Clean Water Act, 33 U.S.C.S. § 1251 et seq., is the National Pollutant Discharge Elimination System (NPDES), the primary means for enforcing effluent limitations and standards under the Clean Water Act. The NPDES sets out the conditions under which the federal Environmental Protection Agency or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. 33 U.S.C.S. § 1342(a), (b). In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. Cal. Water Code § 13374.

Environmental Law > Water Quality > General Overview

Real Property Law > Water Rights > Beneficial Use

HN7 [down arrow] Environmental Law, Water Quality

See Cal. Water Code § 13263(a).

Environmental Law > Water Quality > General

Overview

Real Property Law > Water Rights > Beneficial Use

HN8 **Environmental Law, Water Quality**

See Cal. Water Code § 13241.

Governments > Legislation > Interpretation

HN9 **Legislation, Interpretation**

When construing any statute, the reviewing court's task is to determine the legislature's intent when it enacted the statute so that the court may adopt the construction that best effectuates the purpose of the law. In doing this, the court looks to the statutory language, which ordinarily is the most reliable indicator of legislative intent.

Environmental Law > ... > Enforcement > Discharge Permits > Effluent Limitations

Environmental Law > Water Quality > General Overview

HN10 **Discharge Permits, Effluent Limitations**

Cal. Water Code § 13263 directs regional boards, when issuing wastewater discharge permits, to take into account various factors including those set out in Cal. Water Code § 13241. Listed among the § 13241 factors is economic considerations. Cal. Water Code § 13241(d).

Environmental Law > ... > Enforcement > Discharge Permits > Effluent Limitations

Environmental Law > Water Quality > General Overview

HN11 **Discharge Permits, Effluent Limitations**

Cal. Water Code § 13377 specifies that wastewater discharge permits issued by California's regional boards must meet the federal standards set by federal law. In effect, § 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.S. § 1311(a), and publicly operated wastewater treatment plants must comply with the act's clean water standards, regardless of cost. 33 U.S.C.S. §§ 1311(a), (b)(1)(B), (C), 1342(a)(1), (3).

Constitutional Law > Supremacy Clause > General Overview

Environmental Law > Water Quality > General Overview

HN12 **Constitutional Law, Supremacy Clause**

Because Cal. Water Code § 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. Such a construction of § 13263 would not only be inconsistent with federal law, it would also be inconsistent with the Legislature's declaration in Cal. Water Code § 13377 that all discharged wastewater must satisfy federal standards. Moreover, under the federal Constitution's Supremacy Clause, U.S. Const. art. VI, cl. 2, a state law that conflicts with federal law is without effect. To comport with the principles of federal supremacy, California law cannot authorize the state's regional boards to allow the discharge of pollutants into the navigable waters of the United

States in concentrations that would exceed the mandates of federal law.

Environmental

Law > ... > Enforcement > Discharge

Permits > Effluent Limitations

Environmental Law > Water Quality > General Overview

Environmental Law > ... > Clean Water

Act > Enforcement > General Overview

HN13 Discharge Permits, Effluent Limitations

The federal Clean Water Act, 33 U.S.C.S. § 1251 et seq., reserves to the states significant aspects of water quality policy, 33 U.S.C.S. § 1251(b), and it specifically grants the states authority to "enforce any effluent limitation" that is not "less stringent" than the federal standard, 33 U.S.C.S. § 1370. It does not prescribe or restrict the factors that a state may consider when exercising this reserved authority, and thus it does not prohibit 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.

Headnotes/Summary

Summary

CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court ruled that California law required a regional water quality control board to weigh the economic burden on a wastewater treatment facility against the expected environmental benefits of reducing pollutants in the wastewater discharge. The cities owned three treatment plants that discharged wastewater under National Pollutant Discharge Elimination System permits issued by the regional board. (Superior Court of Los Angeles

County, Nos. BS060960 and BS060957, Dzintra I. Janavs, Judge.) The Court of Appeal, Second Dist., Div. Three, Nos. B150912, B151175 and B152562, concluded that Wat. Code, §§ 13241 and 13263, required a regional board to take into account "economic considerations" when it adopted water quality standards in a basin plan but not when the regional board set specific pollutant restrictions in wastewater discharge permits intended to satisfy those standards.

The Supreme Court affirmed the judgment of the Court of Appeal, reinstating the wastewater discharge permits in part and remanding for further proceedings. The court held that whether the regional board should have complied with Wat. Code, §§ 13263 and 13241, of California's Porter-Cologne Water Quality Control Act, Wat. Code, § 13000 et seq., by taking into account "economic considerations," such as the costs the permit holder would incur to comply with the numeric pollutant restrictions set out in the permits, depended on whether those restrictions met or exceeded the requirements of the federal Clean Water Act, 33 U.S.C. § 1251 et seq. To comport with the principles of federal supremacy, California law could not authorize California's regional boards to allow the discharge of pollutants into the navigable waters of the United States in concentrations that would exceed the mandates of federal law. The federal Clean Water Act did not prohibit a state, when imposing effluent limitations that were more stringent than required by **[*614]** federal law, from taking into account the economic effects of doing so. (Opinion by Kennard, J., with George, C. J., Baxter, Werdegar, Chin, and Moreno, JJ., concurring. Concurring opinion by Brown, J. (see p. 629).)

Headnotes

CA(1) (1)

**Pollution and Conservation Laws § 5—Water—
"Basin Plans."**

Whereas the State Water Resources Control Board establishes statewide policy for water quality control, Wat. Code, § 13140, the regional boards formulate and adopt water quality control plans for all areas within a region, Wat. Code, § 13240. Under Wat. Code, § 13050, subd. (j), 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. Basin plans must be consistent with state policy for water quality control under Wat. Code, § 13240.

CA(2)[↓] (2)

Pollution and Conservation Laws § 5—Water— Federal and State Standards.

Under 33 U.S.C. § 1370, of the federal Clean Water Act, 33 U.S.C. § 1251 et seq., 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.

CA(3)[↓] (3)

Pollution and Conservation Laws § 5—Water— Federal and State Standards.

The Clean Water Act, 33 U.S.C. § 1251 et seq., provides for two sets of water quality measures. Pursuant to 33 U.S.C. §§ 1311 and 1314, effluent limitations are promulgated by the Environmental Protection Agency and restrict the quantities, rates, and concentrations of specified substances which are discharged from point sources. Water quality standards are, in general, promulgated by the states and establish the desired condition of a waterway under 33 U.S.C. § 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.

CA(4)[↓] (4)

Pollution and Conservation Laws § 5—Water— Federal and State Standards.

The Environmental Protection Agency (EPA) provides states with substantial guidance in the drafting of water quality standards. Moreover, the Clean Water Act, 33 U.S.C. § 1251 et seq., requires, inter alia, that state authorities periodically review water quality [***615**] 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, 33 U.S.C. § 1313(c), authorizes the EPA to promulgate water quality standards for the state.

CA(5)[↓] (5)

Pollution and Conservation Laws § 5—Water— National Pollutant Discharge Elimination System.

Part of the federal Clean Water Act, 33 U.S.C. § 1251 et seq., is the National Pollutant Discharge Elimination System (NPDES), the primary means for enforcing effluent limitations and standards under the Clean Water Act. Title 33 U.S.C. § 1342(a), (b), of the NPDES sets out the conditions under which the federal Environmental Protection Agency or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. Under California law, Wat. Code, § 13374, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law.

CA(6)[↓] (6)

Statutes § 21—Construction—Legislative Intent.

When construing any statute, the reviewing court's task is to determine the Legislature's intent when it

enacted the statute so that the court may adopt the construction that best effectuates the purpose of the law. In doing this, the court looks to the statutory language, which ordinarily is the most reliable indicator of legislative intent.

CA(7)[↓] (7)

Pollution and Conservation Laws § 5—Water— Wastewater Discharge Permits—Economic Considerations.

Wat. Code, § 13263, directs regional boards, when issuing wastewater discharge permits, to take into account various factors, including those set out in Wat. Code, § 13241. Listed among the § 13241 factors is economic considerations, in § 13241, subd. (d).

CA(8)[↓] (8)

Pollution and Conservation Laws § 5—Water— Wastewater Discharge Permits—Economic Considerations.

Wat. Code, § 13377, specifies that wastewater discharge permits issued by California's regional boards must meet the federal standards set by federal law. In effect, § 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 [*616] the United States unless there is compliance with federal law (33 U.S.C. § 1311(a)), and publicly operated wastewater treatment plants must comply with the act's clean water standards under 33 U.S.C. §§ 1311(a), (b)(1)(B) and (C), 1342(a)(1) and (3), regardless of cost.

CA(9)[↓] (9)

Pollution and Conservation Laws § 5—Water— Wastewater Discharge Permits—Economic

Considerations.

Because Wat. Code, § 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. Such a construction of § 13263 would not only be inconsistent with federal law, it would also be inconsistent with the Legislature's declaration in Wat. Code, § 13377, that all discharged wastewater must satisfy federal standards. Moreover, under the federal Constitution's supremacy clause, U.S. Const., art. VI, a state law that conflicts with federal law is without effect. To comport with the principles of federal supremacy, California law cannot authorize the state's regional boards to allow the discharge of pollutants into the navigable waters of the United States in concentrations that would exceed the mandates of federal law.

CA(10)[↓] (10)

Pollution and Conservation Laws § 5—Water— Federal and State Standards.

The federal Clean Water Act, 33 U.S.C. § 1251 et seq., reserves to the states significant aspects of water quality policy under 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 under 33 U.S.C. § 1370. It does not prescribe or restrict the factors that a state may consider when exercising this reserved authority, and thus it does not prohibit 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. Thus, 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 factors, including the wastewater discharger's cost of compliance.

[4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, §§ 68, 69.]

[*617]

Counsel: Bill Lockyer, Attorney General, Manuel M. Medeiros, State Solicitor General, Richard M. Frank and Tom Greene, Chief Assistant Attorneys General, Mary E. Hackenbracht, Assistant Attorney General, Marilyn H. Levin and Gregory J. Newmark, Deputy Attorneys General, for Defendants and Appellants.

David S. Beckman and Dan L. Gildor for Natural Resources Defense Counsel, Butte Environmental Council, California Coastkeeper Alliance, CalTrout, Clean Water Action, Clean Water Fund, Coalition on the Environment and Jewish Life of Southern California, Coast Action Group, Defend the Bay, Ecological Rights Foundation, Environment in the Public Interest, Environmental Defense Center, Heal the Bay, Los Angeles Interfaith Environment Council, Ocean Conservancy, Orange County Coastkeeper, San Diego Baykeeper, Santa Barbara Channelkeeper, Santa Monica Baykeeper, Southern California Watershed Alliance, Ventura Coastkeeper, Waterkeeper Alliance, Waterkeepers Northern California, Westside Aquatics, Inc., and Wishtoyo Foundation as Amici Curiae on behalf of Defendants and Appellants.

Downey, Brand, Seymour & Rohwer, Downey Brand, Melissa A. Thorne, Jeffrey S. Galvin, Nicole E. Granquist and Cassandra M. Ferrannini for Plaintiffs and Appellants.

Dennis A. Barlow, City Attorney, and Carolyn A. Barnes, Assistant City Attorney, for Defendant and Appellant City of Burbank.

Rockard J. Delgadillo, City Attorney, and

Christopher M. Westhoff, Assistant City Attorney, for Plaintiff and Appellant City of Los Angeles.

Rutan & Tucker and Richard Montevideo for Cities of Baldwin Park, Bell, Cerritos, Diamond Bar, Downey, Gardena, Montebello, Monterey Park, Paramount, Pico Rivera, Rosemead, San Gabriel, San Marino, Santa Fe Springs, Sierra Madre, Signal [****2] Hill, Temple City and West Covina, the California Building Industry Association and the Building Industry Legal Defense Foundation as Amici Curiae on behalf of Plaintiffs and Appellants.

Stoel Rives and Lawrence S. Bazel for Western Coalition of Arid States as Amicus Curiae on behalf of Plaintiffs and Appellants.

Richards, Watson & Gershon and John J. Harris for the League of California Cities as Amicus Curiae on behalf of Plaintiffs and Appellants.

[****3]

[*618] Squire, Sanders & Dempsey, Joseph A. Meckes; David W. Burchmore; and Alexandra Dapolito Dunn for Association of Metropolitan Sewerage Agencies as Amicus Curiae on behalf of Plaintiffs and Appellants.

Lewis, Brisbois, Bisgaard & Smith and B. Richard Marsh for County Sanitation Districts of Los Angeles County as Amicus Curiae on behalf of Plaintiffs and Appellants.

Fulbright & Jaworski, Colin Lennard, Patricia Chen; Archer Norris and Peter W. McGaw for California Association of Sanitation Agencies as Amicus Curiae on behalf of Plaintiffs and Appellants. [***306]

Judges: Kennard, J., with George, C. J., Baxter, Werdegar, Chin, and Moreno, JJ., concurring. Concurring opinion by Brown, J.

Opinion by: KENNARD [**864]

Opinion

KENNARD, J.—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 [****4] 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 [****5] 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 [128 L. Ed. 2d 716, 114 S. Ct. 1900].) 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 [****6] 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

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

[****7] CA(1)[↑] (1) HN1[↑] 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

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, quoting 33 U.S.C. § 1251(a).) The act’s national goal was to eliminate by the year 1985 [****8] “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).)

CA(2)[↑] (2) HN2[↑] 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] CA(3)[↑] (3) Roughly a dozen years ago, the United States Supreme Court, in *Arkansas v. Oklahoma* (1992) 503 U.S. 91 [117 L. Ed. 2d 239, 112 S. Ct. 1046], described the distinct roles of the state and federal agencies [****9] 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, HN3[↑] [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 [48 L. Ed. 2d 578, 96 S. Ct. 2022, 2025, n. 12] (1976).

[****10] [*621] CA(4)[↑] (4) “HN5[↑] 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

drainages.” (§ 13200, subd. (d).)

³ A “HN4[↑] point source” is “any discernible, confined and discrete conveyance” and includes “any pipe, ditch, channel ... from which pollutants ... may be discharged.” (33 U.S.C. § 1362 (14).)

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.)

CA(5)[↑] (5) HN6[↑] 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.) 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 [****11] 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 [****12] Act.

The third plant, the Burbank Water Reclamation Plant (Burbank Plant), is owned and operated by the City of Bur [***309] bank, 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: [****13] “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

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.

the treated wastewater, measured in milligrams or micrograms per liter of effluent.⁵

[****14] 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 [****15] 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.

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.

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 [****16] 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 [****17] 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

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.

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 *ante*, at p. 619.) Section 13263 provides in relevant part: “**HN7**[↑] *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: “**HN8**[↑] Each regional board shall establish such water quality objectives in water quality control [****18] 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 [****19] in discharged effluent or treated wastewater.

[*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

CA(6)[↑] (6) **HN9**[↑] 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 [****20] 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]; see *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.)

CA(7)[↑] (7) 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. **HN10[↑]** 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 ******21** 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. (*State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1043 [**12****312**] 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.

CA(8)[↑] (8) **HN11[↑]** 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 ******22** 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)). **HN12[↑]** **CA(9)[↑]** (9) 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****24** 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

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*, at p. 629, 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 requirements of 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.

effect.’ ” (*Cipollone v. Liggett Group, Inc.* (1992) 505 U.S. 504, 516 [120 L. Ed. 2d 407, 112 S. Ct. 2608]; see 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 [****23] into the navigable waters of the United States in concentrations that would exceed the mandates of federal law.

[***313] 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 [****25] 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.

CA(10)[↑] (10) At oral argument, counsel for amicus curiae National Resources Defense Council, which argued on [****26] 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. **HN13[↑]** 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 (33 U.S.C. § 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 [****27] 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 [148 L. Ed. 2d 576, 121 S. Ct. 675] [“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 Cal. Rules of Court, rule [***314] 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 [****28] 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. [****29] 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.

George, C. J., Baxter, J., Werdegar, J., Chin, J., and Moreno, J., concurred.

Concur by: BROWN

Concur

BROWN, J., Concurring.—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 the applicable federal standards require.” (Maj. opn., *ante*, at p. 618.) That seems a pretty self-evident proposition, but not a useful one. [****30] 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 [****31] 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 system, 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, [****32] 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, [****33] 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, *fn.* 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) 302 U.S. App. D.C. 80 [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 [****34] 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 [******35**] 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 [******36**] 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 [******37**] 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 [****38] 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 directs [**874] 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 [****39] 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*, at pp. 625–627.)

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 pp. 628–629.)

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 [****40] (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

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.

times of tight fiscal budgets, it is difficult to imagine imposing additional financial burdens on municipalities without at least [****41] 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 [****42] 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

The petitions of all appellants and respondent for a rehearing were denied June 29, 2005. Brown, J., did not participate therein.

End of Document

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 [2005 WL 466202] (conc. opn. of Berzon, J.))

City of Sacramento v. State of California

Supreme Court of California

January 29, 1990

No. S006188

Reporter

50 Cal. 3d 51 *; 785 P.2d 522 **; 266 Cal. Rptr. 139 ***; 1990 Cal. LEXIS 148 ****

CITY OF SACRAMENTO et al., Plaintiffs and Appellants, v. THE STATE OF CALIFORNIA et al., Defendants and Respondents

Prior History: [****1] Superior Court of Sacramento County, No. 331607, Darrel W. Lewis, Judge.

Disposition: We have concluded that chapter 2/78 is a "federal mandate" which exempts affected state and local agencies from pertinent limits on their power to tax, appropriate, and spend. However, local governments' expenses of complying with chapter 2/78 are not subject to compulsory state subvention, because chapter 2/78 imposed no new or increased "program or service," and no "unique" requirement, on local agencies. The contrary judgment of the Court of Appeal is reversed.

Core Terms

costs, reimbursement, local government, unemployment insurance, subvention, federal government, local agency, federal mandate, unemployment, entity, appropriations, mandates, exemption, state and local government, spending limit, programs, taxation, italics, funds, new program, limits, federal law, employees, collateral estoppel, level of service, constitutes, obligations, compliance, expenses, Public Law

Case Summary

Procedural Posture

Appellant city and others challenged the order of the Superior Court of Sacramento County

(California), that entered summary judgment for respondent state and others in appellants' action for reimbursement to local agencies for expenses mandated by respondent state pursuant to 1978 Cal. Stat. ch. 2.

Overview

In response to changes in federal law, 1978 Cal. Stat. ch. 2/78 extended mandatory coverage under the state's unemployment insurance law to include state and local governments. Appellant city and others brought suit against respondent state for reimbursement for the additional expenses to local governmental agencies incurred as a result of ch. 2/78. The trial court granted summary judgment to respondent state and the appellate court reversed. The court affirmed the trial court and held that local governments' expenses of complying with ch. 2/78 were not subject to compulsory state subvention because ch. 2/78 imposed no new or increased program or service, or no "unique" requirement on local agencies. The court concluded that ch. 2/78 was a federal mandate that exempted affected local agencies from pertinent limits on their power to tax, appropriate and spend.

Outcome

The court reversed the appellate court and affirmed the order of the trial court granting summary judgment to respondent state and others and held that respondent was not required to reimburse local agencies for covering their employees with unemployment insurance. The court concluded that the requirement was a federal mandate that exempted affected state and local agencies from pertinent limits on their power to tax, appropriate, and spend.

LexisNexis® Headnotes

Labor & Employment Law > Disability &
Unemployment Insurance > Unemployment
Compensation > Claim Procedures

Tax Law > ... > Tax Credits &
Liabilities > Estimates &
Withholding > Definitions

Labor & Employment Law > Disability &
Unemployment Insurance > General Overview

Tax Law > ... > Tax Credits &
Liabilities > Estimates & Withholding > FUTA
Tax Rate

HN1[↓] Unemployment Compensation, Claim Procedures

The Federal Unemployment Tax Act, 26 U.S.C.S. § 3301 et seq., assesses an annual tax upon the gross wages paid by covered private employers nationwide. The tax rate stands at 6.2 percent for calendar year 1990. 26 U.S.C.S. §§ 3301(1), 3306. However, employers in a state with a federally "certified" unemployment insurance program may credit their contributions to the state system against up to 90 percent of the federal tax. A "certified" state program also qualifies for federal administrative funds. 42 U.S.C.S. §§ 501-503.

Labor & Employment Law > Disability &
Unemployment Insurance > General Overview

Tax Law > ... > Tax Credits &
Liabilities > Estimates &
Withholding > Approval of State Laws

Tax Law > ... > Tax Credits &
Liabilities > Estimates &
Withholding > Definitions

HN2[↓] Labor & Employment Law, Disability & Unemployment Insurance

The Federal Unemployment Tax Act was amended to require that a "certified" state plan include coverage of the employees of public agencies. 26 U.S.C.S. §§ 3304(a)(6)(A), 3309(a), 3306(c)(7). States which did not alter their unemployment compensation laws accordingly faced loss of the federal tax credit and administrative subsidy.

Governments > State & Territorial
Governments > Finance

HN3[↓] State & Territorial Governments, Finance

Cal. Const. art. XIII B restricts the amounts state and local governments may appropriate and spend each year from the proceeds of taxes and requires state reimbursement of resulting local costs whenever, after January 1, 1975, the Legislature or any state agency mandates a new program or higher level of service on any local government. Cal. Const. art. XIII B, § 6. Such mandatory state subventions are excluded from the local agency's spending limit, but included within the state's. Cal. Const. art. XIII B excludes from either the state or local spending limit any appropriations required for purposes of complying with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the providing of existing services more costly.

Governments > State & Territorial
Governments > Finance

HN4[↓] State & Territorial Governments, Finance

To the extent "federally mandated" costs are exempt from prior statutory limits on local taxation, Cal. Const. art. XIII A eliminates the exemption

insofar as it would allow levies in excess of the constitutional ceiling.

Governments > Local Governments > Claims
By & Against

HN5[↓] Local Governments, Claims By & Against

A local entity is expressly authorized to bring suit to declare an unfunded mandate unenforceable. Cal. Rev. & Tax. Code § 2255(c), Cal. Gov't Code §17612(b).

Governments > Legislation > General
Overview

HN6[↓] Governments, Legislation

Under the separation of powers doctrine, the legislature cannot be compelled to appropriate or authorize the disbursement of specific funds.

Governments > Courts > General Overview

HN7[↓] Governments, Courts

Courts are powerless to compel appropriations per se. However, that fact does not render a prayer for reimbursement of past costs wholly meaningless. California courts have previously recognized judicial power to fashion other appropriate reimbursement remedies.

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > Collateral Estoppel

Civil Procedure > Judgments > Preclusion of
Judgments > General Overview

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > General Overview

HN8[↓] Estoppel, Collateral Estoppel

Collateral estoppel bars the party to a prior action, or one in privity with him, from relitigating issues finally decided against him in the earlier action. But when the issue is a question of law rather than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed.

Administrative Law > Agency
Adjudication > Decisions > Res Judicata

Civil Procedure > Appeals > Reviewability of
Lower Court Decisions > General Overview

Civil Procedure > Judgments > Preclusion of
Judgments > General Overview

Civil Procedure > Judgments > Preclusion of
Judgments > Res Judicata

HN9[↓] Decisions, Res Judicata

Res judicata and the rule of final judgments bars the appellate court from disturbing individual claims or causes of action, on behalf of specific agencies, which have been finally adjudicated and are no longer subject to review. Cal. Civ. Proc. Code § 1908 et seq.

Governments > Local Governments > General
Overview

Workers' Compensation & SSDI > ... > Course
of Employment > Activities Related to
Employment > Emergencies

Workers' Compensation &
SSDI > Administrative
Proceedings > Awards > Enforcement

HN10[↓] Governments, Local Governments

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, they are indistinguishable in this respect from private employers.

Governments > Local Governments > Finance

HN11 [↓] **Local Governments, Finance**

The intent underlying Cal. Const. art. XIII B, § 6 is to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. The language of Cal. Const. art. XIII B, § 6 is far too vague to support an inference 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.

Governments > Local Governments > Finance

HN12 [↓] **Local Governments, Finance**

A cost mandated by the federal government is exempt from a local government's statutory taxation limit. Cal. Rev. & Tax. Code § 2271. An appropriation required to comply with a federal mandate is excluded from the constitutional spending limit of any affected entity, state or local. Cal. Const. art. XIII B, § 9(b).

Governments > Federal Government > General Overview

HN13 [↓] **Governments, Federal Government**

Cal. Const. art. XIII B § 9(b) defines federally mandated appropriations as those required for purposes of complying with mandates of the federal

government which, without discretion, require an expenditure for additional services or which unavoidably make the providing of existing services more costly.

Constitutional Law > Relations Among Governments > General Overview

Constitutional Law > Congressional Duties & Powers > Reserved Powers

HN14 [↓] **Constitutional Law, Relations Among Governments**

U. S. Const. amend. X provides that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Governments > Legislation > Interpretation

HN15 [↓] **Legislation, Interpretation**

Constitutional enactments must receive a liberal, practical common-sense construction which will meet changed conditions and the growing needs of the people. A constitutional amendment should be construed in accordance with the natural and ordinary meaning of its words. Literal language of enactments may be disregarded to avoid absurd results and to fulfill the apparent intent of the framers.

Headnotes/Summary

Summary

CALIFORNIA OFFICIAL REPORTS SUMMARY

A city and a county filed claims with the State Board of Control seeking subvention of the costs imposed on them by Stats. 1978, ch. 2, which extended mandatory coverage under the state's unemployment insurance law to include state and

local governments and nonprofit corporations. The board denied the claims, ruling that Stats. 1978, ch. 2, did not enact a state-mandated program for which reimbursement was required under Cal. Const., art. XIII B. On mandamus the trial court overruled the board and found the cost reimbursable, and the Court of Appeal affirmed. On remand, the board determined the amounts due on the claims originally submitted; however, the Legislature failed to appropriate the necessary funds for disbursement. The city then commenced a class action against the state on behalf of all local governments in the state. The complaint sought injunctive and declaratory relief barring enforcement of Stats. 1978, ch. 2, in the absence of state subvention; a writ of mandate directing that past, current, and/or future subvention funds be appropriated and disbursed, and/or that the Employment Development Department pay local agencies' past, current, and future unemployment insurance contributions from its own budget; and damages for past failures to reimburse. The trial court granted summary judgment for the state. (Superior Court of Sacramento County, No. 331607, Darrel W. Lewis, Judge.) The Court of Appeal, Third Dist., No. C002265, reversed.

The Supreme Court reversed the judgment of the Court of Appeal. The court held that the trial court did not err in granting summary judgment for the state on the ground that the local costs of providing unemployment insurance coverage were not subject to subvention under Cal. Const., art. XIII B, or parallel statutes (Rev. & Tax. Code, former §§ 2207, 2231, subd. (a); Gov. Code, §§ 17514, 17561, subd. (a)). The state had not compelled provision of new or increased "service to the public" at the local level, nor had it imposed a state policy "uniquely" on local governments. However, the court held, Stats. 1978, ch. 2, implemented a federal "mandate" within the meaning of Cal. Const., art. XIII B, and prior statutes restraining local taxation; thus, subject to superseding constitutional ceilings on taxation by state and local governments, an agency governed by Stats. 1978, ch. 2, may tax and spend as necessary to meet the

expenses required to comply with that legislation. (Opinion by Eagleson, J., with Lucas, C. J., Mosk, Broussard, Panelli and Kennard, JJ., concurring. Seperate concurring and dissenting opinion by Kaufman, J., concurring in the judgment.)

Headnotes

CA(1)[↓] (1)

Property Taxes § 7.5—Constitutional Provisions; Statutes and Ordinances—Real Property Tax Limitation—Exemptions for Federally Mandated Costs.

--To the extent that a "federally mandated" cost is exempt from prior statutory limits on local taxation, Cal. Const., art. XIII A, restricting the assessment and taxing powers of state and local governments, eliminates the exemption insofar as it would allow levies in excess of the constitutional ceiling.

CA(2)[↓] (2)

State of California § 7—Actions—Reimbursement to Local Governments for Unemployment Insurance Costs—Exhaustion of Remedies.

--A class action by a city on behalf of all local governments in the state, against the state, in which it was alleged that Stats. 1978, ch. 2 (extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations), mandated a new program or higher level of service on local agencies for which reimbursement by the state of local compliance costs was required under Cal. Const., art. XIII B, was not barred by any failure of plaintiffs to exhaust their remedies. The city and a county had filed timely claims for reimbursement of expenses incurred, to comply with Stats. 1978, ch. 2. When the State Board of Control initially denied the claims, the city and the county pursued judicial remedies, culminating in a Court of Appeal opinion concluding that

reimbursement was required. The board then upheld the claims. Insofar as the Legislature thereafter declined to appropriate the necessary funds for disbursement, the city and the county were authorized to bring an enforcement action.

CA(3a)[↓] (3a) CA(3b)[↓] (3b)

State of California § 7—Actions—Reimbursement to Local Governments for Unemployment Insurance Costs—Remedies Available.

--Cal. Const., art. XIII, § 32, precluding any suit to enjoin or impede collection of a tax, did not bar a class action brought by a city on behalf of all local governments in the state, against the state, in which it was alleged that Stats. 1978, ch. 2 (extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations), mandated a new program or higher level of service on local which reimbursement by the state of local compliance costs was required under Cal. Const., art. XIII B. The state contended that the only remedy open to the city was to pay its unemployment "taxes" and then seek a "refund" under the "exclusive" procedures set forth in the Unemployment Insurance Code. However, the city was not challenging, directly or indirectly, the validity or application of the unemployment insurance law as such, or the propriety of any "tax" assessed thereunder; rather, it claimed that all its costs of affording unemployment compensation to its employees were subject to a statutory and constitutional subvention that the state refused to make. For the same reasons, the city's claim for reimbursement for past expenses was not barred.

CA(4)[↓] (4)

Constitutional Law § 40—Distribution of Governmental Powers—Between Branches of Government—Judicial Power.

--Under the separation of powers doctrine, the

Legislature cannot be compelled to appropriate or authorize the disbursement of specific funds.

CA(5a)[↓] (5a) CA(5b)[↓] (5b) CA(5c)[↓] (5c)

Judgments § 81—Res Judicata—Collateral Estoppel—Public-interest Exception—Reimbursement to Local Governments for Unemployment Insurance Costs.

--In a class action by a city on behalf of all local governments in the state, against the state, in which it was alleged that Stats. 1978, ch. 2 (extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations), mandated a new program or higher level of service on local agencies for which reimbursement by the state of local compliance costs was required under Cal. Const., art. XIII B, the state was not collaterally estopped from litigating the reimbursement issue. The city and a county had previously brought an action against the state, culminating in a Court of Appeal opinion concluding that reimbursement was required. The Legislature then declined to appropriate the necessary funds for disbursement. Even if the formal prerequisites for collateral estoppel were present, the public-interest exception to that doctrine governed, since strict application for the doctrine would foreclose any reexamination of the earlier holding, and the consequences of any error transcended those that would apply to mere private parties.

CA(6)[↓] (6)

Judgments § 81—Res Judicata—Collateral Estoppel—Questions of Law.

--Generally, collateral estoppel bars a party to a prior action, or one in privity with him, from relitigating issues finally decided against him in the earlier action. However, when the issue is a question of law rather than of fact, the prior

determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed.

CA(7)[↓] (7)

State of California § 7—Actions—Reimbursement to Local Governments for Unemployment Insurance Costs—Summary Judgment—Effect of Failure of Moving Party to Challenge Prior Summary Adjudication of Issues.

--In a class action by a city, on behalf of all local governments in the state, against the state, in which it was alleged that Stats. 1978, ch. 2 (extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations), mandated a new program or higher level of service on local agencies for which reimbursement by the state of local compliance costs was required under Cal. Const., art. XIII B, the trial court did not lack the power to grant summary judgment for the state on the authority of a newly decided California Supreme Court case. The trial court had previously granted the city's motion for summary adjudication of issues, and the state had failed to seek timely mandamus review of that prior, contrary order. However, failure to challenge a summary adjudication order by the discretionary avenue of writ review cannot foreclose a party from asserting subsequent changes in law that render such a pretrial order incorrect.

CA(8)[↓] (8)

Judgments § 68—Res Judicata—Identity of Parties—Class Action—Where Prior Action Involved Individual Claims.

--In a class action by a city on behalf of all local governments in the state, against the state, in which it was alleged that Stats. 1978, ch. 2 (extending mandatory coverage under the state's unemployment insurance law to include state and

local governments and nonprofit corporations), mandated a new program or higher level of service on local agencies for which reimbursement by the state of local compliance costs was required under Cal. Const., art. XIII B, res judicata did not preclude examination of an earlier Court of Appeal opinion, in an action by the city and a county, concluding that reimbursement was required. The issues presented in the current action were not limited to the validity of any finally adjudicated individual claims; rather, they encompassed the question of the state's subvention obligations in general under Stats. 1978, ch. 2.

CA(9a)[↓] (9a) CA(9b)[↓] (9b)

State of California § 11—Fiscal Matters—Reimbursement to Local Governments—State-mandated Programs—Unemployment Insurance Costs.

--In a class action by a city on behalf of all local governments in the state, against the state, in which it was alleged that Stats. 1978, ch. 2 (extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations), mandated a new program or higher level of service on local agencies for which reimbursement by the state was required under Cal. Const., art. XIII B, the trial court did not err in granting summary judgment for the state on the ground that the local costs of providing such coverage were not subject to subvention under Cal. Const., art. XIII B, or parallel statutes (Rev. & Tax. Code, former §§ 2207, 2231, subd. (a); Gov. Code, §§ 17514, 17561.). The state had not compelled provision of new or increased "service to the public" at the local level, nor had it imposed a state policy "uniquely" on local governments. The phrase, "To force programs on local governments," in the voters' pamphlet relating to Cal. Const., art. XIII B, § 6, confirmed that the intent underlying that section was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar

to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities.

CA(10)[↓] (10)

State of California § 11—Fiscal Matters— Reimbursement to Local Governments—State- mandated Programs.

--The concepts of reimbursable state-mandated costs in Cal. Const., art. XIII B, requiring that the state reimburse local governments for the costs of state-mandated new programs or higher levels of service, and Rev. & Tax. Code, former §§ 2207, 2231, are identical.

CA(11a)[↓] (11a) CA(11b)[↓] (11b) CA(11c)[↓] (11c)

State of California § 11—Fiscal Matters— Reimbursement to Local Governments—Federally Mandated Programs—Unemployment Insurance Costs.

--Stats. 1978, ch. 2, extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations, implemented a federal "mandate" within the meaning of Cal. Const., art. XIII B, and prior statutes restricting local taxation; thus, subject to superseding constitutional ceilings on taxation by state and local governments, an agency governed by Stats. 1978, ch. 2, may tax and spend as necessary to meet the expenses required to comply with that legislation. In enacting Stats. 1978, ch. 2, the 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. (Disapproving, insofar as it is inconsistent with this analysis, the decision in *City of Sacramento v. State of California* (1984) 156 Cal. App. 3d 182 (203 Cal.Rptr. 258).)

CA(12)[↓] (12)

Constitutional Law § 11—Construction of Constitutions—Liberality and Flexibility.

--Constitutional enactments must receive a liberal, practical commonsense construction that will meet changed conditions and the growing needs of the people. While a constitutional amendment should be construed in accordance with the natural and ordinary meaning of its words, the literal language of enactments may be disregarded to avoid absurd results and to fulfill the apparent intent of the framers.

CA(13)[↓] (13)

State of California § 11—Fiscal Matters— Reimbursement to Local Governments—Federally Mandated Programs.

--In determining whether a program is federally mandated, to exempt its cost from a local government's statutory taxation limit (Rev. & Tax. Code, § 2271), and to exclude any appropriation required to comply with the mandate from the constitutional spending limit of the affected entity (Cal. Const., art. XIII B, § 9, subd. (b)), the result will depend on 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. The courts and the Commission on State Mandates must respect the governing principle of Cal. Const., art. XIII B, § 9, subd. (b): neither state nor local agencies may escape their spending limits when their participation in federal programs is truly voluntary.

Counsel: James P. Jackson, City Attorney, and William P. Carnazzo, Deputy City Attorney, for Plaintiffs and Appellants.

John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, Paul H. Dobson, Richard M. Frank, Floyd D. Shimomura and Carol Hunter, Deputy Attorneys General, for Defendants and Respondents.

De Witt W. Clinton, County Counsel, Amanda F. Susskind, Deputy County Counsel, Kitt Berman, Ross & Scott and William D. Ross as Amici Curiae on behalf of Defendants and Respondents.

Judges: Opinion by Eagleson, J., with Lucas, C.J., Mosk, Broussard, Panelli and Kennard, JJ., concurring. Separate concurring [****2] and dissenting opinion by Kaufman, J.

Opinion by: EAGLESON

Opinion

[*57] [**523] [***140] In response to changes in federal law, chapter 2 of the Statutes of 1978 (hereafter chapter 2/78) extended mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations. Here we consider whether, in chapter 2/78, the state "[mandated] a new program or higher level of service" on the local agencies, and must therefore reimburse local compliance costs under article XIII B of the California Constitution and related statutes.

We conclude that the state is *not* required to reimburse the chapter 2/78 expenses of local governments. The obligations [***141] imposed by chapter 2/78 fail to meet the "program" and "service" standards [**524] for mandatory subvention we recently set forth in *County of Los Angeles v. State of California* (1987) 43 Cal. 3d 46 [233 Cal. Rptr. 38, 729 P.2d 202] (hereafter *County of Los Angeles*). Chapter 2/78 imposes no "unique" obligation on local governments, nor does it require them to provide new or increased governmental services to the public. The Court of [****3] Appeal decision, finding the expenses reimbursable, must therefore be reversed.

However, our holding does not leave local agencies powerless to counter the fiscal pressures created by chapter 2/78. Though provisions of the Revenue and Taxation Code limit local property tax levies, and article XIII B itself places spending limits on both state and local governments, "costs mandated by the federal government" are expressly excluded from these ceilings. Chapter 2/78 imposes such "federally mandated" costs, because it was adopted by the state under federal coercion tantamount to compulsion. Hence, subject to overriding limitations on taxation rates (see, e.g., *Cal. Const.*, art. XIII A), both state and local governments may levy and spend for their chapter 2/78 coverage obligations without reduction of the fiscal limits applicable to other needs and services.

I. FACTS.

In 1972, and again in 1973, the Legislature enacted comprehensive schemes for local property tax relief. Though frequently amended thereafter, these statutes retained three principal features. First, they placed a limit on the local property tax rate. Second, they required the *state* to reimburse local governments [****4] for their costs resulting from state laws "which mandate . . . new [programs] or . . . increased [levels] of service" at the local level. Finally, they allowed local governments to exceed their property taxation limits to fund certain other nondiscretionary expenses, including "costs mandated by the federal government." (Stats. 1972, ch. 1406, § 14.7, pp. [*58] 2961-2967; Stats. 1973, ch. 358, § 3, pp. 783-790; *Rev. & Tax. Code*, §§ 2206, 2260 et seq.; 2271, former §§ 2164.3, 2165, 2167, 2169, 2207, 2231; *Gov. Code*, § 17500 et seq.)

Since adoption of the Social Security Act in 1935, federal law has provided powerful incentives to enactment of unemployment insurance protection by the individual states. In current form, **HN1**[↑] the Federal Unemployment Tax Act (hereafter FUTA) (26 U.S.C. § 3301 et seq.) assesses an annual tax upon the gross wages paid by covered private employers nationwide. The tax rate, which

has varied over the years, stands at 6.2 percent for calendar year 1990. (26 U.S.C. §§ 3301(1), 3306.) However, employers in a state with a federally [****5] "certified" unemployment insurance program may credit their contributions to the state system against up to 90 percent of the federal tax (currently computed at 6 percent for this purpose). (*Id.*, §§ 3302-3304.) A "certified" state program also qualifies for federal administrative funds. (42 U.S.C. §§ 501-503.)

California enacted its unemployment insurance system "on the eve of the adoption of the Social Security Act" in 1935 (*Steward Machine Co. v. Davis* (1937) 301 U.S. 548, 587-588 [81 L. Ed. 1279, 1291-1292, 57 S. Ct. 883, 109 A.L.R. 1293]; see Stats. 1935, ch. 352, § 1 et seq., p. 1226 et seq.) and has sought to maintain federal compliance ever since. Every other state has also adopted an unemployment insurance plan in response to the federal stimulus.

In 1976, Congress enacted Public Law number 94-566 (hereafter Public Law 94-566). Insofar as pertinent here, Public Law 94-566 amended HN2[↑] FUTA to require for the first time that a "certified" state plan include coverage of the employees of public agencies. (Pub. L. No. 94-566 (Oct. 20, 1976) § 115(a), 90 Stat. 2670; 26 U.S.C. §§ 3304(a)(6)(A), 3309(a); see [****6] 26 U.S.C. § 3306(c)(7).) States which did not alter their unemployment compensation laws accordingly faced loss of the federal tax credit and administrative subsidy.

The Legislature thereafter adopted chapter 2/78 to conform California's system to Public Law 94-566. Among other things, chapter 2/78 effectively requires the state [***142] and all local governments, beginning January [**525] 1, 1978, to participate in the state unemployment insurance system on behalf of their employees. (Stats. 1978, ch. 2, §§ 12, 24, 31, 36.5, 58-61, pp. 12-14, 16, 18, 24-27; *Unemp. Ins. Code*, §§ 135, subd. (a), 605, 634.5, 802- 804.)

In November 1979, the voters adopted Proposition 4, adding article XIII B to the state Constitution. CA(1)[↑] (1) (See fn. 1.) HN3[↑] Article XIII B -- the so-called "Gann limit" -- restricts the amounts state and local governments may [*59] appropriate and spend each year from the "proceeds of taxes." (§§ 1, 3, 8, subds. (a)-(c).) ¹ In language similar to that of earlier statutes, article XIII B also requires [****7] state reimbursement of resulting local costs whenever, after January 1, 1975, "the Legislature or any state agency mandates a new program or higher level of service on any local government," (§ 6.) Such mandatory state subventions are excluded from the local agency's spending limit, but included within the state's. (§ 8, subds. (a), (b).) Finally, article XIII B excludes from either the state or local spending limit any "[appropriations] required for purposes of complying with mandates of the courts *or the federal government* which, *without discretion*, require an expenditure for additional services or which *unavoidably* make the providing of existing services more costly." (§ 9, subd. (b) [hereafter section 9(b)], italics added.)

[****8] The City of Sacramento (City) and the County of Los Angeles (County) filed claims with the State Board of Control (Board) (see Rev. & Tax. Code, former § 2250 et seq.; see now *Gov. Code*, § 17550 et seq.) seeking state subvention of the costs imposed on them by chapter 2/78 during 1978 and portions of 1979. The Board denied the claims, ruling that chapter 2/78 was an enactment required by federal law and thus was not a

¹ 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. Moreover, HN4[↑] to the extent "federally mandated" costs are exempt from prior *statutory* limits on local *taxation* (see *ante*, at pp. 57-58), article XIII A eliminates the exemption insofar as it would allow levies in excess of the constitutional ceiling.

All further section references are to article XIII B of the California Constitution, unless otherwise indicated.

reimbursable state mandate. On mandamus (Code Civ. Proc., § 1094.5; Rev. & Tax. Code, former § 2253.5, see now Gov. Code, § 17559), the Sacramento Superior Court overruled the Board and found the costs reimbursable. The court ordered the Board to determine the amounts of the City's and the County's individual claims, and also to adopt "parameters and guidelines" to be applied in determining "these . . . and other claims" arising under chapter 2/78. (Rev. & Tax. Code, former § 2253.2; see now Gov. Code, §§ 17555, 17557.)²

[****9] In City of Sacramento v. State of California (1984) 156 Cal. App. 3d 182 [203 Cal. Rptr. 258] (hereafter *Sacramento I*), the Court of Appeal affirmed. Among other things, the court concluded (pp. 194-199) that chapter 2/78 [*60] imposed state-mandated costs reimbursable under section 6 of article XIII B, since the potential loss of federal funds and tax credits did not render Public Law 94-566 so coercive as to constitute a "[*mandate*] . . . of the federal government" under section 9(b). (Italics added.) We denied hearing.

On remand, the Board determined the amounts due on the claims originally submitted by the City and the County. As required by the judgment, the Board also adopted "parameters and guidelines" for reimbursement of chapter 2/78 costs to all affected local agencies. However, during the 1984 session of the Legislature, no bills were introduced for reimbursement of pre-1984 costs, and bills to fund costs in and after 1984 failed passage.

[**526] [***143] From and after the decision in *Sacramento I*, the City paid "under protest" its quarterly billings from the Employment Development Department (EDD) for unemployment [****10] compensation. Each payment included a claim for refund of

unemployment taxes pursuant to Unemployment Insurance Code section 1176 et seq. EDD responded to the refund claims by referring the City to its statutory subvention remedies.

Accordingly, in July 1985, the City began returning its quarterly billings unpaid. It thereupon commenced the instant class action in Sacramento Superior Court on behalf of all local governments in the state. Named as defendants were the State of California, the Governor, EDD, the state Controller and Treasurer, and the Legislature. The complaint sought (1) injunctive and declaratory relief barring enforcement of chapter 2/78 in the absence of state subvention; (2) a writ of mandate directing that past, current, and future subvention funds be appropriated and disbursed, and/or that EDD pay local agencies' past, current, and future unemployment-insurance contributions from its own budget; and (3) damages for past failures to reimburse.

Shortly after this suit was filed, the Legislature appropriated some chapter 2/78 funds for fiscal year 1984-1985 (Stats. 1985, ch. 1217, §§ 12, 17, subd. (b), pp. 4148, 4150), and it subsequently [****11] authorized limited funds in the 1986 Budget Act (Stats. 1986, ch. 186, § 2.00, p. 1006). On defendants' demurrer, the trial court later dismissed plaintiffs' claims for reimbursement for these post-1984 periods.³ Thereafter, the trial court certified the suit as a class action and granted plaintiffs' motion for summary adjudication of issues based on *Sacramento I*.

[*61] While the case remained pending at the trial level, we decided County of Los Angeles. There we held that article XIII B, and earlier subvention statutes, require state reimbursement *only* when the state compels local governments to provide new or upgraded "programs that carry out the

² The claims for reimbursement were originally premised entirely on Revenue and Taxation Code section 2201 et seq. While the City's and the County's mandamus petitions were pending in superior court, article XIII B was adopted. The City and the County amended their petitions to include article XIII B as an additional basis for relief, and the case proceeded accordingly.

³ The trial court also sustained the Legislature's demurrer without leave to amend and dismissed the Legislature as a party defendant. The Court of Appeal affirmed the dismissal in a separate proceeding. (See City of Sacramento v. California State Legislature (1986) 187 Cal. App. 3d 393 [231 Cal. Rptr. 686].)

governmental [****12] function of providing *services to the public*, or . . . , to implement a state policy, [imposes] *unique* requirements on local governments [that] do not apply generally to all residents and entities in the state." (43 Cal. 3d at p. 56, italics added.)

Defendants in this case thereupon moved for summary judgment, urging that extension of unemployment insurance coverage to public employees satisfied neither reimbursement standard set forth in *County of Los Angeles*. The trial court agreed and awarded summary judgment.

The Court of Appeal reversed on two independent grounds. First, the court ruled that defendants were collaterally estopped by *Sacramento I* to relitigate the reimbursability of chapter 2/78 costs. Second, the court found that chapter 2/78 imposed "unique requirements" on local governments, within the meaning of *County of Los Angeles*, since the legislation was aimed solely at local agencies and subjected them to obligations from which they were previously exempt.

II. Jurisdiction; Plaintiffs' Exhaustion of Remedies.

CA(2)[↑] (2) After we granted review, we asked the parties and amici curiae⁴ to brief whether the current suit is jurisdictionally [****13] barred by any failure of plaintiffs to exhaust their remedies (see *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 291-295 [109 P.2d 942, 132 A.L.R. 715]), or for any other reason. If so, the summary judgment for defendants against all plaintiffs was proper notwithstanding the merits of the subvention claim. In that event, the judgment of [**527] [***144] the Court of Appeal must be reversed without consideration of the substantive issues raised by the appeal.

However, we find no failure to exhaust which

would bar us from reaching the merits. Defendants concede plaintiffs exhausted all administrative remedies provided by the statutes governing subvention of state-mandated costs. The concession [****14] appears correct, at least as to the City and the County. These two agencies filed timely claims for reimbursement of expenses incurred to comply with chapter 2/78. When the Board initially denied the claims, the City and the County pursued judicial remedies culminating in [*62] *Sacramento I*. By direction of the judgment in *Sacramento I*, the Board ultimately upheld the City's and County's 1979 claims, determined their amount, and adopted "parameters and guidelines" for statewide reimbursement that were later included in the Board's government-claims report to the Legislature. (Rev. & Tax. Code, former §§ 2253.2, 2255, subd. (a).)

These procedures exhausted the City's and the County's administrative and judicial avenues, short of this suit, to obtain redress on the claims adjudicated in *Sacramento I*. Insofar as the Legislature thereafter declined to appropriate the necessary funds for disbursement by the Controller, the City and the County were authorized to bring an enforcement action. (*Id.*, former § 2255, subd. (c); Gov. Code, § 17612, subd. (b); *County of Contra Costa v. State of California* (1986) 177 Cal. App. 3d 62, 72 [222 Cal. Rptr. 750]; [****15] see *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal. App. 3d 521, 548-549 [234 Cal. Rptr. 795].)⁵

CA(3a)[↑] (3a) Defendants urge, however, that plaintiffs essentially are seeking resolution of a "tax" question -- the validity *vel non* of their unemployment tax contributions -- but have failed to satisfy the special procedures applicable to such

⁴ Amicus curiae briefs were filed on behalf of plaintiffs by (1) the League of California Cities, the Association of California Water Agencies, and the Fire District Association of California, and (2) the County of Los Angeles and the County Supervisors Association of California.

⁵ In 1986, the Legislature repealed sections 2250-2255 of the Revenue and Taxation Code. (Stats. 1986, ch. 879, §§ 37-48, p. 3047.) The Board's functions have been transferred to the Commission on State Mandates (Commission), but the procedures for administrative and judicial determination of subvention disputes remain functionally similar. (Gov. Code, §§ 17500 et seq., 17600 et seq.)

cases. Defendants insist that because article XIII, section 32, of the California Constitution broadly precludes any suit to enjoin or impede collection of a tax [****16] (e.g., Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal. 3d 805, 838-841 [258 Cal. Rptr. 161, 771 P.2d 1247]; Western Oil & Gas Assn. v. State Bd. of Equalization (1987) 44 Cal. 3d 208, 213 [242 Cal. Rptr. 334, 745 P.2d 1360]; Pacific Gas & Electric Co. v. State Bd. of Equalization (1980) 27 Cal. 3d 277, 279-284 [165 Cal. Rptr. 122, 611 P.2d 463]), plaintiffs' claims for declaratory and injunctive relief are barred.

The only remedy constitutionally open to plaintiffs, defendants assert, is to pay their unemployment "taxes" and then seek a "refund" under the "exclusive" procedures set forth in the Unemployment Insurance Code. (Unemp. Ins. Code, §§ 1176 et seq., 1241, subd. (a).) Insofar as plaintiffs' complaint *does* seek reimbursement for past contributions, defendants suggest, plaintiffs have not correctly pursued the Unemployment Insurance Code procedures.

We question, but do not decide, whether a *public entity's* contributions to the state unemployment insurance system can ever constitute a "tax" subject [*63] to article XIII, section 32. Even if so, [****17] defendants' claim lacks merit under the circumstances presented here.

"The policy behind [article XIII,] section 32 is to allow revenue collection to continue during [tax] litigation so that essential public services dependent on the funds are not unnecessarily disrupted. [Citation.]" (Pacific Gas & Electric Co., supra, 27 Cal. 3d at p. 283.) The administrative "refund" procedures established by the unemployment insurance law are designed to ensure initial examination of unemployment tax disputes by the agency with specific expertise in that area.

However, plaintiffs attempt no challenge, direct or indirect, to the validity or application of the unemployment insurance [**528] [***145] law as such, or to the propriety of any "tax" assessed

thereunder. Nor have plaintiffs bypassed the agency or procedures established to decide such disputes.

Rather, plaintiffs claim that *all* their costs of affording unemployment compensation to their employees are subject to a statutory and constitutional *subvention* which the state refuses to make. It is incidental that these costs happen to include what might be characterized as a "tax." As the subvention [****18] statutes require, plaintiffs City and County have pursued all available remedies before the agency (formerly the Board, now the Commission) created to decide *subvention* issues; that agency has upheld their submitted claims in full, but the necessary appropriations have been withheld.

Under these circumstances, the Legislature has concluded that a local entity should be forced to continue incurring the unfunded costs subject to "refund." Rather, the HN5[↑] entity is expressly authorized to bring suit to declare such an unfunded mandate *unenforceable*. (Rev. & Tax. Code, former § 2255, subd. (c); Gov. Code, § 17612, subd. (b).) ⁶

The importance of such a remedy stems from the fundamental legislative prerogative to control [****19] appropriations. CA(4)[↑] (4) HN6[↑] Under the separation of powers doctrine, the Legislature cannot be compelled to appropriate or authorize the disbursement of specific funds. (Mandel v. Myers (1981) 29 Cal. 3d 531, 540 [174 Cal. Rptr. 841, 629 P.2d 935].) Since the Legislature will have demonstrated its refusal to fund a particular mandate by the time a mandamus action is filed, the literal "tax refund" process urged by defendants may often be meaningless.

CA(3b)[↑] (3b) Insofar as plaintiffs also seek

⁶Indeed, when the City filed protective claims for "refund" with EDD in the wake of *Sacramento I*, that agency consistently disclaimed authority to decide the subvention issue presented and ["suggested"] that the City pursue its remedies before the Commission.

reimbursement for past expenses, similar considerations dictate that the governing statutes are those created [*64] to resolve subvention problems rather than garden-variety disputes over the unemployment insurance tax.⁷ We find nothing in the language, history, or purpose of article XIII, section 32, or of the unemployment insurance law, which bars the instant complaint. We therefore have jurisdiction to decide whether chapter 2/78 constitutes a reimbursable mandate.

[****20] III. Collateral Estoppel; Res Judicata.

CA(5a)[↑] (5a) However, *plaintiffs* claim that because *Sacramento I* "finally" decided whether chapter 2/78 constitutes a reimbursable state mandate, the *state* and its agents are collaterally estopped from relitigating the issue here. The Court of Appeal agreed that the doctrine of collateral estoppel applies. Under the circumstances, we are not persuaded.

CA(6)[↑] (6) HN8[↑] Generally, collateral estoppel bars the party to a prior action, or one in privity with him, from relitigating issues finally decided against him in the earlier action. (*Clemmer v. Hartford Insurance Co.* (1978) 22 Cal. 3d 865, 874 [151 Cal. Rptr. 285, 587 P.2d 1098].) ". . . But when the issue is a question of law rather than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed. [Citations.] . . ." (*Consumers Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal. 3d 891, 902 [160 Cal. Rptr. 124, 603 P.2d 41].)

CA(5b)[↑] (5b) Even if the formal prerequisites for collateral estoppel are present here, the public-

⁷As we note above, **HN7[↑]** courts are powerless to compel appropriations per se. However, that fact does not render a prayer for reimbursement of *past* costs wholly meaningless. California courts have previously recognized judicial power to fashion other appropriate reimbursement remedies. (See, e.g., *Carmel Valley Fire Protection Dist.*, *supra*, 190 Cal. App. 3d at pp. 550-552; also cf. *Mandel*, *supra*, 29 Cal. 3d at pp. 535-537, 539-552.) Such power is especially important where subvention is constitutionally compelled.

interest [****21] exception governs. Whether chapter 2/78 costs are reimbursable under [**529] [***146] article XIII B and parallel statutes constitutes a pure question of law. The *state* was the losing party in *Sacramento I*, and also the only entity legally affected by that decision. Thus, strict application of collateral estoppel would foreclose any reexamination of the holding of that case. The state would remain bound, and no other person would have occasion to challenge the precedent.

Yet the consequences of any error transcend those which would apply to mere private parties. If the result of *Sacramento I* is wrong but unimpeachable, taxpayers statewide will suffer unjustly the consequences of the state's continuing obligation to fund the chapter 2/78 costs of local agencies. On the other hand, if the state fails to appropriate the funds to meet this [*65] obligation, and chapter 2/78 therefore cannot be enforced (Rev. & Tax. Code, former § 2255, subd. (c); Gov. Code, § 17612, subd. (b)), the resulting failure to comply with federal law could cost California employers millions.⁸ **CA(7)[↑] (7) (See fn. 9.) CA(5c)[↑] (5c)** Under these circumstances, neither [****22] stare decisis nor collateral estoppel can permanently foreclose our ability to examine the reimbursability of chapter 2/78 costs.⁹

⁸For these reasons, this case is distinguishable from *Slater v. Blackwood* (1975) 15 Cal. 3d 791 [126 Cal. Rptr. 225, 543 P.2d 593], cited by the Court of Appeal. *Slater*, a suit between private parties, held only that the "injustice" exception to the rule of collateral estoppel cannot be based *solely* on an intervening change in the law. (P. 796.) Here, as we note, overriding public-interest issues are involved.

⁹By the same token, the state has not ignored available remedies or otherwise "waived" its right to argue the issues presented by this appeal. The state immediately raised the applicability of *County of Los Angeles* to this suit once our decision therein became final.

Plaintiffs claim the instant trial court had no power to grant summary judgment for defendants on authority of *County of Los Angeles*. *Plaintiffs* assert that because defendants failed to seek timely mandamus review of the prior, contrary order granting summary adjudication of issues in *plaintiffs'* favor, the issues decided by the earlier order must be "deemed established." (See *Code Civ. Proc.*, § 437c, subd. (f).) We disagree. Failure to challenge a summary adjudication order by the *discretionary* avenue of writ review cannot

[****23] CA(8) (8) As below, plaintiffs also argue that reconsideration of *Sacramento I* is precluded by res judicata. They suggest that the prior litigation resolved not only the *legal issues* presented by this appeal, but all *claims* among the current parties as well.

Of course, HN9 res judicata and the rule of final judgments bar us from disturbing individual claims or causes of action, on behalf of specific agencies, which have been finally adjudicated and are no longer subject to review. (Code Civ. Proc., § 1908 et seq.; Slater, supra, 15 Cal. 3d at p. 796; Bernhard v. Bank of America (1942) 19 Cal.2d 807, 810 [122 P.2d 892].) However, the issues presented in the current action are not limited to the validity of any such finally adjudicated individual claims. Rather, they encompass the question of defendants' subvention obligations *in general* under chapter 2/78. We therefore conclude that defendants may contend in this lawsuit that chapter 2/78 is not a reimbursable state mandate.¹⁰ We turn to the merits of that issue.

[****24] [*66] IV. "New Program" or "Increased Service"?

CA(9a) (9a) As below, defendants urge that by extending unemployment insurance coverage to local government employees, the Legislature did not mandate a "new program" or an "increased" or "higher level of service" on local governments. Thus, [**530] [***147] they assert, the local costs of providing such coverage are not subject to

foreclose a party from asserting *subsequent* changes in law which render such a pretrial order incorrect.

¹⁰ Plaintiffs imply that because the original claims by the City and the County were filed decided as statutory "test claims" (Rev. & Tax. Code, former §§ 2218, 2253.2; see now Gov. Code, §§ 17555, 17557), the "cause of action" adjudicated therein encompasses *all* claims by *all* local agencies for *all* years. However, the obvious purpose of the statutory "test claim" procedure is to resolve the *legal issue whether particular state legislation creates a reimbursable mandate*, not to adjudicate every individual claim for reimbursement which may thereafter accrue. The "test claim" result has *precedential* effect for all subsequent claims, but res judicata effect only for the individual claims which were actually adjudicated.

subvention under article XIII B, section 6, or parallel statutes. (Rev. & Tax. Code, former §§ 2207, 2231, subd. (a); Gov. Code, §§ 17514, 17561, subd. (a).) The trial court granted summary judgment for defendants on this basis. Contrary to the conclusions reached by the Court of Appeal, the trial court's ruling was correct.

Our analysis is controlled by our decision in *County of Los Angeles*. There we determined that a general increase in workers' compensation benefits did not, when applied to local governments, constitute a reimbursable state mandate under article XIII B.

In so holding, we focused on the particular language of article XIII B, section 6, which requires state subvention of a local government's costs of any "new program" [****25] or "increased level of service" imposed upon it by the state. We dismissed the notion that, by employing the quoted phrases, the voters intended *all* local costs resulting from compliance with state law to be subject to mandatory reimbursement. Rather, we explained, "[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. . . ." (43 Cal. 3d at p. 56.)

Under these circumstances, we reasoned, the electorate must have intended the undefined terms "new program" and "increased level of service" to carry their "commonly understood 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." (*Ibid.*, italics added.)

Local governments' costs of complying [****26] with a general statewide increase in the level of workers' compensation benefits do not qualify under these standards, we concluded. As we noted,

". . . [HN10] workers'] compensation is not a program administered by local agencies to provide service to the public. CA(10) (10) (See fn. 11.) Although local agencies must provide benefits to [*67] their employees . . . , they are indistinguishable in this respect from private employers. . . ." (*Id.*, at p. 58.)¹¹

[****27] CA(9b) (9b) Similar considerations apply here. By requiring local governments to provide unemployment compensation protection to their own employees, the state has not compelled provision of new or increased "service to the public" at the local level. Nor has it imposed a state policy "[uniquely]" on local governments. Most private employers in the state already were required to provide unemployment protection to their employees. Extension of this requirement to local governments, together with the state government and nonprofit corporations, merely makes the local agencies [*531] [****148] "indistinguishable in this respect from private employers."

Plaintiffs nonetheless suggest there are several bases for reaching a different result here than in *County of Los Angeles*. None of the asserted distinctions has merit.

¹¹ While our discussion centered on the meaning of section 6 of article XIII B, it relied heavily on the legislative history of parallel provisions of the 1972 and 1973 property tax relief statutes. When article XIII B was adopted in November 1979, the Revenue and Taxation Code already required state subvention of local "[costs] mandated by the state," defined as "any increased costs which a local agency is required to incur as a result of . . . [para.] [any] law enacted after January 1, 1973, which mandates a *new program* or an *increased level of service* of an existing program." (Rev. & Tax. Code, former §§ 2207 [italics added], 2231, subd. (a).) However, a further statutory definition of "increased level of service" to include any state mandate "which makes necessary expanded or additional costs to a county, city and county, city, or special district" had been repealed in 1975. (*County of Los Angeles*, 43 Cal. 3d at p. 55; see Rev. & Tax. Code, former § 2231, subd. (e), repealed by Stats. 1975, ch. 486, § 6, p. 999.) We found the repealer significant to the limited meaning of the statutory term "increased level of service" as later incorporated in article XIII B. (43 Cal. 3d at pp. 55-56.) Our implicit conclusion, which we now make explicit, was that the statutory and constitutional concepts of reimbursable state-mandated costs are identical.

Plaintiffs first note the proponents' declaration in the voters' pamphlet that the purpose of article XIII B, section 6, was to prevent the state from "forcing" unfunded programs on local agencies. Plaintiffs invoke this pamphlet language for the proposition that any new cost "forced" on local governments by state law is subject to subvention.

The [****28] claim is directly contrary to our holding in *County of Los Angeles*. As we explained, "[in] . . . context, the [pamphlet] phrase to force *programs* on local governments' confirms that HN11 the intent underlying section 6 [of article XIII B] was to require reimbursement to local agencies for the costs involved in carrying out *functions peculiar to government*, not for expenses incurred by local agencies as an *incidental impact* of laws that apply generally to all state residents and entities. . . . [para.] The language of section 6 is far too vague to support an inference that . . . each time the Legislature [*68] 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. . . ." (43 Cal. 3d at pp. 56-57, italics added.)¹²

[****29] Plaintiffs next urge the Court of Appeal's premise -- that chapter 2/78 did impose a "unique" requirement on local agencies within the meaning of *County of Los Angeles*, since it applied only to them, and compelled costs to which they were not previously subject. Plaintiffs cite our recent decision in *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal. 3d 830 [244 Cal. Rptr. 677, 750 P.2d 318]. There we held, inter alia, that by requiring each local school district to contribute

¹² Indeed, our reasoning here was expressly foreshadowed in *County of Los Angeles*. There we observed: "The Court of Appeal reached a different conclusion in [*Sacramento*], with respect to a newly enacted law requiring that all public employees be covered by unemployment insurance. Approaching the question as . . . 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." (43 Cal. 3d at p. 58, fn. 10.)

part of the expense of educating its handicapped students in state-run schools -- a cost previously absorbed entirely by the state -- the Legislature created a "new program" subject to subvention under article XIII B, section 6. As we observed, "although the schools for the handicapped have been operated by the state for many years, the program was *new insofar as [the local districts] are concerned . . .*" (P. 835, italics added.)

Lucia Mar is inapposite here. The education of handicapped students was clearly a traditional governmental "service to the public," and it qualified as a "program" on that basis. This function had long been performed by the state, [****30] and the only issue was whether the belated shifting of the program's costs to local governments made it "new" for subvention purposes. A negative answer to that question would have undermined a central purpose of article XIII B, section 6 -- to prevent the state's transfer of the *cost of government* from *itself* to the local level.

Here, the issue is whether costs *unrelated* to the provision of public services are *nonetheless* reimbursable costs of government, because they are imposed on local governments "[uniquely]," and not merely as an incident of compliance with general laws. State and local governments, and nonprofit corporations, had previously enjoyed a special *exemption* from requirements imposed on most other employers in the state and nation. Chapter 2/78 merely eliminated the exemption and made these previously exempted entities subject to the general rule. By doing so, it may have imposed a requirement "new" to local agencies, but that requirement was not "unique."

[*69] [**532] [***149] The distinction proposed by plaintiffs would have an anomalous result. The state could avoid subvention under *County of Los Angeles* standards by [****31] imposing new obligations on the public and private sectors *at the same time*. However, if it chose to proceed by stages, extending such obligations first to private entities, and only later to local

governments, it would have to pay. This was not the intent of our recent decision.

Next, plaintiffs complain that the new costs imposed on local governments by chapter 2/78 are too great to be deemed "incidental" within the meaning of *County of Los Angeles*. However, our decision did not use the word "incidental" to mean merely "insignificant in amount." Rather, we declared that the state need not reimburse local governments for expenses *incidentally imposed* upon them by laws of general application. In *County of Los Angeles*, we assumed that the expenses imposed *in common* on the private and public sectors by such a general law -- as by the across-the-board increase in workers' compensation benefits there at issue -- might be substantial. Notwithstanding this possibility, we found the voters did not intend to require a state subsidy of the public sector in such cases. (43 Cal. 3d at pp. 56-58.)

Finally, plaintiffs and their amici curiae urge us to overrule [****32] *County of Los Angeles*. They insist that our "program" and "unique requirement" limitations conflict with the language and purpose of article XIII B. First, they note that *nonreimbursable* state-mandated costs are expressly listed in subdivisions (a) through (c) of article XIII B, section 6.¹³ Under the maxim *inclusio unius est exclusio alterius*, they reason, further exceptions may not be implied. Second, they assert, our limiting construction allows the state to "force" many costly but unfunded requirements on local governments, which the latter must absorb without relief from their own article

¹³ Article XIII B, section 6, provides that the state shall provide a subvention of funds to reimburse a local agency for costs incurred by the agency "[whenever] the [state] mandates [on the agency] a new program or higher level of service . . . , except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [para.] (a) Legislative mandates requested by the local agency affected; [para.] (b) Legislation defining a new crime or changing an existing definition of a crime; or [para.] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

XIII B spending limits. This, they aver, cannot have been the voters' intent.

[****33] These arguments misapprehend both the language of article XIII B, section 6, and our *County of Los Angeles* holding. Our reasoning in that case is not inconsistent with subdivisions (a) through (c) of section 6. Those paragraphs simply exclude certain state-imposed costs *even if they would otherwise be reimbursable under the "new program" or "increased service" [*70] standards.* Subdivisions (a) through (c) do not purport to define what constitutes a "new program" or "increased level of service."

Moreover, the "program" and "service" standards developed in *County of Los Angeles* create no undue risk that the state will impose expensive unfunded obligations against local agencies' article XIII B spending limits. On the contrary, our standards require reimbursement whenever the state freely chooses to impose on local agencies *any* peculiarly "governmental" cost which they were not previously required to absorb.

On the other hand, as we explained in *County of Los Angeles*, extension of the subvention requirements to costs "incidentally" imposed on local governments would require the Legislature to assess the fiscal effect on local agencies of each law of general [****34] application. Moreover, it would subject much general legislation to the supermajority vote required to pass a companion local-government revenue bill. Each such necessary appropriation would, in turn, cut into the *state's* article XIII B spending limit. (§ 8, subd. (a).) We concluded that nothing in the language, history, or apparent purpose of article XIII B suggested such far-reaching limitations on [**533] [***150] legitimate state power. (43 Cal. 3d at pp. 56-58.)

We remain persuaded by this reasoning.¹⁴ We

¹⁴Nor do we agree that subvention depends on whether the "benefit" of a state-imposed local requirement falls principally at the state or local level. Attempts to apply such a "benefit" test to the myriad of

decline to overrule *County of Los Angeles*. Under the teaching of that case, we hold that chapter 2/78 imposes no local costs which must be reimbursed pursuant to article XIII B, section 6, and parallel statutes.

[****35] V. "Federal" Mandate?

CA(11a)[↑] (11a) This case proceeded through the Court of Appeal solely on the issue whether chapter 2/78 constitutes a reimbursable "state mandate," as defined in *County of Los Angeles*. After we granted review, and in the public interest, we also decided to reexamine a related holding contained in *Sacramento I* -- that chapter 2/78 does not qualify as a "federal" mandate.

Proper application of the "federal mandate" concept has important implications beyond subvention. **HN12[↑]** A "cost mandated by the federal government" is exempt from a local government's statutory taxation limit. (Rev. & Tax. Code, § 2271.) Moreover, an appropriation required to comply with a [*71] federal mandate is excluded from the constitutional spending limit of any affected entity, state or local (Cal. Const., art. XIII B, § 9, subd. (b).) Accordingly, we requested supplemental briefs on this question.¹⁵

[****36] After due consideration, we reject *Sacramento I's* premise. We conclude that chapter 2/78 does impose "costs mandated by the federal government," as described in article XIII B and parallel statutes.¹⁶

individual cases could easily produce debates bordering on the metaphysical. Nothing in the language or history of article XIII B, or prior subvention statutes, suggests an intent to force such debates upon the Legislature each time it considers legislation affecting local governments.

¹⁵For the reasons expressed in part III, *ante*, our consideration of this issue is not foreclosed by principles of collateral estoppel.

¹⁶In *Sacramento I*, both the parties and the Court of Appeal assumed that if a cost was "federally mandated," it was therefore *not* a "state mandated" cost subject to subvention. In other words, it was assumed, an expense could not be both "state mandated" and "federally mandated," even if imposed by the state under federal compulsion. It was in this context that *Sacramento I* addressed the

[****37] HN13[↑]

Article XIII B, section 9(b), defines federally mandated appropriations as those "required for purposes of complying with mandates of . . . the federal government which, *without discretion*, require an expenditure for additional services or which *unavoidably make the providing of existing services more costly*." (Italics added.)

As in *Sacramento I*, plaintiffs argue that the words "without discretion" and "unavoidably" require clear *legal* compulsion not present in Public Law 94-566. Defendants respond, as before, that the consequences of California's failure to comply with the federal "carrot and stick" scheme were so substantial that the state had no realistic "discretion" to refuse.¹⁷ In *Sacramento I*, the Court of Appeal adopted plaintiffs' narrow view. On reflection, we disagree.

[****38] Though section 9(b) seems plain on its face, we find a latent ambiguity in context. At the time article XIII B was adopted, United States Supreme Court decisions construing the Tenth Amendment *severely* [**534] [***151] *limited* federal power to dictate policy or programs to the sovereign states or their subdivisions.¹⁸ Indeed, by

"federal mandate" issue. (See also *Carmel Valley Fire Protection Dist.*, *supra*, 190 Cal. App. 3d at p. 543.) We here express no view on the question whether "federal" and "state" mandates are mutually exclusive for purposes of state subvention, but leave that issue for another day. We decide only that, insofar as an expense is "federally mandated," as described in the state Constitution and statutes, it is exempt from the pertinent taxation and spending limits.

¹⁷Ironically, the local agencies here argue *against* a "federal mandate," with the state in opposition to that view. An anti-"federal mandate" position seems directly contrary to the local agencies' interests, since its acceptance would mean the agencies are not eligible for exemptions from their pertinent taxing and spending limits. However, all parties appear still bound by the premise of *Sacramento I* that if a cost is "federally mandated," it is ineligible for state subvention. As noted above (see fn. 16, *ante*), we do not decide that issue here.

¹⁸HN14[↑] The Tenth Amendment to the United States Constitution provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

its early ruling that federal unemployment-insurance [*72] laws did not violate state sovereignty insofar as they merely employed a "carrot and stick" to induce state compliance (*Steward Machine Co. v. Davis*, *supra*, 301 U.S. 548, 585-593 [81 L. Ed. 1279, 1290-1294]), the high court helped set the stage for two generations of pervasive federal regulation by this indirect means.¹⁹

[****39] Just three years before article XIII B was adopted, the court struck down, on Tenth Amendment grounds, Congress's effort to extend the minimum-wage and maximum-hour requirements of the Fair Labor Standards Act directly to local government employees. (*National League of Cities v. Usery* (1976) 426 U.S. 833 [49 L. Ed. 2d 245, 96 S. Ct. 2465].) Overruling earlier authority (see *Maryland v. Wirtz* (1968) 392 U.S. 183 [20 L. Ed. 2d 1020, 88 S. Ct. 2017]), the court held in *Usery, supra*, that constitutional principles of federalism prohibit Congress from using its otherwise "plenary" commerce power against the "States as States," so as to interfere with the essential "attributes of [state government] sovereignty." (426 U.S. at pp. 840-855 [49 L. Ed. 2d at pp. 250-260].) Accordingly, said the court, Congress could not "force directly upon the States its choices as to how essential decisions regarding the conduct of integral governmental functions are to be made. . . ." (*Id.*, at p. 855 [49 L. Ed. 2d at p. 259].)

Usery dealt with federal efforts to regulate sovereign units of government as employers.

[****40] However, the court's rationale obviously

¹⁹The traditional categorical-aid provisions of the Social Security Act (e.g., 42 U.S.C. §§ 301 et seq. [old-age assistance], 601 et seq. [aid to needy families with dependent children], 1201 et seq. [aid to the blind], 1351 et seq. [aid to the permanently and totally disabled]), and statutes concerned with occupational safety and health (e.g., 29 U.S.C. § 651 et seq.), highways and mass transit (e.g., 23 U.S.C. § 101 et seq.), education (e.g., 20 U.S.C. § 241a et seq.), and air and water pollution (e.g., 33 U.S.C. §§ 1251 et seq., 1311 et seq.; 42 U.S.C. § 7401 et seq.) are but a few examples of federal laws imposing greater or lesser degrees of inducement to state and local compliance with federal policies and programs.

applied with equal or greater force to direct federal regulation of state and local governments *as governments*. Under *Usery's* reasoning, it seems manifest that Congress's direct power to require or prohibit substantive governmental policies or programs by state or local agencies was greatly curtailed. Such power would interfere impermissibly with "integral governmental functions" and essential "attributes of [state] sovereignty."²⁰

[****41] [*73] After article XIII B's adoption, both the result and the reasoning of *Usery* were overruled in *Garcia v. San Antonio Metro. Transit Auth.* (1985) 469 U.S. 528 [83 L. Ed. 2d 1016, 105 S. Ct. 1005]. In *Garcia*, a five-justice majority concluded that the political structure of the federal system, rather than rigid categories of inviolable state "sovereignty," constitutes state and local governments' primary protection against Congress's overreaching efforts to regulate them. (Pp. 547-555 [83 L. Ed. 2d at pp. 1031-1037].)

However, this later development does not alter two crucial facts extant when article XIII B was enacted. First, the power of the federal government to impose its direct [*535] [***152] regulatory will on state and local agencies was *then* sharply in doubt. Second, in conformity with this principle, the vast bulk of cost-producing federal influence on government at the state and local levels was by inducement or incentive rather than direct

²⁰ *Hodel v. Virginia Surface Mining & Recl. Assn.* (1981) 452 U.S. 264 [69 L. Ed. 2d 1, 101 S. Ct. 2352] later implicitly confirmed this premise. There, Virginia mine operators challenged a federal surface-mining regulatory scheme on grounds it displaced state authority and sovereignty. The federal law imposed minimum federal standards, to be enforced by federal or state officials at the state's choice, and allowed states to take over regulation by imposing equal or higher standards of their own. (30 U.S.C. §§ 1201 et seq., 1251-1254.) The court upheld the program, noting it regulated private persons, not the "States as States." Moreover, said the court, since states were not ordered to adopt their own surface-mining standards, "there can be no suggestion that the Act commandeers the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program. [Citations.] . . ." (452 U.S. at pp. 286-288 [69 L. Ed. 2d at pp. 22-24].)

compulsion.²¹ That remains so to this day.

[****42] Thus, if article XIII B's reference to "federal mandates" were limited to strict legal compulsion by the federal government, it would have been largely superfluous.²² CA(12)[*] (12) It is well settled that "HN15[*] constitutional . . . enactments must receive a liberal, practical common-sense construction which will meet changed conditions and the growing needs of the people. [Citations.] . . ." (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal. 3d 208, 245 [149 Cal. Rptr. 239, 583 P.2d 1281].) While "[a] constitutional amendment should be construed in accordance with the natural and ordinary meaning of its words[,] [citation] [, the] literal language of enactments may be disregarded to avoid absurd results and to fulfill the apparent intent of the framers. [Citations.]" (*Ibid.*)

[****43] CA(11b)[*] (11b) As the drafters and adopters of article XIII B must have understood, certain regulatory standards imposed by the federal government [*74] under "cooperative federalism" schemes are coercive on the states and localities in every practical sense. The instant facts amply illustrate the point. Joint federal-state operation of

²¹ The United States Constitution includes specific limitations on the subject-matter jurisdiction of state and local governments (art. I, § 10), imposes certain direct obligations and restrictions on the "States as States" (e.g., art. I, § 2, cls. 1, 4; art. I, § 3, cls. 1, 2; art. II, § 1, cl. 2; art. IV, §§ 1, 2, cls. 1, 2; Amends. XIV, XV), and grants Congress power to prevent denial of certain constitutional rights by the states (Amends. XIII, XIV, XV). Obviously, however, these provisions account for only a minute portion of the costs incurred by state and local governments as a result of federal programs and regulations.

²² For this reason, federal cases cited by plaintiffs and their amici curiae for the proposition that Public Law 94-566 is not "coercive" (e.g., *County of Los Angeles, Cal. v. Marshall* (D.C. Cir. 1980) 631 F.2d 767 [203 App. D.C. 185]; *State, etc. v. Marshall* (1st. Cir. 1980) 616 F.2d 240) are inapposite. Those decisions applied *Tenth Amendment* principles to determine whether Public Law 94-566 was constitutionally valid. Had Public Law 94-566 been struck down on this ground, it would *not* have resulted in local costs to which the "federal mandate" provisions of article XIII B might extend. Thus, applying the *Tenth Amendment* cases to determine whether a cost is "federally mandated" for purposes of article XIII B presents a problem in circular reasoning.

a system of unemployment compensation has been a fundamental aspect of our political fabric since the Great Depression. California had afforded federally "certified" unemployment insurance protection to its workers for over 40 years by the time Public Law 94-566, chapter 2/78, and article XIII B were adopted. Every other state also operated such a system. If California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty -- full, double unemployment taxation by both state and federal governments. Besides constituting an intolerable expense against the state's economy on its face, this double taxation would place California employers at a serious competitive disadvantage against their counterparts in states which remained in federal compliance.

Plaintiffs and their amici curiae [****44] suggest California could have chosen to terminate its own unemployment insurance system, thus leaving the state's employers faced only with the federal tax. However, we cannot imagine the drafters and adopters of article XIII B intended to force the state to such draconian ends.

Here, the 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. We therefore conclude that the state acted in response to a federal "mandate" for purposes of article XIII B.²³

²³The dissent cites two older cases for the premise that in antidebt and antispending measures, the exception recognized for "mandatory" costs and expenditures has traditionally been limited to obligations imposed by law. Neither cited decision is dispositive or persuasive here.

County of Los Angeles v. Byram (1951) 36 Cal.2d 694 [227 P.2d 4], and the cases therein cited, concern the constitutional provision (Cal. Const., former art. XI, § 18, see now art. XVI, § 18 (hereafter section 18)) which prohibits local governments, absent voter approval, from incurring debts or liabilities which exceed in any year the income or revenue provided for such year. Section 18 is *absolute on its face* and, unlike article XIII B, it contains *no express exception* for mandatory expenses. Though sometimes founded on contorted

[****45] [*75] [**536] [***153] Unlike the *Sacramento I* court, we deem significant the Legislature's persistent agreement with our construction. In 1980, after the adoption of article XIII B, it amended the statutory definition of "costs mandated by the federal government" to provide that these include "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. . . .*" (Rev. & Tax. Code, § 2206, italics added; Stats. 1980, ch. 1256, § 3, p. 4247.)

In *Sacramento I*, the Court of Appeal declined to apply this statutory amendment "retroactively" to article XIII B. (156 Cal. App. 3d at pp. 197-198.) The Legislature immediately responded. In 1984 statutes enacted for the express purpose of "[implementing]" article XIII B (see Gov. Code, § 17500), the Legislature reiterated its 1980 definition. (*Id.*, § 17513; Stats. 1984, ch. 1459, § 1,

linguistic analyses (see, e.g., *City of Long Beach v. Lisenby* (1919) 180 Cal. 52, 56 [179 P. 198]), the *implied* exceptions to section 18, as recognized in *Byram* and other cases, arise from a rule of necessity and despite the absolute constitutional language. Such implied exceptions must, of course, be narrowly confined.

On the other hand, *County of Los Angeles v. Payne* (1937) 8 Cal.2d 563 [66 P.2d 658], also cited by the dissent, construed former Political Code section 3714, which limited a local government's annual expenditures to its previously adopted budget. Section 3714 *did* contain an express exception for "mandatory expenses *required by law.*" (Italics added.) *Payne's* adherence to the explicit terms of the statutory exception is hardly remarkable.

In contrast with the measure considered in *Byram*, article XIII B and the Revenue and Taxation Code *do* expressly exempt "federally mandated" expenses from the pertinent taxation and appropriations limits. Unlike the measure construed in *Payne*, neither article XIII B nor the Revenue and Taxation Code expressly limit their exemptions to obligations "required by law." Article XIII B uses the broader terms "unavoidably" and "without discretion," suggesting recognition by the drafters and voters that forces beyond strict legal compulsion may produce expenses that are realistically involuntary. The Revenue and Taxation Code explicitly includes coercive federal "carrot and stick" requirements within the federally "mandated" costs exempt from statutory property tax limits. (Rev. & Tax. Code, § 2206.)

p. 5114.)²⁴

[****46] Plaintiffs contend that these statutory pronouncements deserve little interpretive weight since, among other things, they are "internally inconsistent." Plaintiffs stress the proviso in Revenue and Taxation Code, section 2206, and in Government Code, section 17513, that the phrase "[costs] mandated by the federal government" does *not* include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the *option* of the state, local agency, or school district." (Italics added.)

We see no fatal inconsistencies. The first clause of the proviso merely confirms, as article XIII B itself specifies, that program funds voluntarily provided by another unit of government may not be excluded from the [*76] spending limits of recipient local agencies. (Compare art. XIII B, §§ 8, subd. (b), 9(b).) The second clause isolates a concern which we share -- that state or local governments might otherwise claim "federally mandated costs" even where participation in a federal program, or compliance with federal "standards," is a matter of true choice. (Cf. [****47], e.g., *Carmel* [**537] [***154] *Valley Fire Protection Dist., supra*, 190 Cal. App. 3d at pp. 542-544.)²⁵

²⁴ Plaintiffs suggest that by reenacting this language in the wake of *Sacramento I*, the Legislature "acquiesced" in the Court of Appeal's narrow definition of "costs mandated by the federal government." We are not persuaded. *Sacramento I* did not *construe* the statutory language; it simply found a postdated statute *irrelevant* to the proper interpretation of article XIII B. By later readopting its expanded definition in statutes designed to "implement" article XIII B, the Legislature expressed its disagreement with *Sacramento I*, not its acquiescence. Contrary to the implications of *Sacramento I*, legislative efforts to resolve ambiguities in constitutional language are entitled to serious judicial consideration. (See authorities cited *ante*.)

²⁵ In the *Carmel Valley* case, the state claimed, among other things, that local costs of purchasing protective clothing and equipment for firefighters, as required by regulations under the California Occupational Safety and Health Act, constituted a nonreimbursable "federal mandate" because the California standards merely "implemented" federal law. However, the evidence was contrary; a letter from the federal Occupational Safety and Health

[****48] Given the variety of cooperative federal-state-local programs, we here attempt no final test for "mandatory" versus "optional" compliance with federal law. CA(13)[↑] (13) 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(b): neither state nor local agencies may escape their spending limits when their participation in federal programs is truly voluntary.

CA(11c)[↑] (11c) For reasons expressed above, we are satisfied under these standards that chapter 2/78 did implement a federal "mandate" within the meaning of article XIII B and prior statutes restricting local taxation. Hence, subject to superseding constitutional ceilings on taxation by state and local governments, an agency governed by chapter 2/78 may tax and spend as necessary to meet the expenses [****49] required to comply with that legislation. To the extent *Sacramento I* is inconsistent with our analysis, that decision is disapproved.

VI. Conclusion.

We have concluded that chapter 2/78 is a "federal mandate" which exempts affected state and local agencies from pertinent limits on their power to tax, appropriate, and spend. However, local governments' expenses [*77] of complying with

Administration disclaimed federal jurisdiction over California's political subdivisions and stated that state and federal standards were independent. (190 Cal. App. 3d at pp. 543-544.) Examination of the pertinent statutory scheme reinforces the view that compliance with federal standards in this area is "optional" with the state. Other than loss of limited federal administrative funds (29 U.S.C. § 672(g)), the only sanction for California's decision not to maintain a federally approved occupational safety and health system is that federal standards, administered by federal personnel, will then prevail within the state. (*Id.*, § 667(b)-(h).)

chapter 2/78 are not subject to compulsory state subvention, because chapter 2/78 imposed no new or increased "program or service," and no "unique" requirement, on local agencies. The contrary judgment of the Court of Appeal is reversed.

Concur by: KAUFMAN

Dissent by: KAUFMAN

Dissent

KAUFMAN, J., Concurring and Dissenting.

I concur in the judgment. Given this court's decision in County of Los Angeles v. State of California (1987) 43 Cal. 3d 46 [233 Cal. Rptr. 38, 729 P.2d 202], I am compelled to agree that the obligation imposed on local governments by the 1978 state unemployment insurance legislation is not a "new program or higher level of service" within the meaning of article XIII B, section 6, of the California Constitution, and that for this reason the state is not constitutionally [****50] obligated to provide a subvention of funds to reimburse the unemployment insurance costs of local governments. I respectfully dissent, however, from the additional conclusion, stated in part V of the majority opinion, that these unemployment insurance costs are "mandates of . . . the federal government" and therefore exempt from the state and local government appropriation limits of article XIII B and from property taxation limits imposed by statute. In reaching this additional conclusion the majority decides an issue not raised by the parties and completely outside the scope of this action. As so often happens when a court reaches beyond the confines of the case before it to render a gratuitous [**538] [***155] advisory opinion, the majority decides the issue incorrectly.

All too frequently in recent years (see, e.g., S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal. 3d 341, 345, fn. 1 [256 Cal. Rptr. 543, 769 P.2d 399]) this court, in its misguided zeal to provide enlightenment, has

reached out to decide an issue not tendered by the parties. The majority's failure to exercise proper judicial restraint in the instant case [****51] is another example of this trend and one I find particularly disturbing since it violates a fundamental and venerable tenet of judicial practice -- i.e., "A court will not decide a constitutional question unless such construction is absolutely necessary." (Estate of Johnson (1903) 139 Cal. 532, 534 [73 P. 424]; accord, People v. Williams (1976) 16 Cal. 3d 663, 667 [128 Cal. Rptr. 888, 547 P.2d 1000]; Palermo v. Stockton Theatres, Inc. (1948) 32 Cal.2d 53, 65 [195 P.2d 1].) The federal mandate issue which the majority here decides, because it turns on the proper construction of article XIII B, section 9, of our state Constitution, is a constitutional issue. Using this case to resolve that issue is, to my mind, indefensible.

To see just how far the majority has wandered from the issues essential to the proper resolution of this case, one need only point out that this action [*78] was not brought to settle a dispute about taxation or appropriation limits, nor has this court been informed that any such dispute exists. Rather, this action was brought to enforce the holding in City of Sacramento v. State of California (1984) 156 Cal. App. 3d 182 [203 Cal. Rptr. 258] [****52] (Sacramento I), that the state is constitutionally obligated to reimburse the unemployment insurance costs of local governments. The governmental entities litigating this proceeding have not sought a judicial determination of the 1978 unemployment insurance legislation's effect on their statutory or constitutional taxing or spending limits, nor have they raised any issue regarding whether unemployment insurance costs are federally mandated for any purpose. The federal mandate issue was first injected into the case by this court when we requested additional briefing on the questions whether the unemployment insurance costs of local governments are federally mandated under article XIII B, section 9, of the state Constitution and, if so, whether this conclusion necessarily exempts the state from any obligation it might otherwise have to reimburse local

governments for these costs.

The majority's federal mandate discussion does not even provide an alternative ground for the holding denying reimbursement of local governments' unemployment insurance costs, for the majority purports to decide whether unemployment insurance costs are federally mandated without deciding whether resolution [****53] of this issue has any bearing on entitlement to reimbursement (see maj. opn., *ante*, p. 71, fn. 16). The majority's only justification for deciding whether unemployment insurance costs are federally mandated is that the issue has "important implications" inasmuch as federally mandated costs are "exempt from a local government's statutory taxation limit (Rev. & Tax. Code, § 2271)" and "from the constitutional spending limit of any affected entity, state or local (Cal. Const., art. XIII B, § 9, subd. (b))." (Maj. opn., *ante*, pp. 70-71.) But the present case is an inappropriate vehicle for deciding these weighty issues since neither the state nor the local entities have any reason to contest the other's exemptions from spending or taxation limits. In other words, the parties now before us are not adverse on these issues and so have not defined and argued opposing points of view with the vigor and thoroughness essential to proper judicial resolution of complex legal questions, particularly those of constitutional magnitude. Those who might have argued in favor of including unemployment insurance costs in the taxing and spending limits -- for example, [****54] the proponents of the initiative measure by which article XIII B was enacted -- are not represented in this proceeding.

Were the issue properly presented in this case, I would conclude that the unemployment insurance costs are not federally mandated. The text of a constitution "[**539] should be construed in accordance with [***156] the natural and ordinary meaning of its words." (Amador Valley Joint Union High Sch. Dist. v. [*79] State Bd. of Equalization (1978) 22 Cal. 3d 208, 245 [149 Cal. Rptr. 239, 583 P.2d 1281].) The language at issue

here excludes from the definition of "appropriations subject to limitation" those appropriations "required for purposes of complying with *mandates* of the courts or the federal government which, *without discretion, require* an expenditure for additional services or which *unavoidably* make the providing of existing services more costly." (Cal. Const., art. XIII B, § 9, subd. (b), italics added.)

The meaning of this language is clear; to look beyond the text for some other meaning is both unnecessary and improper under accepted rules of constitutional interpretation. (See State Board of Education v. Levit (1959) 52 Cal.2d 441, 462 [343 P.2d 8]; [****55] People v. Knowles (1950) 35 Cal.2d 175, 182-183 [217 P.2d 1].) A "mandate" is "an order, command [or] charge." (Xth Olympiad Com. v. American Olym. Assn. (1935) 2 Cal.2d 600, 604 [42 P.2d 1023]; see also, Morris v. County of Marin (1977) 18 Cal. 3d 901, 908 [136 Cal. Rptr. 251, 559 P.2d 606] ["mandatory duty" is "an obligatory duty which a governmental entity is required to perform"]; Bridgman v. American Book Co. (1958) 12 Misc.2d 63, 66 [173 N.Y.S.2d 502, 506] ["mandate" is "a command, order or direction . . . which a person is bound to obey"].) The mandates to which the constitutional provision at issue refers are those "of the courts or the federal government." The coercive force of court mandates is, of course, the force of law. That "mandates of . . . the federal government" are similarly limited to those obligations imposed by force of federal law is shown not only by the term "mandate" itself but also by the terms "without discretion" and "unavoidably," which plainly exclude any form of inducement using political or economic pressure rather than legal compulsion.

Laws limiting [****56] governmental appropriations and indebtedness have traditionally exempted two categories of expenditures: those required to meet emergencies and those required to satisfy duties or mandates imposed by law. (See, e.g., County of Los Angeles v. Byram (1951) 36 Cal.2d 694, 698-700 [227 P.2d 4]; County of Los Angeles v. Payne (1937) 8 Cal.2d 563, 569-575 [66

P.2d 658]; *State v. City Council of City of Helena* (1939) 108 Mont. 347 [90 P.2d 514, 516]; *Raynor v. King County* (1940) 2 Wn.2d 199 [97 P.2d 696, 707].) The latter category has been interpreted as including only those obligations compelled by force of law, as opposed to economic or political necessity or expedience. (See *County of Los Angeles v. Byram, supra*, at pp. 698-700; *County of Los Angeles v. Payne, supra*, at pp. 573-574.) Article XIII B of the California Constitution follows the pattern of other similar laws; it provides exemptions for emergency appropriations in section 3, subdivision (c), and for legal duties or "mandates" in section 9, subdivision (b). I see no basis for concluding that [****57] the term "mandate," which in the context of government debt and appropriation limitations has traditionally [*80] meant a duty imposed by force of law, has suddenly acquired a novel and more expansive meaning in section 9. On the contrary, the drafters of section 9 appear to have taken pains to avoid any such interpretation.

As stated in *Sacramento I*, "The concept of federal mandates . . . is defined in section 9 of article XIII B. Subdivision (b) of that section excludes from a governmental entity's appropriation limit [appropriations] required for purposes of complying with mandates of . . . the federal government which, *without discretion, require* an expenditure' by the governmental entity. (Italics added.) As contemplated by article XIII B, section 9, a federal mandate is one pursuant to which the federal government imposes a cost upon a governmental entity, and the entity has *no discretion* to refuse the cost. Chapter 2 [the 1978 unemployment insurance legislation] was not a federal mandate within this constitutional definition, as the State had the discretion to participate or not in the federal unemployment insurance system." (*Sacramento I, supra*, 156 Cal. App. 3d 182, 197, [****58] [***157] [**540] italics in original.) Giving the constitutional language its usual and ordinary meaning, I agree with the Court of Appeal that federal law "mandates" an expenditure only if the expenditure

is legally compelled, and not if the federal law merely provides economic or political inducements, no matter how powerful or coercive. Since it is undisputed that the state was under no legal compulsion to enact the 1978 unemployment insurance legislation, the burdens of that legislation are not "mandates of . . . the federal government."

In support of its contrary conclusion, the majority reasons as follows: (1) when article XIII B of the California Constitution was drafted and enacted, the Tenth Amendment to the United States Constitution had been construed to prohibit Congress from imposing costs on state and local governments; (2) as a result, virtually all federal laws imposing costs on state and local governments did so through "carrot and stick" incentive programs rather than by direct legal compulsion; and (3) the exemption for "mandates of . . . the federal government" must be construed to encompass at least some of these incentive programs because otherwise it [****59] would be almost entirely superfluous. I find each of these points highly questionable, if not demonstratively unsound.

First, the Tenth Amendment has never been interpreted as entirely prohibiting the federal government from imposing costs on state and local government. Rather, *National League of Cities v. Usery* (1976) 426 U.S. 833 [49 L. Ed. 2d 245, 96 S. Ct. 2465] defined an exception to the broad sweep of Congress's commerce clause authority. Under this exception, "traditional governmental functions" of state and local governments were protected from direct and intrusive federal regulation. (426 U.S. at p. 852 [49 L. Ed. 2d at pp. 257-258].) As explained in *Garcia v. San Antonio Metro. Transit* [*81] *Auth.* (1985) 469 U.S. 528, 538-547 [83 L. Ed. 2d 1016, 1025-1032, 105 S. Ct. 1005], the result was an inconsistent patchwork of decisions upholding or striking laws depending on whether the regulated activities were perceived by the court as being traditionally associated with state or local government or constituting "attributes of state sovereignty." Thus, a significant number of laws

imposing costs on state and local governments [****60] survived Tenth Amendment scrutiny even before the decision in *Garcia v. San Antonio Metro. Transit Auth.*, *supra*. (See, e.g., *EEOC v. Wyoming* (1983) 460 U.S. 226 [75 L. Ed. 2d 18, 103 S. Ct. 1054] [holding state and local government employee retirement policies subject to federal age discrimination regulations]; see generally, Skover, "Phoenix Rising" and *Federalism Analysis* (1986) 13 *Hastings Const. L.Q.* 271, 286-288.) More importantly, however, I see no reason to assume that the drafters of article XIII B intended that the federal mandate exemption would have broad application, encompassing a large number of federal programs. Rather, construing the exemption narrowly seems entirely consistent with the probable intent of those who drafted the provision.

The test proposed by the majority for identifying those incentive programs which qualify as "mandates of . . . the federal government" will require an extensive factual inquiry into the practical consequences of non-compliance with the federal law. It will be burdensome to apply and its outcome difficult to predict. Besides being wholly unnecessary to resolution of this case, [****61] and violating the probable intent of the voters who enacted article XIII B of the California Constitution,¹ the majority's discussion of the federal mandate issue is certain to generate more difficulties than it resolves.

End of Document

¹ Those voters no doubt will be upset to learn that their tax dollars will be dissipated in litigation to determine such metaphysical questions as whether a decision to participate in a federal program was "truly voluntary."

County of Los Angeles v. Commission on State Mandates

Court of Appeal of California, Second Appellate District, Division Seven.

February 24, 1995, Decided

No. B080938.

Reporter

32 Cal. App. 4th 805 *; 38 Cal. Rptr. 2d 304 **; 1995 Cal. App. LEXIS 161 ***; 95 Cal. Daily Op. Service 1419; 95 Daily Journal DAR 2488

COUNTY OF LOS ANGELES, Plaintiff and Appellant, v. COMMISSION ON STATE MANDATES, Defendant and Respondent; GRAY DAVIS, as Controller, etc., et al., Real Parties in Interest and Respondents.

Subsequent History: [***1] Review Denied May 11, 1995, Reported at: 1995 Cal. LEXIS 3339.

Prior History: Superior Court of Los Angeles County, No. BS020682, Diane Wayne, Judge.

Disposition: The judgment is affirmed. Respondents are awarded costs of appeal.

Core Terms

state mandate, reimburse, appropriation, costs, Budget, mandated, new program, substantial evidence, ancillary services, school district, provisions, Indigents, indigent defendant, constitutes, preparation, argues

Case Summary

Procedural Posture

Appellant county challenged the denial of its petition for a writ of mandate by the Superior Court of Los Angeles County (California). Appellants sought a writ of mandate compelling respondent commission to vacate its determination that Cal. Penal Code § 987.9 (1977) did not constitute a state mandate, for which the state was obligated to reimburse appellant pursuant to Cal. Const. art. XIII B, § 6.

Overview

In response to a test claim filed by appellant county for reimbursement of costs for ancillary services provided to indigent defendants, respondent commission determined that Cal. Penal Code § 987.9 (1977) did not constitute a state mandate, for which the state was obligated to reimburse appellant pursuant to Cal. Const. art. XIII B, § 6. Appellant petitioned for a writ of mandate compelling respondent to vacate its determination, which the trial court denied. Appellant sought review. The court applied the substantial evidence test and affirmed the denial of appellant's petition for a writ of mandate. The court held that a state mandate triggering reimbursement under Cal. Const. art. XIII B, § 6, did not exist because the requirements of the state statute were required by federal law. The requirement of Cal. Penal Code § 987.9 (1977) to pay for ancillary services codified the existing federal constitutional guarantees of due process under U.S. Const. amend XIV and the right to counsel under U.S. Const. amend VI. That the legislature initially provided funding under the statute was irrelevant because respondent had the sole authority to determine if a state mandate existed.

Outcome

The court affirmed the denial of appellant county's petition for a writ of mandate compelling respondent commission to vacate its determination that the statute requiring appellant to pay for ancillary services to indigent defendants was not a state-mandated program. As the duty to pay for

such services came from the Fourteenth Amendment and the Sixth Amendment right to counsel, there was no state mandate requiring reimbursement.

LexisNexis® Headnotes

Constitutional Law > State Constitutional Operation

HN1 [↓] **Constitutional Law, State Constitutional Operation**

See Cal. Const. art. XIII B, § 6.

Criminal Law &
Procedure > Trials > Defendant's Rights > General Overview

HN2 [↓] **Trials, Defendant's Rights**

See Cal. Penal Code § 987.9 (1977).

Governments > State & Territorial Governments > Finance

Tax Law > State & Local Taxes > General Overview

HN3 [↓] **State & Territorial Governments, Finance**

Former Cal. Rev. & Tax Code § 2231(a) requires the state to reimburse local agencies for all costs mandated by the state, as defined in Cal. Rev. & Tax Code 2207. Former Cal. Rev. & Tax. Code § 2207 provides, in pertinent part: 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 enacted after January 1, 1973, which mandates a new program or an

increased level of service of an existing program.

Governments > State & Territorial Governments > Finance

HN4 [↓] **State & Territorial Governments, Finance**

A "test claim" is defined as the first claim filed with the Commission on State Mandates alleging costs mandated by the state as defined in Cal. Gov't Code §§ 17514 and 17551 in a particular statute or executive order. Cal. Code Regs., tit. 2, § 1183.

Administrative Law > Judicial Review > Standards of Review > Substantial Evidence

HN5 [↓] **Standards of Review, Substantial Evidence**

See Cal. Gov't Code § 17559.

Administrative Law > Judicial Review > Reviewability > Factual Determinations

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

Administrative Law > Judicial Review > General Overview

Administrative Law > Judicial Review > Standards of Review > General Overview

Administrative Law > Judicial Review > Standards of Review > Substantial Evidence

Civil Procedure > ... > Standards of Review > Substantial Evidence > General Overview

HN6 [↓] **Reviewability, Factual Determinations Finance**

The substantial evidence test is that standard of judicial review in which the trial court reviews the evidence adduced at the administrative hearing to determine whether there is substantial evidence in support of the agency's finding in light of the whole record. Substantial evidence is evidence of ponderable legal significance, which is reasonable in nature, credible and of solid value. Where the proper scope of review in the trial court was whether the administrative decision was supported by substantial evidence on the whole record, the function of the reviewing court on appeal from the judgment is the same as that of the trial court, that is, to review the administrative decision to determine whether it is supported by substantial evidence on the whole record.

No state mandate exists if the requirements or provisions of a state statute are, nevertheless, required by federal law. When the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate so long as the state had no true choice in the manner of implementation of the federal mandate.

Governments > State & Territorial
Governments > Finance

Constitutional Law > ... > Fundamental
Rights > Criminal Process > Assistance of
Counsel

Criminal Law & Procedure > Counsel > Right
to Counsel > General Overview

Constitutional Law > ... > Fundamental
Rights > Procedural Due Process > General
Overview

HN7 [↓] **Criminal Process, Assistance of Counsel**

Even in the absence of Cal. Penal Code § 987.9 (1977), counties would be responsible for providing ancillary services under the constitutional guarantees of due process under U.S. Const. amend. XIV and the U.S. Const. amend. VI right to counsel.

Governments > State & Territorial
Governments > Finance

HN8 [↓] **State & Territorial Governments,****HN9** [↓] **State & Territorial Governments, Finance**

The statutory scheme, Cal. Gov't Code § 17500 et seq., contemplates that the Commission on State Mandates, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Thus, any legislative findings are irrelevant to the issue of whether a state mandate exists.

Headnotes/Summary**Summary****CALIFORNIA OFFICIAL REPORTS
SUMMARY**

A county sought a writ of mandate to compel the Commission on State Mandates to vacate its determination that Pen. Code, § 987.9 (funding by court for preparation of defense for indigent defendants in capital cases or cases under Pen. Code, § 190.05, subd. (a)), did not constitute a state mandate, for which the state was obligated to reimburse the county pursuant to Cal. Const., art. XIII B, § 6. The trial court denied the writ.

(Superior Court of Los Angeles County, No. BS020682, Diane Wayne, Judge.)

The Court of Appeal affirmed. The court held that the requirements of Pen. Code, § 987.9, are not state mandated, since, even in the absence of the statute, counties would be responsible for providing ancillary services to indigent defendants under the federal constitutional guaranties of right to counsel and due process (U.S. Const., 6th and 14th Amends.). And, even assuming that the provisions of the statute constitute a new program, it does not necessarily mean that the program is a state mandate under Cal. Const., art. XIII B, § 6. If a local entity has alternatives under the statute other than the mandated contribution, that contribution does not constitute a state mandate. In fact, the requirements under Pen. Code, § 987.9, are not mandated by the state, but rather by principles of constitutional law and a superior court's finding of reasonableness and necessity under the statute. Moreover, the court held that the Legislature's initial appropriation to reimburse the counties for the costs of Pen. Code, § 987.9, was not a final and unchallengeable determination that the statute constitutes a state mandate, nor did the commission err in finding that the statute is not a state mandate, despite the Legislature's finding to the contrary in a later appropriations bill. The commission was not bound by the Legislature's determination, and it had discretion to determine whether a state mandate existed. Similarly, the Legislature's initial determination to enact an appropriation did not obligate it to enact an appropriation every year in perpetuity to reimburse the counties, nor did this determination prevent future legislatures from refusing to appropriate moneys for Pen. Code, § 987.9, costs. The court also held that the appropriate standard of review was the substantial evidence test and not the independent judgment test, since the proper scope of review in the trial court was whether the administrative decision was supported by substantial evidence on the whole record. (Opinion by Woods (Fred), J., with Lillie, P. J., and Johnson, J., concurring.)

Headnotes

CA(1a)[↓] (1a) CA(1b)[↓] (1b)

Administrative Law § 138—Judicial Review and Relief—Decision of Courts on Review—Appellate Courts—Standard of Review.

--On appeal from the trial court's denial of a county's petition for a writ of mandate to compel the Commission on State Mandates to vacate its determination that Pen. Code, § 987.9 (funding by court for preparation of defense for indigent defendants in capital cases), did not constitute a state mandate, the appropriate standard of review was the substantial evidence test and not the independent judgment test. The independent judgment test applies when the order or decision substantially affects a fundamental vested right, and the county had no such right. Further, pursuant to Gov. Code, § 17559, which governs the state mandates process, a claimant or the state may commence a mandamus proceeding under Code Civ. Proc., § 1094.5, to set aside a decision of the commission on the ground that the decision is not supported by substantial evidence. Where the proper scope of review in the trial court was whether the administrative decision was supported by substantial evidence on the whole record, the function of the reviewing court on appeal from the judgment is the same as that of the trial court, that is, to review the administrative decision to determine whether it is supported by substantial evidence on the whole record.

CA(2)[↓] (2)

Administrative Law § 131—Judicial Review and Relief—Scope and Extent of Review—Evidence—Substantial Evidence Test.

--The substantial evidence test is that standard of judicial review in which the trial court reviews the evidence adduced at the administrative hearing to determine whether there is substantial evidence in

support of the agency's finding in light of the whole record. "Substantial evidence" is evidence of ponderable legal significance, which is reasonable in nature, credible, and of solid value.

CA(3a)[↓] (3a) CA(3b)[↓] (3b) CA(3c)[↓] (3c)

State of California § 11—Fiscal Matters—State Mandated Programs—What Constitutes—Funding by Court for Preparation of Defense for Indigent Defendants in Capital Cases.

--The trial court properly denied a writ of mandate sought by a county to compel the Commission on State Mandates to vacate its determination that Pen. Code, § 987.9 (funding by court for preparation of defense for indigent defendants in capital cases), did not constitute a state mandate, for which the state was obligated to reimburse the county pursuant to Cal. Const., art. XIII B, § 6. The requirements of Pen. Code, § 987.9, are not state mandated. Pursuant to the federal Constitution's guaranty of the right to counsel and its due process clause (U.S. Const., 6th and 14th Amendments), the right to counsel of an indigent defendant includes the right to the use of experts to assist counsel in preparing a defense. Thus, even in the absence of Pen. Code, § 987.9, counties would be responsible for providing ancillary services under those federal constitutional guaranties. And, even assuming that the provisions of the statute constitute a new program, it does not necessarily mean that the program is a state mandate under Cal. Const., art. XIII B, § 6. If a local entity has alternatives under the statute other than the mandated contribution, that contribution does not constitute a state mandate. In fact, the requirements under Pen. Code, § 987.9, are not mandated by the state, but rather by principles of constitutional law and a superior court's finding of reasonableness and necessity under the statute.

[See 9 **Witkin**, Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]

CA(4)[↓] (4)

Criminal Law § 88—Rights of Accused—Aid of Counsel—Indigent Defendants—Scope of Assistance—Right to Use of Experts to Assist Counsel in Preparation of Defense.

--A state is required by the United States Constitution to provide counsel for indigent defendants, and that right includes the right to the use of any experts that will assist counsel in preparing a defense. If expert or investigative help is necessary to the defense pending the preliminary hearing, due process requires the state to provide the service to an indigent defendant. Further, the right to competent counsel derives not exclusively from the due process clause of U.S. Const., 14th Amend., but also from the constitutional right to the assistance of counsel. Thus, the appointment of experts on behalf of an indigent defendant is constitutionally compelled in a proper case as a fundamental part of the right of an accused under U.S. Const., 6th Amend., to be represented by counsel.

CA(5)[↓] (5)

State of California § 11—Fiscal Matters—State Mandated Programs—What Constitutes—"New Program"—Provisions of State Statute Required by Federal Law.

--A "new program" within the meaning of Cal. Const., art. XIII B, § 6 (reimbursement of local governments for new programs mandated by state), is a program that carries out the governmental function of providing services to the public, or a law that, to implement state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. But no state mandate exists if the requirements or provisions of a state statute are, nevertheless, required by federal law. When the federal government imposes costs on local agencies, those costs are not mandated by the state and thus do not require a state subvention. Instead,

such costs are exempt from local agencies' taxing and spending limitations. This is true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate, so long as the state had no true choice in the manner of implementation of the federal mandate.

CA(6)[↓] (6)

State of California § 11—Fiscal Matters—State Mandated Programs—What Constitutes—Funding by Court for Preparation of Defense for Indigent Defendants in Capital Cases—As Unlawful Shifting of Costs of State-administered Program.

--The decision of the Commission on State Mandates not to reimburse counties for their programs under Pen. Code, § 987.9 (funding by court for preparation of defense for indigent defendants in capital cases), did not constitute an unlawful shifting of the financial responsibility of this program from the state to the counties. The program had never been operated or administered by the State of California, and the counties had always borne legal and financial responsibility for implementing the procedures under the statute. 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.

CA(7)[↓] (7)

State of California § 11—Fiscal Matters—State Mandated Programs—What Constitutes—Funding by Court for Preparation of Defense for Indigent Defendants in Capital Cases—Legislature's Initial Finding of State Mandate as Binding on Trial Court.

--The Legislature's initial appropriation to reimburse counties for the costs of Pen. Code, § 987.9 (funding by court for preparation of defense for indigent defendants in capital cases), was not a

final and unchallengeable determination that the statute constitutes a state mandate, nor did the Commission on State Mandates err in finding that the statute is not a state mandate, despite the Legislature's finding to the contrary in a later appropriations bill. The commission was not bound by the Legislature's determination, and it had discretion to determine whether a state mandate existed. The comprehensive administrative procedures for resolution of claims arising out of Cal. Const., art. XIII B, § 6 (Gov. Code, § 17500 et seq.), are the exclusive procedures by which to implement and enforce the constitutional provision. Thus, the commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Any legislative findings are irrelevant to the issue of whether a state mandate exists, and the commission properly determined that no such mandate existed. In any event, the Legislature itself ceased to regard the provisions of Pen. Code, § 987.9, as a state mandate in 1983.

CA(8)[↓] (8)

State of California § 12—Fiscal Matters—Appropriations—As Legislative Power—Appropriation by One Legislature as Binding Future Legislatures—Costs of Funding by Court for Preparation of Defense for Indigent Defendants in Capital Cases: Legislature § 5—Powers.

--The Legislature's initial determination to enact an appropriation to reimburse counties for their costs under Pen. Code, § 987.9 (funding by court for preparation of defense for indigent defendants in capital cases), did not obligate it to enact an appropriation every year in perpetuity to reimburse the counties, nor did this determination prevent future legislatures from refusing to appropriate monies for Pen. Code, § 987.9, costs. A contrary conclusion would be directly contrary to law and would necessarily unlawfully infringe on the Legislature's constitutional authority to enact appropriations (Cal. Const., art. IV, § 1). This

authority resides with the Legislature under the doctrine of separation of governmental powers. Thus, the Legislature has the authority and the discretion to determine appropriations. If the Legislature, in its wisdom and discretion, has decided not to appropriate monies to reimburse counties for their costs under Pen. Code, § 987.9, it is well within the exercise of its constitutional authority.

Counsel: De Witt W. Clinton, County Counsel, and Stephen R. Morris, Principal Deputy County Counsel, for Plaintiff and Appellant.

Gary D. Hori for Defendant and Respondent.

Daniel E. Lungren, Attorney General, Floyd D. Shimomura, Assistant Attorney General, Linda A. Cabatic and Shelleyanne W. L. Chang, Deputy Attorneys General, for Real Parties in Interest and Respondents.

Judges: Opinion by Woods Fred, J., with Lillie, P. J., and Johnson, J., concurring.

Opinion by: WOODS (Fred), J.

Opinion

[*810] [**305] WOODS (Fred), J.--

I.

FACTUAL AND PROCEDURAL SUMMARY

A. Procedural.

On December 22, 1992, appellant filed its first amended verified petition for writ of mandate. In its petition, appellant sought a peremptory writ of mandate compelling respondent Commission on State Mandates (the Commission) to vacate its determination that Penal Code section¹ 987.9 did not constitute a state mandate, for which the state was obligated to reimburse [***2] appellant

¹Unless otherwise noted, all statutory references are to the Penal Code.

pursuant to article XIII B, section 6, of the California Constitution. The petition also named as real parties in interest, State Controller Gray Davis, the Department of Finance, and Director of Finance Thomas W. Hayes.

Appellant also sought an order from the lower court, determining that section 987.9 [**306] constituted a state mandate and compelling respondents to process appellant's claims.

On or about May 18, 1993, the State of California, Gray Davis, the Department of Finance, and Thomas W. Hayes filed an answer to the first amended verified petition for writ of mandate.

On or about May 19, 1993, the Commission filed its answer to the first amended verified petition for writ of mandate.

On June 30, 1993, appellant filed a motion for peremptory writ of mandate pursuant to Code of Civil Procedure section 1094.5.

On or about August 6, 1993, the Commission filed its opposition.

[*811] On or about August [***3] 13, 1993, the State of California, Gray Davis, the Department of Finance, and Thomas W. Hayes filed their opposition.

On October 8, 1993, after hearing oral arguments, the lower court denied the petition for review, finding that the Sixth Amendment of the United States Constitution guaranteed an indigent criminal defendant the right to publicly funded counsel and the right to ancillary services and that the Commission, as a quasi-judicial body, properly determined within its jurisdiction, that section 987.9 was not a state mandate.

Judgment denying the petition for writ of mandate was entered on November 4, 1993.

A notice of entry of judgment was filed on December 7, 1993.

On December 7, 1993, appellant filed its notice of

appeal.

B. Facts.

Appellant asserts section 987.9 is a state mandate, constituting a new program or higher level of service, thereby requiring reimbursement by respondents pursuant to article XIII B, section 6, of the California Constitution.²

[***4] Section 987.9 was added to the Penal Code on September 24, 1977, by chapter 1048, section 1, pages 3178-3179, of the Statutes of 1977.³ [***5] Included [*812] in the law was an appropriation in the amount of \$ 1 million for "disbursement to local agencies pursuant to Section 2231 of the Revenue and Taxation Code to reimburse such agencies for costs incurred by them pursuant to this act."⁴

² HNI[↑] Article XIII B, section 6, of the California Constitution provides, in pertinent 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"

³ HN2[↑] Section 987.9 provides, in pertinent part, as follows: "In the trial of a capital case or a case under subdivision (a) of Section 190.05 the indigent defendant, through the defendant's counsel, may request the court for funds for the specific payment of investigators, experts, and others for the preparation or presentation of the defense. The application for funds shall be by affidavit and shall specify that the funds are reasonably necessary for the preparation or presentation of the defense. The fact that an application has been made shall be confidential and the contents of the application shall be confidential. Upon receipt of an application, a judge of the court, other than the trial judge presiding over the case in question, shall rule on the reasonableness of the request and shall disburse an appropriate amount of money to the defendant's attorney. The ruling on the reasonableness of the request shall be made at an in camera hearing. In making the ruling, the court shall be guided by the need to provide a complete and full defense for the defendant."

⁴ HN3[↑] Former Revenue and Taxation Code section 2231, subdivision (a), required the state to reimburse local agencies for all costs mandated by the state, as defined in Revenue and Taxation Code section 2207.

Former Revenue and Taxation Code section 2207 provided, in pertinent part: " 'Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following:

From 1977 to 1982, the first five years after the enactment of section 987.9, the Legislature enacted an appropriation to reimburse counties for their costs under that section in each annual budget act along with the following language, "for reimbursement, in accordance with subdivision (a) of section 2231 of the Revenue and Taxation Code."

[**307] In the 1983 Budget Act (Stats. 1983, ch. 323), while an appropriation was made, the appropriation no longer contained a reference to the Revenue and Taxation Code, but instead, specified that the funds [***6] were appropriated for "contributions to counties."

In subsequent years, the Budget Act language was simply, "For local assistance, Assistance to Counties for Defense of Indigents."

In the 1989-1990 Budget Act, the California Legislature enacted a \$ 13 million appropriation to reimburse counties for their costs under section 987.9. The 1989-1990 Budget Act, with the \$ 13 million appropriation, was signed into law by the Governor. In the 1990-1991 Budget Act, however, no appropriation was made to reimburse counties for their section 987.9 costs. Because of the lack of appropriation in the Budget Act, the Legislature introduced and passed Assembly Bill No. 2813, which would have appropriated the sum of \$ 13 million to reimburse counties for their section 987.9 costs. Assembly Bill No. 2813, however, was vetoed by the Governor, and consequently no appropriation was made to counties to reimburse them for their costs in the 1990-1991 Budget Act.

Upon notification by the State Controller's Office that it would not issue claiming instructions and honor requests for payment of section 987.9 costs for fiscal year 1990-1991, appellant filed its test claim with the Commission [*813] [***7] on December 26, 1991, seeking reimbursement for its costs associated with section 987.9 as a state-

"(a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program. . . ."

mandated cost.⁵

After hearing appellant's test claim, the Commission determined that section 987.9 did not constitute a reimbursable state mandate. The Commission found that an indigent defendant's rights, as guaranteed by the provisions of the Sixth Amendment, were obligatory and that the appellant's obligation to provide services to indigent defendants was not mandated by the state, but rather by the United States Constitution and various court rulings. The Commission concluded that section 987.9 did not impose a new program or higher level of service in an existing program within the meaning of Government Code section 17514 and article XIII B, section [***8] 6, of the California Constitution.

Appellant thereafter filed its petition for writ of mandate.

II.

DISCUSSION

A. The Appropriate Standard of Review of the Lower Court's Decision Is Substantial Evidence.

CA(1a)[↑] (1a) Appellant argues the independent judgment standard of review governs this court's review of the lower court's decision. Appellant is mistaken. The independent judgment test applies when the order or decision substantially affects a fundamental vested right. (*Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Bd.* (1979) 24 Cal. 3d 335 [156 Cal. Rptr. 1, 595 P.2d 579].) Appellant has no fundamental vested right here and the appropriate standard of review is the substantial evidence test.

HN5[↑] Government Code section 17559 governs the state mandates process, and provides: "A claimant or the state may commence a proceeding

⁵ **HN4[↑]** A "test claim" is defined as "the first claim filed with the commission alleging costs mandated by the state as defined in Sections 17514 and 17551 of the Government Code in a particular statute or executive order." (Cal. Code Regs., tit. 2, § 1183.)

in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the commission on the ground that the commission's decision *is not supported by substantial evidence*. The court may order the commission to hold another hearing regarding the claim and may direct the commission on what basis [***9] the claim is to receive a rehearing." (Italics added.)

CA(2)[↑] (2) HN6[↑] The substantial evidence test is that standard of judicial review in which the trial court reviews the evidence adduced at the administrative [*814] hearing to determine whether there is substantial evidence in support of the agency's finding in light of the whole record. "Substantial evidence" is evidence of ponderable legal significance, which is "reasonable in nature, credible and of [*308] solid value." (*Pennel v. Pond Union School Dist.* (1973) 29 Cal. App. 3d 832, 837, fn. 2 [105 Cal. Rptr. 817]; see also *Bowers v. Bernards* (1984) 150 Cal. App. 3d 870, 873 [197 Cal. Rptr. 925].)

CA(1b)[↑] (1b) Where the proper scope of review in the trial court was whether the administrative decision was supported by substantial evidence on the whole record, the function of the reviewing court on appeal from the judgment is the same as that of the trial court, that is, to review the administrative decision to determine whether it is supported by substantial evidence on the whole record. (*Steve P. Rados, Inc. v. California Occupational Saf. & Health Appeals Bd.* (1979) 89 Cal. App. 3d 590, 595 [152 Cal. Rptr. 510].) [***10]

B. An Indigent Defendant's Right to Ancillary Services Is Guaranteed by the Sixth Amendment of the United States Constitution.

CA(3a)[↑] (3a) Appellant asserts section 987.9 is a state-mandated program for which it is entitled to be reimbursed. To the contrary, the requirements of section 987.9 are not state mandated.

CA(4)[↑] (4) CA(3b)[↑] (3b) A state is required

by the United States Constitution to provide counsel for indigent defendants. (*Gideon v. Wainwright* (1963) 372 U.S. 335 [9 L. Ed. 2d 799, 83 S. Ct. 792, 93 A.L.R.2d 733].) The right to counsel includes the right to the use of any experts that will assist counsel in preparing a defense. (*In re Ketchel* (1968) 68 Cal. 2d 397, 398 [66 Cal. Rptr. 881, 438 P.2d 625]; *Torres v. Municipal Court* (1975) 50 Cal. App. 3d 778 [123 Cal. Rptr. 553]; *Mason v. State of Arizona* (9th Cir. 1974) 504 F.2d 1345, 1351.)

"It follows, therefore, that if expert or investigative help is necessary to the defense pending the preliminary hearing, due process requires the state to provide the service to indigents." (*Anderson v. Justice Court* (1979) 99 Cal. App. 3d 398, 401-402 [160 Cal. Rptr. 274].)

The California Supreme Court, in *People v. Frierson* [***11] (1979) 25 Cal. 3d 142, 162 [158 Cal. Rptr. 281, 599 P.2d 587], held that the right to competent counsel derives not exclusively from the due process clause of the Fourteenth Amendment to the United States Constitution, but also from the constitutional right to the assistance of counsel. The court concluded that the failure of counsel to take reasonable investigative measures to prepare the apparently sole meritorious defense used at trial, resulted in the presentation [*815] to the jury of an incomplete defense, and thus, deprived the defendant of his right to effective trial counsel. (*Id.*, at p. 164.)

Finally, in *People v. Worthy* (1980) 109 Cal. App. 3d 514 [167 Cal. Rptr. 402], the court found that, although there was no specific authority in California for a trial court to appoint experts at county expense for an indigent defendant represented by private counsel, the appointment of experts was constitutionally compelled in a proper case as a fundamental part of the constitutional right of an accused to be represented by counsel.

Thus, HN7[↑] even in the absence of section 987.9, appellant and other counties would be

responsible for providing ancillary services under [***12] the constitutional guarantees of due process under the Fourteenth Amendment and the Sixth Amendment right to counsel.

In *Corenevsky v. Superior Court* (1984) 36 Cal. 3d 307 [204 Cal. Rptr. 165, 682 P.2d 360], an indigent defendant challenged a superior court order denying him ancillary defense services. The court traced the judicially imposed requirement that the right to counsel includes the right to reasonably necessary ancillary services: *Keenan v. Superior Court* (1982) 31 Cal. 3d 424, 428 [180 Cal. Rptr. 489, 640 P.2d 108] ["The right to effective counsel also includes the right to ancillary services necessary in the preparation of a defense."]; *In re Ketchel, supra*, 68 Cal. 2d 397, 399-400 ["A fundamental part of the constitutional right of an accused to be represented by counsel is that his attorney . . . is obviously entitled to the aid of such expert assistance as he may need . . . in preparing the defense."]; *Puett v. Superior Court* (1979) 96 Cal. App. 3d 936, 938-939 [158 Cal. Rptr. 266] ["[T]he right to counsel encompasses the right to effective counsel which in turn encompasses the right of an indigent and his appointed counsel to have [***13] the services of an investigator."]; *People* [***309] *v. Fixel* (1979) 91 Cal. App. 3d 327, 330 [154 Cal. Rptr. 132] ["The due process right of effective counsel includes the right to ancillary services necessary in the preparation of a defense."]; *Mason v. State of Arizona, supra*, 504 F.2d 1345, 1351 ["[T]he effective assistance of counsel guarantee of the Due Process Clause requires, when necessary, the allowance of investigative expenses or appointment of investigative assistance for indigent defendants"]

The court in *Corenevsky* thus recognized that section 987.9 merely codified these constitutional guarantees.⁶

⁶ While appellant correctly points out that the court in *Corenevsky* referred to "matters within the compass of section 987.9" as "state funded" (*Corenevsky v. Superior Court, supra*, 36 Cal. 3d at p. 314,

[14] [*816]** C. Section 987.9 Merely Implements the Guarantees Provided by the Sixth Amendment of the United States Constitution.

California Constitution, 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."

CA(5)[↑] (5) The California Supreme Court has defined what is a "new program" or "increased cost," stating that the drafters and 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 state **[**15]** 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 California (1987) 43 Cal. 3d 46, 56 [233 Cal. Rptr. 38, 729 P.2d 202].)

The courts have concluded that **HN8[↑]** no state mandate exists if the requirements or provisions of a state statute are, nevertheless, required by federal law.

original italics), this was not a ruling that such funding was required, but merely a recognition of the fact that, in 1984, when the court's opinion was issued, such funding had been through the Legislature's annual appropriation.

"When the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate so long as the state had no 'true choice' in the manner of implementation of the federal mandate." (Hayes v. Commission on State Mandates (1992) 11 Cal. App. 4th 1564, 1593 [15 Cal. Rptr. 2d 547]; see also City of Sacramento v. State of California (1990) 50 Cal. 3d 51, 76 [266 Cal. Rptr. 139, 785 P.2d **[*817]** 522]; County of Fresno v. Lehman (1991) 229 Cal. App. 3d 340, 349 [280 Cal. Rptr. 310].) ⁷

[16]** D. *The State Has Not Shifted the Costs of a State-administered Program to the Counties.*

1. Lucia Mar Unified School Dist. v. Honig (1988) 44 Cal. 3d 830 [244 Cal. Rptr. 677, 750 P.2d 318] *is inapposite.*

CA(6)[↑] (6) Appellant argues that the Commission's decision not to reimburse the counties for their programs under section 987.9 constitutes an unlawful shifting of the financial responsibility of this program from the state **[**310]** to the counties, in violation of the California Supreme Court's holding in *Lucia Mar*.

To the contrary, *Lucia Mar* is factually distinguishable from the case presented by appellant. In *Lucia Mar*, the handicapped school program in issue had been operated and administered by the State of California for many years. The court found primary responsibility rested with the state and that the transfer of financial responsibility from the state through state tax

⁷The argument that section 987.9 is a "new program" because it requires in camera hearings, confidentiality and a second trial judge is disingenuous. The additions of those procedural requirements add nothing to the cost of the statute but are, in fact, designed to curtail costs and to protect defendants and confidentiality rights. They do not involve additional expenses. The financial impact, if any, of these requirements is merely incidental.

revenues to school districts through school district tax and assessment revenues in the school district treasuries imposed a new program on school districts. (44 Cal. 3d at p. 835.)

Upon the enactment of a statute requiring local school districts to contribute to the cost of [***17] educating their handicapped students at the state schools, the court determined it was a "new program" within the meaning of article XIII B, section 6, of the California Constitution. (*Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal. 3d at p. 836 ["The intent of [section 6 of article XIII B] 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" (Italics added.)].)

In contrast, 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 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. There has been no shift of costs from the state to the counties and *Lucia Mar* is, thus, inapposite.

[*818] *Lucia Mar* is further distinguishable because the court in *Lucia Mar* never addressed the issue presented here. That is, whether the statute [***18] in question constituted a state mandate within the meaning of article XIII B, section 6, of the California Constitution. While the court in *Lucia Mar* found that the statute created a new program, it did not reach a determination of whether the school district was mandated by the state to pay these costs within the meaning of article XIII B, section 6, of the California Constitution, and remanded the matter to the lower court to resolve this issue. (*Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal. 3d at p. 837.)

2. Assuming, *arguendo*, section 987.9 constitutes a

"new program" or "increased costs," it is not a state mandate.

CA(3c)[↑] (3c) Assuming, *arguendo*, the provisions of section 987.9 were determined to be a new program, it does not necessarily lead to the conclusion that the program is a state mandate under California Constitution, article XIII B, section 6.

If a local entity or school district has alternatives under the statute other than the mandated contribution, it does not constitute a state mandate. (*Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal. 3d at pp. 836-837.) In fact, the requirements under section 987.9 are not mandated by the state, [***19] but rather by principles of constitutional law and a superior court's finding of reasonableness and necessity under section 987.9.

E. *The Legislature's Initial Finding of a State Mandate Was Not Binding on the Lower Court.*

1. *The Commission has exclusive authority to determine whether a state mandate exists.*

CA(7)[↑] (7) Appellant argues that the Legislature's initial appropriation of \$ 1 million to reimburse the counties, containing the language "pursuant to Section 2231 of the Revenue and Taxation Code," is a final and unchallengeable determination that section 987.9 constitutes a state mandate and that, in light of the Legislature's initial finding in Assembly Bill No. 2813, the Commission erred in finding otherwise. Appellant argues that the Commission was bound by the Legislature's determination and that it had no discretion to determine whether a state mandate existed.

[**311] Appellant, however, is mistaken. The findings of the Legislature as to whether section 987.9 constitutes a state mandate are irrelevant. The Legislature enacted comprehensive administrative procedures for resolution of claims arising out of article XIII B, section 6. (Gov. Code, § 17500 et seq.) [***20] [*819] 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. (*Kinlaw v. State of California* (1991) 54 Cal. 3d 326, 331 [285 Cal. Rptr. 66, 814 P.2d 1308].)

"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. . . . [P] . . . *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.*" (*Kinlaw v. State of California, supra*, 54 Cal. 3d at p. 333, italics added.)

Thus, **HN9**[↑] the statutory scheme contemplates *****21** that the Commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Thus, any legislative findings are irrelevant to the issue of whether a state mandate exists, and the Commission properly determined that no state mandate existed.

2. Beginning in 1983, the Legislature no longer considered section 987.9 a state mandate.

Assuming, arguendo, the Legislature's findings are entitled to some weight, the Legislature, itself, ceased to regard the provisions of section 987.9 as a state mandate in 1983. For the first five years after section 987.9 was enacted, the appropriation in the annual budget acts would be made in accordance with former Revenue and Taxation Code section 2231. The budget acts would contain the following language: "For reimbursement, in accordance with

subdivision (a) of section 2231 of the Revenue and Taxation Code."

In the 1983 Budget Act, however, the funds were appropriated for "contributions to counties." There is no mention of the Revenue and Taxation provisions. In every succeeding year, the Budget Act language was simply "For local assistance, Assistance to Counties for Defense of Indigents."

*****22** The absence of any reference to the Revenue and Taxation Code sections indicates that the Legislature ceased to regard section 987.9 as a state mandate. Although the Legislature ceased to regard section 987.9 as a state mandate, it nevertheless, continued to appropriate moneys for reimbursement to counties as a means of voluntarily providing local assistance.

***820** Thus, the Legislature ceased making appropriations because it recognized that it no longer had a legal obligation to do so under the Revenue and Taxation Code or article XIII B, section 6, of the California Constitution.

F. Appellant's Request for Reimbursement Unlawfully Infringes on the Legislature's Authority of Appropriation.

CA(8)[↑] **(8)** Appellant argues that the Legislature's initial determination to enact an appropriation to reimburse counties for their costs under section 987.9 obligated it to enact an appropriation every year in perpetuity to reimburse the counties and that this determination binds future legislatures from refusing to appropriate moneys for section 987.9 costs.

Appellant's theory is directly contrary to law and would necessarily unlawfully infringe upon the Legislature's constitutional authority *****23** to enact appropriations. The appropriation of tax revenues is a legislative power granted by article IV, section 1, of the California Constitution, and the authority to appropriate moneys resides with the Legislature under the doctrine of separation of governmental *****312** powers. (*California State*

Employees' Assn. v. Flournoy (1973) 32 Cal. App. 3d 219, 234 [108 Cal. Rptr. 251].) Thus, the Legislature has the authority and the discretion to determine appropriations. (Mandel v. Myers (1981) 29 Cal. 3d 531, 539 [174 Cal. Rptr. 841, 629 P.2d 935].)

If the Legislature, in its wisdom and discretion, has decided not to appropriate monies to reimburse counties for their costs under Penal Code section 987.9, it is well within the exercise of its constitutional authority. It is not obligated to enact the same appropriations year after year, as appellant claims.

III.

DISPOSITION

The judgment is affirmed. Respondents are awarded costs of appeal.

Lillie, P. J., and Johnson, J., concurred.

Appellant's petition for review by the Supreme Court was denied May 11, 1995.

End of Document

County of Los Angeles v. State of California

Supreme Court of California

January 2, 1987

L.A. No. 32106

Reporter

43 Cal. 3d 46 *; 729 P.2d 202 **; 233 Cal. Rptr. 38 ***; 1987 Cal. LEXIS 273 ****

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

Subsequent History: [****1] Appellants' petition for a rehearing was denied February 26, 1987.

Prior History: 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, affirmed the first action; the second action was reversed and remanded to the State Board of Control for further and adequate findings (B001713 and B003561).

Disposition: The judgment of the Court of Appeal is reversed. Each side shall bear its own costs.

Core Terms

workers' compensation, increased level of service, local agency, reimbursement, costs, local government, employees, subvention, programs, benefits, mandated, changes, repeal, higher level of service, increases, constitutional provision, pro tanto repeal, increased cost, plenary power, electorate, incidental, workers' compensation benefits, discipline, provide a service, cost of living, new program, state-mandated, effected, maximum, additional cost

Case Summary

Procedural Posture

Appellant county and city sought review of a decision of the Court of Appeals, Third Appellate District, Second Division (California), which held that state-mandated increases in workers' compensation benefits, that do not exceed the rise in the cost of living, were not costs which must be borne by respondent state under Cal. Const. art. XIII B, and its legislative implementing statutes.

Overview

Proceedings were initiated to determine whether legislation, which increased certain workers' compensation benefit payments, was subject to the command of Cal. Const. art. XIII B that local government costs mandated by respondent state must be funded by respondent. Appellant county and city sought review of the appellate court decision which held that state-mandated increases in workers' compensation benefits, that did not exceed the rise in the cost of living, were not costs which must be borne by respondent under Cal. Const. art. XIII B. On appeal, the court agreed that the State Board of Control properly denied appellants' claims but the court's conclusion rested on entirely new grounds. Thus, the judgment was reversed on a finding that appellants' petitions for writs of mandate to compel approval of appellants' claims lacked merit and should have been denied outright. The court concluded that Cal. Const. art. XIII B, § 6 had no application to, and respondent 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 received.

Outcome

The judgment of the court of appeal was reversed in favor of respondent state. The court concluded that appellant county and city's reimbursement claims were both properly denied by the California 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.

LexisNexis® Headnotes

Governments > Local Governments > Finance

Workers' Compensation &
SSDI > Administrative
Proceedings > Awards > Enforcement

Governments > Legislation > Interpretation

Governments > Public Improvements > General
Overview

Workers' Compensation &
SSDI > Coverage > Employment
Status > Governmental Employees

HN1[↓] Local Governments, Finance

The legislative intent of the Cal. Const. art. XIII B was 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. In using the word "programs" the commonly understood meaning of the term was meant, as in programs which carry out the governmental function of providing services to the public.

Governments > Legislation > Expiration,

Repeal & Suspension

HN2[↓] Legislation, Expiration, Repeal & Suspension

It is ordinarily to be presumed that the legislature by deleting an express provision of a statute intended a substantial change in the law.

Governments > Legislation > Interpretation

HN3[↓] Legislation, Interpretation

In construing the meaning of the constitutional provision, the court's 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 Cal. Const. art. XIII B. To determine this intent, the court must look to the language of the provision itself.

Governments > Local Governments > Elections

Governments > Legislation > Enactment

Governments > Legislation > Types of Statutes

HN4[↓] Local Governments, Elections

Although a bill for state subvention for the incidental cost to local governments of general laws may be passed by simple majority vote of each house of the legislature pursuant to Cal. Const. art. IV, § 8(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 Cal. Const. art. XIII B. Cal. Rev. & Tax. Code § 2255(c). Revenue bills must be passed by two-thirds vote of each house of the legislature. Cal. Const. art. IV, § 12(d).

Governments > State & Territorial
Governments > Relations With Governments

Workers' Compensation &
SSDI > Administrative Proceedings > Judicial
Review > General Overview

Governments > Local Governments > Duties &
Powers

Governments > Public Improvements > General
Overview

Business & Corporate
Compliance > ... > Disability & Unemployment
Insurance > Unemployment
Compensation > Scope & Definitions

Workers' Compensation & SSDI > General
Overview

Workers' Compensation &
SSDI > Administrative
Proceedings > Awards > Enforcement

Workers' Compensation & SSDI > Benefit
Determinations > General Overview

Workers' Compensation & SSDI > ... > Course
of Employment > Activities Related to
Employment > Emergencies

HN5[↓] State & Territorial Governments, Relations With Governments

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 workers' compensation program. Workers' compensation is administered by the state through the Division of Industrial Accidents and the Workers' Compensation Appeals Board. Cal. 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 Cal. Const. art. XIII B, § 6.

Governments > Legislation > Interpretation

HN6[↓] Legislation, Interpretation

In the absence of irreconcilable conflict among their various parts, constitutional provisions must be harmonized and construed to give effect to all parts.

Governments > Legislation > Effect &
Operation > General Overview

Workers' Compensation &
SSDI > Coverage > General Overview

HN7[↓] Legislation, Effect & Operation

Cal. Const. art. XIV, § 4 gives the legislature plenary power, unlimited by any provision of the California Constitution, over workers' compensation.

Governments > Legislation > Effect &
Operation > General Overview

Workers' Compensation &
SSDI > Coverage > General Overview

HN8[↓] Legislation, Effect & Operation

See Cal. Const. art. XIV, § 4.

Governments > Legislation > Expiration,
Repeal & Suspension

HN9[↓] Legislation, Expiration, Repeal & Suspension

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.

Headnotes/Summary

Summary

CALIFORNIA OFFICIAL REPORTS 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. Cosnt., 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 that 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

CA(1)[↓] (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 expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities.

CA(2)[↓] (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.]

CA(3)[↓] (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.

CA(4)[↓] (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.

CA(5)[↓] (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.]

CA(6)[↓] (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.

CA(7)[↓] (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: De Witt W. Clinton, County Counsel, Paula A. Snyder, Senior Deputy County Counsel, Edward G. Pozorski, Deputy County Counsel, John W. Witt, City Attorney, Kenneth K. Y. So, Deputy City Attorney, William D. Ross, Diana P. Scott, Ross & Scott and Rogers & Wells for Plaintiffs and Appellants.

James K. Hahn, City Attorney (Los Angeles), Thomas C. Bonaventura and Richard Dawson, Assistant City Attorneys, and Patricia V. Tubert, Deputy City Attorney, as Amici Curiae on behalf of Plaintiffs and Appellants.

John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, Henry G. Ullerich and Martin H. Milas, Deputy Attorneys General, for Defendants and Respondents.

Laurence Gold, Fred H. [****2] Altshuler, Marsha S. Berzon, Gay C. Danforth, Altshuler & Berzon, Charles P. Scully II, Donald C. Carroll, Peter Weiner, Heller, Ehrman, White & McAuliffe, Donald C. Green, Terrence S. Terauchi, Manatt, Phelps, Rothenberg & Tunney and Clare Bronowski as Amici Curiae on behalf of Defendants and Respondents.

Judges: Opinion by Grodin, J., with Bird, C. J., Broussard, Reynoso, Lucas and Panelli, JJ., concurring. Separate concurring opinion by Mosk, J.

Opinion by: GRODIN

Opinion

[*49] [**203] [***38] 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 [***39] 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 [****3] 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. CA(1)[7] (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. HN1[7] 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' [****4] 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 [**204] 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: [para.] (a) Legislative mandates requested by the local agency affected; [para.] (b) Legislation defining a new crime or changing an existing definition of a crime; or [para.] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." No [****5] 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, [****6] including local governments, must pay in workers' compensation benefits to injured employees and families of deceased employees.

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: "[The] 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 [para.] (1) will not allow the state government to force programs on local governments without the state paying for them."

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 [****40] for increased state-mandated costs was made in this legislation.²

[****7] 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

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.

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 **[**205]** pay the increased benefits until the state provided reimbursement.

[**8]** 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 **[****9]** 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 "[notwithstanding] section 6 of Article XIII B of the California Constitution and section 2231 . . . of the Revenue and Taxation **[***41]** Code." (Stats. 1982, ch. 922, § 17, p. 3372.)⁴

[**10]** 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 **[****11]** 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

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.

changes in death and disability benefits and in liability in serious and wilful misconduct cases. (Lab. Code, § 4551.)

The court also held: "[The] 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 [****206**] 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 [******12**]. 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 [******13**] level of service." The court

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.

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 [******42**] concluded that increased costs were no longer tantamount to an increased level of service.

[******14**] 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

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).)

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 [****15] 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 [**207] 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: [para.] (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 [****16] , 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.)

[****17] [***43] CA(2)[↑] (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. HN2[↑] "[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 [****18] 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.

CA(3)[↑] (3) HN3[↑] In construing the meaning

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 "[the] 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].)

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 [**208] that the state reimburse local agencies for the cost of any "new program or higher level of service." Because workers' [****19] 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.

CA(4)[↑] (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 [****20] 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 [***44] 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. [****21] 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.

HN4[↑] Were section 6 construed to require state subvention for the incidental cost to local

governments [****22] 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 [**209] 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.

[****23] CA(5)[↑] (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

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.

indistinguishable in this respect from private employers. HN5[↑] 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 [****45] 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 [****24] to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6.

IV

CA(6)[↑] (6) HN6[↑] 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 [****25] 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].)

HN7[↑] Our concern over potential conflict arises because article XIV, section 4,¹¹ gives the

¹¹ HN8[↑] 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

[**210] 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'

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.)

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 [****26] intended [***46] 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.

[****27] 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 [****28] 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 **[**211]** 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 **[****29]** 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].) **[****30]** **HN9**[⌄] A *pro tanto* repeal of conflicting state constitutional provisions removes 'insofar as necessary' any restrictions which would prohibit the realization **[***47]** 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 **[****31]** the objectives of article XIV, section 4, and no pro tanto repeal need be found.

CA(7)[⌄] (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, [****32] nor shifts from the state to a local agency the expense of providing governmental services.

[**212] 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 [****33] 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.

Concur by: MOSK

Concur

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 [****34] 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.

End of Document

Department of Finance v. Commission on State Mandates

Supreme Court of California

August 29, 2016, Filed

S214855

Reporter

1 Cal. 5th 749 *; 378 P.3d 356 **; 207 Cal. Rptr. 3d 44 ***; 2016 Cal. LEXIS 7123 ****

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.

condition, pollutant, discharges, Regional, costs, maximum extent, deference, mandated, local government, trash receptacle, permits, implementing, expertise, municipal, industrial facility, storm sewer, federal regulation, state mandate, state water, facilities

Notice: As modified Nov. 17, 2016.

Subsequent History: Reported at *Department of Finance v. Commission on State Mandates, 2016 Cal. LEXIS 8339 (Cal., Aug. 29, 2016)*

Time for Granting or Denying Rehearing Extended *Dept. of Finance v. Com. on State Mandates, 2016 Cal. LEXIS 7637 (Cal., Sept. 14, 2016)*

Modified and rehearing denied by, Request denied by *Department of Finance v. Commission on State Mandates, 2016 Cal. LEXIS 9283 (Cal., Nov. 16, 2016)*

Prior History: [****1] Superior Court of Los Angeles County, No. BS130730, Ann I. Jones, Judge. Court of Appeal, Second Appellate District, Division One, No. B237153.

Department of Finance v. Commission on State Mandates, 220 Cal. App. 4th 740, 163 Cal. Rptr. 3d 439, 2013 Cal. App. LEXIS 830 (Cal. App. 2d Dist., 2013)

Core Terms

requirements, regional board, inspections, federal law, regulation, federal mandate, conditions, Operators, reimbursement, practicable, permit

Case Summary

Overview

HOLDINGS: [1]-Local agencies operating storm drain systems pursuant to National Pollutant Discharge Elimination System permits issued by the State Water Resources Control Board under 33 U.S.C. § 1342(p)(3)(A) were entitled to reimbursement from the state under Cal. Const., art. XIII B, § 6, for the costs of complying with permit conditions requiring the agencies to install trash receptacles and to inspect industrial facilities and construction sites because these conditions were not federal mandates under the exception in Gov. Code, § 17556, subd. (c), but were imposed pursuant to Wat. Code, §§ 13260, 13263, 13267, subd. (c), under state regulatory authority; [2]-Although federal regulations generally contemplated that storm drain operators would have street maintenance procedures and would conduct inspections, the state exercised discretion in imposing the specific conditions at issue.

Outcome

Reversed and remanded.

LexisNexis® Headnotes

Governments > State & Territorial
Governments > Finance

Administrative Law > Judicial Review > Standards of
Review > Substantial Evidence

Administrative Law > Judicial
Review > Reviewability > Questions of Law

HNI A decision of the California Commission on State Mandates is reviewed 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. However, the appellate court independently reviews conclusions as to the meaning and effect of constitutional and statutory provisions. The question whether a statute or executive order imposes a mandate is a question of law. Thus, the appellate court reviews 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 determines whether it supports the Commission's conclusion.

Governments > State & Territorial
Governments > Finance

HN2 Cal. Const., art. XIII B, restricts the amounts state and local governments may appropriate and spend each year from the proceeds of taxes. Cal. Const., art. XIII B, is to be distinguished from Cal. Const., art. XIII A, which was adopted as Proposition 13 at the June 1978 election. Cal. Const., art. XIII A, imposes a direct constitutional limit on state and local power to adopt and levy taxes. Cal. Const., arts. XIII A, XIII B, work in tandem, together restricting California governments' power both to levy and to spend for public purposes. The concern which prompted the inclusion of *Cal. Const., art. XIII B, § 6*, 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. The reimbursement provision in *Cal. Const., art. XIII B, § 6*, was included in recognition of the fact that Cal. Const., arts. XIII A, XIII B, severely restrict the taxing and spending powers of local governments.

Governments > State & Territorial
Governments > Finance

HN3 The purpose of *Cal. Const., art. XIII B, § 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 Cal. Const., arts. XIII A, XIII B, impose. Thus, with certain exceptions, *Cal. Const., art. XIII B, § 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. 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)*.

Governments > State & Territorial
Governments > Finance

HN4 In determining whether federal law requires a specified function, the focus of the inquiry is whether the manner of implementation of the federal program was left to the true discretion of the state. 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. 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. 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.

Governments > State & Territorial
Governments > Finance

HN5 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.

Governments > State & Territorial
Governments > Finance

Evidence > Burdens of Proof > Allocation

HN6 *Cal. Const., art. XIII B, § 6*, establishes a general rule requiring reimbursement of all state-mandated costs. *Gov. Code, § 17556, subd. (c)*, codifies an exception to that rule. Typically, the party claiming the applicability of an exception bears the burden of demonstrating that it applies. Thus, the state must explain why federal law mandated the requirements at issue.

Environmental Law > ... > Enforcement > Discharge Permits > Storm Water Discharges

HN7 State law makes a regional water quality control board responsible for regulating discharges of waste within its jurisdiction. *Wat. Code, §§ 13260, 13263*. This regulatory authority includes 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 imposes an overarching mandate that the regional board inspect facilities and sites. In addition, federal law and practice require the regional board to inspect all industrial facilities and construction sites. Under the Clean Water Act, *33 U.S.C. § 1251 et seq.*, the State Water Resources Control Board, as an issuer of

National Pollutant Discharge Elimination System permits, is 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)*.

Headnotes/Syllabus

Summary

CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court granted a petition challenging a reimbursement determination by the California Commission on State Mandates (*Cal. Const., art. XIII B, § 6*) and ordered the Commission to issue a new statement of decision. The Commission had determined that local agencies operating storm drain systems were entitled to reimbursement from the state for the costs of complying with permit conditions requiring the agencies to install trash receptacles and to inspect industrial facilities and construction sites. (Superior Court of Los Angeles County, No. BS130730, Ann I. Jones, Judge.) The Court of Appeal, Second Dist., Div. One, No. B237153, affirmed.

The Supreme Court reversed and remanded. The court held that the agencies, which operated the storm drain systems pursuant to National Pollutant Discharge Elimination System permits issued by the State Water Resources Control Board (*33 U.S.C. § 1342(p)(3)(A)*), were entitled to reimbursement because the permit conditions were not federal mandates (*Gov. Code, § 17556, subd. (c)*), but were imposed under state regulatory authority (*Wat. Code, §§ 13260, 13263, 13267, subd. (c)*). Although federal regulations generally contemplate that storm drain operators will have street maintenance procedures and will conduct inspections, the state exercised discretion in imposing the specific conditions at issue. (Opinion by Corrigan, J., with Cantil-Sakauye, C. J., Werdegar, and Chin, JJ., concurring. Concurring

and dissenting opinion by Cuéllar, J., with Liu, and Kruger, JJ., concurring (see p. 772).)

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

CA(1) (1)

State of California § 11 > Fiscal
Matters > Reimbursing Local Governments for State-
mandated Costs.

Cal. Const., art. XIII B, restricts the amounts state and local governments may appropriate and spend [*750] each year from the proceeds of taxes. Cal. Const., art. XIII B, is to be distinguished from Cal. Const., art. XIII A, which was adopted as Prop. 13 at the June 1978 election. Cal. Const., art. XIII A, imposes a direct constitutional limit on state and local power to adopt and levy taxes. Cal. Const., arts. XIII A, XIII B, work in tandem, together restricting California governments' power both to levy and to spend for public purposes. The concern which prompted the inclusion of Cal. Const., art. XIII B, § 6, 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. The reimbursement provision in Cal. Const., art. XIII B, § 6, was included in recognition of the fact that Cal. Const., arts. XIII A, XIII B, severely restrict the taxing and spending powers of local governments.

CA(2) (2)

State of California § 11 > Fiscal
Matters > Reimbursing Local Governments for State-
mandated Costs > Federal Mandate Exception.

The purpose of Cal. Const., art. XIII B, § 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 Cal. Const., arts. XIII A, XIII B, impose. Thus, with certain exceptions, Cal. Const., art. XIII B, § 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. 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)).

CA(3) (3)

State of California § 11 > Fiscal
Matters > Reimbursing Local Governments for State-
mandated Costs > Federal Mandate Exception.

In determining whether federal law requires a specified function, the focus of the inquiry is whether the manner of implementation of the federal program was left to the true discretion of the state. 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. 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. 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 [*751] 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.

CA(4) (4)

State of California § 11 > Fiscal
Matters > Reimbursing Local Governments for State-
mandated Costs > Federal Mandate Exception.

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.

CA(5) (5)

State of California § 11 > Fiscal Matters > Reimbursing Local Governments for State-mandated Costs > Federal Mandate Exception.

Cal. Const., art. XIII B, § 6, establishes a general rule requiring reimbursement of all state-mandated costs. *Gov. Code, § 17556, subd. (c)*, codifies an exception to that rule. Typically, the party claiming the applicability of an exception bears the burden of demonstrating that it applies. Thus, the state must explain why federal law mandated the requirements at issue.

CA(6) (6)

State of California § 11 > Fiscal Matters > Reimbursing Local Governments for State-mandated Costs > Federal Mandate Exception > Storm Drainage Permit Conditions.

The California Commission on State Mandates determined that National Pollutant Discharge Elimination System permit conditions requiring operators of storm drainage systems to install trash receptacles and to inspect facilities and construction sites were not federal mandates. The Commission was correct. These permit conditions were not federally mandated.

[*Manaster & Selmi, Cal. Environmental Law & Land Use Practice (2016) ch. 31, § 31.24.*]

CA(7) (7)

Pollution and Conservation Laws § 5 > Water Pollution > Inspections and Permits > State and Federal Requirements.

State law makes a regional water quality control board responsible for regulating discharges of waste within its jurisdiction (*Wat. Code, §§ 13260, 13263*). This regulatory authority includes 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 imposes an overarching mandate that the regional board inspect facilities and sites. In addition, federal law and practice require the regional board to inspect all industrial facilities and construction sites. Under the Clean [*752] Water Act, the State Water Resources Control Board, as an issuer of National Pollutant Discharge Elimination System permits, is required to issue permits for stormwater 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) (2001)*).

Counsel: Burhenn & Gest, Howard Gest and David W. Burhenn for Real Parties in Interest and Appellants County of Los Angeles, City of Bellflower, City of Carson, City of Commerce, City of Covina, City of Downey and City of Signal Hill.

John F. Krattli and Mark Saladino, County Counsel, and Judith A. Fries, Principal Deputy County Counsel, for Real Party in Interest and Appellant County of Los Angeles.

Meyers, Nave, Riback, Silver & Wilson, Gregory J. Newmark, John D. Bakker; Morrison & Foerster, Robert L. Falk and Megan B. Jennings for Alameda Countywide Clean Water Program, City/County Association of Governments of San Mateo County and Santa Clara Valley Urban Runoff Pollution Prevention Program as Amici Curiae on behalf of Real Parties in Interest and Appellants.

Somach Simmons & Dunn, Theresa A. Dunham, Nicholas A. Jacobs; Pamela J. Walls and Gregory P. Priamos, County Counsel (Riverside), Karin Watts-Bazan, Principal Deputy County Counsel, and Aaron C. Gettis, Deputy County Counsel, for

California Stormwater Quality Association, Riverside County Flood Control [****2] and Water Conservation District and County of Riverside as Amici Curiae on behalf of Real Parties in Interest and Appellants.

Nicholas S. Chrisos, County Counsel (Orange), Ryan M.F. Baron and Ronald T. Magsaysay, Deputy County Counsel, for County of Orange as Amici Curiae on behalf of Real Parties in Interest and Appellants.

Best Best & Krieger, Shawn Hagerty and Rebecca Andrews for County of San Diego and 18 Cities in San Diego County as Amici Curiae on behalf of Real Parties in Interest and Appellants.

Thomas E. Montgomery, County Counsel (San Diego), and Timothy M. Barry, Chief Deputy County Counsel, for California State Association of Counties and League of California Cities as Amici Curiae on behalf of Real Parties in Interest and Appellants. [*753]

Andrew R. Henderson for Building Industry Legal Defense Foundation as Amicus Curiae on behalf of Real Parties in Interest and Appellants.

Best Best & Krieger and J. G. Andre Monette for City of Aliso Viejo, City of Lake Forest and City of Santa Ana as Amici Curiae on behalf of Real Parties in Interest and Appellants.

Michael R.W. Houston, City Attorney (Anaheim), for City of Anaheim as Amicus Curiae on behalf of Real Parties in Interest and Appellants. [****3]

Richards, Watson & Gershon and Candice K. Lee for City of Brea, City of Buena Park and City of Seal Beach as Amici Curiae on behalf of Real Parties in Interest and Appellants.

Baron J. Bettenhausen for City of Costa Mesa and City of Westminster as Amici Curiae on behalf of Real Parties in Interest and Appellants.

Aleshire & Wynder, Anthony R. Taylor and Wesley A. Miliband for City of Cypress as Amicus

Curiae on behalf of Real Parties in Interest and Appellants.

Rutan & Tucker and Richard Montevideo for City of Dana Point as Amicus Curiae on behalf of Real Parties in Interest and Appellants.

Jennifer McGrath, City Attorney (Huntington Beach), and Michael Vigliotta, Chief Assistant City Attorney, for City of Huntington Beach as Amicus Curiae on behalf of Real Parties in Interest and Appellants.

Rutan & Tucker and Jeremy N. Jungreis for City of Irvine, City of San Clemente and City of Yorba Linda as Amici Curiae on behalf of Real Parties in Interest and Appellants.

Woodruff, Spradlin & Smart and M. Lois Bobak for City of Laguna Hills and City of Tustin as Amici Curiae on behalf of Real Parties in Interest and Appellants.

Terry E. Dixon for City of Laguna Niguel as Amicus Curiae on behalf of Real [****4] Parties in Interest and Appellants.

Mark K. Kitabayashi for City of Mission Viejo as Amicus Curiae on behalf of Real Parties in Interest and Appellants.

Aaron C. Harp for City of Newport Beach as Amicus Curiae on behalf of Real Parties in Interest and Appellants. [*754]

Wayne W. Winthers for City of Orange as Amicus Curiae on behalf of Real Parties in Interest and Appellants.

Kamala D. Harris, Attorney General, Douglas J. Woods, Assistant Attorney General, Peter K. Southworth, Kathleen A. Lynch, Tamar Pachter and Nelson R. Richards, Deputy Attorneys General, for Plaintiffs and Respondents.

No appearance for Defendant and Respondent.

Judges: Opinion by Corrigan, J., with Cantil-

Sakaue C. J., Werdegar, and Chin, JJ., concurring.
Concurring and dissenting opinion by Cuéllar, J.,
with Liu, and Kruger, JJ., concurring.

Opinion by: Corrigan

Opinion

[**49] [**360] **CORRIGAN, J.**—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, [***5] 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 (*33 U.S.C. § 1251 et seq.*). 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]

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,

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 well as inspecting certain commercial [***6] and industrial facilities and construction sites.

Some Operators sought reimbursement for the cost of satisfying the conditions. The Commission [***7] 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. 761.) 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

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)*, italics omitted.) A “[m]unicipal separate storm sewer” is a system owned or operated by a public agency with

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.*)

The federal Clean Water Act (the CWA; *33 U.S.C. § 1251 et seq.*) was enacted in 1972, [****9] and also established a permitting system. The CWA is a comprehensive water quality statute designed to restore and maintain the chemical, physical, and

jurisdiction over disposal of waste and designed [****8] or used for collecting or conveying stormwater. (*40 C.F.R. § 122.26(b)(8)* (2001), italics omitted.) Unless otherwise indicated, all further citations to the Code of Federal Regulations are to the 2001 version.

biological integrity of the nation's waters. (*City of Burbank, supra, 35 Cal.4th at p. 620.*) 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*). (See *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. 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

[*757]

California was the first state authorized to issue its own pollutant discharge permits. (*California 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 *EPA v. State Water Resources Control Board*

³ For a state to acquire permitting authority, the [****10] 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)*).

(1976) 426 U.S. 200 [48 L.Ed.2d 578, 96 S.Ct. 2022].) 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 [****11] 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.)

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 [**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 [****12] 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.*)

[*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 stormwater 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

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' stormwater 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 [****14] were required to inspect industrial

addresses construction sites. It required each Operator [****13] 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

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. 770–771.)

⁶Part 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. 770–771.)

⁷“Costs mandated by the state” means any increased costs which a local agency or school district is required [****15] 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*.)

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*.) 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 [****16] (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

⁸ Title 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 [****17] 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 Title 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 [****18] separate storm sewer system.” (40 C.F.R. § 122.26(d)(2)(iv)(B), (B)(1).)

¹⁰ Title 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).)

[**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*, p. 758, fns. 5, 6). They urged that the Regional Board had shifted that obligation to the Operators as well. Finally, the Operators submitted a declaration [****20] 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”

¹¹ Title 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 non-structural 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 [****19] activity, topography, and the characteristics of soils and receiving water quality.” (40 C.F.R. § 122.26(d)(2)(iv)(D), (D)(3).)

of federal regulations and other EPA guidance regarding stormwater 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 [****21] 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*

HNI Courts review a decision of [****22] 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. (*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)*.) [***56] 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*

CA(1) (1) Voters added article XIII B to the California Constitution in 1979. Also known as the “Gann limit,” *HN2* it “restricts the amounts [****23] state and local governments may appropriate and spend each year from the ‘proceeds

¹² Appellants are the 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.

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.*)

CA(2) (2) 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*). **HN3** The purpose of *section 6* is to prevent “the state from shifting financial responsibility for carrying out governmental functions to local agencies, which [****24] 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.*) 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.*)

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*, this court addressed local governments' reimbursement claims for the costs of extending unemployment insurance protection [****25] to their employees. (*Id. at p. 59.*) 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.*) 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 [****26] against businesses in states complying with federal law. (*City of Sacramento, supra, 50 Cal.3d at p. 74.*) 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, involved a different kind of federal compulsion. In Gideon v. Wainwright (1963) 372 U.S. 335 [9 L.Ed.2d 799, 83 S.Ct. 792], 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.) 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.) 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 [****27] 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.) Penal Code section 987.9 merely codified an existing federal mandate. (County of Los Angeles, at p. 815.)

[***58] 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 former 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 [***765] p. 1594.) 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.)

CA(3) (3) 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), the court concluded that, so far as the state was concerned, the requirements established by the EHA were federally mandated (Hayes, at p. 1592). However, that conclusion “mark[ed] the starting point rather than the end of [its] consideration.” [****28] (Ibid.) The court explained that, HN4 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, 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.) Applying those principles, the court concluded that, to the extent “the state implemented the [EHA] by

freely [****29] 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.*)

CA(4) (4) From *City of Sacramento, County of Los Angeles*, and *Hayes*, we distill the following principle: HN5 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 of 1970 (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.*) 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. [****30] 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.*) 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, supra, 189 Cal.App.3d at p. 802.) However, that federal regulation specifically excluded local fire districts. (*Id. at p. 803.*) 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.*) 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 initial 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 [****31] ... 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.*)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 [42 L. Ed. 2d 725, 95 S. Ct. 729], 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.*) 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.*) Federal law at the time did not require

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.)

expulsion for a student who brought a gun to school. (*Id. at p. 883.*)

The school district argued it was entitled to reimbursement [****32] 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. (*San Diego Unified, supra, 33 Cal.4th at pp. 884–890.*) [***60] 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. (*San Diego Unified at pp. 881–883.*) 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.*)

2. Application

Review of the Commission's [****33] 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.*

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.*) The State does not argue here that the costs of the challenged permit conditions were de minimis.

§ 1342(a).) In this respect, the case is similar to *Division of Occupational Safety, supra, 189 Cal.App.3d 794*. 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*, where the state risked the loss of subsidies [****34] 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*, the Regional Board had discretion to fashion requirements which it determined would meet the CWA's maximum extent practicable standard.

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 [****35] more exacting than federal law required. (*City of Burbank, supra, 35 Cal.4th at pp. 627–628.*) 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 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 [****36] 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, [*769] 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; Building Industry, supra, 124 Cal.App.4th at pp. 888–889.)

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.

HN6 CA(5) (5) 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 [****37] 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.*) 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

¹⁵ Of course, this finding would be case specific, based among other things on local factual circumstances.

entitling local governments to reimbursement. (*County of San Diego, supra, 15 Cal.4th at p. 81.*) Placing the burden on the State to demonstrate that a requirement is federally mandated, and thus excepted from reimbursement, serves those purposes.

CA(6) (6) 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 [****38] federally mandated. [*770]

(a) *The inspection requirements*

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 *40 C.F.R. § 122.26(d)(2)(iv)(C)(1).*) The regulations do not mention commercial facility inspections at all.

HN7 CA(7) (7) 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 [****39] construction sites. Under the CWA,

the State Board, as an issuer of NPDES permits, was required to issue permits for stormwater discharges "associated with industrial activity." (*33 U.S.C. § 1342(p)(3)(A).*) The term "industrial activity" includes "construction activity." (See *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 (*Wat. Code, § 13260, subd. (d)*), [**372] and that a portion of [****40] 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*, 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.*)

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 [****41] 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*

The Commission concluded the trash receptacle requirement was not a federal mandate [****42] 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 [****43] 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.

Cantil-Sakauye, C. J., Werdegar, J., and Chin, J., concurred.

Concur by: Cuellar (In Part)

Dissent by: Cuellar (In Part)

Dissent

CUÉLLAR, J., Concurring and Dissenting.—A

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.

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 Control Board, Los Angeles Region (Regional Board or Board)—specifically, installation and maintenance of trash receptacles [****44] 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*, at pp. 768–769), 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. 770–772).

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 [****45] determination. (See maj. opn., *ante*, at pp. 762, 768, 770.) 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 decisionmaking 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. 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 [****46] 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 Board* (1976) 426 U.S. 200, 203–204 [48 L.Ed.2d 578, 96 S.Ct. 2022].) 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 [****47] 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*, at p. 767 [“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 [****48] 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 [****49] 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, [****50] 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 [****51] 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 [****52] 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 [****53] 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 [****54] 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 [“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 pp. 879–880, fn. 9 [“we do consider and give due deference to the Water Boards' statutory interpretations [of the

CWA] in this case”]; see also 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 [****55] 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 [****56] 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., *ante*, at pp. 768–769.) [***69] 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. 768–769), 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; *Rancho Cucamonga, supra*, 135 Cal.App.4th at p. 1384.) And for good reason: If the Regional Board's judgment is that the trash receptacle and inspection requirements are necessary [****57] 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 [****58] 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 [****59] 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 [****60] 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 [whether local government appropriations are [*780] federally mandated and therefore exempt from taxing and spending limitations under § 9, *subd. (b)*, of art. XIII B of the Cal. Const. 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*, at p. 768.) 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. 764.) Here, in contrast, the negative consequences of failing to comply with federal law may seem less severe, at least [****61] 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 [****62] 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. 770–772.) 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 [****63] 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 [117 L.Ed.2d 239, 112 S.Ct. 1046] [“The Clean Water Act anticipates a partnership between the States and the Federal Government, animated by a shared objective: ‘to restore and maintain [****64] 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.

Liu, J., and Kruger, J., concurred.

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Department of Finance v. Commission on State Mandates

Court of Appeal of California, Second Appellate District, Division One

January 4, 2021, Opinion Filed

B292446

Reporter

59 Cal. App. 5th 546 *; 2021 Cal. App. LEXIS 4 **; 273 Cal. Rptr. 3d 619; 2021 WL 22066

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. COUNTY OF LOS ANGELES et al., Cross-complainants and Appellants, v. COMMISSION ON STATE MANDATES, Cross-defendant and Respondent; DEPARTMENT OF FINANCE et al., Cross-Real Parties in Interest and Respondents.

Prior History: **[**1]** APPEAL from a judgment of the Superior Court of Los Angeles County, No. BS130730, Amy D. Hogue, Judge.

Department of Finance v. Commission on State Mandates, 1 Cal. 5th 749, 207 Cal. Rptr. 3d 44, 378 P.3d 356, 2016 Cal. LEXIS 7123 (Aug. 29, 2016)

Disposition: Reversed with directions.

Core Terms

local government, inspection, trash receptacle, state agency, transit, stormwater, stops, costs, property owner, subvention, programs, pollution, charges, levy, school district, public agency, mandated, higher level of service, provide a service, regulations, compliance, reimburse, governmental function, public utility, regional board, customers, agencies, parcel, cost of complying, public entity

Case Summary

Overview

HOLDINGS: [1]-Costs incurred by local governments to inspect facilities and to install trash receptacles at transit stops, which a stormwater drainage permit required, were state mandates under Cal. Const., art. XIII B, § 6, because they were programs that provided a higher level of service and imposed unique local requirements; [2]-Reimbursement was not available under Gov. Code, § 17556, subd. (d), for the inspections because local police powers under Cal. Const., art. XI, § 7, provided authority to levy inspection fees, which were not preempted as duplicative of Wat. Code, § 13260, fees but, under Wat. Code, § 13002, subd. (a), were local regulations not in conflict; [3]-Subvention was required as to the trash receptacles because the local governments could neither levy fees on transit agencies under Gov. Code, § 54999.7, nor charge property owners under Cal. Const., art. XIII D, § 6.

Outcome

Reversed and remanded.

LexisNexis® Headnotes

Administrative Law > Judicial Review > Standards of Review > De Novo Standard of Review

Administrative Law > Judicial Review > Standards of Review > Substantial Evidence

Administrative Law > Judicial
Review > Remedies > Mandamus

appellate court's decision.

Administrative Law > Agency
Adjudication > Decisions

Governments > Local Governments > Finance

Governments > Legislation > Initiative &
Referendum

Governments > State & Territorial
Governments > Finance

HN1[\[↕\]](#) Standards of Review, De Novo Standard of Review

The California Commission on State Mandates, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Review of its decisions is by writ of administrative mandamus to the trial court. Gov. Code, § 17559, subd. (b). On appeal from the trial court's decision, the appellate court's review of disputed factual determinations is the same as the trial court, that is, to review the administrative decision to determine whether it is supported by substantial evidence on the whole record. However, the appellate court independently reviews conclusions as to the meaning and effect of constitutional and statutory provisions and, more particularly, a determination that permit conditions are state mandates.

HN3[\[↕\]](#) Local Governments, Finance

Cal. Const., art. XIII B, generally restricts the amounts state and local governments may appropriate and spend each year from the proceeds of taxes. The drafters of the initiative perceived that the restriction on state government spending could result in attempts by legislators seeking to establish or expand a government program to require local governments implement the desired program, thus effectively shifting the financial responsibility for the program to the local governments. To protect local governments from such attempts, the drafters included Cal. Const., art. XIII B, § 6, which provides 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 that local government for the costs of the program or increased level of service. Cal. Const., art. XIII B, § 6, subd. (a). As a result, the state, with certain exceptions, must pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies.

Civil Procedure > Judgments > Preclusion of
Judgments > Law of the Case

HN2[\[↕\]](#) Preclusion of Judgments, Law of the Case

Under the law of the case doctrine, an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case. Generally, the doctrine of law of the case does not extend to points of law which might have been but were not presented and determined in the prior appeal. A statement as to an issue that the parties did not dispute does not constitute a rule of law necessary to the decision of the case. An exception to this rule applies when a question is implicitly decided because it was essential to the

Business & Corporate Compliance > ... > Local
Governments > Governments > Local
Governments

HN4[\[↕\]](#) Governments, Local Governments

The phrase "higher level of service" in Cal. Const., art. XIII B, § 6, refers to state-mandated increases

in the services provided by local agencies in existing programs. Whether a program is new or provides a higher level of service is determined by comparing the legal requirements before and after the issuance of the executive order or the change in law.

Business & Corporate Compliance > ... > Local Governments > Governments > Local Governments

HN5 **Governments, Local Governments**

The term "program" is not defined in Cal. Const., art. XIII B, § 6. The California Supreme Court has established a two-part definition. Programs, for purposes of Cal. Const., art. XIII B, § 6, are 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 two parts are alternatives; either will trigger the subvention obligation unless an exception applies.

Evidence > Burdens of Proof > Allocation

Governments > Local Governments > Finance

HN6 **Burdens of Proof, Allocation**

Under Gov. Code, § 17556, subd. (d), when the state imposes on local governments a new program or higher level of service, the state is not required to provide subvention to the local government if 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. § 17556, subd. (d). The state agencies have the burden of demonstrating the applicability of statutory exceptions to the subvention requirement.

Governments > Local

Governments > Ordinances & Regulations

Governments > Local Governments > Police Power

HN7 **Local Governments, Ordinances & Regulations**

Under 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. These powers are known generally as the police powers of local government.

Governments > Local Governments > Finance

Governments > Local Governments > Police Power

HN8 **Local Governments, Finance**

The police power includes the authority to impose a regulatory fee to further the purpose of a valid exercise of that power. The services for which a regulatory fee may be charged include those that are incident to the issuance of a license or permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement.

Business & Corporate Compliance > ... > State & Local Taxes > Tax Law > State & Local Taxes

Civil Procedure > Appeals > Standards of Review > De Novo Review

Governments > Local Governments > Finance

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

HN9 **Tax, State & Local Taxes**

A regulatory fee is valid if (1) the amount of the fee does not exceed the reasonable costs of providing the services for which it is charged, (2) the fee is not levied for unrelated revenue purposes, and (3) the amount of the fee bears a reasonable relationship to the burdens created by the fee payers' activities or operations or the benefits the fee payers receive from the regulatory activity. The third element is a question of fair allocation that considers whether any class of fee payers is shouldering too large a portion of the associated regulatory costs. Whether a statute imposes a fee or a tax is a question of law to be decided upon an independent review of the record.

Environmental
Law > ... > Enforcement > Discharge
Permits > Storm Water Discharges

Governments > Local Governments > Finance

HN10[↓] Discharge Permits, Storm Water Discharges

Although Wat. Code, § 13260, requires that regional boards use a portion of the fees they receive from certain waste dischargers for stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs, as provided in § 13260, subd. (d)(2)(B)(iii), nothing in the statute requires a regional board to inspect a fee payer's site.

Governments > Local
Governments > Ordinances & Regulations

Governments > State & Territorial
Governments > Relations With Governments

HN11[↓] Local Governments, Ordinances & Regulations

Under the doctrine of preemption, a local ordinance that conflicts with state law is preempted by the

state law and void. Such a conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. A local ordinance duplicates state law when it is coextensive with state law.

Environmental
Law > ... > Enforcement > Discharge
Permits > Storm Water Discharges

Governments > Local Governments > Finance

Governments > State & Territorial
Governments > Relations With Governments

HN12[↓] Discharge Permits, Storm Water Discharges

No provision within Wat. Code, § 13260, implies that the Legislature intended to occupy the field of stormwater program inspections or inspection fees. Indeed, the Porter-Cologne Water Quality Control Act, Wat. Code, §§ 13000-16104, which includes § 13260, provides that its provisions do not limit the power of a city or county to adopt and enforce additional regulations, not in conflict therewith, imposing further conditions, restrictions, or limitations with respect to the disposal of waste or any other activity which might degrade the quality of the waters of the state. Wat. Code, § 13002, subd. (a).

Energy & Utilities Law > Regulators > Public
Utility Commissions > Ratemaking Procedures

HN13[↓] Public Utility Commissions, Ratemaking Procedures

Gov. Code, § 54999.7, subd. (b), requires a public utility to determine the amount of the fee for service provided to a public agency based on the same objective criteria and methodology applicable to comparable nonpublic users, based on customer

classes established in consideration of service characteristics, demand patterns, and other relevant factors.

Energy & Utilities Law > Utility Companies

Governments > Local Governments > Property

HN14 **Energy & Utilities Law, Utility Companies**

Gov. Code, § 54999.7, contemplates that the public entity to whom the service is provided has generally agreed to receive the utility's services; that is, the public entity is a voluntary customer of the public utility. Thus, judicial decisions addressing the statutory scheme have arisen from disputes between public utilities and their customers. Viewed in this light, the reference in § 54999.7 to the power of one public agency to impose a fee for a public utility service provided to another public agency contemplates that the receiving public agency is a public utility customer that solicited and uses the services for which it is charged. The statute does not permit one public entity to simply install equipment—such as trash receptacles—on another public entity's premises and then charge the other entity for their installation and ongoing maintenance.

Governments > Local Governments > Finance

HN15 **Local Governments, Finance**

Levying a charge, fee, or assessment on property owners implicates Cal. Const., art. XIII D, enacted as Proposition 218 (approved 1996). That article places procedural and substantive requirements on charges, fees, and assessments on real property. Procedurally, Cal. Const., art. XIII D, provides generally for protest procedures and voter approval for fees and charges. Cal. Const., art. XIII D, § 6, subds. (a), (c). Substantively, a fee or charge may not be imposed on a parcel or upon a person as an

incident of property ownership unless, among other requirements, the fee or charge does not exceed the proportional cost of the service attributable to the parcel, the fee or charge is for a service that is actually used by, or immediately available to, the owner of the property in question, and it is not imposed for general governmental services. Cal. Const., art. XIII D, § 6, subd. (b)(3)-(5).

Governments > Local Governments > Finance

HN16 **Local Governments, Finance**

Pub. Resources Code, § 40059, enacted as part of the California Integrated Waste Management Act of 1989, reserves to local governments decisions concerning waste management that are of local concern. Although such decisions include charges and fees, this statute does not authorize local governments to impose charges and fees against persons or property without regard to constitutional provisions.

Headnotes/Summary

Summary

[*546] CALIFORNIA OFFICIAL REPORTS SUMMARY

The superior court granted a writ of administrative mandamus to command the Commission on State Mandates to set aside its decision that costs incurred by local governments to comply with requirements of a stormwater drainage permit were state mandates (Cal. Const., art. XIII B, § 6) as to which subvention was required for installing trash receptacles at transit stops, but not for inspecting facilities. (Superior Court of Los Angeles County, No. BS130730, Amy D. Hogue, Judge.)

The Court of Appeal reversed and remanded. The court held that the requirements were state mandates because they were programs that provided a higher level of service and imposed unique local requirements. Reimbursement was not

available for the inspections (Gov. Code, § 17556, subd. (d)) because local police powers (Cal. Const., art. XI, § 7) provided authority to levy inspection fees, which were not preempted as duplicative of regional water quality board fees (Wat. Code, § 13260) but were local regulations not in conflict (Wat. Code, § 13002, subd. (a)). Subvention was required as to the trash receptacles because the local governments could neither levy fees on transit agencies (Gov. Code, § 54999.7), nor charge property owners (Cal. Const., art. XIII D, § 6). (Opinion by Rothschild, P. J., with Chaney and Bendix, JJ., concurring.)

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

CA(1)[↓] (1)

State of California § 11—Fiscal Matters— Reimbursing Local Governments for State Mandates—Determinations and Review.

The Commission on State Mandates, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Review of its decisions is by writ of administrative mandamus to the trial court (Gov. Code, § 17559, subd. (b)). On appeal from the trial court's decision, the appellate court's review of disputed factual determinations is the same as the trial court, that is, to review the administrative decision to determine whether it is supported by substantial evidence on the whole record. However, the appellate court independently reviews conclusions as to the meaning and effect of constitutional and statutory provisions and, more particularly, a determination that permit conditions are state mandates.

CA(2)[↓] (2)

Appellate Review § 157—Scope of Review— Successive Appeals and Law of the Case—

Questions Concluded—Rule of Law Necessary to Decision.

Under the law of the case doctrine, an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case. Generally, the doctrine of law of the case does not extend to points of law which might have been but were not presented and determined in the prior appeal. A statement as to an issue that the parties did not dispute does not constitute a rule of law necessary to the decision of the case. An exception to this rule applies when a question is implicitly decided because it was essential to the appellate court's decision.

CA(3)[↓] (3)

State of California § 11—Fiscal Matters— Reimbursing Local Governments for State Mandates—Higher Levels of Service Under Existing Programs.

Cal. Const., art. XIII B, generally restricts the amounts state and local governments may appropriate and spend each year from the proceeds of taxes. The drafters of the initiative perceived that the restriction on state government spending could result in attempts by legislators seeking to establish or expand a government program to require local governments implement the desired program, thus effectively shifting the financial responsibility for the program to the local governments. To protect local governments from such attempts, the drafters included Cal. Const., art. XIII B, § 6, which provides 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 that local government for the costs of the program or increased level of service (Cal. Const., art. [*548] XIII B, § 6, subd. (a)). As a result, the state, with certain exceptions, must pay for any new governmental programs, or for higher levels of

service under existing programs, that it imposes upon local governmental agencies.

CA(4) [↓] (4)

**State of California § 11—Fiscal Matters—
Reimbursing Local Governments for State
Mandates—Higher Levels of Service Under
Existing Programs.**

The phrase “higher level of service” in Cal. Const., art. XIII B, § 6, refers to state-mandated increases in the services provided by local agencies in existing programs. Whether a program is new or provides a higher level of service is determined by comparing the legal requirements before and after the issuance of the executive order or the change in law.

CA(5) [↓] (5)

**State of California § 11—Fiscal Matters—
Reimbursing Local Governments for State
Mandates—Definitions—Program.**

The term “program” is not defined in Cal. Const., art. XIII B, § 6. The California Supreme Court has established a two-part definition. Programs, for purposes of Cal. Const., art. XIII B, § 6, are 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 two parts are alternatives; either will trigger the subvention obligation unless an exception applies.

CA(6) [↓] (6)

**State of California § 11—Fiscal Matters—
Reimbursing Local Governments for State
Mandates—Local Authority to Levy Service
Charges, Fees, or Assessments.**

Under Gov. Code, § 17556, subd. (d), when the state imposes on local governments a new program or higher level of service, the state is not required to provide subvention to the local government if 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 (§ 17556, subd. (d)). The state agencies have the burden of demonstrating the applicability of statutory exceptions to the subvention requirement.

CA(7) [↓] (7)

**State of California § 11—Fiscal Matters—
Reimbursing Local Governments for State
Mandates—Local Authority to Levy Service
Charges, Fees, or Assessments.**

The Commission on State Mandates determined that local governments seeking reimbursement for costs related to a stormwater drainage permit had the authority to levy service charges, fees, or assessments (Gov. Code, § 17556, subd. (d)) sufficient to pay for [*549] inspection requirements, but not for a requirement to install and maintain trash receptacles at transit stops. The commission was correct.

[Cal. Forms of Pleading and Practice (2021) ch. 126A, Constitutional Law, § 126A.24.]

CA(8) [↓] (8)

**Municipalities § 26—Powers—Police Power—
Scope—Under California Constitution.**

Under 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. These powers are known generally as the police powers of local government.

CA(9) [↓] (9)

**Municipalities § 30—Powers—Police Power—
Regulation—Imposition of Regulatory Fee.**

The police power includes the authority to impose a regulatory fee to further the purpose of a valid exercise of that power. The services for which a regulatory fee may be charged include those that are incident to the issuance of a license or permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement.

CA(10)[↓] (10)

**Municipalities § 30—Powers—Police Power—
Regulation—Imposition of Regulatory Fee—
Validity.**

A regulatory fee is valid if (1) the amount of the fee does not exceed the reasonable costs of providing the services for which it is charged, (2) the fee is not levied for unrelated revenue purposes, and (3) the amount of the fee bears a reasonable relationship to the burdens created by the fee payers' activities or operations or the benefits the fee payers receive from the regulatory activity. The third element is a question of fair allocation that considers whether any class of fee payers is shouldering too large a portion of the associated regulatory costs. Whether a statute imposes a fee or a tax is a question of law to be decided upon an independent review of the record.

CA(11)[↓] (11)

**Pollution and Conservation Laws § 5—Water
Pollution—Use of Fees by Regional Boards—
Stormwater Inspection and Regulatory
Compliance.**

Although Wat. Code, § 13260, requires that regional boards use a portion of the fees they receive from certain waste dischargers for stormwater inspection and regulatory compliance issues associated with industrial and construction

stormwater programs (§ 13260, subd. (d)(2)(B)(iii)), nothing in the statute requires a regional board to inspect a fee payer's site.

CA(12)[↓] (12)

**Municipalities § 56—Ordinances—Validity—
Conflict with Statutes—Test for Preemption—
Duplication, Contradiction, or Entering Area Fully
Occupied.**

Under the doctrine of preemption, a local ordinance [*550] that conflicts with state law is preempted by the state law and void. Such a conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. A local ordinance duplicates state law when it is coextensive with state law.

CA(13)[↓] (13)

**Pollution and Conservation Laws § 5—Water
Pollution—Use of Fees by Regional Boards—
Stormwater Inspection and Regulatory
Compliance—Local Regulatory Authority.**

No provision within Wat. Code, § 13260, implies that the Legislature intended to occupy the field of stormwater program inspections or inspection fees. Indeed, the Porter-Cologne Water Quality Control Act (Wat. Code, §§ 13000–16104), which includes § 13260, provides that its provisions do not limit the power of a city or county to adopt and enforce additional regulations, not in conflict therewith, imposing further conditions, restrictions, or limitations with respect to the disposal of waste or any other activity which might degrade the quality of the waters of the state (Wat. Code, § 13002, subd. (a)).

CA(14)[↓] (14)

**Municipalities § 98—Public Utilities—Rates—
Service Provided to Public Agency—**

Determinations.

Gov. Code, § 54999.7, subd. (b), requires a public utility to determine the amount of the fee for service provided to a public agency based on the same objective criteria and methodology applicable to comparable nonpublic users, based on customer classes established in consideration of service characteristics, demand patterns, and other relevant factors.

CA(15)[↓] (15)**Municipalities § 98—Public Utilities—Rates—Service Provided to Public Agency—As Voluntary Customer.**

Gov. Code, § 54999.7, contemplates that the public entity to whom the service is provided has generally agreed to receive the utility's services; that is, the public entity is a voluntary customer of the public utility. Thus, judicial decisions addressing the statutory scheme have arisen from disputes between public utilities and their customers. Viewed in this light, the reference in § 54999.7 to the power of one public agency to impose a fee for a public utility service provided to another public agency contemplates that the receiving public agency is a public utility customer that solicited and uses the services for which it is charged. The statute does not permit one public entity to simply install equipment—such as trash receptacles—on another public entity's premises and then charge the other entity for their installation and ongoing maintenance.

CA(16)[↓] (16)**Property Taxes § 7.8—Real Property Tax Limitation—Charges, Fees, and Assessments.**

Levying a charge, fee, or assessment on property owners implicates Cal. Const., art. XIII D, enacted as Prop. 218 [*551] (approved 1996). That article places procedural and substantive requirements on

charges, fees, and assessments on real property. Procedurally, Cal. Const., art. XIII D, provides generally for protest procedures and voter approval for fees and charges (Cal. Const., art. XIII D, § 6, subs. (a), (c)). Substantively, a fee or charge may not be imposed on a parcel or upon a person as an incident of property ownership unless, among other requirements, the fee or charge does not exceed the proportional cost of the service attributable to the parcel, the fee or charge is for a service that is actually used by, or immediately available to, the owner of the property in question, and it is not imposed for general governmental services (Cal. Const., art. XIII D, § 6, subd. (b)(3)–(5)).

CA(17)[↓] (17)**Pollution and Conservation Laws § 3.2—Pollution—Waste Management—Local Government Decisions.**

Pub. Resources Code, § 40059, enacted as part of the California Integrated Waste Management Act of 1989, reserves to local governments decisions concerning waste management that are of local concern. Although such decisions include charges and fees, this statute does not authorize local governments to impose charges and fees against persons or property without regard to constitutional provisions.

Counsel: Mary C. Wickham, County Counsel, Robert C. Cartwright, Assistant County Counsel, and Michael S. Simon, Deputy County Counsel, for Real Party in Interest, Cross-complainant and Appellant County of Los Angeles.

Burhenn & Gest, David Burhenn and Howard Gest for Real Parties in Interest, Cross-complainants and Appellants County of Los Angeles, City of Bellflower, City of Carson, City of Commerce, City of Downey and City of Signal Hill.

Karl H. Berger, City Attorney, and Timothy E. Campen, Deputy City Attorney, for Real Party in Interest, Cross-complainant and Appellant City of Bellflower.

Best Best & Krieger, Shawn D. Hagerty and Rebecca Andrews for County of San Diego, Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Marcos, Santee, Solana Beach and Vista as Amici Curiae on behalf of Real Parties in Interest, Cross-complainants and Appellants. [*552]

Thomas E. Montgomery, County Counsel (San Diego), and Christina Snider, Deputy County Counsel, for California State Association of Counties as Amicus Curiae on behalf of Real Parties in Interest, Cross-complainants and Appellants.

Meyers, Nave, Riback, Silver & Wilson, Gregory J. Newmark and Bryan K. Brown for Alameda Countywide Clean Water Program as Amicus Curiae on behalf of Real Parties in Interest, Cross-complainants and Appellants.

Somach Simmons & Dunn, Theresa A. Dunham and Roberta Larson for California Stormwater Quality Association as Amicus Curiae on behalf of Real Parties in Interest, Cross-complainants and Appellants.

Xavier Becerra, Attorney General, Thomas S. Patterson, Assistant Attorney General, Tamar Pachter, Anthony R. Hakl, Nelson R. Richards and Ryan A. Hanley, Deputy Attorneys General, for Plaintiffs, Cross-Real Parties in Interest and Respondents Department of Finance, State Water Resources Control Board and Regional Water Quality Control Board, Los Angeles Region.

No appearance for Defendant, Cross-defendant and Respondent Commission on State Mandates.

Judges: Opinion by Rothschild, P. J. with Chaney and Bendix, JJ., concurring.

Opinion by: Rothschild, P. J.

Opinion

ROTHSCHILD, P. J.—The Regional Water Quality Control Board, Los Angeles Region (the Regional Board), issued a permit authorizing the County of Los Angeles (the County) [*3] and certain cities (collectively, the Operators) to operate stormwater drainage systems. The permit requires the Operators (1) to install and maintain trash receptacles at transit stops (the trash receptacle requirement) and (2) periodically inspect commercial facilities, industrial facilities, and construction sites to ensure compliance with various environmental regulatory requirements (the inspection requirements). Some of the Operators filed claims with the Commission on State Mandates (the Commission) seeking a determination that the state must reimburse them for the costs related to the trash receptacle and inspection requirements pursuant to article XIII B, section 6 of the California Constitution (section 6). The Commission determined that the trash receptacle requirement is a reimbursable state mandate and that the inspection requirements are not.

The Department of Finance, State Water Resources Control Board, and the Regional Board (collectively, the state agencies) filed a petition in the superior court for a writ of administrative mandamus to command the [*553] Commission to set aside its decision concerning the trash receptacle requirement.¹ The County and the Cities of Bellflower, Carson, Commerce, Covina, Downey and Signal Hill (collectively, [*4] the local governments) filed a cross-petition challenging the Commission's decision as to the inspection requirements. The superior court granted the state agencies' petition and denied the cross-petition as moot. The local governments appealed. We agree with the Commission that the trash receptacle requirement requires subvention and the inspection requirements do not. We therefore

¹ The state agencies identified as real parties in interest: County of Los Angeles 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.

reverse the judgment of the superior court.

FACTUAL AND PROCEDURAL SUMMARY

In December 2001, the Regional Board issued its permit No. 01-182 (the permit) concerning waste discharge requirements for municipal stormwater and urban runoff discharges within Los Angeles County and certain cities in the Los Angeles County Flood Control District. The permit includes the trash receptacle requirement² and inspection requirements.³

In 2003, the local governments, among others, filed test claims⁴ with the Commission seeking

²The trash receptacle requirement is set forth in part 4.f.5.c.3 of the permit, which provides that the Operators shall “[p]lace trash receptacles at all transit stops within its jurisdiction” and that “[a]ll trash receptacles shall be maintained as necessary.”

³The inspection requirements were summarized by our Supreme Court 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*) as follows:

“As to commercial facilities, [the permit] 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' stormwater quality management program (SQMP). For each type of facility, the [p]ermit set forth specific inspection tasks.

“[The permit] 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 [Water Resources Control] Board that regulates discharges from industrial facilities.” (*Department of Finance, supra*, 1 Cal.5th at p. 758, fn. 5.)

“[The permit] required inspections for violations of the general construction activity stormwater permit, another statewide permit issued by the State Board.” (*Department of Finance, supra*, 1 Cal.5th at p. 758, fn. 6.)

⁴A “[t]est claim” is “the first claim filed with the [C]ommission alleging that a particular statute or executive order imposes costs mandated by the state.” (*Gov. Code, § 17521.*) The Commission's adjudication of the test claim “governs all subsequent claims based

subvention of funds to cover the costs of the trash [*554] receptacle and inspection requirements pursuant to section 6.⁵ That section provides generally that the state must reimburse local governments for the costs of any state-mandated “new program or higher level of service.” (*Cal. Const., art. XIII B, § 6, subd. (a).*) This general [**5] rule does not apply under certain circumstances, such as when the requirement is mandated by federal law or the local agency has the authority to levy fees sufficient to pay for the program or increased level of service. (*Gov. Code, § 17556, subs. (c) & (d).*)

In July 2009, the Commission determined that the challenged requirements imposed new programs or higher levels of service within the meaning of section 6. Because no exception applied to the trash receptacle requirement, subvention was required to reimburse the local governments for the cost of complying with the requirement. The Commission determined that subvention was not required for the cost of complying with the inspection requirements, however, because the local governments have the authority to impose fees that could pay for the required inspections. (See *Gov. Code, § 17556, subd. (d).*)

In February 2011, the state agencies filed a petition for writ of administrative mandamus challenging the Commission's decision on three grounds: (1) the challenged requirements are mandated by federal law; (2) the challenged requirements do not impose new programs or higher levels of service; and (3) subvention for the costs of complying with the trash receptacle requirement is not required because the local [**6] governments have authority to levy fees to cover such costs. The local governments

on the same statute.” (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1807 [53 Cal. Rptr. 2d 521].)

⁵Additional procedural and background facts regarding the permit and the test claims not necessary to our decision are described in *County of Los Angeles v. State Water Resources Control Bd.* (2006) 143 Cal.App.4th 985 [50 Cal. Rptr. 3d 619], *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898 [58 Cal. Rptr. 3d 762], and *Department of Finance, supra*, 1 Cal.5th 749.

filed a cross-petition challenging the Commission's determination that the local governments could levy fees to cover the costs of the required inspections.

In August 2011, the trial court granted the state agencies' petition on the ground that the challenged conditions impose requirements mandated by federal law and, therefore, the costs of complying with the requirements are not reimbursable. (See Gov. Code, § 17556, subd. (c).) The court did not address the other arguments by the state agencies or the local governments' cross-petition. After we affirmed the court's decision in October 2013, the Supreme Court reversed. (*Department of Finance, supra*, 1 Cal.5th at p. 772.)

The Supreme Court held that the federal mandate exception did not apply to the challenged requirements. (*Department of Finance, supra*, 1 Cal.5th at [*555] pp. 771–772.) The court directed the trial court to address the remaining issues raised by the petition and cross-petition. (*Id.* at p. 772.)

In February 2018, the trial court again granted the state agencies' petition, this time on the ground that neither the trash receptacle requirement nor the inspection requirements are state mandated programs within the meaning of section 6. The local governments' cross-petition was therefore moot. The [**7] court did not reach the parties' arguments concerning the local governments' authority to levy fees to pay for the costs of implementing the requirements.

The local governments timely appealed.

The parties briefed issues arising from the trial court's ruling that the trash receptacle requirement and inspection requirements are not state mandates. In June 2020, we requested the parties further brief the questions whether the Commission erred in finding that (1) the costs of the trash receptacle requirement are costs mandated by the state, and (2) the costs of the challenged inspection requirements are not costs mandated by the state. In October 2020, we requested further supplemental briefing to address the questions whether Health

and Safety Code section 5471 or Government Code section 54999.7 provides the local governments with the authority to levy service charges, fees, or assessments sufficient to pay for the trash receptacle requirement. We received and have considered the requested supplemental briefs.

DISCUSSION

A. Standards of Review

HN1 [↑] CA(1) [↑] (1) “[T]he Commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists.” (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 819 [38 Cal. Rptr. 2d 304].) Review of its decisions is by writ of administrative mandamus to the trial court. [**8] (Gov. Code, § 17559, subd. (b).) On appeal from the trial court's decision, our review of disputed factual determinations is the same as “the trial court, that is, to review the administrative decision to determine whether it is supported by substantial evidence on the whole record.” (*County of Los Angeles v. Commission on State Mandates, supra*, 32 Cal.App.4th at p. 814; accord, *Paradise Irrigation Dist. v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 185 [244 Cal. Rptr. 3d 769] (*Paradise Irrigation*).) However, we “independently review[] conclusions as to the meaning and effect of constitutional and statutory provisions” and, more particularly, the determination that the permit conditions are state mandates. (*Department of Finance, supra*, 1 Cal.5th at p. 762.)

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B. New Program or Higher Level of Service⁶

⁶ CA(2) [↑] (2) In *Department of Finance*, the Supreme Court noted that the state agencies and the local governments “d[id] not dispute here that each challenged requirement is a new program or higher level of service.” (*Department of Finance, supra*, 1 Cal.5th at p. 762.) The local governments contend that this statement “could be treated as law of the case”; that is, that the Supreme Court implicitly decided that the trash receptacle and inspection requirements are new programs or higher levels of service. HN2 [↑] Under the law of the

CA(3) **(3)** In 1979, the California electorate added article XIII B to our state constitution. **HN3** That article generally “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].) The drafters of the initiative perceived that the restriction on state government spending could result in attempts by legislators seeking to establish or expand a government program to require local governments implement the desired program, thus effectively shifting the financial responsibility for the program to the local governments. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [233 Cal. Rptr. 38, 729 P.2d 202]; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 [280 Cal. Rptr. 92, 808 P.2d 235].) To protect local governments from such **[**9]** attempts, the drafters included section 6, which provides that “[w]henver the Legislature or any state agency mandates a new program or higher level of service on any local government, the [s]tate shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service.” (Cal. Const., art. XIII B, § 6, subd. (a); see *Department of Finance, supra*, 1 Cal.5th at p. 769.) “As a result, the state ... , with certain exceptions, must “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 v. Commission on State Mandates*

(2018) 6 Cal.5th 196, 207 [240 Cal. Rptr. 3d 52, 430 P.3d 345].)

HN4 **CA(4)** **(4)** The phrase “higher level of service” in section 6 refers to “state mandated increases in the services provided by local agencies in existing ‘programs.’” (*County of Los Angeles v. State of California, supra*, 43 Cal.3d **[*557]** at p. 56.) Whether a program is “new” or provides a “higher level of service” is determined by comparing the legal requirements before and after the issuance of the executive order or the change in law. (See, e.g., *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 [16 Cal. Rptr. 3d 466, 94 P.3d 589] (*San Diego U.S.D.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 [244 Cal. Rptr. 677, 750 P.2d 318].)

HN5 **CA(5)** **(5)** The term, “program,” is not defined in section 6. Our Supreme Court has established a two-part definition. Programs, for purposes of section 6, are “programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements **[**10]** on local governments and do not apply generally to all residents and entities in the state.” (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 56.) The two parts are alternatives; either will trigger the subvention obligation unless an exception applies. (*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537 [234 Cal. Rptr. 795] (*Carmel Valley*).)

case doctrine, ““an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case.” [Citation.] [Citation.] ‘Generally, the doctrine of law of the case does not extend to points of law which might have been but were not presented and determined in the prior appeal.’” (*Leider v. Lewis* (2017) 2 Cal.5th 1121, 1127 [218 Cal. Rptr. 3d 127, 394 P.3d 1055].) The Supreme Court’s statement in *Department of Finance* as to an issue that the parties did not dispute does not constitute “a rule of law necessary to the decision of the case.” Although an exception to this rule applies when a question is implicitly decided because it was essential to the appellate court’s decision, the general rule and not the exception apply here. We therefore reject the argument that the Supreme Court has decided the issues before us.

State mandates that satisfy the first part of the definition—i.e., the program carries out a governmental function of providing services to the public—are illustrated in a line of cases that includes *San Diego U.S.D., supra*, 33 Cal.4th 859, *Carmel Valley, supra*, 190 Cal.App.3d 521, and *Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155 [275 Cal. Rptr. 449] (*Long Beach*).

In *San Diego U.S.D.*, the court considered a state law that required public school principals to

suspend immediately any student who possesses a firearm at school and make a recommendation to the school district board that the student be expelled. (*San Diego U.S.D., supra*, 33 Cal.4th at pp. 867–871.) In that situation, the law further requires that the suspended student be entitled to a hearing and other procedural protections prior to expulsion. (*Id.* at p. 866.) The San Diego Unified School District contended that the cost associated with such procedural protections was reimbursable under section 6, and the Supreme Court agreed. (*Id.* at pp. 877–878.) The new law required subvention because “public schooling ... constitutes a governmental function” (*id.* at p. 879), and the mandatory suspension of students who possess firearms provided “a ‘higher [**11] level of service’ to the public,” specifically, safer schools for other students. (*Id.* at p. 878.)

In *Carmel Valley*, the County of Los Angeles sought reimbursement from the state for the increased costs of complying with an executive order that established minimum requirements for protective clothing and equipment for firefighters. (*Carmel Valley, supra*, 190 Cal.App.3d at pp. 530–531.) The [*558] Court of Appeal stated that firefighting is a “peculiarly governmental function” that provides services to the public and held that the cost of complying with the new requirements required subvention under section 6. (*Carmel Valley, at p. 537.*) The Supreme Court later explained the holding in *Carmel Valley* by stating that subvention was required in that case because the “increased safety equipment apparently was designed to result in more effective fire protection” and thus “intended to produce a higher level of service to the public.” (*San Diego U.S.D., supra*, 33 Cal.4th at p. 877.)

In *Long Beach*, a school district sought subvention under section 6 for costs associated with an executive order that required school districts to “develop and adopt a reasonably feasible plan for the alleviation and prevention of racial and ethnic segregation of minority students.” (*Long Beach, supra*, 225 Cal.App.3d at p. 165.) Although school

districts had an existing “constitutional obligation to alleviate [**12] racial segregation,” the “specific actions” required by the executive order constituted a “higher level of service” requiring reimbursement under section 6. (*Long Beach, at p. 173.*)

Turning to the instant case, there are three pertinent governmental functions implicated by the challenged requirements for purposes of section 6: The operation of stormwater drainage and flood control systems; the installation and maintenance of trash receptacles at transit stops; and the inspection of commercial, industrial, and construction facilities and sites to ensure compliance with environmental laws and regulations. The first existed prior to the Regional Board's permit; the other two are new. Each is a governmental function that provides services to the public, and the carrying out of such functions are thus programs under the first part of the Supreme Court's definition of that term.

In the case of the provision of stormwater drainage and flood control services, the trash receptacle requirement provides a higher level of service because it, together with other requirements, will reduce pollution entering stormwater drainage systems and receiving waters. In addition, litter will presumably be reduced at transit stops and adjacent streets [**13] and sidewalks; as the local governments put it, the “community is cleaner as a result.”

The inspection requirements provide a higher level of service because they promote and enforce third party compliance with environmental regulations limiting the amount of pollutants that enter storm drains and receiving waters.

Alternatively, the trash receptacle services and inspections can be viewed, as the Commission viewed them, as government functions that provide services to the public. That is, even if the installation and maintenance of trash receptacles at transit stops does not result in a higher level of stormwater drainage and flood control services,

trash collection is itself a government [*559] function that provides a service to the public by producing cleaner transit stops, sidewalks, streets, and, ultimately, stormwater drainage systems and receiving waters. Under this view, the mandate to install and maintain trash receptacles at transit stops is a “new program” within the meaning of section 6 because it was not required prior to the Regional Board's issuance of the permit. Similarly, the inspection requirements not only increase the level of service provided by the existing stormwater drainage [**14] and flood control system, but also constitute new programs mandated by the state to ensure third party compliance with environmental regulations.

The challenged requirements also meet the alternative test of a “program”—i.e., a law or order that “impose[s] unique requirements on local governments” “to implement a state policy.” (*County of Los Angeles v. State of California*, supra, 43 Cal.3d at p. 56.) This alternative was addressed in *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538 [263 Cal. Rptr. 351]. In that case, the California Occupational Safety and Health Administration promulgated new earthquake and fire safety regulations concerning elevators. (*Id.* at p. 1540.) The County of Los Angeles, which owns buildings with elevators, filed a claim for reimbursement for the cost of complying with the regulations. The Court of Appeal affirmed the trial court's rejection of the claim, holding that the regulations did not impose a unique requirement on local governments because the regulations applied “to all elevators, not just those which are publicly owned.” (*Id.* at p. 1545.)

A similar result was reached in *County of Los Angeles v. State of California*, supra, 43 Cal.3d 46, where the enactment of laws that increased the amounts that all employers, including local governments, must pay in worker's compensation benefits, did not impose unique requirements on local governments. (*Id.* at pp. 57–58.) By contrast, the requirements for protective [**15] clothing and

equipment for firefighters in *Carmel Valley* imposed unique requirements on local agencies because they applied “only to those involved in fire fighting” and “fire fighting is overwhelmingly engaged in by local agencies.” (*Carmel Valley*, supra, 190 Cal.App.3d at p. 538; see also *San Diego U.S.D.*, supra, 33 Cal.4th at p. 877 [law requiring procedural protections prior to student expulsion imposed unique requirements on school districts].)

The pertinent state policy, as expressed in the Regional Board's permit, is “to protect the beneficial uses of receiving waters in Los Angeles County” and “reduce the discharge of pollutants in storm water to the maximum extent practicable.” The challenged requirements are unique to local governments in two ways. First, as the Commission found, the Regional Board's permit applies by its terms only to the local governmental entities identified in the [*560] permit; no one else is bound by it. Second, the activities compelled by the challenged requirements—collecting trash at transit stops and inspecting businesses and construction sites to ensure environmental regulatory compliance—are, like the firefighting services in *Carmel Valley*, typically within the purview of government agencies. The requirements therefore constitute programs within [**16] the meaning of both alternative definitions. By requiring the local governments to comply with the trash receptacle and inspection requirements, the state agencies have effectively shifted the financial responsibility for such programs to the local governments.

The trial court agreed with the state agencies that the trash receptacle and inspection requirements are mere manifestations of policies to prohibit pollution. As the trial court stated, the requirements “enforce a prohibition rather than initiate or upgrade ‘classic’ or ‘peculiarly governmental functions[s]’ like the firefighting services affected by the executive order in *Carmel Valley*. ... Because the requirements were implemented to prevent pollution (enforce a ban on pollution) rather than to provide a service to the public, it is

difficult to regard them as ‘programs that carry out the governmental function of providing services to the public.’” This view, however, ignores the terms of the Regional Board’s permit; the challenged requirements are not bans or limits on pollution levels, they are mandates to perform specific actions—installing and maintaining trash receptacles and inspecting business sites—that the local [**17] governments were not previously required to perform. Although the purpose of requiring trash collection at transit stops and business site inspections was undoubtedly to reduce pollution in waterways, the state sought to achieve that goal by requiring local governments to undertake new affirmative steps resulting in costs that must be reimbursed under section 6.

Lastly, the state agencies assert that the challenged requirements are not state mandates because the local governments applied for the permit to operate their stormwater drainage systems and “chose a management permit rather than a numeric end-of-pipe permit.” That is, although the local governments could arguably have applied for a permit that simply mandated particular effluent limits on discharges—a so-called end-of-pipe permit—they elected to apply for a “management permit,” which imposes requirements designed to reduce the discharge of pollutants to the maximum extent practicable. (See City of Abilene v. U.S. E.P.A. (5th Cir. 2003) 325 F.3d 657, 659–660; 33 U.S.C. § 1342(p)(3)(B)(iii).) “Having elected a management permit that imposes the challenged conditions in lieu of more rigid requirements,” the state agencies argue, the local governments “should not be allowed to force the [s]tate to pay for that choice.”

The state agencies [**18] rely on Department of Finance v. Commission on State Mandates (2003) 30 Cal.4th 727 [134 Cal. Rptr. 2d 237, 68 P.3d 1203] (Kern [*561] High School District). In that case, the Supreme Court held that school districts that voluntarily elect to participate in particular education-related programs were not entitled to subvention for costs required by such programs.

(*Id.* at p. 743.) This holding does not apply here, however, because, as our Supreme Court explained, the local governments are required under federal and state law to obtain a permit “for any discharge from a municipal storm sewer system serving a population of 100,000 or more.” (Department of Finance, supra, 1 Cal.5th at p. 757.) The permit “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.’” (*Ibid.*, italics omitted.) Although the storm sewer system operator must propose “management practices; control techniques; and system, design, and engineering methods to reduce the discharge of pollutants to the maximum extent practicable,” it is the “permit-issuing agency” that “determine[s] which practices, whether or not proposed by the applicant, will be imposed as conditions.” (*Ibid.*) Thus, as the Commission concluded, in contrast to the school districts’ participation in educational programs [**19] in Kern High School District, the local governments in the instant case “[did] not voluntarily participate” in applying for a permit to operate their stormwater drainage systems; they were required to do so under state and federal law and the challenged requirements were mandated by the Regional Board.

C. Whether the Local Government Can Levy Fees or Assessments To Pay for the Programs

HN6 [↑] **CA(6)** [↑] (6) Under Government Code section 17556, subdivision (d), when, as here, the state imposes on local governments a new program or higher level of service, the state is not required to provide subvention to the local government if 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.” (Gov. Code, § 17556, subd. (d).) The state agencies have the burden of demonstrating the applicability of statutory exceptions to the subvention requirement. (Department of Finance, supra, 1 Cal.5th at p. 769.)

CA(7) [↑] (7) Here, the Commission determined

that the local governments have the authority to levy service charges, fees, or assessments sufficient to pay for the inspection requirements, but not for the trash receptacle requirement. We agree with the Commission.

1. *The Inspection Requirements*

HN7 **CA(8)** **(8)** Under article XI, section 7 of our state constitution, a “county or city may make ****20** and enforce within its limits all local, police, sanitary, and other ***562** ordinances and regulations not in conflict with general laws.” (Cal. Const., art. XI, § 7.) These powers are known generally as the police powers of local government. (*City and County of San Francisco v. Regents of University of California* (2019) 7 Cal.5th 536, 544 [248 Cal. Rptr. 3d 352, 442 P.3d 671].) The parties do not dispute that the challenged inspection requirements are within the government’s police power. (See *Freeman v. Contra Costa County Water Dist.* (1971) 18 Cal.App.3d 404, 408 [95 Cal. Rptr. 852] [“prevention of water pollution is a legitimate governmental objective, in furtherance of which the police power may be exercised”]; *Cowing v. City of Torrance* (1976) 60 Cal.App.3d 757, 764 [131 Cal. Rptr. 830] [local government may enter business property to make reasonable inspection for compliance with public health and safety regulations]; *Sullivan v. City of Los Angeles* (1953) 116 Cal.App.2d 807, 811 [254 P.2d 590] [city officials may inspect private property for compliance with sewage regulations].)

HN8 **CA(9)** **(9)** The police power also includes the authority to impose a regulatory fee to further the purpose of a valid exercise of that power. (*Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 662 [166 Cal. Rptr. 674].) The services for which a regulatory fee may be charged include those that are “incident to the issuance of [a] license or permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement.” (*California Assn. of Prof. Scientists v. Department of Fish & Game* (2000) 79 Cal.App.4th 935, 945 [94 Cal. Rptr. 2d

535].)

HN9 **CA(10)** **(10)** A regulatory fee is valid “if (1) the amount of the fee does not exceed the reasonable costs of providing the services for which it is charged, ****21** (2) the fee is not levied for unrelated revenue purposes, and (3) the amount of the fee bears a reasonable relationship to the burdens created by the fee payers’ activities or operations” or the benefits the fee payers receive from the regulatory activity. (*California Building Industry Assn. v. State Water Resources Control Bd.* (2018) 4 Cal.5th 1032, 1046 [232 Cal. Rptr. 3d 64, 416 P.3d 53], citing *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 881 [64 Cal. Rptr. 2d 447, 937 P.2d 1350].) The third element is a question “of fair allocation” that “considers whether any class of fee payers is shouldering too large a portion of the associated regulatory costs.” (*California Building Industry Assn. v. State Water Resources Control Bd., supra*, at p. 1052.) “Whether a statute imposes a fee or a tax is a question of law to be decided upon an independent review of the record.” (*Id.* at p. 1046.)

Here, we are not faced with the question whether any ordinance imposing a fee on businesses to cover the local governments’ inspection costs constitutes a tax or regulatory fee; the issue is whether the local governments have the authority to levy such a fee “sufficient to pay for the mandated program or increased level of service.” (*Gov. Code, § 17556, subd. (d).*) We agree with ***563** the Commission that, based upon the local governments’ constitutional police power and their ability to impose a regulatory fee that (1) does not exceed the reasonable cost of the inspections, (2) is not levied for unrelated revenue purposes, and (3) is fairly allocated among ****22** the fee payers, the local governments have such authority.⁷

⁷The state agencies also assert that the local governments have the authority to levy charges to pay for the inspections under section 5471 of the Health and Safety Code. Because we hold that the police power under the constitution provides such authority, we do not address this issue.

CA(11)[↑] (11) The local governments contend that they could not impose a fee for the costs of the inspections as to some businesses because the state already imposes a fee for industrial and construction site inspections, and the local governments are “constitutionally constrained from imposing a second fee for those same inspections.” Specifically, the local governments contend that the owners of some of the sites they must inspect pay fees to the state, a portion of which the Regional Board must spend “solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs.” (Wat. Code, § 13260, subd. (d)(2)(B)(iii).) They argue that any regulatory fee the local governments impose for their inspections would duplicate the fees paid to the state and thus (1) exceed the reasonable cost of providing services for which the fee is charged and (2) not bear a fair or reasonable relationship to the pertinent burdens or benefits.⁸ This argument assumes that the local government's inspection would replace or supplant inspections the Regional Board is required to conduct. The local governments, however, do not cite to the record or ****23** authority to support that assumption. **HN10[↑]** Although Water Code section 13260 requires that regional boards use a portion of the fees they receive from certain waste dischargers for “stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs” (Wat. Code, § 13260, subd. (d)(2)(B)(iii)), nothing in the statute requires a regional board to inspect a fee payer's site. Thus, the permit's inspection requirements and Water Code section 13260 can be applied without duplication or conflict; the local governments can impose and collect a fee to cover the reasonable costs of the particular inspections they are required to undertake and the Regional Board can fulfill its expenditure requirements by

⁸ We do not express any view as to whether a particular fee a local government could impose would either exceed the reasonable cost of providing the services for which the fee is charged or not bear a fair or reasonable relationship to the payor's burdens or benefits from the inspection.

addressing “stormwater inspection and regulatory compliance issues” in other ways. (Wat. Code, § 13260, subd. (d)(2)(B)(iii).)

The local governments further argue that, because any regulatory fee they could impose to pay for the required inspections would be duplicative of the ***564** fee some businesses are required to pay to the state under Water Code section 13260, the local government fee would be void under principles of preemption. We disagree.

HN11[↑] **CA(12)[↑]** (12) Under the doctrine of preemption, a local ordinance that conflicts with state law is preempted by the state law and void. (*O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1067 [63 Cal. Rptr. 3d 67, 162 P.3d 583].) Such a ““conflict exists if the ****24** local legislation “*duplicates, contradicts, or enters an area fully occupied* by general law, either expressly or by legislative implication.”””” (*Ibid.*) “A local ordinance *duplicates* state law when it is ‘coextensive’ with state law.” (*Ibid.*)

CA(13)[↑] (13) The local governments have failed to show how a fee it could impose to pay for the required inspections conflicts with state law, specifically, Water Code section 13260. As discussed above, that statute obligates the waste dischargers described in that statute to pay annual fees to the state, and requires some of those fees be used for “stormwater inspection and regulatory compliance issues.” (Wat. Code, § 13260, subd. (d)(2)(B)(iii).) There is nothing in our record to indicate that a local government's inspection fee would necessarily duplicate the annual fees imposed under Water Code section 13260; the local government fee would pay for the costs of the local government's inspection and the fees paid to the state could be used for the activities required or permitted under state law other than the local government's inspection. **HN12[↑]** Nor does any provision within Water Code section 13260 imply that the Legislature intended to “occupy the field” of stormwater program inspections or inspection fees. Indeed, the Porter-Cologne Water Quality

Control Act (Wat. Code, §§ 13000–16104), which **[**25]** includes Water Code section 13260, provides that its provisions do not limit “the power of a city or county ... to adopt and enforce additional regulations, not in conflict therewith, imposing further conditions, restrictions, or limitations with respect to the disposal of waste or any other activity which might degrade the quality of the waters of the state.” (Wat. Code, § 13002, subd. (a).) We therefore reject the local government's preemption arguments.

The local governments also argue that a fee that must be no more than necessary to cover the reasonable costs of the inspections “would be difficult to accomplish.” They refer to problems that would arise from a general business license fee on all businesses, including those not subject to inspection, and to charging fees for inspections in years in which no inspection would take place. Even if we assume that drafting or enforcing a law that imposes fees to pay for inspections would be difficult, the issue is whether the local governments have the authority to impose such a fee, not how easy it would be to do so. (*Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401 [69 Cal. Rptr. 2d 231].) As explained above, the police powers provision **[*565]** of the constitution and the judicial authorities we have cited provide that authority. Moreover, as the Commission pointed **[**26]** out, at least one city—Covina—has enacted “stormwater inspection fees on [commercial establishments] ... expressly for the purpose of complying with the permit.”

2. The Trash Receptacle Requirement

The Commission determined that the local governments do not have the authority to levy charges, fees, or assessments to cover the costs of the trash receptacle requirement. In part, the Commission reasoned that, “[b]ecause the trash receptacles are required to be placed at transit stops that would typically be on city property (sidewalks) or transit district property (for bus, metro, or subway stations), there are no entities on which the [local governments] would have authority to

impose the fees.”⁹ (Fn. omitted.) The trash receptacle requirement, therefore, requires subvention under section 6. The state agencies challenge this determination.

In their initial appellate brief addressing this issue, the state agencies asserted that the local governments could have charged a fee to transit agencies or transit riders. They made the assertion, however, without citation to authority or evidence. We requested that the parties brief the question whether the local governments have authority to charge a fee **[**27]** to transit agencies pursuant to Government Code section 54999.7. In response the state agencies argue that this statute provides such authority; the local governments contend it does not.

Government Code section 54999.7, subdivision (a) provides: “Any public agency providing public utility service may impose a fee, including a rate, charge, or surcharge, for any product, commodity, or service provided to a public agency, and any public agency receiving service from a public agency providing public utility service shall pay that fee so imposed. Such a fee for public utility service, other than electricity or gas, shall not exceed the reasonable cost of providing the public utility service.” We agree with the local governments that their installation and maintenance of trash receptacles at transit stops pursuant to the permit is not a service “provided to a public agency” within the meaning of the statute.

The Legislature enacted Government Code sections 54999 through 54999.7 to address fee disputes among public utilities, such as water districts, and **[*566]** public agencies that received the

⁹ It is not clear from our record whether the local governments have authority to install and maintain trash receptacles on property they do not own, including property owned by transit authorities. When counsel for the Regional Board was asked at a hearing before the Commission about the ability of the local governments to fulfill the trash receptacle requirement with respect to transit authority property, counsel suggested that the local governments could work “cooperatively” with transit authorities to implement the requirement.

services, such as school districts and state universities. (Assem. Floor Analysis, Assem. Bill No. 2951 (2005–2006 Reg. Sess.) as amended Aug. 29, 2006, pp. 3–7.) These disputes and the Legislature's responses have been shaped [**28] by the Supreme Court's decision in San Marcos Water Dist. v. San Marcos Unified School Dist. (1986) 42 Cal.3d 154 [228 Cal. Rptr. 47, 720 P.2d 935] (*San Marcos*). In that case, a school district connected its facilities to the water district's sewer system and paid monthly service fees, which were not disputed. (*Id.* at pp. 158, 167.) The water district, however, also charged a “capacity fee” to pay for capital improvements to the sewer system, which the school district challenged. (*Id.* at pp. 157–158.) The Supreme Court held that the capacity fee constituted an assessment, which the school district, as a public agency, was not required to pay. (*Id.* at pp. 164–165.) The court rejected the argument that the capacity fee was similar to a usage fee, which is “‘voluntary’—in the sense that it is the payer's solicitation and utilization of the [public utility] service which triggers the charge.” (*Id.* at p. 161.) A usage fee, the court noted, “typically is charged only to those who use the goods or services” and “is related to the actual goods or services provided to the payer.” (*Id.* at p. 162.) The capacity fee, by contrast, was an “involuntary” assessment, which the school district did not agree to pay and the water district could not lawfully impose on its public entity customers. (*Ibid.*)

CA(14)[↑] (14) In 1988, the Legislature responded to the San Marcos decision by enacting Government Code sections 54999 through 54999.6—what courts have [**29] referred to as the San Marcos legislation. (Utility Cost Management v. Indian Wells Valley Water Dist. (2001) 26 Cal.4th 1185, 1189 [114 Cal. Rptr. 2d 459, 36 P.3d 2] (*Utility Cost Management*); Regents of University of California v. City and County of San Francisco (2004) 115 Cal.App.4th 1109, 1111 [9 Cal. Rptr. 3d 728] (*Regents*)). The San Marcos legislation authorized public utilities to charge their public entity customers a “capital

facilities fee” and required the public entities “receiving a public utility's service” to pay the fee. (Gov. Code, § 54999.2.) Subsequent litigation among public utilities and public agencies led the Legislature in 2006 to “fine-tune[]” the statutory scheme by adding section 54999.7. (Assem. Conc. Sen. Amends. to Assem. Bill No. 2951 (2005–2006 Reg. Sess.) as amended Aug. 29, 2006, p. 7.) In addition to subdivision (a) of section 54999.7, quoted above, **HN13[↑]** subdivision (b) requires the public utility to determine the amount of the fee for service provided to a public agency based on “the same objective criteria and methodology applicable to comparable nonpublic users, based on customer classes established in consideration of service characteristics, demand patterns, and other relevant factors.” (Gov. Code, § 54999.7, subd. (b).)

CA(15)[↑] (15) Although San Marcos and the legislation it evoked clarified the type of fees a public utility can charge public entities, **HN14[↑]** the legislation contemplates that the public entity to whom the service is provided has generally agreed to [*567] receive the utility's services; that is, the public [**30] entity is a voluntary customer of the public utility. (See Assem. Conc. Sen. Amends. to Assem. Bill No. 2951 (2005–2006 Reg. Sess.) as amended Aug. 29, 2006, p. 3 [Gov. Code, § 54999.7 “authorizes a public agency utility to charge public agency customers rates or charges on the same basis as comparable nonpublic users, except for capital facilities fees”].) Thus, judicial decisions addressing the statutory scheme have arisen from disputes between public utilities and their customers. (See Utility Cost Management, supra, 26 Cal.4th at pp. 1188, 1194 [assignee of Kern Community College District—a “customer” of the defendant water district—sued to recover sums allegedly charged in excess of limits under Gov. Code, § 54999.3]; Regents, supra, 115 Cal.App.4th at p. 1111 [University of California Regents sued provider of water and sewer services in case that “involves setting and collecting proper charges for public entities as customers of public utilities”].)

Viewed in this light, Government Code section 54999.7's reference to the power of one public agency to impose a fee for a public utility service “provided to [another] public agency” contemplates that the receiving public agency is a public utility customer that solicited and uses the services for which it is charged. The statute does not permit one public entity to simply install equipment—such as trash receptacles—on **[**31]** another public entity's premises and then charge the other entity for their installation and ongoing maintenance. We therefore reject the state agencies' argument that the statute authorizes the local governments to impose on transit agencies service charges, fees, or assessments to pay the costs of complying with the trash receptacle requirement.

CA(16)[↑] (16) The state agencies focus their argument on the assertion that the local governments could levy a fee on property owners “in accordance with the burdens created and benefits enjoyed by each parcel.” As the state agencies acknowledge, **HN15[↑]** levying a charge, fee, or assessment on property owners implicates article XIII D of our state constitution, enacted in 1996 as Proposition 218. That article places procedural and substantive requirements on charges, fees, and assessments on real property. Procedurally, article XIII D of the California Constitution provides generally for protest procedures and voter approval for fees and charges. (Cal. Const., art. XIII D, § 6, subs. (a) & (c).) Substantively, a fee or charge may not be imposed on a parcel or upon a person as an incident of property ownership unless, among other requirements, the fee or charge “[does] not exceed the proportional cost of the service attributable to the parcel,” the **[**32]** fee or charge is for a service that “is actually used by, or immediately available to, the owner of the property in question,” and it is not “imposed for general governmental services.” (Cal. Const., art. XIII D, § 6, subd. (b)(3)–(5).)

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The state agencies discuss at some length how the procedural requirements under article XIII D of the

California Constitution do not apply to fees for sewer and refuse collection services and, if they do apply, they do not negate the local government's authority to impose fees and charges to pay for the trash receptacle. (See Cal. Const., art. XIII D, § 6, subd. (d); Gov. Code, §§ 53750, subd. (k), 53751, subd. (l); *Paradise Irrigation, supra*, 33 Cal.App.5th at p. 194.) They address only briefly, and unpersuasively, the substantive requirements that the trash collection service for which the fee or charge would be imposed must be used by or immediately available to the property in question and the fee cannot exceed the cost attributable to the parcel that is charged.

Under the state agencies' theory, the local governments can charge any property owner “in the vicinity of the trash receptacles” installed at bus stops for the cost of collecting trash at the bus stop. The adjacent property owners, they argue, would benefit by the reduction of trash on the streets and sidewalks next to their properties.

Even if we assume that a fee imposed on adjacent property owners for trash collection **[**33]** at transit stops could overcome the procedural hurdles applicable to most fees, charges, and assessments imposed on property owners (see Cal. Const., art. XIII D, §§ 4, 6), the proponent of the fee would have to establish that the fee is for a service that is to some extent “attributable to the parcel,” that the “service is actually used by, or immediately available to, the owner of the property,” and that the service is not “for general governmental services ... where the service is available to the public at large in substantially the same manner as it is to property owners.” (*Id.*, art. XIII D, § 6, subd. (b)(3)–(5).) In a dispute between the property owner and a local government that has imposed such a fee, the local government would have the burden of proof on that issue. (*Id.*, art. XIII D, § 6, subd. (b)(5); *Moore v. City of Lemon Grove (2015)* 237 Cal.App.4th 363, 368 [188 Cal. Rptr. 3d 130].) In the procedural situation in this case, however, it is the state agencies that are asserting that the local governments have authority to impose such a fee;

they therefore have the burden of proving that the local governments could satisfy these tests. (Cf. Department of Finance, supra, 1 Cal.5th at p. 769 [party claiming the applicability of federal mandate exception to subvention “bears the burden of demonstrating that it applies”].)

The state agencies have not satisfied their burden. Not only have the [**34] state agencies failed to cite to the record or authority to support the point that a fee imposed on property owners adjacent to transit stops could satisfy the substantive constitutional requirements, but common sense dictates that the vast majority of persons who would use and benefit from trash receptacles at transit stops are not the owners of adjacent properties but rather pedestrians, [*569] transit riders, and other members of the general public; any benefit to property owners in the vicinity of bus stops would be incidental. Even if the state agencies could establish that the need for the trash receptacles is in part attributable to adjacent property owners and that the property owners would use the trash receptacles (see Cal. Const., art. XIII D, § 6, subd. (b)(3)–(4)), the placement of the receptacles at public transit stops makes the “service available to the public at large in substantially the same manner as it is to property owners” (*id.*, art. XIII D, § 6, subd. (b)(5)). The state agencies, therefore, failed to establish that the local governments could impose on property owners adjacent to transit stops a fee that could satisfy these constitutional requirements.

In their briefs in the trial court, the state agencies relied on Health and Safety Code section 5471, but did not assert it in [**35] their respondents' brief or first supplemental brief on appeal. We requested the parties address the issue in further supplemental briefs, which we have received. Health and Safety Code section 5471, subdivision (a) provides that “any entity shall have power, by an ordinance or resolution approved by a two-thirds vote of the members of the legislative body thereof, to prescribe, revise and collect, fees, tolls, rates, rentals, or other charges for services and facilities

furnished by it, either within or without its territorial limits, in connection with its water, sanitation, storm drainage, or sewerage system.” The local governments do not dispute that this statute generally authorizes fees to pay for the costs of complying with the trash receptacle requirement, but correctly assert the fee or charge must also comply with constitutional limits on local government fees. (See generally Cal. Const., art. XIII D.) To the extent a fee enacted under Health and Safety Code section 5471 is imposed on transit agencies or property owners, it cannot survive scrutiny for the reasons explained above; and no cogent argument has been made as to how a fee could be imposed on pedestrians or transit riders who would be the primary users and beneficiaries of the trash receptacles.

The state agencies rely on [**36] an opinion of the Attorney General which concludes that “[a] city may impose storm drainage pollution abatement charges with respect to property owned by school districts within the city's boundaries to fund the city's activities in meeting federal stormwater discharge requirements if the activities do not include the construction of capital improvements.” (84 Ops.Cal.Atty.Gen. 61, 61 (2001).) The Attorney General's opinion expressly assumes that a city would create “storm drainage services as a utility enterprise of the city” and pass “a resolution establishing storm drainage pollution abatement charges applicable to all parcels of property in the city, apportioned in accordance with a per-parcel runoff formula.” (*Id.* at p. 62.) The opinion implies that charges for storm drainage pollution abatement can be constitutionally imposed by allocating the costs of storm drainage services among all parcels of property based on the amount of [*570] water that runs off each parcel. Without commenting on the correctness of the opinion, it is inapposite here. The state agencies are attempting to justify a fee imposed on parcels adjacent to transit stops to pay for the cost of trash collection at the transit stops. The Attorney General's opinion [**37] offers no guidance on this issue.

CA(17)[↑] (17) Lastly, the state agencies assert that the local governments have authority to levy fees to pay for the trash receptacle requirements based on Public Resources Code section 40059. Subdivision (a) of that statute provides: “Notwithstanding any other provision of law, each county, city, district, or other local governmental agency may determine all of the following: [¶] (1) Aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services.” HN16[↑] This statute, enacted as part of the California Integrated Waste Management Act of 1989, reserves to local governments decisions concerning waste management that are of local concern. Although such decisions include “charges and fees,” this statute does not authorize local governments to impose charges and fees against persons or property without regard to the constitutional provisions discussed above.

DISPOSITION

The judgment is reversed. The court shall vacate its order granting the state agencies' petition for writ of administrative mandamus and denying the local governments' [**38] cross-petition for writ of administrative mandamus as moot, and enter a new order denying both petitions.

The parties shall bear their own costs on appeal.

Chaney, J., and Bendix, J., concurred.

Div. of Occupational Safety & Health v. State Bd. of Control

Court of Appeal of California, Third Appellate District

February 19, 1987

No. C000006

Reporter

189 Cal. App. 3d 794 *; 234 Cal. Rptr. 661 **; 1987 Cal. App. LEXIS 1410 ***; 1987 OSHD (CCH) P27,921 court's decision.

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH, Plaintiff and Respondent, v. STATE BOARD OF CONTROL, Defendant and Respondent; ARCADE FIRE DISTRICT, Real Party in Interest and Appellant

Subsequent History: [***1] A Petition for a Rehearing was Denied March 17, 1987.

Prior History: Superior Court of Sacramento County, No. 299306, Roger K. Warren, Judge.

Disposition: The order granting the Division's petition for a writ of mandate is affirmed.

Core Terms

regulation, subdivision, costs, reimbursement, atmosphere, levels, occupational safety, executive order, mandated, federal mandate, mandated costs, firefighting, standby, state-mandated, state regulation, local agency, local fire, districts, teams, federal law, three-person, promulgated, manpower, repealed

Case Summary

Procedural Posture

Defendant board found that Cal. Admin. Code, tit. 8, § 5144 (g), which imposed higher safety standards, created a reimbursable state mandated cost; therefore defendant approved appellant fire district's reimbursement claim. Plaintiff division sought review of defendant's decision by mandamus and the Superior Court of Sacramento County (California), granted the writ. Appellant then filed a writ of mandamus challenging the trial

Overview

Appellant fire district filed a claim with defendant board asserting that Cal. Admin. Code, tit. 8, § 5144 (g) (Regulation), imposed additional manpower requirements upon it and other local fire protection districts and therefore it was entitled to state reimbursement under former Cal. Rev. & Tax. Code § 2231. Defendant board held that the Regulation created a reimbursable state mandated cost and approved appellant's reimbursement claim. Plaintiff division sought review of defendant's decision, by mandamus and the trial court granted its request. Appellant petitioned the court for a peremptory writ of mandate directing defendant's decision to be set aside. On appeal, the court applied the substantial evidence standard of review and affirmed the trial court's decision. The court held that since plaintiff was not required to promulgate the Regulation in order to comply with federal law, the exemption for federally mandated costs did apply. The court further found that the regulation did not mandate an increase in appellant's fire protection costs, and therefore the trial court did not err when it directed defendant to vacate its decision.

Outcome

The court affirmed the trial court's decision granting defendant board's petition for a writ mandamus. The court held that the regulation, which raised safety requirements, did not create a reimbursable interest, because the regulation did not mandate an increase in appellant's fire protection costs.

LexisNexis® Headnotes

Business & Corporate Compliance > ... > State
& Local Taxes > Tax Law > State & Local
Taxes

HN1 [⚡] Tax, State & Local Taxes

See Cal. Rev. & Tax. Code § 2207.

Governments > Legislation > Types of Statutes

HN2 [⚡] Legislation, Types of Statutes

Cal. Admin. Code, tit. 8, § 5144 (g), requires only two persons to be on the job when atmospheres immediately hazardous to life or health are encountered -- one person to stand by in a location unaffected by likely incidents and the other to encounter the dangerous atmosphere itself.

Administrative Law > Judicial
Review > Standards of Review > General
Overview

Labor & Employment Law > Occupational
Safety & Health > Administrative
Proceedings > Jurisdiction

Administrative Law > Judicial
Review > Remedies > Mandamus

Administrative Law > Judicial
Review > Standards of Review

Labor & Employment
Law > ... > Administrative
Proceedings > Judicial Review > Standards of
Review

HN3 [⚡] Judicial Review, Standards of Review

In an administrative mandamus proceeding, the court is bound by the State Board of Control findings on all issues of fact within its jurisdiction which are supported by substantial evidence on the record. Cal. Gov't Code, § 17559. The interpretation of an administrative regulation, however, like the interpretation of a statute, is a question of law ultimately to be resolved by the courts.

Administrative Law > Judicial
Review > Reviewability > Factual
Determinations

Administrative Law > Judicial
Review > Standards of Review

Administrative Law > Judicial
Review > Standards of Review > Substantial
Evidence

HN4 [⚡] Reviewability, Factual Determinations

Where the substantial evidence test applies, the court exercises an essentially appellate function in determining whether the administrative findings are supported by substantial evidence and the proceedings free from legal error; the scope of our appellate review is coextensive with that of the superior court.

Business & Corporate Compliance > ... > State
& Local Taxes > Tax Law > State & Local
Taxes

HN5 [⚡] Tax, State & Local Taxes

As defined by Cal. Rev. & Tax. § 2206, costs mandated by the federal government include any increased costs mandated upon a local agency after January 1, 1973, in order to comply with the requirements of federal statute or regulation. Although an executive order implementing a federal law may result in federally mandated costs

in this general definitional sense, former § 2253.2(b)(3), as amended in 1978 (see now Cal. Gov't. Code, § 17556 (c)), provided that state reimbursement is available to a claimant if the executive order mandates costs which "exceed the mandate" of federal law or regulation.

Business & Corporate Compliance > ... > Labor & Employment Law > Occupational Safety & Health > Industry Standards

Governments > Legislation > General Overview

HN6 [↓] **Occupational Safety & Health, Industry Standards**

See 29 C.F.R. § 1910.134(e)(3) (1986).

Business & Corporate Compliance > ... > Labor & Employment Law > Occupational Safety & Health > Industry Standards

Labor & Employment Law > Employment Relationships > At Will Employment > Definition of Employers

Labor & Employment Law > Occupational Safety & Health > General Overview

Labor & Employment Law > Occupational Safety & Health > Administrative Proceedings > Jurisdiction

HN7 [↓] **Occupational Safety & Health, Industry Standards**

By definition, regulated employers under federal OSHA do not include the political subdivisions of a state. 29 U.S.C.S § 652(5), 29 C.F.R. § 1910.2(c). On the other hand, the state OSHA broadly defines the "places of employment" over which the Division of Occupational Safety and Health of the Department of Industrial Relations exercises safety jurisdiction to include public agency employers

within the state. Cal. Lab. Code § 6303 (a).

Business & Corporate Compliance > ... > Occupational Safety & Health > Administrative Proceedings > Federal Preemption

Labor & Employment Law > Occupational Safety & Health > Administrative Proceedings > Jurisdiction

Labor & Employment Law > Occupational Safety & Health > General Overview

Business & Corporate Compliance > ... > Occupational Safety & Health > Administrative Proceedings > OSHA Rulemaking

HN8 [↓] **Administrative Proceedings, Federal Preemption**

Where a state chooses to adopt its own occupational safety and health plan, the federal OSHA requires as a condition for approval of the plan that the state establish and maintain a comprehensive program which extends, to the extent permitted by state law, to all employees of public agencies of the state and its political subdivisions. 29 U.S.C.S § 667(c)(6), 29 C.F.R. § 1902.3(j).) A state plan, if approved, must also provide for the development and enforcement of safety standards at least as effective as the standards promulgated under federal OSHA. 29 U.S.C.S. § 667(c)(2).) The initial decision to establish locally a federally approved plan is an option which the state exercises freely. In no sense is the state compelled to enter a compact with the federal government to extend jurisdiction over occupational safety to local government employers in exchange for the removal of federal preemption. 29 U.S.C.S. § 667(b).

Labor & Employment Law > Occupational

Safety & Health > General Overview

Transportation Law > Private Vehicles > Safety Standards > Seat Belts

HN9 [↓] **Labor & Employment Law, Occupational Safety & Health**

Regulation 5182 provides: (b) An approved safety belt with a life line attached or other approved device shall be used by employees wearing respiratory equipment within tanks, vessels, or confined spaces. At least one employee shall stand by on the outside while employees are inside, ready to give assistance in case of emergency. If entry is through a top opening, at least one additional employee, who may have other duties, shall be within sight and call of the stand-by employee. (c) When conditions require the wearing of respiratory equipment in a confined space, at least two men equipped with approved respiratory equipment, exclusive of the employees that may be necessary to operate blowers and perform stand-by duties, shall be on the job. One or more of the employees so equipped may be within the confined space at the same time, provided, however, that this shall not apply to tanks of less than 12 feet in diameter, when entrance is through a side manhole. Cal. Admin. Notice Register, tit. 8, Register 72, No. 6, dated Feb. 5, 1972.

Business & Corporate Compliance > ... > State & Local Taxes > Tax Law > State & Local Taxes

HN10 [↓] **Tax, State & Local Taxes**

See Cal. Rev. & Tax. Code § 2207.

Headnotes/Summary

Summary

**CALIFORNIA OFFICIAL REPORTS
SUMMARY**

The trial court granted the petition of the State Division of Occupational Safety and Health challenging a decision of the State Board of Control approving the claim of a local fire control district for reimbursement, under Rev. & Tax. Code, § 2207 (state reimbursement of state-mandated local costs), for expenses incurred in maintaining additional firefighters on duty at fires requiring the use of artificial breathing devices pursuant to a regulation delineating standby and rescue procedures. The district construed the regulation as requiring, in addition to the "buddy system" pairs of firefighters with respirators it employed as a standard firefighting practice, a third standby firefighter prepared to undertake rescue of the others, if necessary. The division took the position that the regulation merely passed on nonreimbursable standards mandated by the federal government. (Superior Court of Sacramento County, No. 299306, Roger K. Warren, Judge.)

The Court of Appeal affirmed, holding that Rev. & Tax. Code, § 2207, subd. (f), which did not become effective until after the fiscal years for which reimbursement was sought, was not intended to be retroactive and could not support the claim. Turning to Rev. & Tax. Code, § 2207, subd. (c), which was in effect during those fiscal years, the court deferred to the division's interpretation of the regulation, concluding that, so construed, it did not require the district to increase its respirator-equipped manpower; rather, it contemplated that one firefighter so equipped be maintained on standby, whether two "buddies" or a single firefighter entered the hazardous atmospheres to which the regulation applied. Thus, the court held that the district sought reimbursement for its own interpretation that the "buddy system" was a minimum standard to which the standby requirement had been added, not an express state mandate that three firefighters be deployed at every hazardous-atmosphere fire. (Opinion by Puglia, P. J., with Regan and Sparks, JJ., concurring.)

Headnotes

CA(1)[↓] (1)**Mandamus and Prohibition § 74—Mandamus—
Review—Administrative Regulation.**

--The interpretation of an administrative regulation, like the interpretation of a statute, is a question of law ultimately to be resolved by the courts. Where the substantial evidence test applies, the superior court exercises an essentially appellate function in determining whether the administrative findings are supported by substantial evidence and the proceedings are free from legal error. The scope of the Court of Appeal's review is coextensive with that of the superior court.

CA(2)[↓] (2)**Fires and Fire Districts § 2—Statutes and
Ordinances—Occupational Safety and Health—
Reimbursement of State-mandated Local Costs.**

--The 1974 legislative finding of federal mandate underlying the state Occupational Safety and Health Act (Lab. Code, § 6300 et seq.) has been superseded by former Rev. & Tax. Code, § 2253, subds. (b) and (c), as amended, and does not in and of itself preclude an administrative finding that there is no federal mandate preventing reimbursement to a local fire district for state-mandated costs.

CA(3a)[↓] (3a) CA(3b)[↓] (3b)**Fires and Fire Districts § 2—Statutes and
Ordinances—Health and Safety Regulations—
State-mandated Local Costs—Federally Mandated
Costs.**

--Because the state was not required to promulgate a health and safety regulation requiring certain manpower and equipment minimums for firefighting in hazardous atmospheres in order to comply with federal law, the exception for federally mandated costs, to the requirement that the state

reimburse local agencies for costs incurred by compliance with state-mandated standards, did not apply to a local fire district's claim for reimbursement for the costs of compliance with the state regulation.

CA(4)[↓] (4)**Labor § 6—Regulation of Working Conditions—
Occupational Safety and Health Regulations—
Federal Preemption.**

--Under § 667 of the federal Occupational Safety and Health Act (OSHA) (29 U.S.C. § 651 et seq.), California is preempted from regulating matters covered by the federal OSHA standards unless the state has adopted a federally approved plan. The federal law does not, however, confer federal power upon a state that has adopted such a plan. It merely removes federal preemption so that the state may exercise its own sovereign powers over occupational safety and health. There is no indication in the language of the act that a state with an approved plan may not establish more stringent standards than those developed by the federal OSHA, or grant to its own occupational safety and health agency more extensive jurisdiction than that enjoyed by the federal OSHA.

CA(5)[↓] (5)**State of California § 11—Fiscal Matters—
Reimbursement of Local Governments—
Reimbursement for Increased Program Levels.**

--State regulations that do not increase program levels above those required prior to January 1, 1973, do not result in "costs mandated by the state" within the meaning of Rev. & Tax. Code, § 2207, subd. (c), which requires that the state reimburse local governments for costs incurred in meeting state mandates.

CA(6)[↓] (6)

**State of California § 11—Fiscal Matters—
Reimbursement of Local Governments for State-
mandated Costs—Statute—Construction—
Retroactivity of Amendments.**

--The 1980 amendment to Rev. & Tax. Code, § 2207 (reimbursement of local agency for "costs mandated by the state"), was substantive in nature, rather than procedural or remedial, since it significantly expanded the situations in which a claimant could seek reimbursement for such costs. Nothing in the legislative history of the 1980 amendment expressed a legislative intent that the amendment's provisions be applied retroactively. A statute affecting substantive rights is presumed not to have retrospective application unless the courts can clearly discern from the express language of the statute or extrinsic interpretive aids that the Legislature intended otherwise.

CA(7)[↓] (7)

**State of California § 11—Fiscal Matters—
Reimbursement of Local Governments—State-
mandated Costs—Retroactivity.**

-- Rev. & Tax. Code, § 2207, subd. (f), which provides for state reimbursement of local governmental agencies for costs incurred as a result of enactments after January 1, 1973, that remove options previously available to such agencies, thereby increasing program or service levels, or that prohibit specific activities with the result that such agencies use more costly alternatives, applies prospectively only to costs incurred by local agencies after its effective date, by Jan. 1, 1981. The statute cannot support a claim for reimbursement arising before its effective date.

CA(8)[↓] (8)

**Statutes § 31—Construction—Language—Words
and Phrases—Singular and Plural.**

--As a general rule of construction, words used in

the singular include the plural and vice versa.

CA(9)[↓] (9)

**Statutes § 44—Construction—Aids—
Contemporaneous Administrative Construction—
Ambiguous Statutes.**

--In view of inherent ambiguities in a regulation of the state Division of Occupational Safety and Health (Division) delineating firefighting manpower and equipment safety and health standards, the interpretation given the regulation by the Division, which is charged with its enforcement, was entitled to great weight. Thus, it was proper to defer to that agency's interpretation that the regulation requires the presence of only two persons using respiratory equipment in work places involving hazardous atmospheres, notwithstanding that the State Board of Control, in ruling on a claim of reimbursement, had adopted a different interpretation.

CA(10)[↓] (10)

**Fires and Fire Districts § 2—Statutes and
Ordinances—Hazardous Atmospheres
Regulations—Standby Regulation—State-
mandated Costs.**

--Increased local program levels, such as would be reimbursable by the state under Rev. & Tax. Code, § 2207, subd. (c), were not mandated by the adoption of hazardous atmospheres firefighting regulations by the Division of Occupational Safety and Health. Although division inspectors previously gave firefighting agencies the impression that three-person teams equipped with respirators would be required, rather than the standard-practice two-person teams, the practice of continuing to use the two-person teams while adding a third to stand by was a choice made by local fire districts. The regulation did not expressly require three-person teams, and no agency had been cited for failure to use them. Verbal exchanges

between regulators and the agencies do not rise to the level of a legislative mandate or official policy.

Counsel: Ross & Scott, William D. Ross and Diana P. Scott for Real Party in Interest and Appellant.

Michael D. Mason and A. Margaret Cloudt for Plaintiff and Respondent.

John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, Jeffrey J. Fuller and Faith J. Geoghegan, Deputy Attorneys General, for Defendant and Respondent.

Judges: Opinion by Puglia, P. J., with Regan and Sparks, JJ., concurring.

Opinion by: PUGLIA

Opinion

[*797] [**663] In this appeal we consider whether a safety regulation promulgated by the Division of Occupational Safety and Health (Division) of the Department of Industrial Relations mandates increased costs to local [*798] government such that they are reimbursable under the provisions of Revenue and Taxation Code section 2201 et seq.¹ With respect to the period of time in issue, we conclude that the regulation does not create reimbursable state-mandated costs.

[***2] On October 8, 1980, Arcade Fire District (Arcade) filed a test claim with the State Board of Control (Board) asserting that title 8, section 5144, subdivision (g), of the California Administrative Code (hereafter referred to as Regulation) imposed additional manpower requirements upon it and other local fire protection districts beyond service levels required prior to January 1, 1973.² A local

¹ All references to sections or former sections of an unspecified code are to the Revenue and Taxation Code.

² In 1985, administrative jurisdiction to hear and decide claims for reimbursement of state-mandated costs was transferred from the State Board of Control to the newly created Commission on State Mandates. (Gov. Code, § 17500 et seq.)

governmental agency (§ 2211), Arcade sought state reimbursement under former section 2231. (Repealed Stats. 1986, ch. 879, § 23; see now Gov. Code, § 17561.) Arcade claimed it incurred additional manpower costs during [**664] fiscal years 1978-1979 and 1979-1980 as a result of Regulation 5144, subdivision (g), and that these costs were mandated by the state within the meaning of section 2207.

[***3] HN1 [↑]

Section 2207 defines reimbursable "Costs mandated by the state." They include "any increased costs which a local agency is required to incur as a result of . . . (c) Any executive order issued 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." An "executive order" includes a regulation issued by a state agency such as the Division (§ 2209, subd. (c)). Specifically excluded from the definition of "[costs] mandated by the State" are "[costs] mandated by the federal government" as defined in section 2206 and former section 2253.2, subdivision (b)(3) (repealed Stats. 1986, ch. 879, § 41; see now Gov. Code, § 17556, subd. (c)).

Regulation 5144, subdivision (g), was first adopted by the Division effective August 11, 1974. As amended effective October 14, 1978, the regulation provides: "In atmospheres immediately hazardous to life or health, at least two persons equipped with approved respiratory equipment shall be on the job. Communications shall be maintained between both or all individuals present. Standby persons, [***4] at least one of which shall be in a location which [*799] will not be affected by any likely incidents, shall be present with suitable rescue equipment including self-contained breathing apparatus."³

³ The 1978 amendment deleted from the last sentence the concluding clause "in accordance with Section 5182, Confined Spaces," which had been included in the original version in 1974.

At the administrative hearing, Arcade established that it has always adhered to a practice, known as the "buddy system," whereby two firefighters enter a burning structure together. Arcade also presented evidence that the buddy system is considered essential to the safety of both firefighters and the public and is practiced by firefighting agencies nationwide. Prior to the 1974 effective date of Regulation 5144, subdivision (g), Arcade was unaware of any standby requirement and used only two-person teams in its engine companies. After its effective date, Arcade interpreted the regulation to mandate a minimum firefighting team [***5] of at least three persons equipped with respiratory equipment, one of whom was required to stand by outside a burning structure while the other two operated together under the "buddy system." In support of this interpretation, Arcade presented evidence that Division inspectors had previously informed local fire protection districts that Regulation 5144, subdivision (g), requires a minimum of three fire fighters at the scene.

In opposition to Arcade's claim, the Division maintained that any costs incurred as a result of Regulation 5144, subdivision (g), were federally mandated because the state regulation merely implemented a federal regulation under the 1979 Federal Occupational Safety and Health Act. (29 U.S.C. § 651 et seq.) Even if a state mandate were involved, the Division contended, Arcade's interpretation of the regulation was erroneous. In the Division's view, HN2[↑] Regulation 5144, subdivision (g), requires only two persons to be on the job when atmospheres immediately hazardous to life or health are encountered -- one person to stand by in a location unaffected by likely incidents and the other to encounter the dangerous atmosphere itself. While the Division would certainly [***6] encourage the use of three-person teams at the option of local fire districts, it takes the position that additional manpower is neither mandated by the express language of the regulation nor, as a matter of official policy, a firefighting standard which the Division seeks to enforce.

The Board found the regulation created a reimbursable state-mandated cost and approved Arcade's claim. The Board apparently concluded the regulation did not "explicitly require three-person companies" but considered its effect nonetheless "was to remove the previously existing option of public fire departments to deploy two-person [**665] companies," and that this requirement "exceeded federal and prior state safety regulations."

[*800] The Division sought mandamus to review the Board's ruling. (See former § 2253.5 repealed Stats. 1986, ch. 879, § 44; see now Gov. Code, § 17559; Code Civ. Proc., § 1094.5.) The superior court found the Board had abused discretion in allowing Arcade's claim and issued a peremptory writ of mandate directing the Board to set aside its decision.

Arcade appeals from the order granting the Division mandamus relief. In challenging the court's conclusion that [***7] Regulation 5144, subdivision (g), did not create state-mandated costs, Arcade contends the court (1) applied the wrong standard of review, (2) improperly considered new evidence and legal issues which were not presented at the administrative hearing, and (3) erred in ruling that section 2207, subdivision (f), did not apply.

I

Preliminarily, we set forth the applicable standard of review. HN3[↑] In an administrative mandamus proceeding, we are bound by the Board's findings on all issues of fact within its jurisdiction which are supported by substantial evidence on the record. (See former § 2253.5; Gov. Code, § 17559.) CA(1)[↑] (1) The interpretation of an administrative regulation, however, like the interpretation of a statute, is a question of law ultimately to be resolved by the courts. (Carmona v. Division of Industrial Safety (1975) 13 Cal.3d 303, 310 [118 Cal.Rptr. 473, 530 P.2d 161]; Skyline Homes, Inc. v. Occupational Safety & Health Appeals Bd. (1981) 120 Cal.App.3d 663, 669 [174

Cal.Rptr. 665]; see also *People ex rel. Fund American Companies v. California Ins. Co.* (1974) 43 Cal.App.3d 423, 431 [117 Cal.Rptr. 623].)

HN4 [↑] Where the substantial evidence test applies, [***8] the superior court exercises an essentially appellate function in determining whether the administrative findings are supported by substantial evidence and the proceedings free from legal error; the scope of our appellate review is coextensive with that of the superior court. (*Bank of America v. State Water Resources Control Bd.* (1974) 42 Cal.App.3d 198, 207 [116 Cal.Rptr. 770]; *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182, 190 [203 Cal.Rptr. 258], disapproved on other grounds in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 58, fn. 10 [233 Cal.Rptr. 38].; see also *Swaby v. Unemployment Ins. Appeals Bd.* (1978) 85 Cal.App.3d 264, 269 [149 Cal.Rptr. 336].) We therefore focus our review on the administrative proceedings, declining to consider specific claims of error committed by the superior court.

We shall also consider, as a preliminary matter, whether a federal mandate or an equally or more restrictive pre-1973 state regulation exists which would [*801] bar Arcade's claim for reimbursement. (See §§ 2206; 2207, subds. (c), (f); former § 2253.2, subd. (b)(3).) Although these legal theories may [***9] not have been thoroughly developed by the Division in the administrative proceedings, we are not foreclosed from addressing them on appeal. (See *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 781 [200 Cal.Rptr. 642]; *Frink v. Prod* (1982) 31 Cal.3d 166, 170-171 [181 Cal.Rptr. 893, 643 P.2d 476].) Such consideration will not involve receipt of evidence not before the Board. The Board found Regulation 5144, subdivision (g), exceeded the requirements of both federal and pre-1973 state safety regulations. Our review necessarily requires that we take judicial notice of any statutes and published administrative regulations which impact upon the contentions of the parties. (See *Evid. Code*, § 451, subds. (a), (b); *Gov. Code*, § 11343.6; 44 U.S.C. §

1507.) In any event, Arcade is not prejudiced by our consideration of these issues on appeal because, as will appear, we reject the Division's arguments that a federal mandate or a pre-1973 state regulation bars Arcade's claim.

II

CA(2) [↑] (2) The California Occupational Safety and Health Act (state OSHA; *Lab. Code*, [***666] § 6300 et seq.), from which the Division derives its regulatory authority, was enacted [***10] in 1973 (Stats. 1973, ch. 993, §§ 39-107) as a state plan under the Federal Occupational Safety and Health Act of 1970 (federal OSHA; see 29 U.S.C. § 667). In 1974, an uncodified amendment to state OSHA was enacted which provided: "Notwithstanding Section 2231 of the Revenue and Taxation Code [providing for reimbursement to local governments for state-mandated costs], there shall be no reimbursement pursuant to this section . . . 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, § 36, adding § 106 to ch. 993 of the Stats. of 1973.)⁴ However, this legislative disclaimer of any reimbursable mandate with respect to state OSHA and regulations thereunder is not controlling here. Former section 2253, subdivisions (b) and (c) as amended (Stats. 1978, ch. 794, § 6; repealed Stats. 1986, ch. 879, § 40), permitted reimbursement claims for costs incurred after January 1, 1978, under an executive order or a bill chaptered after January 1, 1973, even though the bill or executive order contained a provision making inoperative former section 2231. Thus [***11] the legislative finding of federal mandate underlying [*802] state OSHA (Stats. 1974, ch. 1284, § 36) has been superseded and does not in and of itself preclude a finding such as the Board made here that there is no federal mandate

⁴Chapter 993 of Statutes 1973 already had a section 106 as part of the original enactment. The original section 106 disclaimed any obligation to reimburse local costs incurred in complying with state OSHA "because the cost of implementing this act is minimal on a statewide basis in relation to the effect on local tax rates." (P. 1954.)

preventing reimbursement of Arcade.

CA(3a) [↑] (3a) Having disposed of the express legislative declaration on the subject, we next consider whether state OSHA, under authority of which Regulation 5144, subdivision (g), was promulgated, in fact did no more than impose costs mandated by federal law.

HN5 [↑] As defined by section 2206, "[costs] mandated by the federal government" include "any increased costs mandated . . . upon a local agency . . . after January [***12] 1, 1973, in order to comply with the requirements of federal statute or regulation." Although an executive order implementing a federal law may result in federally mandated costs in this general definitional sense, former section 2253.2, subdivision (b)(3), as amended in 1978 (see now Gov. Code, § 17556, subd. (c)), provided that state reimbursement is available to a claimant if the executive order mandates costs which "exceed the mandate" of federal law or regulation. (Stats. 1978, ch. 794, § 10, eff. Sept. 18, 1978.)⁵

[***13] We accept for purposes of discussion the Division's assertion that Regulation 5144, subdivision (g), simply mandates a safety standard patterned after and commensurate with a regulation

⁵ Effective January 1, 1981, section 2206 was amended to limit the definition of "costs mandated by the federal government" to increased costs mandated *specifically* by the federal government upon a local agency and to exclude from that definition those costs which result from programs or services "implemented at the option of the state, . . ." (Stats. 1980, ch. 1256, § 3.) Correspondingly, subdivision (d) was added to section 2207 to include within the definition of "costs mandated by the state" any increased costs a local agency is required to incur as a result of a post-1973 executive order which implements or interprets a federal or state regulation and by such implementation or interpretation "increases program or service levels above the levels required by such federal statute or regulation." (Stats. 1980, ch. 1256, § 4; see also Gov. Code, § 17513, which excludes from "[costs] mandated by the federal government" "programs or services which may be implemented at the option of the state, . . .") While these amendments are supportive of the conclusion we reach, we assume for present purposes they have no retrospective operation with respect to costs incurred by Arcade during fiscal years 1978-1979 and 1979-1980.

promulgated under federal OSHA. Also governing the use of respirators, **HN6** [↑] 29 Code of Federal Regulations, section 1910.134(e)(3) (1986) reads in pertinent part: ". . . (i) In areas where the wearer, with failure of the respirator, could [**667] be overcome by a toxic or oxygen-deficient atmosphere, at least one additional man shall be present. Communications . . . shall be maintained between both or all individuals present. Planning shall be such that one individual will be unaffected by any likely incident and have the proper rescue equipment to be able to assist the other(s) in case of emergency. [para.] (ii) When self-contained apparatus or hose [*803] masks with blowers are used in atmospheres immediately dangerous to life or health, standby men must be present with suitable rescue equipment."

The federal regulation, unlike the state regulation in issue, has no applicability to local fire departments such as Arcade. **HN7** [↑] By definition, regulated employers under federal OSHA do not include [***14] the political subdivisions of a state. (29 U.S.C. § 652(5); 29 C.F.R. § 1910.2(c).)⁶ On the other hand, the state OSHA broadly defines the "places of employment" over which the Division exercises safety jurisdiction to include public agency employers within the state. (Lab. Code, § 6303, subd. (a); see also United Air Lines, Inc. v. Occupational Safety & Health Appeals Bd. (1982) 32 Cal.3d 762, 767 [187 Cal.Rptr. 387, 654 P.2d 157].)

HN8 [↑] Where a state chooses to adopt its own occupational safety and health plan, the federal OSHA requires as a condition for approval of the plan that the state establish and maintain a comprehensive program which extends, to the extent permitted by state law, "to all [***15] employees of public agencies of the State and its

⁶ Indeed, to our knowledge the federal government did not assert safety jurisdiction over "private fire brigades until federal regulations on the subject were first published in September 1980. (See 29 C.F.R. § 1910.156(a)(2) and (f)(1)(i); 45 Fed. Reg. 60706, amended May 1, 1981, 46 Fed. Reg. 24557.)

political subdivisions." (29 U.S.C. § 667(c)(6); 29 C.F.R. § 1902.3(j).) A state plan, if approved, must also provide for the development and enforcement of safety standards "at least as effective" as the standards promulgated under federal OSHA. (29 U.S.C. § 667(c)(2).) However, these conditions for approval do not render costs incurred by a local agency as a result of a state safety regulation federally mandated costs within the meaning of former section 2253.2, subdivision (b)(3). Clearly, the initial decision to establish locally a federally approved plan is an option which the state exercises freely. In no sense is the state *compelled* to enter a compact with the federal government to extend jurisdiction over occupational safety to local government employers in exchange for the removal of federal preemption. (29 U.S.C. § 667(b).) (Accord, *City of Sacramento v. State of California*, *supra*, 156 Cal.App.3d at pp. 194-199.)

CA(4)[↑] (4) In *United Air Lines, Inc. v. Occupational Safety & Health Appeals Bd.*, *supra*, 32 Cal.3d 762, the court expressed this principle as follows: "Under the [29 United States Code] section [***16] 667 scheme, California is preempted from regulating matters covered by Fed/OSHA [Federal Occupational Safety and Health Administration] standards unless the state has adopted a federally approved plan. The section does not, however, confer federal power on a state - like California -- that has adopted such a plan; it merely removes federal preemption so that the state may exercise its own sovereign powers [*804] over occupational safety and health. (See, e.g., *American Federation of Labor, etc. v. Marshall* (D.C.Cir. 1978) 570 F.2d 1030, 1033; *Green Mt. Power v. Com'r of Labor and Industry* (1978) 136 Vt. 15 [383 A.2d 1046, 1051]. See also 29 U.S.C. § 651(b)(11).) There is no indication in the language of the act that a state with an approved plan may not establish more stringent standards than those developed by Fed/OSHA (see *Skyline Homes, Inc. v. Occupational Safety & Health Appeals Bd.* (1981) 120 Cal.App.3d 663, 671 . . .) or grant to its own occupational safety and health agency more extensive jurisdiction than that enjoyed by

Fed/OSHA." (*United Air Lines, Inc.*, *supra*, 32 Cal.3d at pp. 772-773.) **CA(3b)[↑]** (3b) Thus since Division was not required to promulgate [***17] [**668] Regulation 5144, subdivision (g), to comply with federal law, the exemption for federally mandated costs does not apply.

III

CA(5)[↑] (5) State regulations which do not *increase* program levels above the levels required prior to January 1, 1973, do not result in "costs mandated by the state" within the meaning of section 2207, subdivision (c). The Division submits that former Regulation 5182, which existed prior to 1973, provided standby personnel requirements which were equal to, if not more stringent than, those set forth in Regulation 5144, subdivision (g). A comparison of the two regulations, however, convinces us that former Regulation 5182 was limited to employees working within tanks, vessels, and similar "confined spaces" and was never intended more broadly to encompass fire fighters working in burning structures.

Subdivision (c) of former Regulation 5182 expressly required at least two persons on the job in addition to the standby employee when conditions necessitated the wearing of respiratory equipment in a confined space. ⁷ It was not replaced until

⁷ As pertinent here, former **HN9[↑]** Regulation 5182 provided: ". . . (b) An approved safety belt with a life line attached or other approved device shall be used by employees wearing respiratory equipment within tanks, vessels, or confined spaces . . . At least one employee shall stand by on the outside while employees are inside, ready to give assistance in case of emergency. If entry is through a top opening, at least one additional employee, who may have other duties, shall be within sight and call of the stand-by employee. [para.] (c) When conditions require the wearing of respiratory equipment in a confined space, at least two men equipped with approved respiratory equipment, exclusive of the employees that may be necessary to operate blowers and perform stand-by duties, shall be on the job. One or more of the employees so equipped may be within the confined space at the same time, provided, however, that this shall not apply to tanks of less than 12 feet in diameter, when entrance is through a side manhole." (Cal. Admin. Notice Register, tit. 8, Register 72, No. 6, dated Feb. 5, 1972.)

1978, when new article 108 (Regulations 5156-5159, Cal. Admin. Code, tit. 8), entitled "Confined Spaces," was added. [***18] (Cal. Admin. Notice Register, tit. 8, Register 78, No. 37.) We do not agree with the Division that Regulation 5182 covered fire fighters (see *Carmona v. [**805] Division of Industrial Safety, supra*, 13 Cal.3d at p. 310). Moreover, we note that the Division's reading of the regulation would undermine, if not invalidate, its alternative position that it has always required only a minimum two-person, firefighting team. Thus if Regulation 5144, subdivision (g), properly interpreted, requires a minimum of three persons as contended by Arcade, it does increase program levels above those required prior to January 1, 1973. Before we address that issue directly, we consider the rationale of the Board's decision.

[***19] IV

The Board's approval of Arcade's claim was based on the conclusion that, although Regulation 5144, subdivision (g), did not expressly require three-person engine companies, its effect was to remove a previous option of local fire districts to use only two person companies. In so concluding, the Board apparently relied on the definition of "[costs] mandated by the state" as expressed in subdivision (f) rather than subdivision (c) of section 2207. Under subdivision (f), costs are mandated and reimbursable when they result from "Any . . . executive order issued after January 1, 1973, which . . . *removes an option previously available to local agencies and thereby increases program or service levels . . .*" (Italics added.)

Because subdivision (f) did not become effective until January 1, 1981 (Stats. 1980, ch. 1256, § 4), the Division contends the Board could not retroactively apply the removal-of-an-option criterion to Arcade's October 1980 reimbursement claim for costs incurred during fiscal years 1978-1979 and 1979-1980. We agree.

CA(6)[**] (6) We observe first that the amendment which added subdivisions (d) through (h) to section

2207 significantly expanded the situations in [***20] which a claimant could seek reimbursement for "[costs] mandated by the state." (See *County of Los Angeles v. [**669] State of California* (1984) 153 Cal.App.3d 568, 572 [200 Cal.Rptr. 394].) Before 1981, the entire spectrum of state-mandated costs was confined to those defined in subdivisions (a) through (c) of section 2207.⁸ As the 1980 amendment necessarily increased the state's liability for [**806] locally incurred costs, it must be construed as substantive rather than

⁸ HN10[**] As amended, section 2207 now reads in full: "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 enacted after January 1, 1973, which mandates a new program or an increased 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 issued 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.

"(d) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which implements or interprets a federal statute or regulation and, by such implementation or interpretation, increases program or service levels required by such federal statute or regulation.

"(e) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which implements or interprets a statute or amendment adopted or enacted pursuant to the approval of a statewide ballot measure by the voters and, by such implementation or interpretation, increases program or service levels above the levels required by such ballot measure.

"(f) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which (i) removes an option previously available to local agencies and thereby increases program or service levels or (ii) prohibits a specific activity which results in the local agencies using a more costly alternative to provide a mandated program or service.

"(g) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which requires that an existing program or service be provided in a shorter time period and thereby increases the costs of such program or service.

"(h) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which adds new requirements to an existing optional program or service and thereby increases the cost of such program or service if the local agencies have no reasonable alternatives other than to continue the optional program."

procedural or remedial in nature. (See *Alta Loma School Dist. v. San Bernardino County Com. on School Dist. Reorganization* (1981) 124 Cal.App.3d 542, 553 [177 Cal.Rptr. 506].) A statute affecting substantive rights is presumed not to have retrospective application unless the courts can clearly discern from the express language of the statute or extrinsic interpretive aids that the Legislature intended otherwise. (*In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 587 [128 Cal.Rptr. 427, 546 P.2d 1371]; *Thompson v. Modesto City High School Dist.* (1977) 19 Cal.3d 620, 625, fn. 3 [139 Cal.Rptr. 603, 566 P.2d 237]; *Alta Loma School Dist., supra*, at p. 553.)

[***21] Although all of the new subdivisions added by the 1980 amendment to section 2207 expressly deal with executive orders issued after January 1, 1973, nothing has been brought to our attention which would indicate the Legislature intended retroactive operation of the expanded definition to resulting costs *incurred* before the 1981 effective date of the amendment. When section 2207 was originally enacted in 1975, the Legislature provided that subdivisions (a) through (c) were "declaratory of existing law." (Stats. 1975, ch. 486, § 18.6.) However, the 1980 amendment adding subdivisions (d) through (h) conspicuously omits any such statement or other indication of retrospective application. CA(7)[↑] (7) Moreover, other related statutory provisions make it clear that the Legislature intended strictly to limit the time period within which a reimbursement claim may be brought for costs incurred during a prior fiscal year. (Former § 2218.5, see now Gov. Code, § 17560; former § 2231, subd. (d)(2), see now Gov. Code, § 17561, subd. [*807] (d)(2); former § 2253; former § 2253.8, repealed Stats. 1986, ch. 879, § 45, see now Gov. Code, § 17557.) Hence, we presume that subdivision (f) of section [***22] 2207 applies prospectively only to costs incurred by local agencies after its effective date, January 1, 1981, and not before. (Accord, *City of Sacramento v. State of California, supra*, 156 Cal.App.3d at p. 194, disapproved on other [**670] grounds in *County of Los Angeles v. State of California, supra*,

43 Cal.3d at p. 58, fn. 10.) Subdivision (f) therefore is not available to support Arcade's claim.

V

The remaining issue is whether Arcade incurred state-mandated costs within the meaning of subdivision (c) of section 2207. It will be recalled that under subdivision (c) of section 2207, reimbursable costs mandated by the state include "any increased costs which a local agency is required to incur as a result of . . . (c) Any executive order issued 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."

As recognized by the Board, the problem resides in the ambiguity of Regulation 5144, subdivision (g). No one contests the regulation's applicability to the occupation of fire fighting. CA(8)[↑] (8) (See fn. 9) But depending on the significance [***23] ascribed to certain of its language, e.g., "In atmospheres," "on the job," "Communications . . . between *both* or all" (italics added) and "standby persons," the regulation is reasonably susceptible to alternative interpretations: (1) at least two persons must *enter* a dangerous atmosphere, (i.e., to be "on the job" one must be "in" the atmosphere) while a third remains outside, (2) at least two persons must stand by (i.e., "standby persons") while others(s) perform a job in a dangerous atmosphere,⁹ or (3) a total of two persons -- one active and one standing by -- is all that is required when working in a dangerous atmosphere.

CA(9)[↑] (9) In view of these inherent ambiguities, the interpretation given the regulation by the Division [***24] as the administrative agency charged with its enforcement is entitled to

⁹ Notwithstanding the use of the plural ("standby persons"), a general rule of construction is that words used in the singular include the plural and vice versa. (See Lab. Code, § 13; Civ. Code, § 14.) Arcade does not contend the regulation requires more than one standby person.

great weight. (*People v. French* (1978) 77 Cal.App.3d 511, 521 [143 Cal.Rptr. 782]; see also *Pacific Legal Foundation v. Unemployment Ins. Appeals Bd.* (1981) 29 Cal.3d 101 111 [172 Cal.Rptr. 194, 624 P.2d 244]; *Carmona v. Division of Industrial Safety, supra*, 13 Cal.3d at p. 310.) We shall defer to the Division's interpretation that the [*808] intended meaning of the regulation, when considered generally and in the abstract, is to require the presence of only two persons using respiratory equipment in workplaces involving hazardous atmospheres. Such deference does not undercut the authority vested in the Board to determine the existence of state-mandated costs under section 2201 et seq. In the exercise of that authority the Board also owes a duty of deference to the administrative agency's interpretation of its regulation. The Board is not licensed to impress its own interpretation upon an administrative regulation in derogation of the reasonable construction of the responsible agency.

CA(10)[↑] (10) In this regard, Arcade contends that substantial evidence supports the conclusion that the [***25] practical consequence of Regulation 5144, subdivision (g), is to mandate an increase in firefighting manpower from two to three persons. Viewing as we must the evidence at the hearing in a light most favorable to Arcade, we accept as true the proposition that fire fighting agencies universally consider the two-person "buddy" system essential to the safety of the workers. We also accept as true that Division inspectors previously gave firefighting agencies the impression that three-person teams are a necessary safeguard.

It does not follow, however, that the regulation in question *mandates* an increase in "program levels above the levels *required* prior to January 1, 1973" as defined by section 2207, subdivision (c). (Italics added.) Although founded on safety reasons, the continued practice of using two fire fighters to enter a burning structure [**671] while adding a third to meet the requirement of a standby was a choice which rested with the local fire districts. As the

Board recognized, the regulation does not expressly require three-person teams nor has the Division issued a citation for failure to use the additional manpower. Verbal exchanges between Division [***26] personnel and the fire districts do not rise to the level of a legislative mandate or official policy. Failing proof that it is impossible to fight fires without the use of "buddies," Arcade cannot inject its own safety standards into a state regulation and say it is a "requirement" of the state.

We conclude that Regulation 5144, subdivision (g), did not mandate an increase in Arcade's fire protection costs for the 1978-1979 and 1979-1980 fiscal years. Accordingly, there was no error in the superior court's order directing the Board to vacate its decision allowing Arcade's claim.

The order granting the Division's petition for a writ of mandate is affirmed.

End of Document

Hayes v. Commission on State Mandates

Court of Appeal of California, Third Appellate District

December 30, 1992, Decided

No. C009519

Reporter

11 Cal. App. 4th 1564 *; 15 Cal. Rptr. 2d 547 **; 1992 Cal. App. LEXIS 1498 ***; 93 Cal. Daily Op. Service 17; 93 Daily Journal DAR 18

THOMAS WILLIAM HAYES, as Director, etc., Plaintiff and Respondent, v. COMMISSION ON STATE MANDATES, Defendant, Cross-defendant, and Respondent; DALE S. HOLMES, as Superintendent, etc., Real Party in Interest, Cross-complainant and Appellant; WILLIAM CIRONE, as Superintendent, etc., Real Party in Interest and Respondent; STATE OF CALIFORNIA et al., Cross-defendants and Respondents.

Subsequent History: [***1] Review Denied April 1, 1993, Reported at 1993 Cal. LEXIS 1988. Lucas, C.J., Kennard, J., and Arabian, J., are of the opinion the petition should be granted.

Prior History: Superior Court of Sacramento County, No. 352795, Eugene T. Gualco, Judge.

Disposition: The judgment is affirmed.

Core Terms

costs, Handicapped, subvention, reimbursement, handicapped child, federal mandate, local agency, mandated, special education, local government, regulation, funding, state-mandated, accommodate, local school district, school district, programs, higher level of service, federal government, state mandate, fiscal year, appropriation, new program, administrative mandate, limitations, spending, federal program, superior court, educational needs, trial court

Case Summary

Procedural Posture

Appellant Riverside Schools sought review from a decision of the Superior Court of Sacramento County (California), which set aside an administrative decision that all local special education costs were state mandated and subject to state reimbursement and, denied appellant's writ of mandate that would have ordered respondent controller to issue a warrant in payment of its claim.

Overview

Appellant Riverside Schools filed claims seeking state reimbursement for alleged state-mandated costs incurred in connection with special education programs. After lengthy proceedings, the administrative agency decided that all local special education costs were state mandated and subject to reimbursement. On appeal, the lower court issued a writ of administrative mandate directing the agency to reconsider the matter and denying appellant's petition for a writ of mandate that would have directed issuance of a warrant in payment of its claim. The court affirmed the lower court decision and clarified the criteria to be applied by the administrative agency. The court concluded that, all financial assistance or funds under the Rehabilitation Education Act, 29 U.S.C.S. § 794 (1973) or, under the Education of the Handicapped Act, 20 U.S.C.S. § 1400 et seq., were federally mandated and thus, appellant was not entitled to reimbursement from the state for these types of programs.

Outcome

The court affirmed the judgment of the lower court,

which set aside an administrative decision that all local special education costs were state mandated and subject to state reimbursement because the special education costs were federally mandated and thus, appellant Riverside Schools was not entitled to reimbursement from the state for these types of programs.

LexisNexis® Headnotes

Education Law > Departments of Education > State Departments of Education > Authority of Departments of Education

Education Law > Departments of Education > US Department of Education > US Department of Education Authority

HN1 [⚡] State Departments of Education, Authority of Departments of Education

Essentially, the constitutional rule of state subvention provides that the state is required to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies.

Education Law > Students > Right to Education

HN2 [⚡] Students, Right to Education

States typically do purport to guarantee all of their children the opportunity for a basic education. In fact, in this state basic education is regarded as a fundamental All basic educational programs are essentially affirmative action activities in the sense that educational agencies are required to evaluate and accommodate the educational needs of the children in their districts.

Education Law > Students > Disabled Students > Scope of Protections

Governments > Legislation > Statutory Remedies & Rights

Education Law > Departments of Education > US Department of Education > US Department of Education Authority

Business & Corporate Compliance > ... > Students > Disabled Students > Compliance Enforcement

Governments > Legislation > Effect & Operation > Amendments

HN3 [⚡] Disabled Students, Scope of Protections

Since the 1975 amendment, the Education of the Handicapped Act requires recipient states to demonstrate a policy that assures all handicapped children the right to a free appropriate education, 20 U.S.C.S. § 1412(1). The act is not merely a funding statute; rather, it establishes an enforceable substantive right to a free appropriate public education in recipient states.

Civil Rights Law > ... > Protection of Disabled Persons > Federal Employment & Services > Remedies

Constitutional Law > Supremacy Clause > General Overview

Governments > State & Territorial Governments > Relations With Governments

Civil Rights Law > Protection of Rights > Federally Assisted Programs > Federal Assistance

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > General Overview

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Constitutional Law > Equal
Protection > Disability

Constitutional Law > Equal Protection > Nature
& Scope of Protection

Education Law > Departments of
Education > US Department of Education > US
Department of Education Authority

Education Law > Students > Disabled
Students > Due Process

Public Health & Welfare Law > ... > Disabled
& Elderly Persons > Education &
Training > General Overview

Public Health & Welfare Law > ... > Disabled
& Elderly Persons > Education &
Training > Rehabilitation Act

HN4[📌] Federal Employment & Services, Remedies

Federal financial assistance is not the only incentive for a state to comply with the Education of the Handicapped Act, 20 U.S.C.S. § 1400 et seq. Congress intends the act to serve as a means by which state and local educational agencies can fulfill their obligations under the equal protection and due process provisions of the Constitution and under § 504 of the Rehabilitation Act of 1973, 29 U.S.C.S. § 794. Accordingly, where it is applicable the act supersedes claims under the Civil Rights Act, 42 U.S.C.S. § 1983 and § 504 of the Rehabilitation Act of 1973, and the administrative remedies provided by the act constitute the exclusive remedy of handicapped children and their parents or other representatives.

Administrative Law > Judicial
Review > General Overview

Constitutional Law > Supremacy
Clause > General Overview

Business & Corporate
Compliance > ... > Students > Disabled
Students > Compliance Enforcement

Administrative Law > Judicial
Review > Reviewability > General Overview

Administrative Law > Judicial
Review > Reviewability > Exhaustion of
Remedies

Administrative Law > Judicial
Review > Standards of Review > General
Overview

Civil
Procedure > ... > Justiciability > Exhaustion of
Remedies > General Overview

Civil
Procedure > ... > Justiciability > Exhaustion of
Remedies > Administrative Remedies

Civil Procedure > Appeals > Standards of
Review > De Novo Review

HN5[📌] Administrative Law, Judicial Review

As a result of the exclusive nature of the Education of the Handicapped Act, 20 U.S.C.S. § 1415(e)(2), dissatisfied parties in recipient states must exhaust their administrative remedies under the act before resorting to judicial intervention. This gives local agencies the first opportunity and the primary authority to determine appropriate placement and to resolve disputes. If a party is dissatisfied with the final result of the administrative process then he or she is entitled to seek judicial review in a state or federal court. In such a proceeding the court independently reviews the evidence but its role is restricted to that of review of the local decision and the court is not free to substitute its view of sound educational policy for that of the local authority.

Constitutional Law > State Constitutional
Operation

Education Law > Students > Right to Education

HN6[↓] Constitutional Law, State Constitutional Operation

The constitutional provision requires state subvention when the Legislature or any State agency mandates a new program or higher level of service on local agencies. Cal. Const., art. XIII B, § 6.

Constitutional Law > State Constitutional Operation

Governments > Legislation > Interpretation

HN7[↓] Constitutional Law, State Constitutional Operation

As a general rule and unless the context clearly requires otherwise, reviewing court must assume that the meaning of a term or phrase is consistent throughout the entire act or constitutional article of which it is a part.

Headnotes/Summary

Summary

CALIFORNIA OFFICIAL REPORTS SUMMARY

Two school districts filed claims with the State Board of Control for state reimbursement of alleged state-mandated costs incurred in connection with special education programs. The board determined that the costs were state mandated and subject to reimbursement by the state. In a mandamus proceeding, the trial court entered a judgment by which it issued a writ of administrative mandate directing the Commission on State Mandates (the successor to the board) to set aside the board's administrative decision and to reconsider the matter in light of an intervening decision by the California Supreme Court, and by which it denied the petition of one of the school districts for a writ of mandate

that would have directed the State Controller to issue a warrant in payment of the district's claim. (Superior Court of Sacramento County, No. 352795, Eugene T. Gualco, Judge.)

The Court of Appeal affirmed. It held that the 1975 amendments to the federal Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) constituted a federal mandate with respect to the state. However, even though the state had no real choice in deciding whether to comply with the act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. The court held that to the extent the state implemented the act 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 subvention under Cal. Const., art. XIII B, § 6. Thus, on remand to the commission, the court held, the commission was required to focus on the costs incurred by local school districts and on whether those costs were imposed by federal mandate or by the state's voluntary choice in its implementation of the federal program. (Opinion by Sparks, Acting P. J., with Davis and Scotland, JJ., concurring.)

Headnotes

CA(1)[↓] (1)

State of California § 11 — Fiscal Matters — Reimbursement to Local Governments — State-mandated Costs: Words, Phrases, and Maxims — Subvention.

--"Subvention" generally means a grant of financial aid or assistance, or a subsidy. The constitutional rule of state subvention provides that the state is required to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. This does not mean that the state is required to reimburse local agencies for any incidental cost that may result

from the enactment of a state law; rather, the subvention requirement is restricted to governmental services that the local agency is required by state law to provide to its residents. The subvention requirement is intended to prevent the state from transferring the costs of government from itself to local agencies. Reimbursement is required when the state freely chooses to impose on local agencies any peculiarly governmental cost which they were not previously required to absorb.

CA(2)[↓] (2)

Schools § 4 — School Districts — Relationship to State.

--A school district's relationship to the state is different from that of local governmental entities such as cities, counties, and special districts. Education and the operation of the public school system are matters of statewide rather than local or municipal concern. Local school districts are agencies of the state and have been described as quasi-municipal corporations. They are not distinct and independent bodies politic. The Legislature's power over the public school system is exclusive, plenary, absolute, entire, and comprehensive, subject only to constitutional constraints. The Legislature has the power to create, abolish, divide, merge, or alter the boundaries of school districts. The state is the beneficial owner of all school properties, and local districts hold title as trustee for the state. School moneys belong to the state, and the apportionment of funds to a school district does not give the district a proprietary interest in the funds. While the Legislature has chosen to encourage local responsibility for control of public education through local school districts, that is a matter of legislative choice rather than constitutional compulsion, and the authority that the Legislature has given to local districts remains subject to the ultimate and nondelegable responsibility of the Legislature.

CA(3)[↓] (3)

Property Taxes § 7.8 — Real Property Tax Limitation — Exemptions and Special Taxes — Federally Mandated Costs.

--Pursuant to Rev. & Tax. Code, § 2271 (local agency may levy rate in addition to maximum property tax rate to pay costs mandated by federal government that are not funded by federal or state government), costs mandated by the federal government are exempt from an agency's taxing and spending limits.

CA(4)[↓] (4)

State of California § 11 — Fiscal Matters — Reimbursement to Local Governments — State-mandated Costs — Costs Incurred Before Effective Date of Constitutional Provision.

--Since Cal. Const., art. XIII B, requiring subvention for state mandates enacted after Jan. 1, 1975, had an effective date of July 1, 1980, a local agency may seek subvention for costs imposed by legislation after Jan. 1, 1975, but reimbursement is limited to costs incurred after July 1, 1980. Reimbursement for costs incurred before July 1, 1980, must be obtained, if at all, under controlling statutory law.

CA(5)[↓] (5)

Schools § 53 — Parents and Students — Right or Duty to Attend — Handicapped Children — Federal Rehabilitation Act — Obligations Imposed on Districts.

--Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. § 794) does not only obligate local school districts to prevent handicapped children from being excluded from school. States typically purport to guarantee all of their children the opportunity for a basic education. In California, basic education is regarded as a fundamental right. All basic educational programs are essentially

affirmative action activities in the sense that educational agencies are required to evaluate and accommodate the educational needs of the children in their districts. Section 504 does not permit local agencies to accommodate the educational needs of some children while ignoring the needs of others due to their handicapped condition. The statute imposes an obligation upon local school districts to take affirmative steps to accommodate the needs of handicapped children.

CA(6)[↓] (6)

Schools § 53 — Parents and Students — Right or Duty to Attend — Handicapped Children — Education of the Handicapped Act.

--The federal Education of the Handicapped Act (20 U.S.C. § 1401 et seq.), which since its 1975 amendment has required recipient states to demonstrate a policy that assures all handicapped children the right to a free appropriate education, is not merely a funding statute; rather, it establishes an enforceable substantive right to a free appropriate public education in recipient states. Congress intended the act to establish a basic floor of opportunity that would bring into compliance all school districts with the constitutional right to equal protection with respect to handicapped children. It is also apparent that Congress intended to achieve nationwide application.

CA(7)[↓] (7)

Civil Rights § 6 — Education — Handicapped — Scope of Federal Statute.

--Congress intended the Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) to serve as a means by which state and local educational agencies could fulfill their obligations under the equal protection and due process provisions of the Constitution and under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794). Accordingly, where it is applicable, the act

supersedes claims under the Civil Rights Act (42 U.S.C. § 1983) and section 504, and the administrative remedies provided by the act constitute the exclusive remedy of handicapped children and their parents or other representatives. As a result of the exclusive nature of the Education of the Handicapped Act, dissatisfied parties in recipient states must exhaust their administrative remedies under the act before resorting to judicial intervention.

CA(8a)[↓] (8a) CA(8b)[↓] (8b)

State of California § 11 — Fiscal Matters — Reimbursement to Local Governments — State-mandated Costs — Special Education: Schools § 4 — School Districts; Financing; Funds — Special Education Costs — Reimbursement by State.

--The 1975 amendments to the federal Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) constituted a federal mandate with respect to the state. However, even though the state had no real choice in deciding whether to comply with the act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. To the extent the state implemented the act 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 subvention under Cal. Const., art. XIII B, § 6. Thus, on remand of a proceeding by school districts to the Commission on State Mandates for consideration of whether special education programs constituted new programs or higher levels of service mandated by the state entitling the districts to reimbursement, the commission was required to focus on the costs incurred by local school districts and whether those costs were imposed by federal mandate or by the state's voluntary choice in its implementation of the federal program.

CA(9)[↓] (9)

**State of California § 11 — Fiscal Matters —
Reimbursement to Local Governments —
Federally Mandated Costs.**

--The constitutional subvention provision (Cal. Const., art. XIII B, § 6) and the statutory provisions which preceded it do not expressly say that the state is not required to provide a subvention for costs imposed by a federal mandate. Rather, that conclusion follows from the plain language of the subvention provisions themselves. The constitutional provision requires state subvention when "the Legislature or any State agency mandates a new program or higher level of service" on local agencies. Likewise, the earlier statutory provisions required subvention for new programs or higher levels of service mandated by legislative act or executive regulation. When the federal government imposes costs on local agencies, those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate, so long as the state had no "true choice" in the manner of implementation of the federal mandate.

CA(10)[↓] (10)

**Statutes § 28 — Construction — Language —
Consistency of Meaning Throughout Statute.**

--As a general rule and unless the context clearly requires otherwise, it must be assumed that the meaning of a term or phrase is consistent throughout the entire act or constitutional article of which it is a part.

CA(11)[↓] (11)

**State of California § 11 — Fiscal Matters —
Reimbursement to Local Governments —
Federally Mandated Costs — Subvention.**

--Subvention principles are part of a more comprehensive political scheme. The basic purpose of the scheme as a whole was to limit the taxing and spending powers of government. The taxing and spending powers of local agencies were to be "frozen" at existing levels with adjustments only for inflation and population growth. Since local agencies are subject to having costs imposed upon them by other governmental entities, the scheme provides relief in that event. If the costs are imposed by the federal government or the courts, then the costs are not included in the local government's taxing and spending limitations. If the costs are imposed by the state, then the state must provide a subvention to reimburse the local agency. Nothing in the scheme suggests that the concept of a federal mandate should have different meanings depending upon whether one is considering subvention or taxing and spending limitations. Thus, the criteria set forth in a California Supreme Court case concerning whether costs mandated by the federal government are exempt from an agency's taxing and spending limits are applicable when subvention is the issue.

CA(12)[↓] (12)

**State of California § 11 — Fiscal Matters —
Reimbursement to Local Governments — State-
mandated Costs — Special Education —
Applicable Criteria in Determining Whether
Subvention Required.**

--In a proceeding for a writ of mandate to direct the Commission on State Mandates to set aside an administrative decision by the State Board of Control (the commission's predecessor), in which the board found that all local special education costs were state mandated and thus subject to state reimbursement, the trial court did not err in determining that the board failed to consider the issues under the appropriate criteria as set forth in a California Supreme Court case concerning whether costs mandated by the federal government are exempt from an agency's taxing and spending

limits. The board relied upon the "cooperative federalism" nature of the Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) without any consideration of whether the act left the state any actual choice in the matter. It also relied on litigation involving another state. However, under the criteria set forth in the Supreme Court's case, the litigation in the other state did not support the board's decision but in fact strongly supported a contrary result.

CA(13) (13)

Courts § 34 — Decisions and Orders — Prospective and Retroactive Decisions — Opinion Elucidating Existing Law.

--In a California Supreme Court case concerning whether costs mandated by the federal government are exempt from an agency's taxing and spending limits, the court elucidated and enforced existing law. Under such circumstances, the rule of retrospective operation controls. Thus, in a proceeding for a writ of mandate to direct the Commission on State Mandates to set aside an administrative decision by the State Board of Control (the commission's predecessor), in which the board found that all local special education costs were state mandated and thus subject to state reimbursement, the trial court correctly applied the Supreme Court decision to the litigation pending before it.

Counsel: Biddle & Hamilton, W. Craig Biddle, Christian M. Keiner and F. Richard Ruderman for Real Party in Interest, Cross-complainant and Appellant.

Breon, O'Donnell, Miller, Brown & Dannis and Emi R. Uyehara as Amici Curiae on behalf of Real Party in Interest, Cross-complainant and Appellant.

No appearance for Real Party in Interest and Respondent.

Daniel E. Lungren, Attorney General, N. Eugene Hill, Assistant Attorney General, Cathy Christian

and Marsha A. Bedwell, Deputy Attorneys General, and Daniel G. Stone for Plaintiff and Respondent.

Gary D. Hori for Defendant, Cross-defendant and Respondent.

Richard J. Chivaro and Patricia A. Cruz for Cross-defendants and Respondents.

Judges: Opinion by Sparks, Acting P. J., with Davis and Scotland, JJ., concurring.

Opinion by: SPARKS, Acting P. J.

Opinion

[*1570] [**550] This appeal involves a decade-long battle over claims for subvention by two county superintendents of schools [***2] for reimbursement for mandated special education programs. Section 6 of article XIII B of the California Constitution directs, with exceptions not relevant here, that "[w]henver 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, ..." The issue on appeal is whether the special education programs in question constituted new programs or higher levels of service mandated by the state entitling the school districts to reimbursement under section 6 of article XIII B of the California Constitution and related statutes for the cost of implementing them or whether these programs were instead mandated by the federal government for which no reimbursement is due.

The Santa Barbara County Superintendent of Schools and the Riverside County Superintendent of Schools each filed claims with the Board of Control for state reimbursement for alleged state-mandated costs incurred in connection with special education programs. After a lengthy administrative process, the Board of Control rendered a decision [***3] finding that all local special

education costs were state mandated and subject to state reimbursement. That decision was then successfully challenged in the Sacramento County Superior Court. The superior court entered a judgment by which it: (1) issued a writ of administrative mandate (Code Civ. Proc., § 1094.5), directing the Commission on State Mandates (the successor to the Board of [*1571] Control) to set aside the administrative decision and to reconsider the matter in light of the California Supreme Court's intervening decision in City of Sacramento v. State of California (1990) 50 Cal.3d 51 [266 Cal.Rptr. 139, 785 P.2d 522]; and (2) denied the Riverside County Superintendent of School's petition for a writ of mandate (Code Civ. Proc., § 1085), which would have directed the State Controller to issue a warrant in payment of the claim. The Riverside County Superintendent of Public Schools appeals. We shall clarify the criteria to be applied by the Commission on State Mandates on remand and affirm the judgment.

I. THE PARTIES

This action was commenced in July 1987 by Jesse R. Huff, then the Director of the [***4] California Department of Finance. Huff petitioned for a writ of administrative mandate to set aside the administrative decision which found all the special education costs to be state mandated. On appeal Huff appears as a respondent urging that we affirm the judgment.

The Commission on State Mandates (the Commission) is the administrative agency which now has jurisdiction over local agency claims for reimbursement for state-mandated costs. (Gov. Code, § 17525.) In this respect the Commission is the successor to the Board of Control. The Board of Control rendered the administrative decision which is at issue here. Since an appropriation for payment of these claims was not included in a local government claims bill before January 1, 1985, administrative jurisdiction over the claims has been transferred from the Board of Control to the Commission. (Gov. Code, § 17630.) The Commission is the named defendant in the petition

for a writ of administrative mandate. In the trial court and on appeal the Commission has appeared as the agency having administrative jurisdiction over the claims, but has not expressed a position on the merits of the litigation.

[**551] The Santa Barbara County Superintendent [***5] of Schools (hereafter Santa Barbara) is a claimant for state reimbursement of special education costs incurred in the 1979-1980 fiscal year. Santa Barbara is a real party in interest in the proceeding for administrative mandate. Santa Barbara has not appealed from the judgment of the superior court and, although a nominal respondent on appeal, has not filed a brief in this court.

The Riverside County Superintendent of Schools (hereafter Riverside) represents a consortium of school districts which joined together to provide special education programs to handicapped students. Riverside seeks reimbursement for special education costs incurred in the 1980-1981 fiscal year. [*1572] Riverside is a real party in interest in the proceeding for writ of administrative mandate. It filed a cross-petition for a writ of mandate directing the Controller to pay its claim. Riverside is the appellant in this appeal.

The State of California and the State Treasurer are named cross- defendants in Riverside's cross-petition for a writ of mandate. They joined with Huff in this litigation. The State Controller is the officer charged with drawing warrants for the payment of moneys from the State [***6] Treasury upon a lawful appropriation. (Cal. Const., art. XVI, § 7.) The State Controller is a named defendant in Riverside's petition for a writ of mandate. In the trial court and on appeal the State Controller expresses no opinion on the merits of Riverside's reimbursement claim, but asserts that the courts lack authority to compel him to issue a warrant for payment of the claim in the absence of an appropriation for payment of the claim.

In addition to the briefing by the parties on appeal, we have permitted a joint amici curiae brief to be filed in support of Riverside by the Monterey

County Office of Education, the Monterey County Office of Education Special Education Local Planning Area, and 21 local school districts.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Legislature has provided an administrative remedy for the resolution of local agency claims for reimbursement for state mandates. In *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62 [222 Cal.Rptr. 750], at pages 71 and 72, we described these procedures as follows (with footnotes deleted): " Section 2250 [Revenue & Taxation Code] and those following [***7] it provide a hearing procedure for the determination of claims by local governments. The State Board of Control is required to hear and determine such claims. (§ 2250.) For purposes of such hearings the board consists of the members of the Board of Control provided for in part 4 (commencing with § 13900) of division 3 of title 2 of the Government Code, together with two local government officials appointed by the Governor. (§ 2251.) The board was required to adopt procedures for receiving and hearing such claims. (§ 2252.) The first claim filed with respect to a statute or regulation is considered a 'test claim' or a 'claim of first impression.' (§ 2218, subd. (a).) The procedure requires an evidentiary hearing where the claimant, the Department of Finance, and any affected department or agency can present evidence. (§ 2252.) If the board determines that costs are mandated, then it must adopt parameters and guidelines for the reimbursement of such claims. (§ 2253.2.) The claimant or the state is entitled to commence an action in administrative mandate pursuant to Code of Civil Procedure section 1094.5 to set aside a decision of the board on the grounds that the board's decision [***8] is not supported by substantial evidence. (§ 2253.5.)

[*1573] "At least twice each calendar year the board is required to report to the Legislature on the number of mandates it has found and the estimated statewide costs of these mandates. (§ 2255, subd. (a).) In addition to the estimate of the statewide

costs for each mandate, the report must also contain the reasons for recommending reimbursement. (§ 2255, subd. (a).) Immediately upon receipt of the report a local government claims bill shall be introduced in the Legislature which, when introduced, must contain an appropriation sufficient to pay for the estimated costs of the mandates.

[**552] (§ 2255, subd. (a).) In the event the Legislature deletes funding for a mandate from the local government claims bill, then it may take one of the following courses of action: (1) include a finding that the legislation or regulation does not contain a mandate; (2) include a finding that the mandate is not reimbursable; (3) find that a regulation contains a mandate and direct that the Office of Administrative Law repeal the regulation; (4) include a finding that the legislation or regulation contains a reimbursable mandate and direct that the [***9] legislation or regulation not be enforced against local entities until funds become available; (5) include a finding that the Legislature cannot determine whether there is a mandate and direct that the legislation or regulation shall remain in effect and be enforceable unless a court determines that the legislation or regulation contains a reimbursable mandate in which case the effectiveness of the legislation or regulation shall be suspended and it shall not be enforced against a local entity until funding becomes available; or (6) include a finding that the Legislature cannot determine whether there is a reimbursable mandate and that the legislation or regulation shall be suspended and shall not be enforced against a local entity until a court determines whether there is a reimbursable mandate. (§ 2255, subd. (b).) If the Legislature deletes funding for a mandate from a local government claims bill but does not follow one of the above courses of action or if a local entity believes that the action is not consistent with article XIII B of the Constitution, then the local entity may commence a declaratory relief action in the Superior Court of the County of Sacramento to declare [***10] the mandate void and enjoin its enforcement. (§ 2255, subd. (c).)

"Effective January 1, 1985, the Legislature has

established a new commission to consider and determine claims based upon state mandates. This is known as the Commission on State Mandates and it consists of the Controller, the Treasurer, the Director of Finance, the Director of the Office of Planning and Research, and a public member with experience in public finance, appointed by the Governor and approved by the Senate. (Gov. Code, § 17525.) 'Costs mandated by the state' are defined as '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 after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which [*1574] 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.) The procedures before the Commission are similar to those which were followed before the Board of Control. (Gov. Code, § 17500 et seq.) Any claims which had not been included in a local government claims [***11] bill prior to January 1, 1985, were to be transferred to and considered by the commission. (Gov. Code, § 17630; [Rev. & Tax. Code.] § 2239.)"

On October 31, 1980, Santa Barbara filed a test claim with the Board of Control seeking reimbursement for costs incurred in the 1979-1980 fiscal year in connection with the provision of special education services as required by Statutes 1977, chapter 1247, and Statutes 1980, chapter 797. Santa Barbara asserted that these acts should be considered an ongoing requirement of increased levels of service.

Santa Barbara's initial claim was based upon the "mandate contained in the two bills specified above [which require] school districts and county offices to provide full and formal due process procedures and hearings to pupils and parents regarding the special education assessment, placement and the appropriate education of the child." Santa Barbara asserted that state requirements exceeded those of federal law as reflected in section 504 of the

Rehabilitation Act of 1973 (29 U.S.C. § 794).¹ Santa [**553] Barbara's initial claim was for \$ 10,500 in state-mandated costs for the 1979-1980 fiscal year.

[***12] During the administrative proceedings Santa Barbara amended its claim to reflect the following state-mandated activities alleged to be in excess of federal requirements: (1) the extension of eligibility to children younger and older than required by federal law; (2) the establishment of procedures to search for and identify children with special needs; (3) assessment and evaluation; (4) the preparation of "Individual Education Plans" (IEP's); (5) due process hearings in placement determinations; (6) substitute teachers; and (7) staff development programs. Santa Barbara was claiming reimbursement in excess of \$ 520,000 for the cost of these services during the 1979- 1980 fiscal year.

[*1575] Also, during the administrative proceedings the focus of federally mandated requirements shifted from section 504 of the Rehabilitation Act to federal Public Law No. 94-142, which amended the Education of the Handicapped Act. (20 U.S.C. § 1401 et seq.)²

¹ Section 794 of title 29 of the United States Code will of necessity play an important part in our discussion of the issues presented in this case. That provision was enacted as section 504 of the Rehabilitation Act of 1973. (Pub.L. No. 93-112, tit. V, § 504 (Sept. 26, 1973) 87 Stat. 394.) It has been amended several times. (Pub.L. No. 95-602, tit. I, § 119, 122(d)(2) (Nov. 6, 1978) 92 Stat. 2982, 2987 [Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978]; Pub.L. No. 99- 506, tit. I, § 103(d)(2)(B), tit. X, § 1002(e)(4) (Oct. 21, 1986) 100 Stat. 1810, 1844; Pub.L. No. 100-259, § 4 (Mar. 22, 1988) 102 Stat. 29; Pub.L. No. 100-630, tit. II, § 206(d) (Nov. 7, 1988) 102 Stat. 3312.) The decisional authorities universally refer to the statute as "section 504." We will adhere to this nomenclature and subsequent references to section 504 will refer to title 29, United States Code, section 794.

² The Education of the Handicapped Act was enacted in 1970. (Pub.L. No. 91-230, tit. VI (Apr. 13, 1970) 84 Stat. 175.) It has been amended many times. The amendment of primary interest here was enacted as the Education for All Handicapped Children Act of 1975. (Pub.L. No. 94-142 (Nov. 29, 1975) 89 Stat. 774.) The 1975 legislation significantly amended the Education of the Handicapped Act, but did not change its short title. The Education of the

[***13] The Board of Control adopted a decision denying Santa Barbara's claim. The board concluded that the Education of the Handicapped Act resulted in costs mandated by the federal government, that state special education requirements exceed those of federal law, but that "the resulting mandate is not reimbursable because the Legislature already provides funding for all Special Education Services through an appropriation in the annual Budget Act."

Santa Barbara sought judicial review by petition for a writ of administrative mandate. The superior court found the administrative record and the Board of Control's findings to be inadequate. Judgment was rendered requiring the Board of Control to set aside its decision and to rehear the matter to establish a proper record, including findings. That judgment was not appealed.

On October 30, 1981, Riverside filed a test claim for reimbursement of \$ 474,477 in special education costs incurred in the 1980-1981 fiscal year. Riverside alleged that the costs were state mandated by chapter 797 of Statutes 1980. The basis of Riverside's claim was Education Code section 56760, a part of the state special education funding formula which, according [***14] to Riverside, "mandates a 10%% cap on ratio of students served by special education and within that 10%% mandates the ratio of students to be served by certain services." Riverside explained that chapter 797 of Statutes 1980 was enacted as urgency legislation effective July 28, 1980, and that at that time it was already "locked into" providing special education services to more than 13 percent of its students in accordance with prior state law and funding formulae.³

Handicapped Act has now been renamed the Individuals with Disabilities Education Act. (Pub.L. No. 101-476, tit. IX, § 901(b)(21) (Oct. 30, 1990) 104 Stat. 1143; Pub.L. No. 101-476, tit. IX, § 901b; Pub.L. No. 102-119, § 25(b) (Oct. 7, 1991) 105 Stat. 607.) Since at all times relevant here the federal act was known as the Education of the Handicapped Act, we will adhere to that nomenclature.

³ The 1980 legislation required that a local agency adopt an annual

[***15] [**554] The Riverside claim, like Santa Barbara's, evolved over time with increases in the amount of reimbursement sought. Eventually the Board of [*1576] Control denied Riverside's claim for the same reasons the Santa Barbara claim was denied. Riverside sought review by petition for a writ of administrative mandate. In its decision the superior court accepted the board's conclusions that the Education of the Handicapped Act constitutes a federal mandate and that state requirements exceed those of the federal mandate. However, the court disagreed with the board that any appropriation in the state act necessarily satisfies the state's subvention obligation. The court concluded that the Board of Control had failed to consider whether the state had fully reimbursed local districts for the state-mandated costs which were in excess of the federal mandate, and the matter was remanded for consideration of that question. That judgment was not appealed.

On return to the Board of Control, the Santa Barbara claim and the Riverside claim were consolidated. The Board of Control adopted a decision holding that all special education costs under Statutes 1977, chapter 1247, and Statutes 1980, chapter [***16] 797, are state-mandated costs subject to subvention. The board reasoned that the federal Education of the Handicapped Act

budget plan for special education services. (Ed. Code, § 56200.) Education Code section 56760 provided that in the local budget plan the ratio of students to be served should not exceed 10 percent of total enrollment. However, those proportions could be waived for undue hardship by the Superintendent of Public Instruction. (Ed. Code, § 56760, 56761.) In addition, the 1980 legislation included provisions for a gradual transition to the new requirements. (Ed. Code, § 56195 et seq.) The transitional provisions included a guarantee of state funding for 1980-1981 at prior student levels with an inflationary adjustment of 9 percent. (Ed. Code, § 56195.8.) The record indicates that Riverside applied for a waiver of the requirements of Education Code section 56760, but that the waiver request was denied due to a shortage of state funding. It also appears that Riverside did not receive all of the 109 percent funding guarantee under Education Code section 56195.8. In light of the current posture of this appeal we need not and do not consider whether the failure of the state to appropriate sufficient funds to satisfy its obligations under the 1980 legislation can be addressed in a proceeding for the reimbursement of state-mandated costs or must be addressed in some other manner.

is a discretionary program and that section 504 of the Rehabilitation Act does not require school districts to implement any programs in response to federal law, and therefore special education programs are optional in the absence of a state mandate.

The claimants were directed to draft, and the Board of Control adopted, parameters and guidelines for reimbursement of special education costs. The board submitted a report to the Legislature estimating that the total statewide cost of reimbursement for the 1980-1981 through 1985-1986 fiscal years would be in excess of \$ 2 billion. Riverside's claim for reimbursement for the 1980-1981 fiscal year was now in excess of \$ 7 million. Proposed legislation which would have appropriated funds for reimbursement of special education costs during the 1980-1981 through 1985-1986 fiscal years failed to pass in the Legislature. (Sen. Bill No. 1082 (1985-1986 Reg. Sess.)) A separate bill which would have appropriated funds to reimburse Riverside [*1577] for its 1980-1981 claim also failed to pass. (Sen. Bill No. 238 [***17] (1987-1988 Reg. Sess.))

At this point Huff, as Director of the Department of Finance, brought an action in administrative mandate seeking to set aside the decision of the Board of Control. Riverside cross-petitioned for a writ of mandate directing the state, the Controller and the Treasurer to issue a warrant in payment of its claim for the 1980-1981 fiscal year.

The superior court concluded that the Board of Control did not apply the appropriate standard in determining whether any portion of local special education costs are incurred pursuant to a federal mandate. The court found that the definition of a federal mandate set forth by the *Supreme Court in City of Sacramento v. State of California, supra, 50 Cal.3d 51*, "marked a departure from the narrower 'no discretion' test" of this court's earlier decision in *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258]. It further found that the standard set forth in the high court's

decision in *City of Sacramento* "is to be applied retroactively." Accordingly, the superior court issued a [***18] peremptory writ of mandate directing the Commission on State Mandates to set aside [***555] the decision of the Board of Control, to reconsider the claims in light of the decision in *City of Sacramento v. State of California, supra, 50 Cal.3d 51*, and "to ascertain whether certain costs arising from Chapter 797/80 and Chapter 1247/77 are federally mandated, and if so, the extent, if any, to which the state-mandated costs exceed the federal mandate." Riverside's cross-petition for a writ of mandate was denied. This appeal followed.

III. PRINCIPLES OF SUBVENTION

CA(1)[↑] (1) "Subvention" generally means a grant of financial aid or assistance, or a subsidy. (See Webster's Third New Internat. Dict. (1971) p. 2281.) As used in connection with state-mandated costs, the basic legal requirements of subvention can be easily stated; it is in the application of the rule that difficulties arise.

HN1[↑] Essentially, the constitutional rule of state subvention provides that the state is required 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 Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202].) [***19] This does not mean that the state is required to reimburse local agencies for any incidental cost that may result from the enactment of a state law; rather, the subvention requirement is restricted to governmental services which the local agency is required by [*1578] state law to provide to its residents. (*City of Sacramento v. State of California, supra, 50 Cal.3d at p. 70.*) The subvention requirement is intended to prevent the state from transferring the costs of government from itself to local agencies. (*Id.* at p. 68.) Reimbursement is required when the state "freely chooses to impose on local agencies *any* peculiarly 'governmental' cost which they were not previously required to absorb." (*Id.* at p. 70, italics in original.)

The requirement of subvention for state-mandated costs had its genesis in the "Property Tax Relief Act of 1972" which is also known as "SB 90" (Senate Bill No. 90). (*City of Sacramento v. State of California, supra*, 156 Cal.App.3d at p. 188.) That act established limitations upon the power of local governments to levy taxes and concomitantly prevented [***20] the state from imposing the cost of new programs or higher levels of service upon local governments. (*Ibid.*) The Legislature declared: "It is the intent in establishing the tax rate limits in this chapter to establish limits that will be flexible enough to allow local governments to continue to provide existing programs, that will be firm enough to insure that the property tax relief provided by the Legislature will be long lasting and that will afford the voters in each local government jurisdiction a more active role in the fiscal affairs of such jurisdictions." (Rev. & Tax. Code, former § 2162, Stats. 1972, ch. 1406, § 14.7, p. 2961.)⁴ The act provided that the state would pay each county, city and county, city, and special district the sums which were sufficient to cover the total cost of new state-mandated costs. (See Rev. & Tax. Code, former § 2164.3, Stats. 1972, ch. 1406, § 14.7, pp. 2962-2963.) New state-mandated costs would arise from legislative action or executive regulation after January 1, 1973, which mandated a new program or higher level of service under an existing mandated program. (*Ibid.*)

[***21] CA(2)[↑] (2) [**556] (See fn. 5.) Senate Bill No. 90 did not specifically include school districts in the group of agencies entitled to

⁴In addition to requiring subventions for new state programs and higher levels of service, Senate Bill No. 90 required the state to reimburse local governments for revenues lost by the repeal or reduction of property taxes on certain classes of property. In this connection the Legislature said: "It is the purpose of this part to provide property tax relief to the citizens of this state, as undue reliance on the property tax to finance various functions of government has resulted in serious detriment to one segment of the taxpaying public. The subventions from the State General Fund required under this part will serve to partially equalize tax burdens among all citizens, and the state as a whole will benefit." (*Gov. Code*, § 16101, Stats. 1972, ch. 1406, § 5, p. 2953.)

reimbursement for state-mandated costs.⁵ [***23] (Rev. & Tax. Code, former § 2164.3, Stats. 1972, ch. 1406, § 14.7, pp. 2962-2963.) In fact, at that time methods of financing education in this state were [**1579] undergoing fundamental reformation as the result of the litigation in *Serrano v. Priest* (1971) 5 Cal.3d 584 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]. At the time of the *Serrano* decision local property taxes were the primary source of school revenue. (*Id.* at p. 592.) In *Serrano*, the California Supreme Court held that education is a fundamental interest, that wealth is a suspect classification, and that an educational system which produces disparities of opportunity based upon district wealth would violate principles of equal protection. (*Id.* at pp. 614-615, 619.) A major portion of Senate Bill No. 90 constituted new formulae for state and local contributions to education in a legislative response to the decision in *Serrano*. (Stats. 1972, ch. 1406, § 1.5-2.74, pp. 2931-2953. See *Serrano v. Priest* (1976) 18 Cal.3d 728, 736- 737 [135 Cal.Rptr. 345, 557 P.2d 929].) [***22]⁶

⁵A school district's relationship to the state is different from that of local governmental entities such as cities, counties, and special districts. Education and the operation of the public school system are matters of statewide rather than local or municipal concern. (*California Teachers Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1524 [7 Cal.Rptr.2d 699].) Local school districts are agencies of the state and have been described as quasi-municipal corporations. (*Ibid.*) They are not distinct and independent bodies politic. (*Ibid.*) The Legislature's power over the public school system has been described as exclusive, plenary, absolute, entire, and comprehensive, subject only to constitutional constraints. (*Ibid.*) The Legislature has the power to create, abolish, divide, merge, or alter the boundaries of school districts. (*Id.* at p. 1525.) The state is the beneficial owner of all school properties and local districts hold title as trustee for the state. (*Ibid.*) School moneys belong to the state and the apportionment of funds to a school district does not give the district a proprietary interest in the funds. (*Ibid.*) While the Legislature has chosen to encourage local responsibility for control of public education through local school districts, that is a matter of legislative choice rather than constitutional compulsion and the authority that the Legislature has given to local districts remains subject to the ultimate and nondelegable responsibility of the Legislature. (*Id.* at pp. 1523-1524.)

⁶After the first *Serrano* decision, the United States Supreme Court held that equal protection does not require dollar-for-dollar equality

[**24] The provisions of Senate Bill No. 90 were amended and refined in legislation enacted the following year. (Stats. 1973, ch. 358.) Revenue and Taxation Code section 2231, subdivision (a), was enacted to require the state to reimburse local agencies, including school districts, for the full costs of new programs or increased levels of service mandated by the Legislature after January 1, 1973. Local agencies except school districts were also entitled to reimbursement for costs mandated by executive regulation after January 1, 1973. (Rev. & Tax. Code, § 2231, subd. (d), added by Stats. 1973, ch. 358, § 3, p. 783 [*1580] and repealed by Stats. 1986, ch. 879, § 23, p. 3045.) In subsequent years legislation was enacted to entitle school districts to subvention for state-mandated costs imposed by legislative acts after January 1, 1973, or by executive regulation after January 1, 1978. (Rev. & Tax. Code, former § 2207.5, added by Stats. 1977, ch. 1135, § 5, p. 3646 and amended by Stats. 1980, ch. 1256, § 5, pp. 4248-4249.)

[**557] In the 1973 legislation, Revenue and Taxation Code section 2271 was enacted to provide, among other things: "A local agency may levy, or have levied on its behalf, [**25] a rate in addition to the maximum property tax rate established pursuant to this chapter (commencing with Section 2201) to pay costs mandated by the federal government or costs mandated by the courts

between school districts. (*San Antonio School District v. Rodriguez* (1973) 411 U.S. 1, 33-34 48-56, 61-62 [36 L.Ed.2d 16, 42-43, 51-56, 59-60, 93 S.Ct. 1278].) In the second *Serrano* decision, the California Supreme Court adhered to the first *Serrano* decision on independent state grounds. (*Serrano v. Priest, supra*, 18 Cal.3d at pp. 761-766.) The court concluded that Senate Bill No. 90 and Assembly Bill No. 1267, enacted the following year (Stats. 1973, ch. 208, p. 529 et seq.), did not satisfy equal protection principles. (*Serrano v. Priest, supra*, 18 Cal.3d at pp. 776-777.) Additional complications in educational financing arose as the result of the enactment of article XIII A of the California Constitution at the June 1978 Primary Election (Proposition 13), which limited the taxes which can be imposed on real property and forced the state to assume greater responsibility for financing education (see Ed. Code, § 41060), and the enactment of Propositions 98 and 111 in 1988 and 1990, respectively, which provide formulae for minimum state funding for education. (See generally *California Teachers Assn. v. Huff, supra*, 5 Cal.App.4th 1513.)

or costs mandated by initiative enactment, which are not funded by federal or state government." CA(3)[↑] (3) In this respect costs mandated by the federal government are exempt from an agency's taxing and spending limits. (*City of Sacramento v. State of California, supra*, 50 Cal.3d at p. 71, fn. 17.)

At the November 6, 1979, General Election, the voters added article XIII B to the state Constitution by enacting Proposition 4. That article imposes spending limits on the state and all local governments. For purposes of article XIII B the term "local government" includes school districts. (Cal. Const., art. XIII B, § 8, subd. (d).) The measure accomplishes its purpose by limiting a governmental entity's annual appropriations to the prior year's appropriations limit adjusted for changes in the cost of living and population growth, except as otherwise provided in the article. (Cal. Const., art. XIII B, § 1.)⁷ The appropriations subject [**26] to limitation do not include, among other things: "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." (Cal. Const., art. XIII B, § 9, subd. (b).)

Like its statutory predecessor, the constitutional initiative measure includes a provision [**27] designed "to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of these restrictions on the taxing and spending power of the local entities." (*Lucia Mar Unified School Dist. v.*

⁷As it was originally enacted, article XIII B required that all governmental entities return revenues in excess of their appropriations limits to the taxpayers through tax rate or fee schedule revisions. In Proposition 98, adopted at the November 1988 General Election, article XIII B was amended to provide that half of state excess revenues would be transferred to the state school fund for the support of school districts and community college districts. (See Cal. Const., art. XVI, § 8.5; *California Teachers Assn. v. Huff, supra*, 5 Cal.App.4th 1513.)

Honig (1988) 44 Cal.3d 830, 835-836 [244 Cal.Rptr. 677, 750 P.2d 318].) Section 6 of article XIII B of the state Constitution provides: "Whenever the Legislature or any State agency mandates a new program or higher level of service on any local government, the [*1581] 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: [P] (a) Legislative mandates requested by the local agency affected; [P] (b) Legislation defining a new crime or changing an existing definition of a crime; or [P] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

Although article XIII B of the state Constitution [***28] requires subvention for state mandates enacted after January 1, 1975, the article had an effective date of July 1, 1980. (Cal. Const., art. XIII B, § 10.) CA(4)[↑] (4) Accordingly, under the constitutional provision, a local agency may seek subvention for costs imposed by legislation after January 1, 1975, but reimbursement is limited to costs incurred after July 1, 1980. (*City of Sacramento v. State of California, supra*, 156 Cal.App.3d at pp. 190-193.) Reimbursement for costs incurred before July 1, 1980, must be obtained, if at all, under controlling statutory law. (See 68 Ops.Cal.Atty.Gen. 244 (1985).)

The constitutional subvention provision, like the statutory scheme before it, requires state reimbursement whenever "the Legislature or any State agency" mandates a new program or higher level of service. (Cal. Const., art. XIII B, § 6.) Accordingly, it has been held that state [**558] subvention is not required when the federal government imposes new costs on local governments. (*City of Sacramento v. State of California, supra*, 156 Cal.App.3d at p. 188; see also *Carmel Valley Fire Protection Dist. v. State of*

California (1987) 190 Cal.App.3d 521, 543 [234 Cal.Rptr. 795].) [***29] In our *City of Sacramento* decision this court held that a federal program in which the state participates is not a federal mandate, regardless of the incentives for participation, unless the program leaves state or local government with no discretion as to alternatives. (156 Cal.App.3d at p. 198.)

In its *City of Sacramento* opinion,⁸ the California Supreme Court rejected this court's earlier formulation. In doing so the high court noted that the vast bulk of cost-producing federal influence on state and local government is by inducement or incentive rather than direct compulsion. (50 Cal.3d at p. 73.) However, "certain regulatory standards imposed by the federal government [*1582] under 'cooperative federalism' schemes are coercive on the states and localities in every practical sense." (*Id.* at pp. 73-74.) The test for determining whether there is a federal mandate is whether compliance with federal standards "is a matter of true choice," that is, whether participation in the federal program "is truly voluntary." (*Id.* at p. 76.) The court went on to say: "Given the variety [***30] 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." (*Ibid.*)

⁸The Supreme Court's decision in *City of Sacramento* was not a result of direct review of this court's decision. The Supreme Court denied a petition for review of this court's *City of Sacramento* decision. After the Board of Control had adopted parameters and guidelines for reimbursement under this court's decision, the Legislature failed to appropriate the funds necessary for such reimbursement. The litigation which resulted in the Supreme Court's *City of Sacramento* decision was commenced as an action to enforce the result on remand from this court's *City of Sacramento* decision. (See 50 Cal.3d at p. 60.)

[***31] IV. SPECIAL EDUCATION

The issues in this case cannot be resolved by consideration of a particular federal act in isolation. Rather, reference must be made to the historical and legal setting of which the particular act is a part. Our consideration begins in the early 1970's.

In considering the 1975 amendments to the Education of the Handicapped Act, Congress referred to a series of "landmark court cases" emanating from 36 jurisdictions which had established the right to an equal educational opportunity for handicapped children. (See Smith v. Robinson (1984) 468 U.S. 992, 1010 [82 L.Ed.2d 746, 763, 104 S.Ct. 3457].) Two federal district court cases, Pennsylvania Ass'n, Ret'd Child. v. Commonwealth of Pa. (E.D.Pa. 1972) 343 F.Supp. 279 (see also Pennsylvania Ass'n, Retard. Child. v. Commonwealth of Pa. (E.D.Pa. 1971) 334 F.Supp. 1257), and Mills v. Board of Education of District of Columbia (D.D.C. 1972) 348 F.Supp. 866, were the most prominent of these judicial decisions. (See Hendrick Hudson Dist. Bd. of Ed. v. Rowley (1982) 458 U.S. 176, 180, fn. 2 [73 L.Ed.2d 690, 695, 102 S.Ct. 3034].) [***32]

In the Pennsylvania case, an association and the parents of certain retarded children brought a class action against the commonwealth and local school districts in the commonwealth, challenging the exclusion of retarded children from programs of education and training in the public schools. (Pennsylvania Ass'n, Ret'd Child. v. Commonwealth of Pa., *supra*, 343 F.Supp. at p. 282.) The matter was assigned to a three-judge panel which heard evidence on the plaintiffs' due process and equal protection claims. (*Id.* at p. 285.) The parties [**559] then agreed to resolve the litigation by means of a consent [*1583] judgment. (*Ibid.*) The consent agreement required the defendants to locate and evaluate all children in need of special education services, to reevaluate placement decisions periodically, and to accord due process hearings to parents who are dissatisfied with

placement decisions. (*Id.* at pp. 303-306.) It required the defendants to provide "a free public program of education and training appropriate to the child's capacity." (*Id.* at p. 285, italics deleted.)

In view of the consent agreement the district court was not required to resolve the plaintiffs' equal [***33] protection and due process contentions. Rather, it was sufficient for the court to find that the suit was not collusive and that the plaintiffs' claims were colorable. The court found: "Far from an indication of collusion, however, the Commonwealth's willingness to settle this dispute reflects an intelligent response to overwhelming evidence against [its] position." (Pennsylvania Ass'n, Ret'd Child. v. Commonwealth of Pa., *supra*, 343 F.Supp. at p. 291.) The court said that it was convinced the due process and equal protection claims were colorable. (*Id.* at pp. 295-296.)

In the *Mills* case, an action was brought on behalf of a number of school-age children with exceptional needs who were excluded from the Washington, D.C., public school system. (Mills v. Board of Education of District of Columbia, *supra*, 348 F.Supp. at p. 868.) The district court concluded that equal protection entitled the children to a public-supported education appropriate to their needs and that due process required a hearing with respect to classification decisions. (*Id.* at pp. 874-875.) The court said: "If sufficient funds are not available to finance [***34] all of the services and programs that are needed and desirable in the system then the available funds must be expended equitably in such manner that no child is entirely excluded from a publicly supported education consistent with his needs and ability to benefit therefrom. The inadequacies of the District of Columbia Public School System whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the 'exceptional' or handicapped child than on the normal child." (*Id.* at p. 876.)

In the usual course of events, the development of

principles of equal protection and due process as applied to special education, which had just commenced in the early 1970's with the authorities represented by the *Pennsylvania* and *Mills* cases, would have been fully expounded through appellate processes. However, the necessity of judicial development was truncated by congressional action. In the Rehabilitation Act of 1973, section 504, Congress provided: "No otherwise qualified handicapped individual in the United States, as defined in section 706(7) [now 706(8)] of this title, [*1584] shall, solely by reason of his handicap, [***35] be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (29 U.S.C. § 794, Pub.L. No. 93- 112, tit. V, § 504 (Sept. 26, 1973) 87 Stat. 394.)⁹ Since federal assistance to education is pervasive (see, e.g., Ed. Code, § 12000- 12405, 49540 et seq., 92140 et seq.), section 504 was applicable to virtually all public educational programs in this and other states.

[***36] The Department of Health, Education and Welfare (HEW) promulgated regulations to ensure compliance with section 504 [**560] by educational agencies.¹⁰ The regulations required

⁹In section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978, the application of section 504 was extended to federal executive agencies and the United States Postal Service. (Pub.L. No. 95-602, tit. I, § 119 (Nov. 6, 1978) 92 Stat. 2982.) The section is now subdivided and includes subdivision (b), which provides that the section applies to all of the operations of a state or local governmental agency, including local educational agencies, if the agency is extended federal funding for any part of its operations. (29 U.S.C. § 794.) This latter amendment was in response to judicial decisions which had limited the application of section 504 to the particular activity for which federal funding is received. (See *Consolidated Rail Corporation v. Darrone* (1984) 465 U.S. 624, 635-636 [79 L.Ed.2d 568, 577-578, 104 S.Ct. 1248].)

¹⁰HEW was later dissolved and its responsibilities are now shared by the federal Department of Education and the Department of Health and Human Services. The promulgation of regulations to enforce section 504 had a somewhat checkered history. Initially HEW determined that Congress did not intend to require it to promulgate regulations. The Senate Public Welfare Committee then declared that regulations were intended. By executive order and by judicial decree in *Cherry v. Mathews* (D.D.C. 1976) 419 F.Supp. 922, HEW was

local educational agencies to locate and evaluate handicapped children in order to provide appropriate educational opportunities and to provide administrative hearing procedures in order to resolve disputes. The federal courts concluded that section 504 was essentially a codification of the equal protection rights of citizens with disabilities. (See *Halderman v. Pennhurst State School & Hospital* (E.D.Pa. 1978) 446 F.Supp. 1295, 1323.) Courts also held that section 504 embraced a private cause of action to enforce its requirements. (*Sherry v. New York State Ed. Dept.* (W.D.N.Y. 1979) 479 F.Supp. 1328, 1334; *Doe v. Marshall* (S.D.Tex. 1978) 459 F.Supp. 1190, 1192.) It was further held that section 504 imposed upon school districts and other public educational agencies "the duty of analyzing individually the needs of each handicapped student and devising a program which will enable each individual handicapped student to receive [***37] an appropriate, free public education. The failure to perform this analysis and structure a program suited to the needs of each handicapped child, constitutes discrimination against that child and a failure to provide an appropriate, free [*1585] public education for the handicapped child." (*Doe v. Marshall, supra*, 459 F.Supp. at p. 1191. See also *David H. v. Spring Branch Independent School Dist.* (S.D.Tex. 1983) 569 F.Supp. 1324, 1334; *Halderman v. Pennhurst State School & Hospital, supra*, 446 F.Supp. at p. 1323.)

[***38] CA(5)[7] (5) Throughout these proceedings Riverside, relying upon the decision in *Southeastern Community College v. Davis, supra*, 442 U.S. 397 [60 L.Ed.2d 980], has contended that section 504 cannot be considered a federal mandate because it does not obligate local school districts to take any action to accommodate the needs of handicapped children so long as they are not

required to promulgate regulations. The ensuing regulations were embodied in title 45 Code of Federal Regulations part 84, and are now located in title 34 Code of Federal Regulations part 104. (See *Southeastern Community College v. Davis* (1979) 442 U.S. 397, 404, fn. 4 [60 L.Ed.2d 980, 987, 99 S.Ct. 2361]; *N. M. Ass'n for Retarded Citizens v. State of N. M.* (10th Cir. 1982) 678 F.2d 847, 852.)

excluded from school. That assertion is not correct.

In the *Southeastern Community College* case a prospective student with a serious hearing disability sought to be admitted to a postsecondary educational program to be trained as a registered nurse. As a result of her disability the student could not have completed the academic requirements of the program and could not have attended patients without full-time personal supervision. She sought to require the school to waive the academic requirements, including an essential clinical program, which she could not complete and to otherwise provide full-time personal supervision. That demand, the Supreme Court held, was beyond the scope of section 504, which did not require the school to modify its program affirmatively [***39] and substantially. (442 U.S. at pp. 409-410 [60 L.Ed.2d at pp. 990-991].)

The *Southeastern Community College* decision is inapposite. States typically do not guarantee their citizens that they will be admitted to, and allowed to complete, specialized postsecondary educational programs. State educational institutions often impose stringent admittance and completion requirements for such programs in higher education. In the *Southeastern Community College* case the Supreme Court simply held that an institution of higher education need not lower or effect substantial modifications of its standards in order to accommodate a handicapped person. (442 U.S. at p. 413 [60 L.Ed.2d at pp. 992-993].) The court did not hold that a primary or secondary [**561] educational agency need do nothing to accommodate the needs of handicapped children. (See *Alexander v. Choate* (1985) 469 U.S. 287, 301 [83 L.Ed.2d 661, 672, 105 S.Ct. 712].)

HN2 [↑] States typically do purport to guarantee all of their children the opportunity for a basic [***40] education. In fact, in this state basic education is regarded as a fundamental right. (*Serrano v. Priest, supra*, 18 Cal.3d at pp. 765-766.) All basic educational programs are essentially affirmative action activities in the sense that

educational agencies are required to evaluate and accommodate [*1586] the educational needs of the children in their districts. Section 504 would not appear to permit local agencies to accommodate the educational needs of some children while ignoring the needs of others due to their handicapped condition. (Compare *Lau v. Nichols* (1974) 414 U.S. 563 [39 L.Ed.2d 1, 94 S.Ct. 786], which required the San Francisco Unified School District to take affirmative steps to accommodate the needs of non-English speaking students under section 601 of the Civil Rights Act of 1964.)

Riverside's view of section 504 is inconsistent with congressional intent in enacting it. The congressional record makes it clear that section 504 was perceived to be necessary not to combat affirmative animus but to cure society's benign neglect of the handicapped. [***41] The record is replete with references to discrimination in the form of the denial of special educational assistance to handicapped children. In *Alexander v. Choate, supra*, 469 U.S. at pages 295 to 297 [83 L.Ed.2d at pages 668- 669], the Supreme Court took note of these comments in concluding that a violation of section 504 need not be proven by evidence of purposeful or intentional discrimination. With respect to the *Southeastern Community College v. Davis, supra*, 442 U.S. 397 case, the high court said: "The balance struck in *Davis* requires that an otherwise qualified handicapped individual must be provided with meaningful access to the benefit that the grantee offers. The benefit itself, of course, cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled; to assure meaningful access, reasonable accommodations in the grantee's program or benefit may have to be made. ..." (*Alexander v. Choate, supra*, 469 U.S. at p. 301 [83 L.Ed.2d at p. 672], [***42] fn. omitted.)

Federal appellate courts have rejected the argument that the *Southeastern Community College* case means that pursuant to section 504 local educational agencies need do nothing affirmative to

accommodate the needs of handicapped children. (*N. M. Ass'n for Retarded Citizens v. State of N. M.*, *supra*, 678 F.2d at pp. 852-853; *Tatro v. State of Texas* (5th Cir. 1980) 625 F.2d 557, 564 [63 A.L.R. Fed. 844].)¹¹ We are satisfied that section 504 does impose an obligation upon local school districts to accommodate the needs of handicapped children. However, as was the case with constitutional principles, full judicial development of section 504 as it relates to special education in elementary and secondary school districts was truncated by congressional action.

[***43] [*1587] In 1974 Congress became dissatisfied with the progress under earlier efforts to stimulate the states to accommodate the educational needs of handicapped children. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, *supra*, 458 U.S. at p. 180 [73 L.Ed.2d at p. 695].) These earlier efforts had included a 1966 amendment to the Elementary and Secondary Education Act of 1965, and the 1970 version of the Education of the Handicapped Act. (*Ibid.*) The prior acts had been grant programs that did not contain specific guidelines for a state's use of grant funds. (*Ibid.*) In 1974 Congress greatly increased federal funding for education of the handicapped and simultaneously required recipient [**562] states to adopt a goal of providing full educational opportunities to all handicapped children. ([73 L.Ed.2d at pp. 695-696].) The following year Congress amended the Education of the Handicapped Act by enacting the Education for All Handicapped Children Act of 1975. ([73 L.Ed.2d at p. 696].)

HN3[↑] Since the 1975 amendment, the Education [***44] of the Handicapped Act has required recipient states to demonstrate a policy

¹¹ Following a remand and another decision by the Court of Appeals, the *Tatro* litigation, *supra*, eventually wound up in the Supreme Court. (*Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883 [82 L.Ed.2d 664, 104 S.Ct. 3371].) However, by that time the Education of the Handicapped Act had replaced section 504 as the means for vindicating the education rights of handicapped children and the litigation was resolved, favorably for the child, under that act.

that assures all handicapped children the right to a free appropriate education. (20 U.S.C. § 1412(1).) **CA(6)**[↑] (6) The act is not merely a funding statute; rather, it establishes an enforceable substantive right to a free appropriate public education in recipient states. (*Smith v. Robinson*, *supra*, 468 U.S. at p. 1010 [82 L.Ed.2d at p. 764].) To accomplish this purpose the act incorporates the major substantive and procedural requirements of the "right to education" cases which were so prominent in the congressional consideration of the measure. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, *supra*, 458 U.S. at p. 194 [73 L.Ed.2d at p. 704].) The substantive requirements of the act have been interpreted in a manner which is "strikingly similar" to the requirements of section 504 of the Rehabilitation Act of 1973. (*Smith v. Robinson*, *supra*, 468 U.S. at pp. 1016-1017 [82 L.Ed.2d at p. 768].) The Supreme [***45] Court has noted that Congress intended the act to establish "a basic floor of opportunity that would bring into compliance all school districts with the constitutional right to equal protection with respect to handicapped children." (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, *supra*, 458 U.S. at p. 200 [73 L.Ed.2d at p. 708] citing the House of Representatives Report.)¹²

It is demonstrably manifest that in the view of Congress the substantive requirements of the 1975 amendment to the Education of the Handicapped Act were commensurate with the [***46] constitutional obligations of state and local [**1588] educational agencies. Congress found that "State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children;" and "it

¹² Consistent with its "basic floor of opportunity" purpose, the act does not require local agencies to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children. Rather, the act requires that handicapped children be accorded meaningful access to a free public education, which means access that is sufficient to confer some educational benefit. (*Ibid.*)

is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law." (20 U.S.C. former § 1400(b)(8) & (9).)¹³

[***47] It is also apparent that Congress intended the act to achieve nationwide application: "It is the purpose of this chapter to assure that all handicapped children have available to them, within the time periods specified in section 1412(2)(B) of this title, a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children." (20 U.S.C. former § 1400(c).)

[**563] In order to gain state and local acceptance of its substantive provisions, the Education of the Handicapped Act employs a "cooperative federalism" scheme, which has also been referred to as the "carrot and stick" approach. (See City of Sacramento v. State of California, supra, 50 Cal.3d at pp. 73-74; City of Sacramento v. State of California, supra, 156 Cal.App.3d at p. 195.) [***48] As an incentive Congress made substantial federal financial assistance available to states and local educational agencies that would agree to adhere to the substantive and procedural

terms of the act. (20 U.S.C. § 1411, 1412.) For example, the administrative record indicates that for fiscal year 1979- 1980, the base year for Santa Barbara's claim, California received \$ 71.2 million in federal assistance, and during fiscal year 1980-1981, the base year for Riverside's claim, California received \$ 79.7 million. We cannot say that such assistance on an ongoing basis is trivial or insubstantial.

Contrary to Riverside's argument, HN4[↑] federal financial assistance was not the only incentive for a state to comply with the Education of the Handicapped Act. CA(7)[↑] (7) Congress intended the act to serve as a means by which state and [*1589] local educational agencies could fulfill their obligations under the equal protection and due process provisions of the Constitution and under section 504 of the Rehabilitation Act of 1973. Accordingly, where it is applicable the act supersedes claims under the Civil Rights Act (42 U.S.C. § 1983) [***49] and section 504 of the Rehabilitation Act of 1973, and the administrative remedies provided by the act constitute the exclusive remedy of handicapped children and their parents or other representatives. (Smith v. Robinson, supra, 468 U.S. at pp. 1009, 1013, 1019 [82 L.Ed.2d at pp. 763, 766, 769].)¹⁴

HN5[↑] As a result of the exclusive nature of the Education of the Handicapped [***50] Act, dissatisfied parties in recipient states must exhaust their administrative remedies under the act before resorting to judicial intervention. (Smith v. Robinson, supra, 468 U.S. at p. 1011 [82 L.Ed.2d at p. 764].) This gives local agencies the first opportunity and the primary authority to determine appropriate placement and to resolve disputes.

¹³ That Congress intended to enforce the Fourteenth Amendment to the United States Constitution in enacting the Education of the Handicapped Act has since been made clear. In Dellmuth v. Muth (1989) 491 U.S. 223 at pages 231232 [105 L.Ed.2d 181, 189-191, 109 S.Ct. 2397], and the court noted that Congress has the power under section 5 of the Fourteenth Amendment to abrogate a state's Eleventh Amendment immunity from suit in federal court, but concluded that the Education of the Handicapped Act did not clearly evince such a congressional intent. In 1990 Congress responded by expressly abrogating state sovereign immunity under the act. (20 U.S.C. § 1403.)

¹⁴ In Smith v. Robinson, supra, the court concluded that since the Education of the Handicapped Act did not include a provision for attorney fees, a successful complainant was not entitled to an award of such fees even though such fees would have been available in litigation under section 504 of the Rehabilitation Act of 1973 or section 1983 of the Civil Rights Act. Congress reacted by adding a provision for attorney fees to the Education of the Handicapped Act. (20 U.S.C. § 1415(e)(4)(B).)

(*Ibid.*) If a party is dissatisfied with the final result of the administrative process then he or she is entitled to seek judicial review in a state or federal court. (20 U.S.C. § 1415(e)(2).) In such a proceeding the court independently reviews the evidence but its role is restricted to that of review of the local decision and the court is not free to substitute its view of sound educational policy for that of the local authority. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra*, 458 U.S. at pp. 206-207 [73 L.Ed.2d at p. 712].) And since the act provides the exclusive remedy for addressing a handicapped child's right to an appropriate education, where the act applies a party [***51] cannot pursue a cause of action for constitutional violations, either directly or under the Civil Rights Act (42 U.S.C. § 1983), nor can a party proceed under section 504 of the Rehabilitation Act of 1973. (*Smith v. Robinson, supra*, 468 U.S. at pp. 1013, 1020 [82 L.Ed.2d at pp. 766, 770].)

Congress's intention to give the Education of the Handicapped Act nationwide application was successful. By the time of the decision in *Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra*, all states except New Mexico had become recipients under the act. (458 U.S. at pp. 183-184 [73 L.Ed.2d at p. 698].) It is important at this point in our discussion to consider the experience of New Mexico, both because the Board of Control relied upon that state's failure to adopt the Education [**564] of the Handicapped Act as proof that the act is not federally mandated, and because it illustrates the consequences of a failure to adopt the act. [*1590]

In *N. M. Ass'n for Retarded Citizens v. State of N. M.* (D.N.M. 1980) 495 F.Supp. 391, [***52] a class action was brought against New Mexico and its local school districts based upon the alleged failure to provide a free appropriate public education to handicapped children. The plaintiffs' causes of action asserting constitutional violations were severed and stayed pending resolution of the federal statutory causes of action. (*Id.* at p. 393.) The district court concluded that the plaintiffs could not proceed with claims under the Education of the

Handicapped Act because the state had not adopted that act and, without more, that was a governmental decision within the state's power. (*Id.* at p. 394.)¹⁵ The court then considered the cause of action under section 504 and found that both the state and its local school districts were in violation of that section by failing to provide a free appropriate education to handicapped children within their territories. (495 F.Supp. at pp. 398-399.)

[***53] After the district court entered an injunctive order designed to compel compliance with section 504, the matter was appealed. (*N. M. Ass'n for Retarded Citizens v. State of N. M., supra*, 678 F.2d 847.) The court of appeals rejected the defendants' arguments that the plaintiffs were required to exhaust state administrative remedies before bringing their action and that the district court should have applied the doctrine of primary jurisdiction to defer ruling until the Office of Civil Rights could complete its investigation into the charges. (*Id.* at pp. 850-851.) The court also rejected the defendants' arguments that section 504 does not require them to take action to accommodate the needs of handicapped children and that proof of disparate treatment is essential to a violation of section 504. (678 F.2d at p. 854.) The court found sufficient evidence in the record to establish discrimination against handicapped children within the meaning of section 504. (678 F.2d at p. 854.) However, the reviewing court concluded that the district court had applied an erroneous standard in reaching its decision, [***54] and the matter was remanded for further proceedings. (*Id.* at p. 855.)

On July 19, 1984, during the proceedings before the Board of Control, a representative of the Department of Education testified that New Mexico has since implemented a program of special education under the Education of the Handicapped

¹⁵ The plaintiffs alleged that the failure of the state to apply for federal funds under the Education of the Handicapped Act was itself an act of discrimination. The district court did not express a view on that question, leaving it for resolution in connection with the constitutional causes of action. (*Ibid.*)

Act. We have no doubt that after the litigation we have just recounted New Mexico saw the handwriting on the wall and realized that it could either establish a program of special education with federal financial assistance under the Education of the Handicapped Act, or be compelled through litigation to accommodate the educational needs of handicapped [*1591] children without federal assistance and at the risk of losing other forms of federal financial aid. In any event, with the capitulation of New Mexico the Education of the Handicapped Act achieved the nationwide application intended by Congress. (20 U.S.C. § 1400(c).)

California's experience with special education in the time period leading up to the adoption of the Education of the Handicapped Act is examined as a case study in Kirp et al., *Legal Reform of Special Education: Empirical* [*55] *Studies and Procedural Proposals* (1974) 62 Cal.L.Rev. 40, at pages 96 through 115. As this study reflects, during this period the state and local school districts were struggling to create a program to accommodate adequately the educational needs of the handicapped. (*Id.* at pp. 97-110.) Individuals and organized groups, such as the California Association for the Retarded and the California Association for Neurologically Handicapped Children, were exerting pressure through political and other means at every level of the educational system. (*Ibid.*) Litigation was becoming so prevalent [*565] that the authors noted: "Fear of litigation over classification practices, prompted by the increasing number of lawsuits, is pervasive in California." (*Id.* at p. 106, fn. 295.)¹⁶

¹⁶Lawsuits primarily fell into three types: (1) Challenges to the adequacy or even lack of available programs and services to accommodate handicapped children. (*Id.* at p. 97, fns. 255, 257.) (2) Challenges to classification practices in general, such as an overtendency to classify minority or disadvantaged children as "retarded." (*Id.* at p. 98, fns. 259, 260.) (3) Challenges to individual classification decisions. (*Id.* at p. 106.) In the absence of administrative procedures for resolving classification disputes, dissatisfied parents were relegated to self-help remedies, such as pestering school authorities, or litigation. (*Ibid.*)

[**56] In the early 1970's the state Department of Education began working with local school officials and university experts to design a "California Master Plan for Special Education." (Kirp et al., *Legal Reform of Special Education: Empirical Studies and Procedural Proposals*, *supra*, 62 Cal.L.Rev. at p. 111.) In 1974 the Legislature enacted legislation to give the Superintendent of Public Instruction the authority to implement and administer a pilot program pursuant to a master plan adopted by State Board of Education in order to determine whether services under such a plan would better meet the needs of children with exceptional needs. (Stats. 1974, ch. 1532, § 1, p. 3441, enacting Ed. Code, § 7001.) In 1977 the Legislature acted to further implement the master plan. (Stats. 1977, ch. 1247, especially § 10, pp. 4236-4237, enacting Ed. Code, § 56301.) In 1980 the Legislature enacted urgency legislation revising our special education laws with the express intent of complying with the 1975 amendments to the Education of the Handicapped Act. (Stats. 1980, ch. 797, especially § 9, pp. 2411-2412, enacting Ed. Code, § 56000.)

As this history demonstrates, in determining whether to [*57] adopt the requirements of the Education of the Handicapped Act as amended in 1975, our [*1592] Legislature was faced with the following circumstances: (1) In the *Serrano* litigation, our Supreme Court had declared basic education to be a fundamental right and, without even considering special education in the equation, had found our educational system to be violative of equal protection principles. (2) Judicial decisions from other jurisdictions had established that handicapped children have an equal protection right to a free public education appropriate to their needs and due process rights with regard to placement decisions. (3) Congress had enacted section 504 of the Rehabilitation Act of 1973 to codify the equal protection rights of handicapped children in any school system that receives federal financial assistance and to threaten the state and local districts with the loss of all federal funds for failure to accommodate the needs of such children. (4)

Parents and organized groups representing handicapped children were becoming increasingly litigious in their efforts to secure an appropriate education for handicapped children. (5) In enacting the 1975 amendments to [***58] the Education of the Handicapped Act, Congress did not intend to require state and local educational agencies to do anything more than the Constitution already required of them. The act was intended to provide a means by which educational agencies could fulfill their constitutional responsibilities and to provide substantial federal financial assistance for states that would agree to do so.

CA(8a)[↑] (8a) Under these circumstances we have no doubt that enactment of the 1975 amendments to the Education of the Handicapped Act constituted a federal mandate under the criteria set forth in *City of Sacramento v. State of California, supra*, 50 Cal.3d at page 76. The remaining question is whether the state's participation in the federal program was a matter of "true choice" or was "truly voluntary." The alternatives were to participate in the federal program and obtain federal financial assistance and the procedural protections accorded by the act, or to decline to participate and face a barrage of litigation with no real defense and ultimately be compelled to accommodate the educational needs of handicapped children in any event. We conclude [***59] that so far [**566] as the state is concerned the Education of the Handicapped Act constitutes a federal mandate.

V. SUBVENTION FOR SPECIAL EDUCATION

Our conclusion that the Education of the Handicapped Act is a federal mandate with respect to the state marks the starting point rather than the end of the consideration which will be required to resolve the Santa Barbara and Riverside test claims. In *City of Sacramento v. State of California, supra*, 50 Cal.3d at pages 66 through 70, the California Supreme Court concluded that the costs at issue in that case (unemployment insurance premiums) were not subject to state subvention because they were incidental to a law of general [*1593]

application rather than a new governmental program or increased level of service under an existing program. The court addressed the federal mandate issue solely with respect to the question whether the costs were exempt from the local government's taxing and spending limitations. (*Id.* at pp. 70-71.) It observed that prior authorities had assumed that if a cost was federally mandated it could not be a state mandated cost subject to subvention, and [***60] said: "We here express no view on the question whether 'federal' and 'state' mandates are mutually exclusive for purposes of state subvention, but leave that issue for another day. ..." (*Id.* at p. 71, fn. 16.) The test claims of Santa Barbara and Riverside present that question which we address here for the guidance of the Commission on remand.

CA(9)[↑] (9) The constitutional subvention provision and the statutory provisions which preceded it do not expressly say that the state is not required to provide a subvention for costs imposed by a federal mandate. Rather, that conclusion follows from the plain language of the subvention provisions **HN6[↑]** themselves. The constitutional provision requires state subvention when "the Legislature or any State agency mandates a new program or higher level of service" on local agencies. (Cal. Const., art. XIII B, § 6.) Likewise, the earlier statutory provisions required subvention for new programs or higher levels of service mandated by legislative act or executive regulation. (See Rev. & Tax. Code, former § 2164.3 [Stats. 1972, ch. 1406, § 14.7, pp. 2962- 2963], 2231 [Stats. 1973, ch. 358, § 3, pp. 783-784], 2207 [Stat. 1975, ch. 486, § 1.8, pp. 997-998], 2207.5 [***61] [Stats. 1977, ch. 1135, § 5, pp. 3646-3647].) When the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate so long as the state had no "true choice" in the manner of implementation of the federal

mandate. (See *City of Sacramento v. State of California, supra*, 50 Cal.3d at p. 76.)

This reasoning would not hold true where the manner of implementation of the federal program was left to the true discretion of the state. A central purpose of the principle of state subvention is to prevent the state from shifting the cost of government from itself to local agencies. (*City of Sacramento v. State of California, supra*, 50 Cal.3d at p. 68.) Nothing in the statutory or constitutional subvention provisions would suggest that the state is free to shift state costs to local agencies [***62] without subvention merely because those costs were imposed upon the state by the federal government. In our view the determination whether certain costs were imposed upon a local agency by a federal mandate must focus upon the local agency which [*1594] is ultimately forced to bear the costs and how those costs came to be imposed upon that agency. 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 [**567] upon the state by the federal government.

The Education of the Handicapped Act is a comprehensive measure designed to provide all handicapped children with basic educational opportunities. While the act includes certain substantive and procedural requirements which must be included in a state's plan for implementation of the act, it leaves primary responsibility for implementation to the state. (20 U.S.C. § 1412, 1413.) CA(8b)[↑] (8b) In short, even though the state had no real choice in deciding whether to comply with the federal act, the act did not necessarily require the state to impose all of [***63] the costs of implementation upon local school districts. To the extent the state implemented the act 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 subvention.

We can illustrate this point with a hypothetical situation. Subvention principles are intended to prevent the state from shifting the cost of state governmental services to local agencies and thus subvention is required where the state imposes the cost of such services upon local agencies even if the state continues to perform the services. (*Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d at pp. 835-836.) The Education of the Handicapped Act requires the state to provide an impartial, state-level review of the administrative decisions of local or intermediate educational agencies. (20 U.S.C. § 1415(c), (d).) Obviously, the state could not shift the actual performance of these new administrative reviews to local districts, but it could attempt to shift the costs to local districts [***64] by requiring local districts to pay the expenses of reviews in which they are involved. An attempt to do so would trigger subvention requirements. In such a hypothetical case, the state could not avoid its subvention responsibility by pleading "federal mandate" because the federal statute does not require the state to impose the costs of such hearings upon local agencies. Thus, as far as the local agency is concerned, the burden is imposed by a state rather than a federal mandate.

In the administrative proceedings the Board of Control did not address the "federal mandate" question under the appropriate standard and with proper focus on local school districts. In its initial determination the board concluded that the Education of the Handicapped Act constituted a federal mandate and that the state-imposed costs on local school districts in excess of the federally imposed costs. However, the board did not consider the [*1595] extent of the state-mandated costs because it concluded that any appropriation by the state satisfied its obligation. On Riverside's petition for a writ of administrative mandate the superior court remanded to the Board of Control to consider whether [***65] the state appropriation was sufficient to reimburse local school districts fully for the state-mandated costs. On remand the board clearly applied the now-discredited criteria set forth in this court's decision in *City of*

Sacramento v. State of California, supra, 156 Cal.App.3d 182, and concluded that the Education of the Handicapped Act is not a federal mandate at any level of government. Under these circumstances we agree with the trial court that the matter must be remanded to the Commission for consideration in light of the criteria set forth in the Supreme Court's *City of Sacramento* decision. We add that on remand the Commission must focus upon the costs incurred by local school districts and whether those costs were imposed *on local districts* by federal mandate or by the state's voluntary choice in its implementation of the federal program.

VI. RIVERSIDE'S OBJECTIONS

In light of this discussion we may now consider Riverside's objections to the trial court's decision to remand the matter to the Commission for reconsideration.

Riverside asserts that the California Supreme Court opinion in *City of Sacramento* is not [***66] on point because the court did not address the federal mandate question with respect to state subvention principles. Riverside implies that the definition of a federal mandate may be different [**568] with respect to state subvention than with respect to taxing and spending limitations. HN7[☞] CA(10)[☞] (10) As a general rule and unless the context clearly requires otherwise, we must assume that the meaning of a term or phrase is consistent throughout the entire act or constitutional article of which it is a part. (*Lungren v. Davis* (1991) 234 Cal.App.3d 806, 823 [285 Cal.Rptr. 777].) CA(11)[☞] (11) Subvention principles are part of a more comprehensive political scheme. The basic purpose of the scheme as a whole was to limit the taxing and spending powers of government. The taxing and spending powers of local agencies were to be "frozen" at existing levels with adjustments only for inflation and population growth. Since local agencies are subject to having costs imposed upon them by other governmental entities, the scheme provides relief in that event. If the costs are imposed by the federal government or the courts, then the costs are not included in the local

government's [***67] taxing and spending limitations. If the costs are imposed by the state then the state must provide a subvention to reimburse the local agency. Nothing in this scheme suggests that the concept of a federal mandate should have different meanings depending upon whether one is considering subvention or taxing and spending limitations. Accordingly, we reject the claim that the criteria set forth in [*1596] the Supreme Court's *City of Sacramento* decision do not apply when subvention is the issue.

CA(12)[☞] (12) Riverside asserts that the trial court erred in concluding that the Board of Control did not consider the issues under the appropriate criteria and that the board did in fact consider the factors set forth in the Supreme Court's *City of Sacramento* decision. From our discussion above it is clear that we must reject these assertions. In its decision the board relied upon the "cooperative federalism" nature of the Education of the Handicapped Act without any consideration whether the act left the state any actual choice in the matter. In support of its conclusion the board relied upon the New Mexico litigation which we have also discussed. However, as we have pointed out, under [***68] the criteria set forth in the Supreme Court's *City of Sacramento* decision, the New Mexico litigation does not support the board's decision but in fact strongly supports a contrary result. We are satisfied that the trial court correctly concluded that the board did not apply the appropriate criteria in reaching its decision.

Riverside asserts that the Supreme Court's *City of Sacramento* decision elucidated and enforced prior law and thus no question of retroactivity arises. (See *Donaldson v. Superior Court* (1983) 35 Cal.3d 24, 37 [196 Cal.Rptr. 704, 672 P.2d 110].) CA(13)[☞] (13) We agree that in *City of Sacramento* the Supreme Court elucidated and enforced existing law. Under such circumstances the rule of retrospective operation controls. (See also *Wellenkamp v. Bank of America* (1978) 21 Cal.3d 943, 953- 954 [148 Cal.Rptr. 379, 582 P.2d 970]; *County of Los Angeles v. Faus* (1957) 48

Cal.2d 672, 680-681 [312 P.2d 680].) Pursuant to that rule the trial court correctly applied the *City of Sacramento* decision to the [***69] litigation pending before it. As we have seen, that decision supports the trial court's determination to remand the matter to the Commission for reconsideration.

Davis, J., and Scotland, J., concurred. The petition of plaintiff and respondent for review by the Supreme Court was denied April 1, 1993. Lucas, C.J., Kennard, J., and Arabian, J., were of the opinion that the petition should be granted.

End of Document

Riverside asserts that if further consideration under the criteria of the Supreme Court's *City of Sacramento* decision is necessary then the trial court should have, and this court must, engage in such consideration to reach a final conclusion on the question. To a limited extent we agree. In our previous discussion we have concluded that under the criteria set forth in *City of Sacramento*, the Education of the Handicapped Act constitutes a federal mandate as far as the state is concerned. We are satisfied that is the only conclusion which may be drawn and we so hold as a matter of law. However, that conclusion does not resolve the question whether new special education costs were imposed upon local school districts by federal mandate or by state choice in the implementation of the federal program. The issues were not addressed by the parties or the Board of Control in this light. The [*1597] Commission on State Mandates is the entity with the responsibility for considering the issues in [**569] the first instance [***70] and which has the expertise to do so. We agree with the trial court that it is appropriate to remand the matter to the Commission for reconsideration in light of the appropriate criteria which we have set forth in this appeal.

In view of the result we have reached we need not and do not consider whether it would be appropriate otherwise to fashion some judicial remedy to avoid the rule, based upon the separation of powers doctrine, that a court cannot compel the State Controller to make a disbursement in the absence of an appropriation. (See *Carmel Valley Fire Protection Dist. v. State of California, supra*, 190 Cal.App.3d at pp. 538- 541.)

DISPOSITION

The judgment is affirmed.

Howard Jarvis Taxpayers Ass'n v. City of Salinas

Court of Appeal of California, Sixth Appellate District

June 3, 2002, Decided

No. H022665.

Reporter

98 Cal. App. 4th 1351 *; 121 Cal. Rptr. 2d 228 **; 2002 Cal. App. LEXIS 4198 ***; 2002 Cal. Daily Op. Service 4853; 2002 Daily Journal DAR 6161

HOWARD JARVIS TAXPAYERS ASSOCIATION et al., Plaintiffs and Appellants, v. CITY OF SALINAS et al., Defendants and Respondents.

Subsequent History: [***1] Rehearing Denied July 2, 2002.

Review Denied August 28, 2002, Reported at: 2002 Cal. LEXIS 5938.

Prior History: Superior Court of Monterey County. Super. Ct. No. M45873. Richard M. Silver, Judge.

Disposition: The judgment is reversed. Costs on appeal are awarded to plaintiffs.

Core Terms

storm drain, sewer, storm water, property-related, facilities, parcel, surface, runoff, sanitary, storm, property owner, services, voter, industrial waste, surface water, water service, sewer system, drainage, storm drainage system, drainage system, sewer service, city council, proportional, impervious, pollutants, ordinance, carries, defines

Case Summary

Procedural Posture

Plaintiff taxpayers filed a complaint under Cal. Code Civ. Proc. § 863 to determine the validity of a

storm drainage fee imposed by defendant city. The Monterey County Superior Court (California) ruled that the fee did not violate Cal. Const. art. XIID, § 6. The taxpayers appealed.

Overview

The city adopted ordinances and a resolution imposing a storm water management utility fee that was imposed on the owners of every developed parcel of land within the city. The 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 was discharged into natural bodies of water. The appellate court found that: (1) Cal. Const. art. XIID, § 6, required the city to subject the proposed storm drainage fee to a vote by the property owners or the voting residents of the affected area because the fee was not exempt as a water service; and (2) the trial court therefore erred in ruling that Salinas, Cal., Ordinance 2350, 2351, and Salinas, Cal., Resolution 17019 were valid exercises of authority by the city council.

Outcome

The judgment of the superior court was reversed.

LexisNexis® Headnotes

Governments > State & Territorial
Governments > Elections

Tax Law > State & Local Taxes > Real

Property Taxes > General Overview

HN1 State & Territorial Governments, Elections

The Right to Vote On Taxes Act, Cal. Const. art. XIID, § 6, 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. Cal. Const. art. XIID, § 6 (a)(2).

Tax Law > State & Local Taxes > Real
Property Taxes > General Overview

HN2 State & Local Taxes, Real Property Taxes

See Cal. Const. XIID, § 6(c).

Communications Law > Overview & Legal
Concepts > Ownership > General Overview

Tax Law > State & Local Taxes > Real
Property Taxes > General Overview

HN3 Overview & Legal Concepts, Ownership

Cal. Const. art. XIID, § 2(e), defines a "fee" under the 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.

Communications Law > Overview & Legal
Concepts > Ownership > General Overview

Tax Law > State & Local Taxes > Real
Property Taxes > General Overview

HN4 Overview & Legal Concepts, Ownership

A "property-related service" is a public service having a direct relationship to property ownership. Cal. Const. art. XIID, § 2(h).

Tax Law > State & Local Taxes > Real
Property Taxes > General Overview

HN5 State & Local Taxes, Real Property Taxes

Salinas, Cal., Resolution 17019 plainly establishes 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. The resolution expressly states 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.

Tax Law > State & Local Taxes > Real
Property Taxes > General Overview

HN6 State & Local Taxes, Real Property Taxes

Cal. Proposition 218, § 5, specifically states that the provisions of the Right to Vote On Taxes Act, Cal. Const. art. XIID, § 6, shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent.

Governments > Legislation > Interpretation

HN7 Legislation, Interpretation

The appellate court is 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.

Tax Law > ... > Personal Property
Taxes > Exemptions > General Overview

HN8 [↓] **Personal Property Taxes, Exemptions**

The exception in Cal. Const. art. XIII D, § 6(c), applies to fees for sewer, water, and refuse collection services.

Governments > Legislation > Interpretation

HN9 [↓] **Legislation, Interpretation**

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.

Governments > Legislation > Interpretation

Tax Law > State & Local Taxes > Real
Property Taxes > General Overview

HN10 [↓] **Legislation, Interpretation**

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.

Governments > Legislation > Interpretation

HN11 [↓] **Legislation, Interpretation**

Cal. Gov't Code § 53750 is enacted to explain some of the terms used in Cal. Const. art. XIIC, XIII D, and defines "water" as "any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water." 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.

Headnotes/Syllabus

Summary

**CALIFORNIA OFFICIAL REPORTS
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

**CALIFORNIA OFFICIAL REPORTS
HEADNOTES**

Classified to California Digest of Official Reports

CA(1a) [↓] (1a) **CA(1b)** [↓] (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.]

CA(2)[↓] (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.

Judges: Opinion by Elia, J., with Premo, Acting P.

J., and Mihara, J., concurring.

Opinion by: Elia

Opinion

[*1352] [**229] **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 [***2] 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 [***3] 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.

[***4] [**230] 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"

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.

and (2) it was exempt from the voter-approval requirement because it was "related to" sewer and water services.

[***5] 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 HN1 [↑] 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)), HN2 [↑] 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."

HN3 [↑] Section 2 [***6] 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).) HN4 [↑] A "property-related service" is "a public service having a direct relationship to property ownership." (§ 2, subd. (h).) CA(1a) [↑] (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 HN5 [↑] plainly established

³ All further unspecified section references are to article XIII D of the California Constitution.

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 [**231] 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 [***7] 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 [***8] 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 HN6[↑] specifically stated that "[t]he provisions of this act shall be liberally construed to effectuate its purposes of limiting local [***9] 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].) CA(2)[↑] (2) HN7[↑] 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 [167 P.3d 1356] Cal. Rptr. 820, 616 P.2d 802.) CA(1b)[↑] (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 [***10] 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.)

[**232] **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." HN8[↑] The exception in section 6(c) applies to fees

⁴According to the public works director, proportional reductions were not anticipated to apply to a large number of people.

"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 [***11] 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 [***12] statutes differentiate between

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."

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 [**233] 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.

[***13] 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

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. (g)(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."

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. HN9[↑] 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' [***14] 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 HN10[↑] 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 [***15] 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 [***16] The Salinas City Code contains

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).)

requirements [***234] 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, HN11[↑] 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 [***17] 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.

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).)

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.

End of Document

Jacks v. City of Santa Barbara

Supreme Court of California

June 29, 2017, Filed

S225589

Reporter

3 Cal. 5th 248 *; 397 P.3d 210 **; 219 Cal. Rptr. 3d 859 ***; 2017 Cal. LEXIS 4769 ****; 2017 WL 2805638

ROLLAND JACKS et al., Plaintiffs and Appellants, v. CITY OF SANTA BARBARA, Defendant and Respondent.

Subsequent History: Reported at Jacks v. City of Santa Barbara, 2017 Cal. LEXIS 5545 (Cal., June 29, 2017)

Rehearing denied by Jacks v. City of Santa Barbara, 2017 Cal. LEXIS 6402 (Cal., Aug. 16, 2017)

Prior History: [****1] Superior Court of Santa Barbara County, No. 1383959, Thomas Pearce Anderle, Judge. Court of Appeal, Second Appellate District, Division Six, No. B253474.

Jacks v. City of Santa Barbara, 234 Cal. App. 4th 925, 184 Cal. Rptr. 3d 539, 2015 Cal. App. LEXIS 178 (Cal. App. 2d Dist., Feb. 26, 2015)

Core Terms

customers, franchise fee, surcharge, franchise, charges, taxes, electricity, percent, Ordinance, purposes, value of a franchise, ratepayers, local government, voter approval, negotiations, reasonable relation, courts, costs, rates, gross receipts, voters, payor, collected, italics, bears, bills, taxpayer, public property, provisions, incidence

Case Summary

Overview

HOLDINGS: [1]-In a case in which plaintiffs

challenged a city's imposition of a 1 percent surcharge on an electric utility's gross receipts from the sale of electricity within the city, the Supreme Court held that to constitute a valid franchise fee under Proposition 218, the amount of the franchise fee must bear a reasonable relationship to the value of the property interests transferred; [2]-Liberally construed, the first amended complaint and the stipulated facts adequately alleged the basis for a claim that the surcharge bore no reasonable relationship to the value of the franchise, and was therefore a tax requiring voter approval under Proposition 218; accordingly, the trial court erred in granting judgment on the pleadings to the city; [3]-However, the facts on which plaintiffs relied in seeking summary adjudication did not establish their claim that the surcharge was a tax.

Outcome

Judgment of court of appeal affirmed in part and reversed in part; case remanded with directions.

LexisNexis® Headnotes

Governments > Local Governments > Finance

HN1 [↓] **Local Governments, Finance**

A charge imposed in exchange for franchise rights is a valid fee rather than a tax only if the amount of the charge is reasonably related to the value of the franchise.

Governments > Local Governments > Finance

Tax Law > State & Local Taxes > Real
Property Taxes > Assessment & Valuation

Governments > State & Territorial
Governments > Finance

Governments > State & Territorial
Governments > Legislatures

HN2[↓] Local Governments, Finance

State voters have imposed various limitations upon the authority of state and local governments to impose taxes and fees. Proposition 13, which was adopted in 1978, set the assessed value of real property as the full cash value on the owner's 1975-1976 tax bill, limited increases in the assessed value to 2 percent per year unless there was a change in ownership, and limited the rate of taxation on real property to 1 percent of its assessed value. Cal. Const., art. XIII A, §§ 1, 2. In addition, to prevent tax savings related to real property from being offset by increases in state and local taxes, Proposition 13 required approval by two-thirds of the members of the legislature in order to increase state taxes, and required approval by two-thirds of the local electors of a city, county, or special district in order for such a local entity to impose special taxes. Cal. Const., art. XIII A, §§ 3, 4.

Governments > Local Governments > Finance

HN3[↓] Local Governments, Finance

The term "special taxes" in Cal. Const., art. XIII A, § 4, means taxes which are levied for a specific purpose. In addition, a "special tax" does not include 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. Gov. Code, § 50076.

Governments > Local Governments > Finance

HN4[↓] Local Governments, Finance

Proposition 62, which added a new article to the California Government Code, Gov. Code, §§ 53720-53730, requires that all new local taxes be approved by a vote of the local electorate.

Governments > Local Governments > Charters

Governments > Local Governments > Finance

HN5[↓] Local Governments, Charters

Proposition 218 amended the California Constitution to add voter approval requirements for general and special taxes, thereby binding charter jurisdictions. Cal. Const., art. XIII C, §§ 1, 2.

Evidence > Burdens of Proof > Allocation

Governments > Local Governments > Finance

Tax Law > State & Local Taxes > Real
Property Taxes > Assessment & Valuation

HN6[↓] Burdens of Proof, Allocation

Proposition 13 was not intended to limit traditional benefit assessments. It requires an agency proposing an assessment on property to determine the proportionate special benefit to be derived by each parcel subject to the assessment; to support the assessment with an engineer's report; to give written notice to each parcel owner of the amount of the proposed assessment and the basis of the calculation; and to provide each owner with a ballot to vote in favor of or against the proposed assessment. It also requires the agency to hold a public hearing, and bars imposition of the assessment if a majority of parcel owners within the assessment area submit ballots in opposition to the assessment, with each ballot weighted based on the proposed financial obligation of the affected parcel.

3 Cal. 5th 248, *248; 397 P.3d 210, **210; 219 Cal. Rptr. 3d 859, ***859; 2017 Cal. LEXIS 4769, ****1

In the event legal action is brought contesting an assessment, the agency has the burden to establish that the burdened properties receive a special benefit and the assessment is proportional to the benefits conferred. Cal. Const., art. XIII D, §§ 2, subd. (b).

Constitutional Law > State Constitutional Operation

Evidence > Burdens of Proof > Allocation

Governments > Local Governments > Finance

Tax Law > State & Local Taxes > Real Property Taxes > Assessment & Valuation

HN7[↓] Constitutional Law, State Constitutional Operation

Proposition 26 amended the California Constitution to provide that for purposes of article XIII C, which addresses voter approval of local taxes, "tax" means any levy, charge, or exaction of any kind imposed by a local government, Cal. Const., art. XIII C, § 1, subd. (e), except (1) a charge imposed for a specific benefit or privilege received only by those charged, which does not exceed its reasonable cost, (2) a charge for a specific government service or product provided directly to the payor and not provided to those not charged, which does not exceed its reasonable cost, (3) charges for reasonable regulatory costs related to the issuance of licenses, permits, investigations, inspections, and audits, and the enforcement of agricultural marketing orders, (4) charges for access to or use, purchase, rental, or lease of local government property, (5) fines for violations of law, (6) charges imposed as a condition of developing property, and (7) property-related assessments and fees as allowed under article XIII D. The local government bears the burden of establishing the exceptions. Cal. Const., art. XIII C, § 1, subd. (e).

Governments > Local Governments > Finance

Tax Law > State & Local Taxes > Real Property Taxes > Assessment & Valuation

HN8[↓] Local Governments, Finance

If an assessment for improvements provides a special benefit to the assessed properties, then the assessed property owners should pay for the benefit they receive. But if the assessment exceeds the actual cost of the improvement, the exaction is a tax and not an assessment. With respect to costs, Proposition 13's goal of providing effective property tax relief is promoted rather than subverted by shifting costs to those who generate the costs. However, if the charges exceed the reasonable cost of the activity on which they are based, the charges are levied for unrelated revenue purposes, and are therefore taxes.

Governments > Local Governments > Finance

HN9[↓] Local Governments, Finance

Restricting allowable fees to the reasonable cost or value of the activity with which the charges are associated serves Proposition 13's purpose of limiting taxes. If a state or local governmental agency were allowed to impose charges in excess of the special benefit received by the payor or the cost associated with the payor's activities, the imposition of fees would become a vehicle for generating revenue independent of the purpose of the fees. Therefore, to the extent charges exceed the rationale underlying the charges, they are taxes.

Governments > Public Improvements > Bridges & Roads

Governments > Local Governments > Finance

HN10[↓] Public Improvements, Bridges & Roads

A franchise to use public streets or rights-of-way is a form of property, and a franchise fee is the purchase price of the franchise. Historically, franchise fees have not been considered taxes. Nothing in Proposition 218 reflects an intent to change the historical characterization of franchise fees, or to limit the authority of government to sell or lease its property and spend the compensation received for whatever purposes it chooses. Cal. Const., arts. XIII A, § 3, subd. (b)(4), XIII C. This understanding that restrictions on taxation do not encompass amounts paid in exchange for property interests is confirmed by Proposition 26, the purpose of which was to reinforce the voter approval requirements set forth in Propositions 13 and 218. Although Proposition 26 strengthened restrictions on taxation by expansively defining "tax" as any levy, charge, or exaction of any kind imposed by a local government, Cal. Const., art. XIII C, § 1, subd. (e), it provided an exception for a charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property. Art. XIII C, § 1, subd. (e)(4).

Governments > Public Improvements > Bridges & Roads

Governments > Local Governments > Finance

HN11[↓] Public Improvements, Bridges & Roads

The Broughton Act's provision that a franchise fee be based on the receipts from the use, operation, or possession of the franchise results in a complicated calculation of franchise fees. Usually, some portion of a utility's rights-of-way are on private property or property outside the jurisdiction of the city or county granting the franchise, and the utility's gross receipts attributable to a particular franchise must be reduced in proportion to the utility's rights-of-way that are not within the franchise agreement. In addition, because gross receipts arise from all of a utility's operative property, such as equipment and

warehouses, the portion of gross receipts attributable to property other than the franchise must be excluded from the calculation of the franchise fee. Finally, if a utility also provides service under a constitutional franchise - for example, where it provides artificial light under a constitutional franchise in the same area in which it provides electricity under a franchise agreement entered pursuant to the Broughton Act - the franchise fee applies only to the gross receipts from the provision of services under the nonconstitutional franchise.

Energy & Utilities Law > Regulators > Public Utility Commissions > Authorities & Powers

Energy & Utilities Law > Utility Companies > Rates

HN12[↓] Public Utility Commissions, Authorities & Powers

The California Public Utilities Commission sets the rates of a publicly regulated utility to permit the utility to recover its costs and expenses in providing its service, and to receive a fair return on the value of the property it uses in providing its service. Among a utility's costs and expenses are government fees and taxes.

Energy & Utilities Law > Regulators > Public Utility Commissions > Authorities & Powers

Energy & Utilities Law > Utility Companies > Rates

HN13[↓] Public Utility Commissions, Authorities & Powers

The California Public Utilities Commission has established a procedure by which utilities may obtain approval to impose disproportionate charges on ratepayers within the jurisdiction that imposed the charges. When a local government imposes

taxes or fees which in the aggregate significantly exceed the average aggregate of taxes or fees imposed by the other local governmental entities within the public utility's service territory, a utility may file an advice letter seeking approval to charge local government fee surcharges. Such surcharges shall be included as a separate item or items to bills rendered to applicable customers. Each surcharge shall be identified as being derived from the local governmental entity responsible for it.

Civil Procedure > Appeals > Standards of Review > De Novo Review

Governments > Local Governments > Finance

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

HN14[↓] Standards of Review, De Novo Review

Whether a charge is a tax or a fee is a question of law for the appellate courts to decide on independent review of the facts.

Governments > Local Governments > Finance

Governments > Legislation > Interpretation

HN15[↓] Local Governments, Finance

The provisions of Proposition 218 shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent.

Governments > Public Improvements > Bridges & Roads

Governments > Local Governments > Finance

HN16[↓] Public Improvements, Bridges & Roads

Sums paid for the right to use a jurisdiction's rights-of-way are fees rather than taxes. But to constitute compensation for the value received, the fees must reflect a reasonable estimate of the value of the franchise.

Governments > Local Governments > Finance

HN17[↓] Local Governments, Finance

In general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted. In determining whether a charge is a tax or a fee, a court looks to whether the primary purpose of a charge was to generate revenue. In contrast, a fee paid for an interest in government property is compensation for the use or purchase of a government asset rather than compensation for a cost. Consequently, the revenue generated by the fee is available for whatever purposes the government chooses rather than tied to a public cost. The aspect of the transaction that distinguishes the charge from a tax is the receipt of value in exchange for the payment.

Governments > Local Governments > Finance

HN18[↓] Local Governments, Finance

A franchise fee must be based on the value of the franchise conveyed in order to come within the rationale for its imposition without approval of the voters. Its value may be based on bona fide negotiations concerning the property's value, as well as other indicia of worth. Consistent with the principles that govern other fees, to constitute a valid franchise fee under Proposition 218, the amount of the franchise fee must bear a reasonable relationship to the value of the property interests transferred.

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil
 Procedure > ... > Pleadings > Complaints > Requirements for Complaint

Civil Procedure > Judgments > Pretrial
 Judgments > Judgment on Pleadings

HN19[↓] Standards of Review, De Novo Review

A motion for judgment on the pleadings presents the question of whether the plaintiff's complaint states facts sufficient to constitute a cause of action against the defendant. The trial court generally considers only the allegations of the complaint, but may also consider matters that are subject to judicial notice. Moreover, the allegations must be liberally construed with a view to attaining substantial justice among the parties. The court's primary task is to determine whether the facts alleged provide the basis for a cause of action against defendants under any theory. An appellate court independently reviews a trial court's order on such a motion.

Headnotes/Summary

Summary

[*248] CALIFORNIA OFFICIAL REPORTS
 SUMMARY

Plaintiffs filed a class action complaint challenging a city's imposition of a 1 percent surcharge on an electric utility's gross receipts from the sale of electricity within the city. The utility transferred the revenues from the surcharge to the city. The city contended this separate charge was the fee paid by the utility for the privilege of using city property in connection with the delivery of electricity. The superior court granted the city's motion for judgment on the pleadings, concluding that the surcharge was not a tax and therefore was not subject to the voter approval requirements of Prop. 218. (Superior Court of Santa Barbara County, No. 1383959, Thomas Pearce Anderle, Judge.) The Court of Appeal, Second Dist., Div. Six, No.

B253474, reversed the trial court's judgment, holding that the surcharge was a tax, and therefore required approval under Prop. 218.

The Supreme Court affirmed the judgment of the Court of Appeal to the extent it reversed the trial court's grant of the city's motion for judgment on the pleadings, reversed the judgment to the extent the Court of Appeal directed the trial court to grant plaintiffs' motion for summary adjudication, and remanded the case with directions. The court held that to constitute a valid franchise fee under Prop. 218, the amount of the franchise fee must bear a reasonable relationship to the value of the property interests transferred. Liberally construed, the first amended complaint and the stipulated facts adequately alleged the basis for a claim that the surcharge bore no reasonable relationship to the value of the franchise, and was therefore a tax requiring voter approval under Prop. 218. Accordingly, the trial court erred in granting judgment on the pleadings to the city. However, the facts on which plaintiffs relied in seeking summary adjudication did not establish their claim that the surcharge was a tax. (Opinion by Cantil-Sakauye, C. J., with Werdegar, Corrigan, Liu, Cuéllar, and Krueger, JJ., concurring. Dissenting opinion by Chin, J. (see p. 274).)

Headnotes

CALIFORNIA OFFICIAL REPORTS
 HEADNOTES

CA(1)[↓] (1)

**Municipalities § 96—Franchise Fee—Tax—
 Reasonable Relationship—Value of Franchise.**

A charge imposed in exchange for franchise rights is a valid fee rather than a tax only if the amount of the charge is reasonably related to the value of the franchise.

CA(2)[↓] (2)

Taxation § 1—Constitutional Limitations—Voter Approval—Special Taxes.

State voters have imposed various limitations upon the authority of state and local governments to impose taxes and fees. Prop. 13, which was adopted in 1978, set the assessed value of real property as the full cash value on the owner's 1975–1976 tax bill, limited increases in the assessed value to 2 percent per year unless there was a change in ownership, and limited the rate of taxation on real property to 1 percent of its assessed value (Cal. Const., art. XIII A, §§ 1, 2). In addition, to prevent tax savings related to real property from being offset by increases in state and local taxes, Prop. 13 required approval by two-thirds of the members of the Legislature in order to increase state taxes, and required approval by two-thirds of the local electors of a city, county, or special district in order for such a local entity to impose special taxes (Cal. Const., art. XIII A, §§ 3, 4).

CA(3)[↓] (3)

Municipalities § 34—Fiscal Affairs—Special Taxes—Reasonable Cost.

The term “special taxes” in Cal. Const., art. XIII A, § 4, means taxes which are levied for a specific purpose. In addition, a “special tax” does not include 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 (Gov. Code, § 50076).

CA(4)[↓] (4)

Municipalities § 34—Fiscal Affairs—New Taxes—Voter Approval.

Prop. 62 requires that all new local taxes be approved by a vote of the local electorate.

CA(5)[↓] (5)

Municipalities § 34—Fiscal Affairs—General and Special Taxes—Voter Approval—Charter Jurisdictions.

Prop. 218 amended the California Constitution to add voter approval requirements for general and special taxes, thereby binding charter jurisdictions (Cal. Const., art. XIII C, §§ 1, 2).

CA(6)[↓] (6)

Taxation § 1—Assessment on Property—Special Benefit.

Prop. 13 was not intended to limit traditional benefit assessments. It requires an agency proposing an assessment on property to determine the proportionate special benefit to be derived by each parcel subject to the [*250] assessment; to support the assessment with an engineer's report; to give written notice to each parcel owner of the amount of the proposed assessment and the basis of the calculation; and to provide each owner with a ballot to vote in favor of or against the proposed assessment. It also requires the agency to hold a public hearing, and bars imposition of the assessment if a majority of parcel owners within the assessment area submit ballots in opposition to the assessment, with each ballot weighted based on the proposed financial obligation of the affected parcel. In the event legal action is brought contesting an assessment, the agency has the burden to establish that the burdened properties receive a special benefit and the assessment is proportional to the benefits conferred (Cal. Const., art. XIII D, §§ 2, subd. (b), 4).

CA(7)[↓] (7)

Municipalities § 34—Fiscal Affairs—Local Taxes—Voter Approval—Specific Benefit—Reasonable Cost.

Prop. 26 amended the California Constitution to

provide that for purposes of article XIII C, which addresses voter approval of local taxes, “tax” means any levy, charge, or exaction of any kind imposed by a local government (Cal. Const., art. XIII C, § 1, subd. (e)), except (1) a charge imposed for a specific benefit or privilege received only by those charged, which does not exceed its reasonable cost; (2) a charge for a specific government service or product provided directly to the payor and not provided to those not charged, which does not exceed its reasonable cost; (3) charges for reasonable regulatory costs related to the issuance of licenses, permits, investigations, inspections, and audits, and the enforcement of agricultural marketing orders; (4) charges for access to or use, purchase, rental, or lease of local government property; (5) fines for violations of law; (6) charges imposed as a condition of developing property; and (7) property-related assessments and fees as allowed under article XIII D. The local government bears the burden of establishing the exceptions (Cal. Const., art. XIII C, § 1, subd. (e)).

CA(8)[↓] (8)

Taxation § 1—Assessment on Property—Special Benefit—Reasonable Cost.

If an assessment for improvements provides a special benefit to the assessed properties, then the assessed property owners should pay for the benefit they receive. But if the assessment exceeds the actual cost of the improvement, the exaction is a tax and not an assessment. With respect to costs, Prop. 13's goal of providing effective property tax relief is promoted rather than subverted by shifting costs to those who generate the costs. However, if the charges exceed the reasonable cost of the activity on which they are based, the charges are levied for unrelated revenue purposes, and are therefore taxes.

CA(9)[↓] (9)

Taxation § 1—Special Benefit—Reasonable Cost—Payor's Activities.

Restricting allowable fees to the reasonable cost or value of the activity [***251**] with which the charges are associated serves Prop. 13's purpose of limiting taxes. If a state or local governmental agency were allowed to impose charges in excess of the special benefit received by the payor or the cost associated with the payor's activities, the imposition of fees would become a vehicle for generating revenue independent of the purpose of the fees. Therefore, to the extent charges exceed the rationale underlying the charges, they are taxes.

CA(10)[↓] (10)

Municipalities § 96—Franchise Fee—Use of Rights-of-way.

A franchise to use public streets or rights-of-way is a form of property, and a franchise fee is the purchase price of the franchise. Historically, franchise fees have not been considered taxes. Nothing in Prop. 218 reflects an intent to change the historical characterization of franchise fees, or to limit the authority of government to sell or lease its property and spend the compensation received for whatever purposes it chooses (Cal. Const., arts. XIII A, § 3, subd. (b)(4), XIII C). This understanding that restrictions on taxation do not encompass amounts paid in exchange for property interests is confirmed by Prop. 26, the purpose of which was to reinforce the voter approval requirements set forth in Props. 13 and 218. Although Prop. 26 strengthened restrictions on taxation by expansively defining “tax” as any levy, charge, or exaction of any kind imposed by a local government (Cal. Const., art. XIII C, § 1, subd. (e)), it provided an exception for a charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property (Cal. Const., art. XIII C, § 1, subd. (e)(4)).

CA(11)[↓] (11)

Municipalities § 96—Franchise Fee—Calculation—Gross Receipts.

The Broughton Act's (Pub. Util. Code, § 6001 et seq.) provision that a franchise fee be based on the receipts from the use, operation, or possession of the franchise results in a complicated calculation of franchise fees. Usually, some portion of a utility's rights-of-way are on private property or property outside the jurisdiction of the city or county granting the franchise, and the utility's gross receipts attributable to a particular franchise must be reduced in proportion to the utility's rights-of-way that are not within the franchise agreement. In addition, because gross receipts arise from all of a utility's operative property, such as equipment and warehouses, the portion of gross receipts attributable to property other than the franchise must be excluded from the calculation of the franchise fee. Finally, if a utility also provides service under a constitutional franchise—for example, where it provides artificial light under a constitutional franchise in the same area in which it provides electricity under a franchise agreement entered pursuant to the Broughton Act—the franchise fee applies only to the gross receipts from the provision of services under the nonconstitutional franchise.

[*252] CA(12)[⚡] (12)

Public Utilities § 9—Public Utilities Commission—Rates—Costs and Expenses.

The Public Utilities Commission sets the rates of a publicly regulated utility to permit the utility to recover its costs and expenses in providing its service, and to receive a fair return on the value of the property it uses in providing its service. Among a utility's costs and expenses are government fees and taxes.

CA(13)[⚡] (13)

Public Utilities § 9—Public Utilities Commission—Rates—Surcharge.

The Public Utilities Commission has established a

procedure by which utilities may obtain approval to impose disproportionate charges on ratepayers within the jurisdiction that imposed the charges. When a local government imposes taxes or fees which in the aggregate significantly exceed the average aggregate of taxes or fees imposed by the other local governmental entities within the public utility's service territory, a utility may file an advice letter seeking approval to charge local government fee surcharges. Such surcharges must be included as a separate item or items to bills rendered to applicable customers. Each surcharge must be identified as being derived from the local governmental entity responsible for it.

CA(14)[⚡] (14)

Municipalities § 34—Fiscal Affairs—Taxes—Proposition 218—Liberal Construction.

The provisions of Prop. 218 must be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent.

CA(15)[⚡] (15)

Municipalities § 96—Franchise Fee—Use of Rights-of-way—Value of Franchise.

Sums paid for the right to use a jurisdiction's rights-of-way are fees rather than taxes. But to constitute compensation for the value received, the fees must reflect a reasonable estimate of the value of the franchise.

CA(16)[⚡] (16)

Municipalities § 34—Fiscal Affairs—Taxes—Revenue Purposes—Fee.

In general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted. In determining whether a charge is a tax or a fee, a court looks to whether the

primary purpose of a charge was to generate revenue. In contrast, a fee paid for an interest in government property is compensation for the use or purchase of a government asset rather than compensation for a cost. Consequently, the revenue generated by the fee is available for whatever purposes the government chooses rather than tied to a public cost. The aspect of the transaction that distinguishes the charge from a tax is the receipt of value in exchange for the payment.

[*253] CA(17)[📄] (17)

Municipalities § 96—Franchise Fee—Tax—Voter Approval—Reasonable Relationship—Value of Franchise.

A franchise fee must be based on the value of the franchise conveyed in order to come within the rationale for its imposition without approval of the voters. Its value may be based on bona fide negotiations concerning the property's value, as well as other indicia of worth. Consistent with the principles that govern other fees, to constitute a valid franchise fee under Prop. 218, the amount of the franchise fee must bear a reasonable relationship to the value of the property interests transferred.

CA(18)[📄] (18)

Municipalities § 34—Fiscal Affairs—Tax—Surcharge—Sale of Electricity—Reasonable Relationship—Value of Franchise—Voter Approval.

In a case in which plaintiffs challenged a city's imposition of a 1 percent surcharge on an electric utility's gross receipts from the sale of electricity within the city, the first amended complaint and the stipulated facts adequately alleged the basis for a claim that the surcharge bore no reasonable relationship to the value of the franchise, and was therefore a tax requiring voter approval under Prop. 218. Accordingly, the trial court erred in granting

judgment on the pleadings to the city.

[Cal. Forms of Pleading and Practice (2017) ch. 540, Taxes and Assessments, § 540.131; 9 Witkin, Summary of Cal. Law (11th ed. 2017) Taxation, § 139.]

Counsel: Huskinson, Brown & Heidenreich, David W.T. Brown and Paul E. Heidenreich for Plaintiffs and Appellants.

Trevor A. Grimm, Jonathan M. Coupal, Timothy A. Bittle and J. Ryan Cogdill for Howard Jarvis Taxpayers Association and California Taxpayers Association as Amici Curiae on behalf of Plaintiffs and Appellants.

Ariel Pierre Calonne, City Attorney, Tom R. Shapiro, Assistant City Attorney; Colantuono, Highsmith & Whatley, Michael G. Colantuono, Ryan Thomas Dunn, Leonard P. Aslanian; Jarvis, Fay, Doport & Gibson, Benjamin P. Fay, Rick W. Jarvis and Andrea Saltzman for Defendant and Respondent.

Hanson Bridgett, Adam W. Hofmann and Caroline E. Lee for League of California Cities as Amicus Curiae on behalf of Defendant and Respondent.

Judges: Opinion by Cantil-Sakauye, C. J., with Werdegar, Corrigan, Liu, Cuéllar, and Kruger, JJ., concurring. Dissenting Opinion by Chin, J.

Opinion by: Cantil-Sakauye

Opinion

[*254]

[212] [***862] CANTIL-SAKAUYE, C. J.**—Pursuant to an agreement between Southern California Edison (SCE) and defendant City of Santa Barbara (the City), SCE includes on its electricity [****2] bills to customers within the City a separate charge equal to 1 percent of SCE's gross receipts from the sale of electricity within the City, and transfers the revenues to the City. The City contends this separate charge, together with

another charge equal to 1 percent of SCE's gross receipts that SCE includes in its electricity rates, is the fee paid by SCE for the privilege of using City property in connection with the delivery of electricity. Plaintiffs Rolland [**213] Jacks and Rove Enterprises, Inc., contend the 1 percent charge that is separately stated on electricity bills is not compensation for the privilege of using City property, but is instead a tax imposed without voter approval, in violation of Proposition 218 (Gen. Elec. (Nov. 5, 1996)). (Cal. Const., art. XIII C, § 2, added by Prop. 218.)

As we explain below, the right to use public streets or rights-of-way is a property interest, and Proposition 218 does not limit the authority of government to sell or lease its property and spend the compensation it receives for whatever purposes it chooses. Therefore, charges that constitute compensation for the use of government property are not subject to Proposition 218's voter approval requirements. To constitute compensation for a property [****3] interest, however, the amount of the charge must bear a reasonable relationship to the value of the property interest; to the extent the charge exceeds any reasonable value of the interest, it is a tax and therefore requires voter approval.

The litigation below did not address whether the charges bear a reasonable relationship to the value of the property interests. Therefore, we affirm the judgment of the Court of Appeal to the extent it reversed the trial court's grant of the City's motion for judgment on the pleadings, but we reverse the Court of Appeal's order that the trial court grant summary adjudication to plaintiffs.

[***863] I. FACTS

The parties stipulated to the following facts in the trial court. Beginning in 1959, the City and SCE entered into a series of franchise agreements granting SCE the privilege to construct and use equipment along, over, and under the City's streets

to distribute electricity.¹ At issue in this case is an agreement [*255] the City and SCE began negotiating in 1994, when their 1984 agreement was about to expire. The 1984 agreement required SCE to pay to the City a fee equal to 1 percent of the gross annual receipts from SCE's sale of electricity within the City in [****4] exchange for the franchise granted by the City. During the course of extended negotiations regarding a new agreement, the City and SCE extended the terms of the 1984 agreement five times, from September 1995 to December 1999.

In the negotiations for a long-term agreement, the City pursued a fee equal to 2 percent of SCE's gross annual receipts from the sale of electricity within the City. At some point in the negotiations, SCE proposed that it would remit to the City as a franchise fee 2 percent of its gross receipts if the Public Utilities Commission (PUC) consented to SCE's inclusion of the additional 1 percent as a surcharge on its bills to customers. Based on SCE's proposal, the City and SCE tentatively agreed to a 30-year agreement that included the provisions for payment of 2 percent of gross receipts. Following notice and a hearing, the City Council of Santa Barbara adopted the agreement as City Ordinance No. 5135 on December 7, 1999, with a term beginning on January 1, 2000 (the 1999 agreement). The ordinance was not submitted to the voters for their approval.

The 1999 agreement divides its 30-year period into two terms. The first two years [****5] were the "initial term," during which SCE was required to pay the City an "initial term fee" equal to 1 percent of its gross receipts from the sale of electricity

¹ A franchise is a privilege granted by the government to a particular individual or entity rather than to all as a common right. A utility franchise is a privilege to use public streets or rights-of-way in connection with the utility's provision of services to residents within the governmental entity's jurisdiction. (*Spring Valley W. W. v. Schottler* (1882) 62 Cal. 69, 106–108; *Santa Barbara County Taxpayer Assn. v. Board of Supervisors* (1989) 209 Cal.App.3d 940, 949 [257 Cal.Rptr. 615] (*Santa Barbara County Taxpayer Assn.*); 12 McQuillin, *The Law of Municipal Corporations* (3d ed. 2017) § 34.2, p. 15.)

within the City. The subsequent 28 years are the “extension term,” during which SCE is to pay the additional 1 percent charge on its gross receipts, denominated the “recovery portion,” for a total “extension term fee” of 2 percent of SCE's gross receipts from the sale of electricity within the City. At issue in this case is the recovery portion, which we, like the parties, refer to as the surcharge.

[**214] The 1999 agreement required SCE to apply to the PUC by April 1, 2001, for approval to include the surcharge on its bills to ratepayers within the City, and to use its best efforts to obtain PUC approval by April 1, 2002. Approval was to be sought in accordance with the PUC's “Re Guidelines for the Equitable Treatment of Revenue-Producing Mechanisms Imposed by Local Government Entities on Public Utilities.” (*Investigation on the Commission's Own Motion To Establish Guidelines for the Equitable Treatment of Revenue-producing Mechanisms Imposed by Local Government Entities on Public Utilities* (1989) 32 Cal.P.U.C.2d 60, 63 [****6] (*PUC Investigation*)). The 1999 agreement further provided that, in [***864] the event the PUC did not give its approval by the end of the initial term, either party could terminate the agreement. Thereafter, [*256] the City agreed to delay the time within which SCE was required to seek approval from the PUC, but SCE eventually obtained PUC approval, and began billing its customers within the City for the full extension term fee in November 2005.

The 1999 agreement provided that half of the revenues generated by the surcharge were to be allocated to the City's general fund and half to a City undergrounding projects fund. In November 2009, however, the City Council decided to reallocate the revenues from the surcharge, directing that all of the funds be placed in the City's general fund without any limitation on the use of these funds.

In 2011, plaintiffs filed a class action complaint challenging the surcharge. In their first amended complaint, they alleged the surcharge was an illegal

tax under Proposition 218, which requires voter approval for all local taxes. (Cal. Const., art. XIII C.) Plaintiffs sought refunds of the charges collected, as well as declaratory relief and injunctive relief requiring the City to discontinue collection [****7] of the surcharge.

On cross-motions for summary adjudication and the City's motion for summary judgment, the trial court ruled that a franchise fee is not a tax under Proposition 218. Its ruling was based largely on *Santa Barbara County Taxpayer Assn., supra*, 209 Cal.App.3d 940, which held that franchise fees are not “proceeds of taxes” for purposes of calculating limits on state and local appropriations under article XIII B of the California Constitution. Notwithstanding this ruling, the trial court denied the motions, based on its view that Proposition 26, which was approved by the voters in the 2010 general election, retroactively altered the definition of a tax under Proposition 218 to encompass franchise fees. Therefore, the court concluded, the City had failed to establish that the surcharge did not violate Proposition 218 during the period *after* Proposition 26 was adopted in 2010.

Thereafter, the City moved for judgment on the pleadings, contending that Proposition 26 does not apply retroactively to the surcharge. The trial court agreed, citing *Brooktrails Township Community Services Dist. v. Board of Supervisors of Mendocino County* (2013) 218 Cal.App.4th 195 [159 Cal. Rptr. 3d 424], which held that Proposition 26 does not apply retroactively. Based on its earlier conclusion that the surcharge, as a franchise fee, was not a tax under Proposition 218 (see *Santa Barbara County Taxpayer Assn., supra*, 209 Cal.App.3d 940), and its additional conclusion that a franchise fee, as negotiated compensation, need [****8] not be based on the government's costs, the trial court ruled that the surcharge was not subject to the voter approval requirements of Proposition 218. Therefore, it granted the City's motion for judgment on the pleadings.

[*257]

The Court of Appeal reversed the judgment. It looked to our opinion in *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866 [64 Cal. Rptr. 2d 447, 937 P.2d 1350] (*Sinclair Paint*), which considered whether a charge imposed by the state on those engaged in the stream of commerce of lead-containing products was a tax or a fee under Proposition 13 (Primary Elec., June 6, 1978), an earlier voter initiative that requires voter approval of various taxes. (Cal. Const., art. XIII A.) Noting that our analysis in *Sinclair Paint* focused on whether the primary [***865] purpose of the charge was to raise revenue or to regulate those charged, the Court of Appeal considered whether the primary purpose of the surcharge is to raise revenue or to compensate the City for allowing SCE to use its streets [**215] and rights-of-way. Based on its conclusion that the surcharge's "primary purpose is for the City to raise revenue from electricity users for general spending purposes rather than for SCE to obtain the right-of-way to provide electricity," the Court of Appeal held that the surcharge is a tax, and therefore requires voter approval under [****9] Proposition 218. (Cal. Const., art. XIII C, § 2, subd. (b).)

We granted review to address whether the surcharge is a tax subject to Proposition 218's voter approval requirement, or a fee that may be imposed by the City without voter consent.

II. DISCUSSION

CA(1)[↑] (1) Over the past four decades, California voters have repeatedly expanded voter approval requirements for the imposition of taxes and assessments. These voter initiatives have not, however, required voter approval of certain charges related to a special benefit received by the payor or certain costs associated with an activity of the payor. Whether the surcharge required voter approval hinges on whether it is a valid charge under the principles that exclude certain charges from voter approval requirements. Our evaluation of this issue begins with a review of four voter

initiatives that require voter approval of taxes, and the legal principles underlying the exclusion of certain charges from the initiatives' requirements. We then describe the historical characteristics of franchise fees, the Legislature's history of regulating the calculation of franchise fees, and the PUC's requirements concerning the imposition of franchise fees that exceed the average charges imposed by other [****10] local governments in the utility's service area. Finally, we analyze whether the surcharge is a valid franchise fee or a tax, and we hold that **HN1[↑]** a charge imposed in exchange for franchise rights is a valid fee rather than a tax only if the amount of the charge is reasonably related to the value of the franchise.

[*258]

A. Restrictions on Taxes and Other Charges

1. Voter Initiatives

CA(2)[↑] (2) Beginning in 1978, **HN2[↑]** state voters have imposed various limitations upon the authority of state and local governments to impose taxes and fees. Proposition 13, which was adopted that year, set the assessed value of real property as the "full cash value" on the owner's 1975–1976 tax bill, limited increases in the assessed value to 2 percent per year unless there was a change in ownership, and limited the rate of taxation on real property to 1 percent of its assessed value. (Cal. Const., art. XIII A, §§ 1, 2.) In addition, to prevent tax savings related to real property from being offset by increases in state and local taxes, Proposition 13 required approval by two-thirds of the members of the Legislature in order to increase state taxes, and required approval by two-thirds of the local electors of a city, county, or special district in order for such [****11] a local entity to impose special taxes. (Cal. Const., art. XIII A, §§ 3, 4; *Sinclair Paint, supra*, 15 Cal.4th at p. 872; *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*).)

CA(3)[↑] (3) Proposition 13 did not define "special taxes," but this court addressed the

initiative's [***866] restrictions on such taxes in two early cases. In *Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197 [182 Cal. Rptr. 324, 643 P.2d 941], we held that the requirement that “special districts” obtain two-thirds voter approval for special taxes applied only to those special districts empowered to levy property taxes. (*Id.* at p. 207.) In *City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47 [184 Cal. Rptr. 713, 648 P.2d 935] (*Farrell*), “we construe[d] **HN3**[↑] the term ‘special taxes’ in section 4 [of article XIII A of the Constitution] to mean taxes which are levied for a specific purpose.” (*Id.* at p. 57.) In addition, the Legislature provided that “‘special tax’ shall not include 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.” (Gov. Code, § 50076.)

CA(4)[↑] (4) Thereafter, in 1986, the voters approved **HN4**[↑] Proposition 62, which “added a new article to the Government Code (§§ 53720–53730) requiring [**216] that all new local taxes be approved by a vote of the local electorate.” (*Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 231 [45 Cal. Rptr. 2d 207, 902 P.2d 225], fn. omitted.) The initiative embraced the definition of special taxes set forth in *Farrell, supra*, 32 Cal.3d 47 (Gov. Code, § 53721; see *Guardino*, at p. 232), but applied its voter approval requirements to any district rather than only to special districts, and defined “district” [****12] broadly. (Gov. Code, § 53720, subd. (b) [“‘district’ means an agency of the state, formed ... for the local performance of governmental [*259] or proprietary functions within limited boundaries”].) By the time Proposition 62 was proposed, courts as well as the Legislature had recognized that various fees were not taxes for purposes of Proposition 13 (see *Beaumont Investors v. Beaumont-Cherry Valley Water Dist.* (1985) 165 Cal.App.3d 227 [211 Cal. Rptr. 567]; *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656 [166 Cal. Rptr. 674]), but Proposition 62 was silent with respect to the

imposition of fees.

CA(5)[↑] (5) Next, in 1996, state voters approved Proposition 218, known as the “Right to Vote on Taxes Act.” (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 835 [102 Cal. Rptr. 2d 719, 14 P.3d 930] (*Apartment Assn.*)) Proposition 218 addressed two principal concerns. First, it was not clear whether Proposition 62, which enacted statutory provisions, bound charter jurisdictions.² (*Howard Jarvis Taxpayers Assn. v. City of San Diego* (2004) 120 Cal.App.4th 374, 390–391 [15 Cal. Rptr. 3d 457].) Therefore, **HN5**[↑] Proposition 218 amended the Constitution to add voter approval requirements for general and special taxes, thereby binding charter jurisdictions. (Cal. Const., art. XIII C, §§ 1, 2.)

CA(6)[↑] (6) Second, **HN6**[↑] Proposition 13 was “not intended to limit ‘traditional’ benefit assessments.” (*Knox v. City of Orland* (1992) 4 Cal.4th 132, 141 [14 Cal. Rptr. 2d 159, 841 P.2d 144] (*Knox*) [upholding property-based assessments for public landscaping and lighting improvements].) Proposition 218 [***867] was adopted in part to address *Knox*'s holding. (*Greene v. Marin County Flood Control & Water Conservation Dist.* (2010) 49 Cal.4th 277, 284 [109 Cal. Rptr. 3d 620, 231 P.3d 350].) It requires an agency proposing an assessment on property to determine the proportionate special [****13] benefit to be derived by each parcel subject to the assessment; to support the assessment with an engineer's report; to give written notice to each parcel owner of the amount of the proposed assessment and the basis of the calculation; and to provide each owner with a ballot to vote in favor of or against the proposed assessment. It also requires

²“For its own government, a county or city may adopt a charter by majority vote of its electors voting on the question.” (Cal. Const., art. XI, § 3, subd. (a).) County charters “supersede ... all laws inconsistent therewith” (*ibid.*), and city charters supersede all inconsistent laws “with respect to municipal affairs.” (*Id.*, § 5, subd. (a); see *Johnson v. Bradley* (1992) 4 Cal.4th 389, 394–400 [14 Cal. Rptr. 2d 470, 841 P.2d 990].)

the agency to hold a public hearing, and bars imposition of the assessment if a majority of parcel owners within the assessment area submit ballots in opposition to the assessment, with each ballot weighted based on the proposed financial obligation of the affected parcel. In the event legal action is brought contesting an assessment, the agency has the burden to establish that the burdened properties receive a [*260] special benefit and the assessment is proportional to the benefits conferred. (Cal. Const., art. XIII D, §§ 2, subd. (b), 4; see *Apartment Assn., supra*, 24 Cal.4th 830.)³

[**217] CA(7)[↑] (7) Most recently, in 2010, after the charge at issue in this case was adopted, state voters approved Proposition 26. HN7[↑] That measure amended the Constitution to provide that for purposes of article XIII C, which addresses voter approval of local taxes, “ ‘tax’ means any levy, charge, or exaction of any kind imposed by a local government” (Cal. Const., art. XIII C, § 1, subd. (e)), *except* [****14] (1) a charge imposed for a specific benefit or privilege received only by those charged, which does not exceed its reasonable cost; (2) a charge for a specific government service or product provided directly to the payor and not provided to those not charged, which does not exceed its reasonable cost; (3) charges for reasonable regulatory costs related to the issuance of licenses, permits, investigations, inspections, and audits, and the enforcement of agricultural marketing orders; (4) charges for access to or use, purchase, rental, or lease of local government

³ Proposition 218 also imposed restrictions on the imposition of fees and charges for property-related services, such as sewer and water services, but provided that “fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.” (Cal. Const., art. XIII D, § 3, subd. (b); *id.*, § 6; see *Silicon Valley Taxpayers’ Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 443 [79 Cal. Rptr. 3d 312, 187 P.3d 37].) Based on its conclusion that the charges imposed by the 1999 agreement are compensation for the franchise rights conveyed to SCE, the trial court further concluded the charges are for the provision of electrical service, and therefore are not imposed as an incident of property ownership. Plaintiffs do not contend on appeal that the surcharge is a property-related fee.

property; (5) fines for violations of law; (6) charges imposed as a condition of developing property; and (7) property-related assessments and fees as allowed under article XIII D. The local government bears the burden of establishing the exceptions. (Cal. Const., art. XIII C, § 1, subd. (e).)⁴

2. Characteristics of Valid Fees

As noted above, following the enactment of Proposition 13, the Legislature and courts viewed various fees as outside the [***868] scope of the initiative. (Gov. Code, § 50076; *Evans v. City of San Jose* (1992) 3 Cal.App.4th 728, 736–737 [4 Cal. Rptr. 2d 601] (*Evans*), and cases cited therein.) In *Sinclair Paint, supra*, 15 Cal.4th 866, we summarized three categories of charges that are fees rather than taxes, and therefore are not subject to the voter approval requirements of Proposition [****15] 13. First, special assessments may be imposed “in amounts reasonably reflecting the value of the benefits conferred by improvements.” (*Sinclair Paint*, at p. 874.) Second, development fees, which are [*261] charged for building permits and other privileges, are not considered 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.” (*Id.* at p. 875.) Third, regulatory fees are imposed under the police power to pay for the reasonable cost of regulatory activities. (*Id.* at pp. 875–876.)

CA(8)[↑] (8) The commonality among these categories of charges is the relationship between the charge imposed and a benefit or cost related to the payor. With respect to charges for benefits received, we explained in *Knox, supra*, 4 Cal.4th 132, that HN8[↑] “if an assessment for ... improvements provides a special benefit to the assessed properties, then the assessed property owners should pay for the benefit they receive.”

⁴ Plaintiffs and the City both view Proposition 26 as confirming their view of the law before Proposition 26 was enacted, but no party contends that it applies to the charges in this case, which were imposed prior to the enactment of Proposition 26.

(*Id.* at p. 142; see *Evans, supra*, 3 Cal.App.4th at p. 738 [when a “discrete group is specially benefitted ... [, t]he public should not be required to finance an expenditure through taxation which benefits only a small segment of the population”].) But “if the assessment exceeds the actual cost of the improvement, the exaction is a [****16] tax and not an assessment.” (*Knox*, at p. 142, fn. 15.) With respect to costs, we explained in *Sinclair Paint, supra*, 15 Cal.4th 866, 879, that Proposition 13's goal of providing effective property tax relief is promoted rather than subverted by shifting costs to those who generate the costs. (See *San Diego Gas & Electric Co. v. San Diego County Air Pollution Control Dist.* (1988) 203 Cal.App.3d 1132, 1148 [250 Cal. Rptr. 420].) However, if the charges exceed the reasonable cost of the activity on which they are based, the charges are levied for unrelated revenue purposes, and are therefore taxes. (*Sinclair Paint*, at pp. 874, 881.)

CA(9)[↑] (9) In sum, **HN9[↑]** restricting allowable fees to the reasonable cost or value of the activity with which the charges are associated serves [**218] Proposition 13's purpose of limiting taxes. (See *Amador Valley, supra*, 22 Cal.3d at p. 231 [Prop. 13's restrictions on real property taxes “could be withdrawn or depleted by additional or increased state or local levies of other than property taxes”].) If a state or local governmental agency were allowed to impose charges in excess of the special benefit received by the payor or the cost associated with the payor's activities, the imposition of fees would become a vehicle for generating revenue independent of the purpose of the fees. Therefore, to the extent charges exceed the rationale underlying the charges, they are taxes.

Although *Sinclair Paint, supra*, 15 Cal.4th 866, focused on restrictions imposed by Proposition 13, its analysis [****17] of the characteristics of fees that may be imposed without voter approval remains sound. According [***869] to Proposition 218's findings and declarations, “Proposition 13 was intended to provide effective tax relief and to

require voter approval of tax increases. However, local governments have subjected taxpayers to *excessive* tax, assessment, fee [*262] and charge increases that ... frustrate the purposes of voter approval for tax increases” (Prop. 218, § 2, reprinted at 1 Stats. 1996, p. A-295, italics added.) As relevant here, this finding reflects a concern with excessive fees, not fees in general. In addition, although Proposition 218 imposed additional restrictions on the imposition of assessments, that initiative did not impose additional restrictions on other fees. (Cal. Const., arts. XIII C, §§ 1, 2, XIII D, § 4.) Finally, *Sinclair Paint's* understanding of fees as charges reasonably related to specific costs or benefits is reflected in Proposition 26, which exempted from its expansive definition of tax (1) charges imposed for a specific benefit or privilege which do not exceed its reasonable cost, (2) charges for a specific government service or product provided which do not exceed [****18] its reasonable cost, and (3) charges for reasonable regulatory costs related to specified regulatory activities.⁵ (Cal. Const., art. XIII C, § 1, subd. (e).)

To determine how franchise fees fit within these principles, we next consider the nature of franchise fees. We also describe the regulatory framework related to their calculation and imposition.

B. Franchise Fees

1. Nature of Franchise Fees

HN10[↑] **CA(10)[↑]** (10) A franchise to use public streets or rights-of-way is a form of property (*Stockton Gas etc. Co. v. San Joaquin Co.* (1905) 148 Cal. 313, 319 [83 P. 54]), and a franchise fee is the purchase price of the franchise. (*City & Co. of S. F. v. Market St. Ry. Co.* (1937) 9 Cal.2d 743, 749 [73 P.2d 234].) Historically, franchise fees have not been considered taxes. (See *County of Tulare v. City of Dinuba* (1922) 188 Cal. 664, 670 [206 P.

⁵ Proposition 26's description of valid charges based on regulatory costs does not mirror our discussion of such costs in *Sinclair Paint, supra*, 15 Cal.4th 866. (See Cal. Const., art. XIII C, § 1, subd. (e)(3).) We express no opinion on the breadth of the regulatory costs that Proposition 26 allows to be imposed without voter approval.

983] [franchise fee based on gross receipts of utility is not a tax]; *City & Co. of S. F. v. Market St. Ry. Co.*, *supra*, 9 Cal.2d at p. 749 [payments for franchises are not taxes]; *Santa Barbara County Taxpayer Assn.*, *supra*, 209 Cal.App.3d 940, 949–950 [franchise fees are not proceeds of taxes].) Nothing in Proposition 218 reflects an intent to change the historical characterization of franchise fees, or to limit the authority of government to sell or lease its property and spend the compensation received for whatever purposes it chooses. (See Cal. Const., arts. XIII A, § 3, subd. (b)(4), XIII C.)

This understanding that restrictions on taxation do not encompass amounts paid in exchange for property interests is confirmed by Proposition 26, the [*263] purpose of which was to *reinforce* the voter approval requirements set forth in [****19] Propositions 13 and 218. (Prop. 26, § 1, subd. (f), Historical Notes, reprinted at 2B West's Ann. Cal. Const., *supra*, foll. art. XIII A, § 3, p. 297 [“to ensure the effectiveness of these constitutional limitations, [Proposition 26] defines a “tax” ... so that neither the Legislature nor local governments can circumvent these restrictions on [**219] increasing taxes by simply defining new or expanded taxes as “fees””].) Although Proposition 26 [***870] strengthened restrictions on taxation by expansively defining “tax” as “any levy, charge, or exaction of any kind imposed by a local government” (Cal. Const., art. XIII C, § 1, subd. (e)), it provided an exception for “[a] charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property” (*id.*, subd. (e)(4)).⁶

2. Laws Governing the Calculation of Franchise Fees

The Legislature has taken several approaches to the issue of the amount of compensation to be paid to local jurisdictions in exchange for rights-of-way

over the jurisdictions' land relating to the provision of services such as electricity. As described more fully below, it initially barred the imposition of franchise fees due to perceived abuses by local governments. Thereafter, it authorized local agencies to grant franchises, [****20] and established two formulas with which to calculate franchise fees. These formulas do not bind charter jurisdictions, such as the City, but they provide helpful background to the PUC's regulation of charges imposed on ratepayers.

The California Constitution as adopted in 1879 provided that “[i]n any city where there are no public works owned and controlled by the municipality for the supplying the same with water or artificial light, any individual, or any company duly incorporated for such purpose ... , shall ... have the privilege of using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and connections therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gaslight or other illuminating light, or with fresh water for domestic and all other purposes, upon the condition that the municipal government shall have the right to regulate the charges thereof.” (Cal. Const., former art. XI, § 19.) The provision was intended to prevent a municipality from creating a monopoly within its jurisdiction by imposing burdens on parties who wanted to compete with an existing private utility. Although [****21] cities could not impose franchise fees on these “constitutional franchises,” they were authorized to tax a franchise on the basis that a franchise constitutes real property within the city. (*Stockton Gas etc. Co. v. San Joaquin [*264] Co.*, *supra*, 148 Cal. at pp. 315–321; *City of Santa Cruz v. Pacific Gas & Electric Co.* (2000) 82 Cal.App.4th 1167 [1171, 99 Cal. Rptr. 2d 198].) In 1911, this constitutional provision was replaced with a provision that authorized the private establishment of public works for providing services such as light, water, and power “upon such conditions and under such regulations as the municipality may prescribe under its organic law.” (Sen. Const. Amend. No.

⁶We are concerned only with the validity of the surcharge under Proposition 218. Proposition 26's exception from its definition of “tax” with respect to local government property is not before us. (See Cal. Const., art. XIII C, § 1, subd. (e)(4).)

49, Stats. 1911 (1911 Reg. Sess.) res. ch. 67, p. 2180.) The constitutional amendment did not impair rights under existing constitutional franchises. (*Russell v. Sebastian* (1914) 233 U.S. 195, 210 [58 L.Ed. 912, 34 S.Ct. 517].)

In the meantime, in 1905, the Legislature enacted the Broughton Act (Pub. Util. Code, § 6001 et seq.), which authorized cities and counties to enter franchise agreements for the provision of electricity and various other services not encompassed by the constitutional restrictions [***871] on franchise fees. (Stats. 1905, ch. 578, p. 777; *County of Alameda v. Pacific Gas & Electric Co.* (1997) 51 Cal.App.4th 1691, 1694–1695 [60 Cal. Rptr. 2d 187] (*County of Alameda*)). The legislation provided that when an application for a franchise was received by a city or county, the governing body was to advertise for bids and award the franchise to the highest bidder. The successful bidder was [****22] required to pay, in addition to the amount bid, 2 percent of the gross annual receipts from the “use, operation or possession” of the franchise after the first five years of the term of the franchise agreement had passed. (Stats. 1905, ch. 578, §§ 2–3, pp. 777–778.)

HN11 [↑] **CA(11)** [↑] (11) The Broughton Act's provision that the fee be based on the receipts from the use, operation or possession of the franchise results in a complicated calculation of franchise [**220] fees. Usually, some portion of a utility's rights-of-way are on private property or property outside the jurisdiction of the city or county granting the franchise, and the utility's gross receipts attributable to a particular franchise must be reduced in proportion to the utility's rights-of-way that are not within the franchise agreement. (*County of Tulare v. City of Dinuba, supra*, 188 Cal. at pp. 673–676.) In addition, because gross receipts arise from all of a utility's operative property, such as equipment and warehouses, the portion of gross receipts attributable to property other than the franchise must be excluded from the calculation of the franchise fee. (*County of L. A. v. Southern etc. Gas Co.* (1954) 42 Cal.2d 129, 133–

134 [266 P.2d 27].) Finally, if a utility also provides service under a constitutional franchise—for example, where it provides artificial light under a constitutional franchise [****23] in the same area in which it provides electricity under a franchise agreement entered pursuant to the Broughton Act—the franchise fee applies only to the gross receipts from the provision of services under the nonconstitutional franchise. (*Oakland v. Great Western Power Co.* (1921) 186 Cal. 570, 578–583 [200 P. 395].)

[*265]

In 1937, apparently due in part to the complexity involved in calculating franchise fees under the Broughton Act, the Legislature enacted an alternative scheme by which cities could grant franchises for the transmission of electricity and gas. (Stats. 1937, ch. 650, p. 1781; see Pub. Util. Code, § 6201 et seq. (1937 Act);⁷ *County of Alameda, supra*, 51 Cal.App.4th at pp. 1695–1696.) Instead of a bidding process, the 1937 Act requires only a public hearing before the local government that will decide whether to grant an application for a franchise, at which objections to the granting of the franchise may be made. (Pub. Util. Code, §§ 6232–6234.) In addition, although the 1937 Act reiterates the Broughton Act formula for calculating franchise fees, it also provides an alternative formula: “this payment shall be not less than 1 percent of the applicant's gross annual receipts derived from the sale within the limits of the municipality of the utility service for which the franchise is awarded.” (Pub. Util. Code, § 6231, subd. (c).)⁸ According to a review of that year's

⁷In 1971, the Legislature amended the 1937 Act to provide that “municipality includes counties.” (Pub. Util. Code, § 6201.5.) In addition, the act has been extended to franchises for the transmission of oil and oil products, and the transmission of water. (Pub. Util. Code, § 6202.)

⁸The 1937 Act includes a second alternative formula if the franchise is “complementary to a franchise derived under” the California Constitution. In that circumstance, the alternative payment is “one-half of 1 percent of the applicant's gross annual receipts from the sale of electricity within the limits of the municipality under both the electric franchises.” (Pub. Util. Code, § 6231, subd. (c).)

legislation, the new franchise [****24] [***872] system was “expected to bring more adequate returns to cities, while lessening disputes concerning amounts to be paid.” (David, *The Work of the 1937 California Legislature: Municipal Matters* (1937–1938) 11 S.Cal. L.Rev. 97, 107.)

As noted above, these statutory provisions do not bind jurisdictions governed by a charter, such as the City, but charter jurisdictions are free to follow the procedures set forth in the 1937 Act. (Pub. Util. Code, § 6205.)⁹ However, the 1937 Act's provisions “relating to the payment of a percentage of gross receipts shall not be construed as a declaration of legislative judgment as to the proper compensation to be paid a chartered municipality for the right to exercise franchise privileges therein.” (Pub. Util. Code, § 6205.) We explain below that although a charter jurisdiction's franchise fees are not limited by these statutory formulas, the PUC has concluded that it is not fair or reasonable to allow a utility to recoup from all of its utility customers charges imposed by a jurisdiction whose charges exceed the average amount of charges imposed by other local governments. Therefore, the PUC has established a procedure by which a utility may [**221] obtain approval [*266] to impose a surcharge on the bills of only those customers within the particular [****25] jurisdiction that imposes higher-than-average charges.

3. PUC Scrutiny of Utility Charges

HN12[↑] **CA(12)**[↑] (12) The PUC sets the rates of a publicly regulated utility to permit the utility to recover its costs and expenses in providing its service, and to receive a fair return on the value of the property it uses in providing its service.

⁹ The trial court ruled that as a charter jurisdiction, the City is not subject to general laws concerning franchises. (See *Southern Pacific Pipe Lines, Inc. v. City of Long Beach* (1988) 204 Cal.App.3d 660, 667–670 [251 Cal. Rptr. 411] [except where the nature of the utility services reflects a matter of statewide concern, the granting of franchises is a municipal affair].) Plaintiffs do not challenge that conclusion.

(*Southern Cal. Gas Co. v. Public Utilities Com.* (1979) 23 Cal.3d 470, 474–476 [153 Cal. Rptr. 10, 591 P.2d 34].) Among a utility's costs and expenses are government fees and taxes. Historically, “fees and taxes imposed upon the utility itself by the various governmental entities within the utility's service territory ... tended to average out, with the total derived from each taxing jurisdiction tending to be approximately equal. Therefore, rather than impose a special billing procedure upon utilities to account for the small differences historically involved, the [PUC] ... permitted a utility to simply average them and allowed them to be ‘buried’ in the rate structure applicable to the entire system.” (*PUC Investigation, supra*, 32 Cal.P.U.C.2d at p. 63.) As voters restricted the taxing authority of local governments, however, some local jurisdictions increased the charges they imposed in connection with the provision of utility services. “As the number and increasing amounts of these local revenue-producing mechanisms [****26] began to multiply, the [PUC] became concerned that averaging these costs among all ratepayers would create inequities among ratepayers.” (*Ibid.*)

CA(13)[↑] (13) In response to this concern, **HN13**[↑] the PUC established a procedure by which utilities may obtain approval to impose disproportionate charges on ratepayers within the jurisdiction that imposed the charges. [***873] (*PUC Investigation, supra*, 32 Cal.P.U.C.2d at pp. 62, 69.) When a local government imposes taxes or fees “which in the aggregate significantly exceed the average aggregate of taxes or fees imposed by the other local governmental entities within the public utility's service territory,” a utility may file an advice letter seeking approval to charge “local government fee surcharges.” (*Id.* at p. 73.) Such surcharges “shall be included as a separate item or items to bills rendered to applicable customers. Each surcharge shall be identified as being derived from the local governmental entity responsible for it.” (*Ibid.*)

The purpose of the PUC's procedure concerning local government fee surcharges is to ensure that

utility rates are just, reasonable, and nondiscriminatory. (*PUC Investigation, supra*, 32 Cal.P.U.C.2d at p. 69; see Pub. Util. Code, §§ 451 [all public utility charges shall be just and reasonable], 453 [no public utility shall discriminate], 728 [if PUC [****27] finds rates are unreasonable or discriminatory, it shall order just and reasonable rates].) “Basic rates ... are those designed to recoup a utility’s costs incurred to serve all its customers.” [*267] (*PUC Investigation, supra*, 32 Cal.P.U.C.2d at p. 69.) If disproportionate taxes and fees are incorporated into all customers’ basic rates, “some of these ratepayers would be subsidizing others but are not themselves benefiting from such increased taxes or fees.” (*Ibid.*)

The PUC’s decision does not concern the validity of any charges imposed by local government. The PUC explained that it “[did] not dispute or seek to dispute the authority or right of any local governmental entity to impose or levy any form of tax or fee upon utility customers or the utility itself, which that local entity, as a matter of general or judicial decision, has jurisdiction to impose, levy, or increase. Any issue relating to such local authority is a matter for the Superior Court, not this Commission.” (*PUC Investigation, supra*, 32 Cal.P.U.C.2d at p. 69.)

C. Validity of the Surcharge

1. Relationship Between Franchise Rights and Franchise Fees

CA(14)[↑] (14) Plaintiffs contend the surcharge is a tax rather than a fee under Proposition 218, and therefore requires voter approval. **HN14[↑]** Whether a charge is a tax or a fee [****28] “is a question of law for the appellate courts to decide on independent review of the facts.” (*Sinclair Paint, supra*, 15 Cal.4th at p. 874.) In resolving this issue, **HN15[↑]** the provisions of Proposition 218 “shall be liberally construed to effectuate [**222] its purposes of limiting local government revenue and enhancing taxpayer consent.” (Prop. 218, § 5, reprinted at 1 Stats. 1996, p. A-299; see *Silicon*

Valley Taxpayers’ Assn., Inc. v. Santa Clara County Open Space Authority, supra, 44 Cal.4th at pp. 446, 448 [express purpose of Prop. 218 was to limit methods of exacting revenue from taxpayers; its provisions are to be liberally construed].)

CA(15)[↑] (15) As explained earlier, a franchise is a form of property, and a franchise fee is the price paid for the franchise. Moreover, historically, franchise fees have not been considered taxes, and nothing in Proposition 218 reflects an intention to treat amounts paid in exchange for property interests as taxes. Finally, like the receipt by a discrete group of a special benefit from the government, the receipt of an [***874] interest in public property justifies the imposition of a charge on the recipient to compensate the public for the value received. Therefore, **HN16[↑]** sums paid for the right to use a jurisdiction’s rights-of-way are fees rather than taxes. But as explained below, to constitute compensation for the value [****29] received, the fees must reflect a reasonable estimate of the value of the franchise.

Each of the categories of valid fees we recognized in *Sinclair Paint, supra*, 15 Cal.4th 866, was restricted to an amount that had a reasonable relationship [*268] to the benefit or cost on which it was based. We observed that special assessments were allowed “in amounts reasonably reflecting the value of the benefits conferred” (*id.* at p. 874), development fees were allowed “if the amount of the fees bears a reasonable relation to the development’s probable costs to the community and benefits to the developer” (*id.* at p. 875), and regulatory fees were allowed where the fees reflected bear a “reasonable relationship to the social or economic ‘burdens’ that [the payor’s] operations generated” (*id.* at p. 876; see *Pennell v. City of San Jose* (1986) 42 Cal.3d 365, 375 [228 Cal. Rptr. 726, 721 P.2d 1111]). To the extent fees exceed a reasonable amount in relation to the benefits or costs underlying their imposition, they are taxes. (*Sinclair Paint, supra*, at p. 881; *Knox, supra*, 4 Cal.4th at p. 142, fn. 15.)

CA(16)[↑] (16) In the course of our analysis, we observed that, **HN17[↑]** “[i]n general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted,” and we looked to whether the primary purpose of a charge was to generate revenue. (*Sinclair Paint, supra*, 15 Cal.4th at p. 874; see *id.* at pp. 879–880.) The issue of whether the funds generated by the types of fees [****30] considered in *Sinclair Paint* were used primarily for revenue purposes was relevant because the fees were related to an expenditure by the government or a cost borne by the public. More particularly, in connection with special assessments, the government seeks to recoup the costs of the program that results in a special benefit to particular properties, and in connection with development fees and regulatory fees, the government seeks to offset costs borne by the government or the public as a result of the payee's activities.

In contrast, a fee paid for an interest in government property is compensation for the use or purchase of a government *asset* rather than compensation for a cost. Consequently, the revenue generated by the fee is available for whatever purposes the government chooses rather than tied to a public cost. The aspect of the transaction that distinguishes the charge from a tax is the receipt of value in exchange for the payment. (See *Sinclair Paint*, 15 Cal.4th at p. 874 [contrasting taxes from charges imposed in return for a special benefit or privilege]; 9 Witkin, Summary of Cal. Law (10th ed. 2005) Taxation, § 1, p. 25 [“in taxation, ... no compensation is given to the taxpayer except by way of governmental [****31] protection and other general benefits”].)

Plaintiffs observe, however, that SCE customers pay the surcharge, but SCE receives the franchise rights; therefore, they contend, the ratepayers do not receive any value in exchange for their [***875] payment of the [**223] charge. As noted above, publicly regulated utilities are allowed to recover their costs and expenses by passing them

on to their ratepayers. Among the charges included in the rates charged to customers within the City is the initial 1 percent of [*269] gross receipts paid in exchange for franchise rights, yet plaintiffs do not contend that this initial 1 percent is a tax because ratepayers do not receive the franchise rights. The fact that the surcharge is placed on customers' bills pursuant to the franchise agreement rather than a unilateral decision by SCE does not alter the substance of the surcharge; like the initial 1 percent charge, it is a payment made in exchange for a property interest that is needed to provide electricity to City residents.¹⁰ Because a publicly regulated utility is a conduit through which government charges are ultimately imposed on ratepayers, we would be placing form over substance if we precluded the City from establishing [****32] that the surcharge bears a reasonable relationship to the value of the property interest it conveyed to SCE because the City expressed in its ordinance what was implicit—that once the PUC gave its approval, SCE would place the surcharge on the bills of customers within the City.

Although *Sinclair Paint's* consideration of the purposes to which revenues will be put is not relevant in the context of transfers of public property interests, its broader focus on the relationship between a charge and the rationale underlying the charge provides guidance in evaluating whether the surcharge is a tax. Just as the amount of fees imposed to compensate for the expense of providing government services or the cost to the public associated with a payer's activities must bear a reasonable relationship to the costs and benefits that justify their imposition, fees imposed in exchange for a property interest must bear a reasonable relationship to the value received

¹⁰ As explained above, the division of the charge into two parts, with one included in the rates paid by customers and the other separately stated on the bill, was driven by the PUC's effort to ensure that a local government's higher-than-average charges are not unfairly imposed on ratepayers outside of the local government's jurisdiction; this division of the charges is unrelated to the character or validity of the charges.

from the government. To the extent a franchise fee exceeds any reasonable value of the franchise, the excessive portion of the fee does not come within the rationale that justifies the imposition of fees without voter approval. Therefore, the [****33] excessive portion is a tax. If this were not the rule, franchise fees would become a vehicle for generating revenue independent of the purpose of the fees. In light of the PUC's investigation of local governments' attempts to produce revenue through charges imposed on public utilities, this concern is more than merely speculative. (See PUC Investigation, supra, 32 Cal.P.U.C.2d 60.)

We recognize that determining the value of a franchise may present difficulties. Unlike the cost of providing a government improvement or program, which may be calculated based on the expense of the personnel and materials used to perform the service or regulation, the value of property may vary greatly, depending on market forces and negotiations. Where a utility has an incentive to negotiate a lower fee, the negotiated fee may reflect the [*270] value of the franchise rights, just as the negotiated rent paid by the lessor of a publicly owned building reflects its market value, despite the fact that a different lessor might have negotiated a different rental rate. In the absence of bona fide negotiations, [***876] however, or in addition to such negotiations, an agency may look to other indicia of value to establish a reasonable value of franchise rights.¹¹

CA(17)[↑] (17) In [****34] sum, HN18[↑] a franchise fee must be based on the value of the franchise conveyed in order to come within the rationale for its imposition without approval of the voters. Its value may be based on bona fide negotiations concerning the property's value, as well as other indicia of worth. Consistent with the principles that govern other fees, we hold that to constitute a valid franchise fee under Proposition

218, the amount of the franchise fee must bear a reasonable relationship to the value of the property interests transferred. [**224] (See Sinclair Paint, supra, 15 Cal.4th at pp. 874–876.)

2. *The City's Alternative Theories To Support the Surcharge*

We find the City's remaining arguments in defense of the surcharge to be without merit.

The City contends that the surcharge is not a tax imposed on ratepayers because it is a burden SCE voluntarily assumed. The terms of the 1999 agreement belie the contention that SCE assumed a burden to pay the surcharge. The 1999 agreement states that SCE “shall collect” the surcharge from all SCE customers within the City, and the collection shall be based on electricity consumption. Arguably, these provisions are ambiguous as to whether the mandatory language imposes a duty to collect the surcharge, or imposes a [****35] duty, *if* it collects the surcharge, to apply it to all customers within the City based on consumption. However, the next paragraph of the 1999 agreement refers to “[t]he conditions precedent to *the obligation of [SCE] under this Section 5 to levy, collect, and deliver to City the [surcharge].*” In addition, the parties stipulated that “[t]he SCE assessments, collections and remittance of the [surcharge] were required by Santa Barbara Ordinance 5135.” Finally, as noted above, public utilities are allowed to pass along to their customers expenses the utilities incur in producing their services, and SCE could terminate the 1999 agreement if the PUC did not agree to the inclusion of the surcharge on customers' bills. Thus, it does not appear that SCE assumed any burden to pay the surcharge from its assets.

We also reject the City's contention that imposition of the surcharge on customers is the result of a decision by SCE and the PUC. As discussed [*271] above, the purpose of the PUC's involvement in the process was to ensure that higher-than-average fees were not imposed on customers who reside outside the City. The fact that

¹¹ The parties' briefs do not consider the means by which franchise rights might be valued. We leave this issue to be addressed by expert opinion and subsequent case law.

the 1999 agreement required SCE to seek the approval of the PUC to include the charge on [****36] customers' bills, and allowed either party to terminate the agreement if the PUC's approval was not obtained, reflects that SCE was not willing to assume the burden of paying the surcharge, and that both parties to the agreement understood that the charge would be collected from ratepayers. These conclusions are confirmed by the parties' negotiations, which reflect that SCE was willing only to collect the charge from its customers and remit the revenue to the City. Finally, the City stipulated that the parties reached their [***877] agreement on the condition that the surcharge would become payable only if SCE obtained the PUC's consent to include the surcharge as a customer surcharge. In sum, the City and SCE agreed that SCE would impose the surcharge on customers and remit the revenues to the City.

In a similar vein, the City contends we should look to a revenue measure's legal incidence—who is required to pay the revenues—rather than its economic incidence—who bears the economic burden of the measure. The City's contention is based on its view that SCE bears the legal incidence of the charges and, therefore, the charges are not a tax on the ratepayers. In support of its theory, the City [****37] cites case law holding that nonresidents do not have taxpayer standing under Code of Civil Procedure section 526a to challenge a jurisdiction's actions based on their payment of taxes within the jurisdiction. (See Cornelius v. Los Angeles County etc. Authority (1996) 49 Cal.App.4th 1761, 1777–1778 [57 Cal. Rptr. 2d 618] [plaintiff who did not live in Los Angeles County was denied taxpayer standing to challenge a county affirmative action program based in part on payment of sales and gasoline taxes in Los Angeles County]; Torres v. City of Yorba Linda (1993) 13 Cal.App.4th 1035, 1048 [17 Cal. Rptr. 2d 400] [plaintiffs who did not live within a city were denied taxpayer standing to challenge a redevelopment plan based on the payment of sales taxes in the city].) These cases would support an argument that individuals who

live outside the City do not have taxpayer standing to challenge the surcharge, but they do not provide guidance concerning what constitutes a tax under various voter initiatives restricting taxation.

In any event, all that the City ultimately contends in this regard is that the [**225] economic incidence of a charge does not determine whether it is a tax. We agree. Valid fees do not become taxes simply because their cost is passed on to the ratepayers. As our discussion above reflects, the determination of whether a charge that is nominally a franchise fee constitutes a tax depends on whether it is [****38] reasonably related to the value of the franchise rights.

[*272]

Finally, the City asserts that the negotiated value of the franchise is entitled to deference because the City's adoption of the 1999 agreement was a legislative act and because charter jurisdictions have broad discretion to enter franchise agreements. (See Gov. Code, § 50335 [the legislative body of a local agency may grant utility easements “upon such terms and conditions as the parties thereto may agree”].) The record does not adequately disclose the negotiations that occurred with respect to the value of the franchise, and we are therefore unable to evaluate what deference, if any, might be due.

III. THE JUDGMENT OF THE COURT OF APPEAL

As noted above, the Court of Appeal concluded that the surcharge's primary purpose was to raise revenue for general spending purposes rather than to compensate the City for the rights-of-way. Therefore, it held, the surcharge is a tax, and requires voter approval under Proposition 218. Based on these conclusions, it reversed the trial court's grant of the City's motion for judgment on the pleadings, and “directed the trial court to grant [plaintiffs'] motion for summary adjudication because the City imposed the [****39] 1% surcharge without complying with Proposition

218.” As explained below, we agree that the judgment on the pleadings must be reversed, [***878] but we conclude that plaintiffs did not establish a right to summary adjudication.

HN19[↑] A motion for judgment on the pleadings presents the question of whether “the plaintiff’s complaint state[s] facts sufficient to constitute a cause of action against the defendant.” (*Smiley v. Citibank* (1995) 11 Cal.4th 138, 145 [44 Cal. Rptr. 2d 441, 900 P.2d 690].) The trial court generally considers only the allegations of the complaint, but may also consider matters that are subject to judicial notice. (*Id.* at p. 146.) “Moreover, the allegations must be liberally construed with a view to attaining substantial justice among the parties.’ [Citation.] ‘Our primary task is to determine whether the facts alleged provide the basis for a cause of action against defendants under any theory.’” (*Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1232 [44 Cal. Rptr. 2d 352, 900 P.2d 601].) “An appellate court independently reviews a trial court’s order on such a motion.” (*Smiley, supra*, at p. 146.)

CA(18)[↑] (18) The first amended complaint alleges that the surcharge is not a franchise fee, but is instead a tax that requires voter approval under Proposition 218. In addition, with the parties’ consent, the trial court took judicial notice of the written stipulation of facts submitted in connection [****40] with the motions for summary adjudication and summary judgment, and a second stipulation of facts submitted in connection with the City’s motion for judgment on the pleadings. As described above, the stipulated facts reflect that the City and SCE agreed to double the amount to be paid for the privilege of using the rights-of-way and to pass these charges on to the [*273] ratepayers, but they do not address the relationship, if any, between the surcharge and the value of the franchise. Liberally construed, the first amended complaint and the stipulated facts adequately allege the basis for a claim that the surcharge bears no reasonable relationship to the value of the franchise, and is therefore a tax

requiring voter approval under Proposition 218. Accordingly, the trial court erred in granting judgment on the pleadings to the City.

Next we consider the Court of Appeal’s direction to the trial court to grant plaintiffs’ motion for summary adjudication. A plaintiff moving for summary adjudication with respect to a claim must establish each element of the claim. The burden then shifts to the defendant to demonstrate a triable issue of fact exists as to the claim. (*Code Civ. Proc.*, § 437c, subd. (p)(1).) Like a ruling on a motion [****41] for judgment on the pleadings, a ruling on a motion for summary adjudication is reviewed de novo. (*Kendall v. Walker* (2009) [**226] 181 Cal.App.4th 584, 591 [104 Cal. Rptr. 3d 262].)

Plaintiffs sought summary adjudication of the allegation that the surcharge is a tax. (*Code Civ. Proc.*, § 437c, subd. (f).) They asserted that the tests set forth in *Sinclair Paint, supra*, 15 Cal.4th 866, remain good law, but like the Court of Appeal, they drew from *Sinclair Paint* the principle that if the primary purpose of a charge is to raise revenue, the charge is a tax. Plaintiffs also challenged the surcharge on the ground that it was not based on a determination that there was a reasonable relationship between the charge and any costs borne by the City. In response, the City noted that *Sinclair Paint, supra*, 15 Cal.4th 866, [***879] addressed the distinction between regulatory fees and taxes. The City relied instead on *Santa Barbara County Taxpayer Assn., supra*, 209 Cal.App.3d 940, which held that franchise fees are not “proceeds of taxes” for purposes of calculating limits on state and local appropriations under article XIII B of the California Constitution. The trial court concluded that “[b]ecause the measure of compensation [for a franchise] is a matter of contractual negotiation, the amount of the franchise fee need not be based on costs.”

Although plaintiffs’ allegations and the stipulated facts adequately allege the basis for a contention that the surcharge bears no reasonable relationship

to the value [****42] of the franchise, plaintiffs' motion for summary adjudication did not *establish* this contention. As explained in our discussion of franchise fees, cities are free to sell or lease their property, and the fact that a franchise fee is collected for the purpose of generating revenue does not establish that the compensation paid for the property interests is a tax. In addition, in contrast to fees imposed for the purpose of recouping the costs of government services or programs, which are limited to the reasonable costs of the services or programs, franchise fees are not based on the costs incurred in affording a [*274] utility access to rights-of-way. Therefore, the facts on which plaintiffs relied in seeking summary adjudication did not establish their claim that the surcharge is a tax.

IV. DISPOSITION

We affirm the judgment of the Court of Appeal to the extent it reversed the trial court's judgment, and we reverse the judgment to the extent it directed the trial court to grant plaintiffs' motion for summary adjudication. The case is remanded to the Court of Appeal with directions to remand the matter to the trial court for further proceedings consistent with this opinion.

Cantil-Sakauye, C. J., [****43] Werdegar, J., Corrigan, J., Liu, J., Cuéllar, J., and Kruger, J., concurred.

Dissent by: Chin

Dissent

CHIN, J., Dissenting.—Since 1970, the City of Santa Barbara (the City) has imposed “a tax” on those using electricity in the City. Since 1977, the amount of the tax has been “six percent (6%) of the charges made for” energy use. (Santa Barbara Mun. Code, § 4.24.030.) In 1999, the City, in order to raise revenues for general governmental purposes, passed an ordinance—City Ordinance No. 5135

(the Ordinance)—separately requiring those receiving electricity within the City from Southern California Edison (SCE) to pay *an additional* 1 percent of the amount of their electrical bill. I conclude that this additional charge constitutes a tax that the City imposed in violation of the voter approval requirements of article XIII C of the California Constitution, as adopted by the voters at the November 5, 1996 General Election through passage of Proposition 218 (Proposition 218). The City's arguments to the contrary are unpersuasive.

The majority agrees that most of the City's arguments fail, but it largely agrees [***880] with the City that the charge is a “valid franchise fee ... rather than a tax.” (Maj. [**227] opn., *ante*, at p. 257.) Putting its own gloss on the City's argument—a gloss the City expressly [****44] rejects—the majority concludes that the charge is a valid franchise fee to the extent it “bear[s] a reasonable relationship to,” as alternatively phrased, “the value of the property interests transferred” (maj. opn., *ante*, at p. 270), “the value of the franchise conveyed” (*ibid.*), or “the value of the franchise rights” (*id.* at p. 271).

There is a fundamental problem with this approach: The electricity users upon whom the City imposes the charge, and who actually pay it, do not receive the franchise, any franchise rights, or any property interests. The Ordinance grants those valuable rights and interests *only to SCE*, the electricity supplier. Because the Ordinance requires SCE's customers to pay for rights and interests the City has granted to SCE, the charge does not [*275] constitute a “franchise fee” for purposes of the rule that “franchise fees [are not] considered taxes.” (Maj. opn., *ante*, at p. 262.) In reality, it is just an increase in the City's user tax, which the City *calls* a franchise fee. It thus constitutes *precisely* what the voters adopted article XIII C of the California Constitution to preclude: a “tax increase[] disguised via euphemistic relabeling as ‘fees,’ ‘charges,’ or ‘assessments.’” (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 839 [102 Cal. Rptr. 2d 719, 14 P.3d

930].) Consistent with our *duty*, as established [****45] by the voters themselves, to “liberally construe[]” article XIII C of the California Constitution “to effectuate [the] purpose[] of limiting local government revenue and enhancing taxpayer consent” (Prop. 218, § 5, reprinted at 1 Stats. 1996, p. A-299), I conclude that the charge is invalid because the City imposed it on SCE’s customers without voter approval.

The majority cites no support for its conclusion that a charge imposed on and paid by someone who is granted nothing in return is not a tax as to that person so long as *someone else* receives franchise rights for the payment. Indeed, as I explain below, the majority’s analysis is inconsistent with our case law. And the line the majority draws between a valid franchise fee and a tax—whether the amount of the charge to a utility’s customers bears a reasonable relationship to the value the entity receives—is problematic in many ways and renders long-standing statutory provisions regarding utility franchises vulnerable to constitutional challenge. For all of these reasons, I dissent.

I. FACTUAL AND LEGAL BACKGROUND

In 1887, SCE’s predecessor, the Santa Barbara Electric Company, began supplying electricity in the City. In 1959, the City, pursuant to an agreement with SCE, adopted Ordinance [****46] No. 2728 granting SCE a 25-year franchise to use public property to transmit and distribute electricity. The ordinance required SCE to pay the City 2 percent of its “gross annual receipts ... arising from the use, operation or possession of [the] franchise,” with a minimum payment of one-half percent of SCE’s “gross annual receipts derived ... from the sale of electricity within the [City’s] limits ... under both” the franchise being granted by the ordinance and SCE’s separate and preexisting “constitutional franchise.” The ordinance specified that the City was granting the franchise “under and in accordance with the provisions of [***881] [the] Franchise Act of

1937.”¹

In 1985, after the 1959 franchise expired, the City, pursuant to another agreement with SCE, adopted Ordinance No. 4312 granting SCE a 10-year [*276] franchise to use public property to transmit and distribute electricity. “[A]s compensation,” the ordinance required SCE to pay to the City 2 percent of its “annual gross receipts ... arising from the use, operation or possession of th[e] franchise,” with a minimum payment of 1 percent of SCE’s “annual gross receipts derived ... from the sale of electricity within the limits of [the] [****47] City under both” the franchise being granted by the ordinance and SCE’s separate and preexisting “constitutional franchise.” [**228] The 1985 ordinance also required SCE to “collect for [the] City any utility users tax imposed by [the] City.” This provision reflected the City’s imposition in 1970 of “a tax” on “every person in” the City using electricity in the City. (Santa Barbara Ord. No. 3436.) The amount of the tax was initially three percent “of the charges made for” use of electricity. (*Ibid.*) In 1977, the City doubled the tax to 6 percent. (Santa Barbara Ord. No. 3927, amending Santa Barbara Mun. Code, § 4.24.030; see Santa Barbara Ord. No. 4289 (1984), amending Santa Barbara Mun. Code, tit. 4.)

The year after the City doubled its electricity users tax, California voters passed Proposition 13. As the majority notes, Proposition 13 amended our Constitution to limit increases in the assessed value of real property to 2 percent per year (absent a change in ownership) and to limit the rate of taxation on real property to 1 percent of its assessed value. (Maj. opn., *ante*, at p. 258.) In order to prevent these tax savings from being offset by increases in state and local taxes, Proposition 13 also amended [****48] our Constitution to require approval by two-thirds of the local electors of a

¹ Charter cities are not required to apply the Franchise Act of 1937 (the 1937 Act) (Pub. Util. Code, § 6201 et seq.), but may voluntarily follow its provisions. (Pub. Util. Code, § 6205; all further unlabeled statutory references are to the Public Utilities Code.)

city, county, or special district in order for such a local entity to impose or raise special taxes. (Maj. opn., *ante*, at p. 258.) Since the voters enacted these limits on the City's taxing powers, the City has not *formally* increased the percentage of its electricity users tax.

However, in 1999, the City informally and effectively increased this tax by passing the Ordinance, which codified a new franchise agreement with SCE and required users of electricity within the City to pay an additional 1 percent of their electrical bill. According to the parties' stipulated facts, this charge began as a proposal from "City staff," "[d]uring the negotiations for the new franchise agreement," to "increase[] [the] annual 'franchise fee'" from 1 percent of SCE's gross receipts for electricity sold within the City—the amount under the expiring agreement—to 2 percent. "City staff" proposed the increase in order "to raise additional revenues for the City for general City governmental purposes." "After a period of negotiations," SCE said it would agree "to remit to the City a two percent ... franchise fee provided that the City [****49] agreed that the increase in the franchise fee would be payable to the City only if the California Public Utilities Commission ... consented to SCE's request that it be allowed to include the additional 1% amount as a customer surcharge on the bills of SCE to its customers in the City." City [***882] staff and SCE [*277] reached agreement "[o]n that basis" and the City Council later adopted the tentative agreement as Ordinance No. 5135 (Dec. 7, 1999).

The Ordinance granted SCE a franchise to use public property to construct and operate an electric transmission system. It provided for an "Initial Term" of three years—January 1, 2000, through December 31, 2002—and set the payment for that term at 1 percent of SCE's "Gross Annual Receipts." (Ord., §§ 3.A, 5.) The Ordinance also provided for an "Extension Term" beginning 60 days after the Public Utilities Commission (PUC) approved an "Extension Term Fee" and ending

December 31, 2029. (Ord., § 3.B.) The total Extension Term Fee was 2 percent of SCE's Gross Annual Receipts, and comprised two elements: (1) the 1 percent Initial Term Fee; and (2) a 1 percent "Recovery Portion." (Ord., § 5.B.) Like the City's electricity users tax, the Recovery Portion [****50] was to be collected from "all electric utility customers served by [SCE] within the boundaries of the City" and was "based on consumption or use of electricity." (*Ibid.*) SCE's "obligation" was "to levy" the Recovery Portion on its customers, "collect" this payment from its customers, and "deliver" the collected amount "to [the] City." (Ord., § 5.C.) In other words, according to the parties' stipulated facts, the Ordinance "obligate[d]" all persons in the City receiving electricity from SCE "to pay" the Recovery Portion, and "require[d] [SCE] to collect" the Recovery Portion "from" its City customers "and remit [it] to" the City. The Ordinance made PUC approval of the Extension Term Fee a "condition[] precedent to" SCE's "obligation ... to levy, collect, and deliver to [the] City the Recovery Portion." ² [**229] If that approval was not obtained by the end of the Initial Term—December 31, 2002—the franchise would "continue on a year to year basis at the Initial Term Fee"—1 percent of gross revenues—until terminated by either party upon written notice.

In April 2001, the City and [****51] SCE agreed to delay for up to two years the filing with the PUC of a request for approval of the Extension Term Fee. In December 2004, almost three years later, the City directed SCE to submit the request. During that period, the only compensation SCE paid the

² A utility may, "at its discretion," request permission from the PUC to set forth separate charges on certain of their customers' bills when a local governmental entity imposes upon the utility "[f]ranchise, general business license, or special taxes and/or fees ... [that] in the aggregate significantly exceed the average aggregate of taxes or fees imposed by the other local governmental entities within the public utility's service territory." (*Re Guidelines for the Equitable Treatment of Revenue-Producing Mechanisms Imposed by Local Government Entities on Public Utilities* (1989) 32 Cal.P.U.C.2d 60, 73.)

City for the franchise was the Initial Term Fee. SCE eventually submitted the request on March 30, 2005, asking for approval “to bill and collect from its customers within the City ... a 1.0% electric franchise surcharge to be remitted to the City by SCE as a pass-through fee, pursuant to SCE's new franchise agreement with the City.” The request explained that the new franchise [*278] agreement “expressly provides for the additional amount to be surcharged to SCE's customers within the City,” and requires PUC approval “in order for SCE to bill and collect the additional franchise surcharge for the City.” The request also explained that, upon the PUC's approval, SCE would “bill and collect the surcharge revenues and pass through the revenues directly to the City.” [***883] On April 20, 2005, the PUC granted SCE's request.

In November 2005, SCE began billing the Recovery Portion to, and collecting it from, customers in the City, and remitting [****52] those revenues in their entirety to the City. At first, the City apportioned the revenues in accordance with the Ordinance, i.e., half to the City's general fund and half to a City undergrounding projects fund. In November 2009, the City directed that all revenues from the Recovery Portion be placed in its general fund without any limitation on use.

II. DISCUSSION

Plaintiffs Rolland Jacks and Rove Enterprises, Inc., claim that the City, by imposing the Recovery Portion through adoption of the Ordinance, violated article XIII C of the California Constitution. As here relevant, article XIII C provides that “local government[s]” may not “impose ... any general tax ... until that tax is submitted to the electorate and approved by a majority vote” (Cal. Const., art. XIII C, § 2, subd. (b)), and may not “impose ... any special tax ... until that tax is submitted to the electorate and approved by a two-thirds vote” (*id.*, § 2, subd. (d)). Plaintiffs argue that the Recovery Portion is a tax within the meaning of these provisions and that the City violated article XIII C

by imposing it without voter approval.

In opposition to this argument, the City focuses heavily on the word “impose” in California Constitution, article XIII C's provisions, asserting that the Recovery Portion was not “imposed” *by the City* on anyone. According [****53] to the City, the Recovery Portion is, as to SCE, a “voluntary” payment to which SCE, a “sophisticated, commercial entit[y] with substantial market power,” “willingly agreed” in order “to obtain use of valuable public rights of way in its for-profit business.” As to SCE's customers, SCE and/or the PUC “imposed” the Recovery Portion, and the City “played no part in” the decisions of those entities.

The majority correctly rejects these arguments, explaining that the terms of the agreement and the Ordinance require that the Recovery Portion “be collected from” SCE's customers and impose on SCE only an obligation “to collect the charge from its customers and remit the revenue to the City.” (Maj. opn., *ante*, at p. 271.) Indeed, the City's arguments necessarily fail in light of its stipulation that “[p]ursuant to City Ordinance [No.] 5135, all [*279] persons in the City receiving electricity from SCE *are obligated to pay* the 1% Recovery Portion.” (Italics added.)

In a related argument, the City asserts that the Recovery Portion is not “imposed” [**230] on SCE's customers because its “legal incidence”—i.e., the “legal duty to pay it”—“is on SCE.” According to the City, that SCE's customers in fact “ultimately bear[]” the Recovery [****54] Portion's “economic burden” is irrelevant because, under the law, “whether a charge is a tax is determined by its legal incidence.”

The City is correct to focus on the Recovery Portion's legal incidence, but its argument fails because, under the Ordinance, both the legal incidence and the economic burden of the Recovery Portion fall on SCE's customers, not on SCE. The rule in California is that where the government *mandates* payment of a charge by one party, and imposes a duty on some other party to collect the

payment and remit it to the government, the legal incidence of the charge falls, not on the party [***884] collecting the payment—who acts merely as the government's collection agent or conduit—but on the party from whom the payment is, by law, collected. (*Western States Bankcard Assn. v. City and County of San Francisco* (1977) 19 Cal.3d 208, 217 [137 Cal. Rptr. 183, 561 P.2d 273] (*Western States*) [tax ordinances lacked “mandatory pass-on provisions” that would “shift the legal incidence of the tax”]; *Bunker Hill Associates v. City of Los Angeles* (1982) 137 Cal.App.3d 79, 87 [186 Cal. Rptr. 719] [“the legal incidence of a tax does not necessarily fall on the party who acts as conduit by forwarding collected taxes to the state,” and charge imposed on tenants, that lessors were legally required to collect and transmit to the government, was not a tax on lessors]; *Occidental Life Ins. Co. v. State Bd. of Equalization* (1982) 135 Cal.App.3d 845, 850 [185 Cal. Rptr. 779] (*Occidental Life*) [whether “pass [****55] on” of charge is “mandatory” is “legally significant” in determining who bears the charge's “legal incidence”].) Consistent with this rule, in *City of Modesto v. Modesto Irrigation Dist.* (1973) 34 Cal.App.3d 504, 506 [110 Cal. Rptr. 111], the court held that a monthly charge imposed by the City of Modesto for use of water, gas, electricity, and telephone service, “paid by the service user (the consumer), but ... collected by the service supplier,” was “a tax against the utility user, not the utility supplier.”

Under these principles, the legal incidence of the Recovery Portion falls on SCE's customers, not, as the City asserts, on SCE. As noted above, the City has stipulated that SCE's customers “are obligated to pay” the Recovery Portion “[p]ursuant to City Ordinance [No.] 5135,” and that SCE's duty under the Ordinance is “to collect” the Recovery Portion “from all SCE electricity users in the City and remit those funds to the City.” The terms of the Ordinance and the representations in SCE's application for PUC approval, [*280] as set forth above, fully support this stipulation. On this record, it is clear that the Ordinance mandates payment of

the Recovery Portion by SCE's customers and makes SCE the City's collection agent and conduit regarding this payment. Accordingly, the legal incidence [****56] of the Recovery Portion is on SCE's customers.

The City's final argument is that the Recovery Portion is a “franchise fee”—i.e., “a bargained-for price for use of the City's rights of way in SCE's search for profits”—and that under California case law, a franchise fee “is not a tax.” The majority essentially agrees with the City. “Historically,” the majority begins, “franchise fees have not been considered” by California courts to be “taxes,” and “[n]othing in Proposition 218 reflects an intent to change” this rule. (Maj. opn., *ante*, at p. 262.) Putting its own gloss on the City's argument, the majority then concludes that the Recovery Portion is a “franchise fee” and not a tax insofar as its amount “is reasonably related to the value of the franchise.” (Maj. opn., *ante*, at p. 257.) “To the extent [it] exceeds any reasonable value of the franchise,” it “is a tax” rather than a “franchise fee,” because “the excessive portion ... does not come within the rationale that justifies the imposition of fees without voter approval.” (*Id.* at p. 269.)

Whether a charge constitutes a “tax” for purposes of the Constitution “is a question of law for the appellate courts to decide on independent review of the facts.” [****57] (*Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 874 [64 Cal. Rptr. 2d 447, 937 P.2d 1350].) [***885] In answering this question, we [**231] should not, as the majority appears to do, rely on the circumstance that the charge is “nominally a franchise fee.” (Maj. opn., *ante*, at p. 271.) In determining whether a charge is a tax, courts “are not bound by what the parties may have called the liability” (*Bank of America v. State Bd. of Equal.* (1962) 209 Cal.App.2d 780, 801 [26 Cal. Rptr. 348] (*Bank of America*)), and are “not to be guided by labels” (*Beamer v. Franchise Tax Board* (1977) 19 Cal.3d 467, 475 [138 Cal. Rptr. 199, 563 P.2d 238]) or “bare legislative assertion” (*Flynn v. San Francisco*

(1941) 18 Cal.2d 210, 215 [115 P.2d 3]). Instead, their “task is to determine the[] true nature” of the charge (*Beamer v. Franchise Tax Board, supra*, at p. 475), based on “its incidents” and “the natural and legal effect of the language employed in” the enactment (*Ainsworth v. Bryant* (1949) 34 Cal.2d 465, 473 [211 P.2d 564]). This general principle is especially applicable here for two reasons: (1) Proposition 218's “main concern” was “perhaps” the “euphemistic relabeling” of taxes “as ‘fees,’ ‘charges,’ or ‘assessments’” (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles, supra*, 24 Cal.4th at p. 839), and (2) Proposition 218 expressly required courts to “liberally construe[]” article XIII C “to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent” (Prop. 218, § 5, reprinted at 1 Stats. 1996, p. A-299).

[*281]

Given the City's argument, the question here is whether the Recovery Portion, in light of its incidents, constitutes the type of charge we have declared [****58] to be a franchise fee instead of a tax. One of our earliest decisions to discuss this type of charge is *County of Tulare v. City of Dimuba* (1922) 188 Cal. 664 [206 P. 983] (*Tulare*). There, we held that the annual payment imposed by the Broughton Act (§ 6001 et seq.) on the successful bidder for a franchise to provide electricity—2 percent of gross annual receipts from the use, operation or possession of the franchise—is “neither a tax nor a license.” (*Tulare*, at p. 670.) Instead, it is a “charge” that “the holder of the franchise undertakes to pay as part of the consideration for the privilege of using the avenues and highways occupied by the public utility [¶] It is purely a matter of contract. . . . [I]t is a matter of option with the applicant whether he will accept the franchise on those terms. His obligation to pay is not imposed by law but by his acceptance of the franchise.” (*Ibid.*)

Tulare makes clear that the Recovery Portion, irrespective of its relationship to the value of the franchise SCE received, is not a franchise fee for

purposes of the rule that a franchise fee is not a tax. As explained above, the Recovery Portion is not a charge that “the holder of the franchise”—SCE—“undert[ook] to pay.” (*Tulare, supra*, 188 Cal. at p. 670.) Indeed, as the majority correctly states, the terms [****59] of the Ordinance “belie” this characterization, establishing instead that SCE did not “assume[] a burden to pay” the Recovery Portion. (Maj. opn., *ante*, at p. 270.) And the City's factual stipulation that the Ordinance “obligated” SCE's customers “to pay” the Recovery Portion conclusively establishes that *their* “obligation to pay” the Recovery Portion was, in fact, “imposed by law,” not by *their* “acceptance of the franchise.” (*Tulare*, at p. 670.) Indeed, SCE's customers did not receive a franchise, which, as the majority explains, “is a privilege granted by the [***886] government to a particular individual or entity rather than to all as a common right.” (Maj. opn., *ante*, at p. 254, fn. 1.) The Ordinance granted them no legal right to make any use of the City's property or to conduct a franchise for supplying electricity. In short, the Recovery Portion simply lacks the incidents of a franchise fee for purposes of the rule that franchise fees are not taxes. “To call it a fee” rather than a tax is simply “a transparent evasion.” (*Fatjo v. Pfister* (1897) 117 Cal. 83, 85 [48 P. 1012].)

Although the majority recognizes the principles underlying the rule that franchise fees are not taxes, it fails to apply them. The majority observes that “a franchise fee is the [****60] purchase price of the franchise” (maj. opn., *ante*, at p. 262), but it does not explain how the Recovery Portion, which the City has imposed on [**232] someone *other than the purchaser* of the franchise, meets this test. The majority explains that “sums paid for the right to use a jurisdiction's rights-of-way are fees rather than taxes” because “the receipt of an interest in public property justifies the imposition of a charge *on the recipient* to compensate the public for the value received.” (*Id.* at p. 267, italics added.) [*282] But the Recovery Portion is not imposed “on the recipient” of the interest in public property. (*Ibid.*) The majority explains that

“restrictions on taxation do not encompass amounts *paid in exchange for* property interests” (*id.* at p. 262, italics added), and that what “distinguishes” a valid charge “from a tax is the receipt of value *in exchange for the payment*” (*id.* at p. 268, italics added). But SCE's customers do not receive any property interest or value “in exchange for” paying the Recovery Portion. (*Ibid.*) In short, the Recovery Portion lacks the “historical characteristics of franchise fees” that the majority identifies from our decisions. (*Id.* at p. 257.) It therefore [****61] does not, to use the majority's own words, “come within the rationale that justifies” (*id.* at p. 269) the rule that franchise fees are not taxes.

According to the majority, in determining whether the Recovery Portion is a franchise fee rather than a tax, it is irrelevant that SCE's customers “pay the surcharge” while “SCE receives the franchise rights,” that SCE's customers “do not receive any value in exchange for their payment,” and that the City is requiring SCE's customers “to compensate the City for *the utility's* use of public property.” (See maj. opn., *ante*, at pp. 268–269, italics added.) The stated basis for this view is that “publicly regulated utilities are allowed to recover their costs and expenses by passing them on to their ratepayers,” and are therefore merely “conduit[s] through which government charges are ultimately imposed on ratepayers.” (*Ibid.*) Given this circumstance, the majority reasons, it makes no difference that the Recovery Portion is an obligation the City imposes directly on SCE's customers, instead of a contractual obligation of SCE that SCE “unilateral[ly]” decides to pass on to its customers. (*Id.* at p. 269.) The City, the majority asserts, should not be “precluded” from showing that the Recovery Portion [****62] bears a reasonable relationship to the value of the property interest it conveyed to SCE merely because the Ordinance *expressly mandates* what would have been “implicit” had SCE agreed to pay the Recovery Portion itself—“that once the PUC gave its approval, [***887] SCE would place the surcharge on the bills of customers within the City.” (*Ibid.*)

For a number of reasons, I disagree. First, the majority's view is inconsistent with our case law, which, as explained above, establishes that a franchise fee—as distinguished from a tax—is a “charge [that] *the holder of the franchise undertakes to pay*,” i.e., an “obligation to pay” that is “purely a matter of contract” and that is “imposed” on the payor “not ... by law but by *his* acceptance of the franchise.” (*Tulare, supra*, 188 Cal. at p. 670, italics added.) As also explained above, the Recovery Portion is *not* a charge that “the holder of the franchise undert[ook] to pay,” and it *is* imposed by the City on SCE's customers “by law” instead of by *their* “acceptance of [any] franchise.” (*Ibid.*) The majority cites no authority for its conclusion that a [*283] charge imposed by law on one person to pay for *someone else's* right to use public property in a business is a franchise fee rather than a tax. [****63] ³

[**233] Second, the majority fails to explain why SCE's purported unfettered ability to pass on to customers charges it contractually agrees to pay means that whether the charge is a tax *on its customers* depends on the value of the franchise *to SCE*. Had SCE contractually agreed to pay the Recovery Portion itself, it could *not* assert that the charge was a tax to the extent it exceeds the value of the franchise rights. As we have explained, because a municipality's power to permit utilities to

³According to the majority, by adding a definition of “tax” to California Constitution, article XIII C and excepting from that definition “[a] charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property,” Proposition 26, approved by voters at the November 2, 2010 General Election, “confirmed” that “restrictions on taxation do not encompass amounts paid in exchange for property interests.” (Maj. opn., *ante*, at p. 263.) As the majority elsewhere acknowledges, Proposition 26 is not at issue here because “no party contends that it applies to the charges in this case.” (Maj. opn., *ante*, at p. 260, fn. 4.) Moreover, nothing in Proposition 26 indicates that a charge imposed on one party for *someone else's* use of government property comes within the exception the majority quotes. To the extent the majority's analysis suggests otherwise, it is dictum. Nor does anything in Proposition 26 support the majority's rule that payments for the privilege to use public property *are* taxes to the extent they exceed “the value of the franchise conveyed.” (Maj. opn., *ante*, at p. 270.)

use public property “on such terms as are satisfactory to it” includes the power to “require the payment of such compensation as seems proper,” courts do not “question whether or not the amount charged is a reasonable charge.” (*Sunset Tel. and Tel. Co. v. Pasadena* (1911) 161 Cal. 265, 285 [118 P. 796] (*Sunset*.) And if, as the majority asserts, the utility in this scenario is merely “a conduit through which government charges are ultimately imposed on ratepayers” (maj. opn., *ante*, at p. 269), then there is no logical reason why the value of the benefit *to the utility* would be the proper measure of whether the charge is a tax *as to the utility's customers*. Nor is there any logical reason for making this the test where, as here, a municipality imposes [****64] the charge directly on those customers.

Indeed, the majority's conclusion in this regard is inconsistent with its own discussion of the very case law on which it principally relies. As the majority explains, our prior decisions identify “categories of charges” that constitute valid “fees rather [***888] than taxes” for purposes of applying Proposition 13. (Maj. opn., *ante*, at p. 260.) “The commonality among these categories,” the majority states, “is the relationship between the charge imposed and a benefit ... *to the payor*.” (*Id.* at p. 261, italics added.) For example, the majority observes, “we [have] explained ... that ‘if an assessment for ... improvements provides a special benefit to the assessed properties, then the assessed property owners should pay for the benefit *they receive*.’” (*Ibid.*, italics added.) Under these cases, the majority states, a purported fee is a tax for [*284] purposes of Proposition 13 to the extent it exceeds “the special benefit received *by the payor*.” (Maj. opn., *ante*, at p. 261, italics added.)

A closer look at our assessment decisions reveals that a nexus between the benefit conferred and the person *paying the charge* is a prerequisite to concluding that the charge is not a tax. As we explained [****65] over 100 years ago, “the compensating benefit to the property owner” on whom the government imposes a charge for an

improvement “is the warrant, and the sole warrant, for” finding that the charge is a valid assessment rather than a tax. (*Spring Street Co. v. City of Los Angeles* (1915) 170 Cal. 24, 30 [148 P. 217].) Thus, “if we are not able to say that the owner for the specific charge imposed is compensated by the increased value of the property, then most manifestly we have a special tax.” (*Ibid.*) In other words, an assessment levied upon property owners “without regard to the benefit actually accruing *to them* by means of the improvement, is a tax.” (*Creighton v. Manson* (1865) 27 Cal. 613, 627, italics added.) The majority purports to reaffirm and follow these decisions insofar as they set forth “the characteristics of fees that may be imposed without voter approval” (maj. opn., *ante*, at p. 261), but it then eliminates the *principal* characteristic it itself identifies: “the relationship between the charge imposed and a benefit ... *to the payor*” (*ibid.*, italics added).⁴

The charge the majority here says is a valid fee differs in another significant respect [**234] from the charges we have previously held to be permissible fees instead of taxes: the [****66] measure of what is permissible. As the majority observes, as to all of the charges for benefits we have dealt with in prior cases, we have held that they are “taxes” to the extent they “exceed the reasonable *cost* of the activity on which they are based.” (Maj. opn., *ante*, at p. 261, italics added.) This is true even of property assessments; although a given property may be assessed based on the proportionate share of the benefit it receives from a government improvement, the assessment is a valid fee rather than a tax only to the extent it does not exceed the proportionate *cost* of the improvement

⁴ The majority's analysis is likewise out of step with decisions from other jurisdictions holding that, to constitute a valid fee instead of a tax, a charge must be “based on a special benefit conferred *on the person paying the fee*.” (*Home Builders Assn. v. West Des Moines* (Iowa 2002) 644 N.W.2d 339, 347, italics added; see *American Council of Life Insurers v. DC Health* (D.C. Cir. 2016) 815 F.3d 17, 19 [whether charge is a fee or a tax depends on whether there is a “match between the sum paid and the ... benefit provided, *as seen from the payers' perspective*” (italics added)].)

to the government. (*Knox v. City of Orland* (1992) 4 Cal.4th 132, 142, fn. 15 [14 Cal. Rptr. 2d 159, 841 P.2d 144].) In other words, “an assessment [***889] is not measured by the precise amount of special benefits enjoyed by the assessed property,” but “reflects costs allocated according to relative benefit received.” (*Town of Tiburon v. Bonander* (2009) 180 [*285] Cal.App.4th 1057, 1081 [103 Cal. Rptr. 3d 485].) Thus, “an assessment exceeding the cost of the improvement, so as to furnish revenue to the city” constitutes a tax. (*City of Los Angeles v. Offner* (1961) 55 Cal.2d 103, 109 [10 Cal. Rptr. 470, 358 P.2d 926].) Consistent with these common law principles, Proposition 218 amended the state Constitution to provide that “[n]o assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel.” (Cal. Const., art. XIII D, § 4, subd. (a).) Thus, [****67] were a city, in order to raise revenue for general purposes, to impose a charge to recover the amount by which the benefit conferred by a government improvement exceeds the cost, the charge would be a tax.

The majority here affords different treatment to the general revenue-raising measure at issue. It holds that cost is irrelevant, and that a charge labeled a “franchise fee” becomes a tax as to a utility's customers only to the extent the charge exceeds “the value” to the utility of “the property interests transferred” (maj. opn., *ante*, at p. 270), “the value of the franchise conveyed” (*ibid.*), or “the value of the franchise rights” (*id.* at pp. 270–271). Contrary to the majority's analysis, our prior decisions clearly do *not* provide support for the line the majority draws between a valid fee and a tax, or for its conclusion that the method the City used here to raise money for general purposes is, uniquely, not a tax. And because there is no existing authority for the majority's newly minted approach, the majority is incorrect that focusing on the fact the Recovery Portion is directly imposed by the City on SCE's customers “preclude[s]” the City from doing something it otherwise could, i.e., proving the charge [****68] is a fee rather than a tax by

“establishing that [it] bears a reasonable relationship to the value of the property interest it conveyed to SCE.” (*Id.* at p. 269.)

Third, there is no factual or legal basis for the majority's assumption that a utility, through price increases, *necessarily* can and will pass on to its customers charges it is legally required to pay. With respect to the sales tax, we have observed that a retailer “may choose simply to absorb the sales tax” imposed by statute instead of passing it on to its customers. (*Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1103 [171 Cal. Rptr. 3d 189, 324 P.3d 50].) A utility could make a similar business decision with respect to higher payments it has become contractually obligated to pay in exchange for its right to operate; it could, for reasons related to the marketplace, simply decline to pass the increase on to its customers.

Moreover, in order to pass charges on to customers through a price increase, a utility would have to apply for and obtain approval from the PUC. Under our Constitution, the PUC has both the power and the duty to “fix rates” for California public utilities (Cal. Const., art. XII, § 6), such that the [*286] charges they demand for service are “just and reasonable” (§ 451; see *Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 792 [3 Cal. Rptr. 3d 703, 74 P.3d 795]). This constitutional power, we have observed, [****69] includes the “power to prevent a utility from passing on to the ratepayers unreasonable costs for materials and services.” (*Pac. Tel. & Tel. Co. v. Public Utilities Com.* (1950) 34 Cal.2d 822, 826 [215 P.2d 441] (*Pac. Tel.*)) [***890] We have also [**235] observed that where “the safeguards provided by arms-length bargaining are absent,” the PUC, in exercising its constitutional power, has “been vigilant to protect the rate-payers from excessive rates reflecting excessive payments.” (*Ibid.*)

In one especially relevant example of its exercise of this power, the PUC disallowed, for purposes of a requested rate increase, contractual payments a utility made to its controlling parent company for

various services. (*Pac. Tel., supra*, 34 Cal.2d at p. 825.) The contract between the two entities specified that the amount of the payment was 1 percent of the utility's gross receipts. (*Ibid.*) In disallowing these payments as a basis for a rate increase, the PUC reasoned that the utility “exercise[d] no real, untrammled and independent judgment in its negotiations” with its parent company and that “arms-length bargaining” between the two entities was “not, in fact, engaged in, although ... in some instances” they had “made [an attempt] to simulate the same.” (Dec. No. 42529 (1949) 48 Cal.P.U.C. 461, 470.) The PUC further reasoned that the formula for the amount [****70] of the payments—a “percentage of gross revenues”—was “a false measuring rod”: it was “totally unrealistic and [bore] no rational relationship to the reasonable cost of services rendered, reflect[ed] no causal or proximate connection or relationship between payments made thereunder and reasonable value of the services rendered and [was] neither supported by law, logic nor elementary common sense.” (*Id.* at p. 472.) The utility's “payment of these excessive amounts,” the PUC concluded, did not support the utility's request for a rate increase. (*Ibid.*)

Nothing would preclude the PUC from finding, for similar reasons, that it would not be just and reasonable for a utility, having agreed to pay a city double what it had paid for many years as compensation for using public property, to raise its rates in order to recoup from customers the doubled cost to which it agreed. Nor would anything preclude the PUC from finding that where the utility's duty to pay the increase was expressly made contingent on the utility's ability to recoup the expense from its customers, the increase was not “based on bona fide negotiations.” (Maj. opn., *ante*, at p. 270.) Indeed, the majority rightly questions whether “the negotiations” [****71] here, which placed responsibility for paying the Recovery Portion on SCE's ratepayers and imposed no financial responsibility for that charge on SCE, reasonably reflect “the value” of what SCE received from the City. (*Id.* at p. 271.) And where

the payment is set as a percentage of a utility's gross annual receipts, the PUC could also find that the formula is “a false measuring rod,” i.e., it “bears [*287] no rational relationship to” the value of what the utility is receiving. (Dec. No. 42529, *supra*, 48 Cal.P.U.C. at p. 472.) In short, had SCE agreed to pay the Recovery Portion and then applied for a rate increase to pass on the charge to its customers, the PUC could have “disallow[ed] expenditures that it [found] unreasonable, thus insuring that any excessive costs [would] be met from [SCE's] profits. The effect of the payments on rates and services [would have been] no greater than in any other case where the [PUC] and management disagree on the reasonableness of an expenditure, and the management concludes that it is good business judgment to make such payments from its profits despite the fact that it cannot recoup them from its rate payers.” (*Pac. Tel., supra*, 34 Cal.2d at p. 832.) [***891] The majority ignores this precedent in assuming that [****72] a utility, through rate increases, necessarily can pass on to its customers any and all charges it has agreed to pay.

Indeed, the facts in the record indicate that SCE and the City did not share the majority's assumption. As the majority explains, the record shows “that SCE was not willing to assume the burden of paying” the additional 1 percent the City demanded, and “was willing only to collect the charge from its customers and remit the revenue to the City.” (Maj. opn., *ante*, at p. 271.) It is for this reason that the agreement and the Ordinance provided that “the charge would be collected from ratepayers” and “would become payable only if SCE obtained the PUC's consent to include the surcharge as a customer surcharge.” (Maj. opn., *ante*, at p. 271.) Moreover, as explained [***236] above, although the agreement required SCE to *obtain* PUC approval by December 31, 2002, SCE and the City agreed not even to *apply* for PUC approval until over two years later, in March 2005. According to a letter from the City to SCE, the delay was “[b]ased” in part “upon the tremendous uncertainty associated with the end of the [California] deregulation transition period ... and the volatility and

uncertainty of rates.” Were it true, as the [****73] majority assumes, that SCE necessarily could have passed on the Recovery Portion to its customers, there would have been no reason for SCE to have refused legal responsibility for the proposed charge, for SCE and the City to have made the Recovery Portion contingent on “the PUC’s consent to include the surcharge as a customer surcharge” (maj. opn., *ante*, at p. 271), or for SCE and the City to have delayed submission of the application for PUC approval. In other words, as plaintiffs assert, the facts in the record indicate that, unlike the majority, SCE and the City did not consider the PUC to be “a mere rubber stamp of financial burdens” SCE and the City “might try to impose upon utility users.”

Fourth, the majority’s approach, in addition to being inconsistent with our case law, is fundamentally inconsistent with Proposition 218’s purpose. The majority, partially quoting the first two sentences of Proposition 218’s findings and declarations, suggests that the voters were “concern[ed] with excessive fees, not fees in general.” (Maj. opn., *ante*, at p. 262.) But the [*288] majority ignores the very next sentence of the findings and declarations: “This measure protects taxpayers by limiting the methods by [****74] which local governments exact revenue from taxpayers without their consent.” (Prop. 218, § 2, reprinted at 1 Stats. 1996, p. A-295.) Proposition 218 expressly provided that article XIII C “shall be liberally construed to effectuate” this goal, i.e., “limiting local government revenue and enhancing taxpayer consent.” (Prop. 218, § 5, reprinted at 1 Stats. 1996, p. A-299.) The majority also ignores the ballot arguments in favor of Proposition 218, which (1) warned that “politicians [had] created a loophole in the law that allows them to raise taxes without voter approval by calling taxes ‘assessments’ and ‘fees,’” and (2) stated that “Proposition 218 guarantees your right to vote on local tax increases—even when they are called something else, like ‘assessments’ or ‘fees’ and imposed on homeowners.” (Ballot Pamp., Gen. Elec. (Nov. 5, 1996) argument in favor of Prop. 218, p. 76.) The

record here shows that the City imposed the Recovery Portion on SCE’s customers in order to raise revenue for [***892] general governmental purposes. The charge clearly constitutes one of the “revenue-producing mechanisms” that, as the majority explains, local governments [****75] adopted because “voters restricted [their] taxing authority.” (Maj. opn., *ante*, at p. 266.) By holding that the City may raise revenue from SCE’s consumers by calling the charge a franchise fee, even though those paying the fee receive no franchise, the majority sanctions this obvious evasion of Proposition 218 and allows the City to use the utility as a middleman for what is a tax disguised as a fee, in derogation of Proposition 218’s express purpose and liberal construction clause.

Fifth, the majority’s concern about the *possible* treatment of charges passed on to ratepayers by a utility’s “unilateral decision” does not justify its refusal to recognize the significance under our case law of the fact that SCE’s customers do not receive franchise rights in exchange for paying the Recovery Portion, and its focus instead on the value of those rights to an entity that is not paying for them. (Maj. opn., *ante*, at p. 269.) Initially, the facts of this case do not present that scenario, and holding here that the Recovery Portion is a tax rather than a franchise fee because SCE’s customers receive no franchise rights in return for their payment would not preclude ratepayers from arguing *in a [****76] future case* that we should *expand California Constitution, article XIII C*’s reach to franchise charges that a utility, having contractually agreed to pay, unilaterally decides to pass on to its customers. The majority’s concern about this scenario does not justify its *contraction* of article XIII C so as to make it inapplicable where it clearly does and should apply: direct [**237] government imposition of a charge on those who receive nothing in return.

In any event, the majority’s analysis is contrary to decades of California case law establishing that, for purposes of determining whether a charge is a tax

or a fee as to the payor, charges passed on to the payor by the unilateral [*289] and discretionary decision of some third party are, in fact, different from charges legally imposed on the payor by the government. (E.g. *Western States, supra*, 19 Cal.3d at pp. 217–218; *Western L. Co. v. State Bd. of Equalization* (1938) 11 Cal.2d 156, 162–164 [78 P.2d 731] (*Western L.*.) The majority simply ignores these cases in reasoning that the two types of charges must be treated the same. (Maj. opn., *ante*, at p. 269.)

Indeed, the effect of the majority's approach is to allow claims that this long-standing and unbroken line of precedent precludes. Under that precedent, a charge that is not imposed by the government on the payor—either directly or by inclusion of a [****77] mandatory pass-on provision—and that is passed on to the payor by the unilateral and discretionary decision of some third party, is not a tax, even if it is “implicit” (maj. opn., *ante*, at p. 269) that the third party on whom the charge is imposed will pass it on to the payor. Notably, in *Howard Jarvis Taxpayers Assn. v. City of Fresno* (2005) 127 Cal.App.4th 914, 927 [26 Cal. Rptr. 3d 153], the court applied this principle to hold that a charge the City of Fresno had imposed on a utility, and that the utility had passed on to its customers, was not “a tax on utilities consumers” within the meaning of California Constitution article XIII C. The court explained that “[a]n exaction imposed on any particular ratepayer in an amount established in the discretion of the utility ... is not an exercise of the city's taxing power.” (*Howard Jarvis, at p. 927.*) [***893] Applying this principle, it held that the charge at issue was “not a tax upon consumers of utilities” because the legislation establishing it placed “the ‘levy’ directly upon the utility” and did “not require[]” the utility “to recover the ... fee from ratepayers in any particular manner.” (*Ibid.*)⁵

⁵ See *Western States, supra*, 19 Cal.3d at page 217 (charge imposed on nonprofit corporation providing services to banks, that was “recoup[ed]” from banks “by raising” fees, was not a tax on the banks because local ordinance imposing the charge did not “requir[e]” that it “be passed on” to customers); *Western L., supra*,

Courts applying the federal Constitution's prohibition on state taxation of the federal government have used the same analysis specifically with respect to so-called utility [****78] franchise fees. In *U.S. v. City of Leavenworth, Kan.* (D.Kan. 1977) 443 F.Supp. 274, 280–281, a city ordinance provided that an electrical [*290] utility would pay, as a franchise fee, “three percent (3%) of its gross revenue from the sale of electric energy to all customers within city limits, and the utility in turn billed its customers ‘a three percent franchise fee.’ The United States, as a purchaser of electricity from the utility, argued that the fee it had been charged constituted ‘an impermissible tax upon the federal government.’ (*Id.* at p. 281.) The court rejected the argument because the ordinance imposed “[l]egal liability for payment of the exaction” on the utility and ‘contain[ed] no provisions for collection directly from’ the utility's customers and ‘no requirement that [the utility] pass on to’ its customers ‘all or any part of the financial burden of the franchise fee.’” (*Id.* at p. 282.)

Following this decision, in *U.S. v. State of Md.* (D.Md. 1979) 471 F.Supp. 1030, 1032, another federal court rejected the claim of [**238] the United States, again as a purchaser of electricity, that an environmental surcharge the State of Maryland had imposed was a constitutionally invalid tax on the federal government. Although agreeing that the surcharge was a tax—i.e., “an ‘enforced contribution to provide for the support of [the] government’” (*id.* at p. 1036)—the

¹¹ Cal.2d at page 163 (state sales tax is not a tax on consumers even though retailers pass it on to consumers, because tax statute laid “the tax solely on the retailer”); *Occidental Life, supra*, 135 Cal.App.3d at page 849 (sales tax on retailer is a tax on purchasers from whom retailer recoups the charge only if it “must,” “by its terms,” “be passed on to the purchaser”); *Rio Grande Oil Co. v. Los Angeles* (1935) 6 Cal.App.2d 200, 201 [44 P.2d 451] (charge on sale of gasoline is a tax as to the seller, but not as to the consumer, even though statute allows sellers to add the charge to the sale process and “in effect collect the tax from the consumer”); see also *Bank of America, supra*, 209 Cal.App.2d at pages 792–793 (bank's statutory liability for use tax on checks it sold to customers, which by statute was imposed upon the purchaser rather than the seller, was not a tax on the bank).

court [****79] denied relief because the surcharge was not a tax *on the federal government* (*id.* at pp. 1037–1041). By statute, the court first reasoned, the surcharge was “directly imposed on the electric companies” and was their “direct obligation.” (*Id.* at p. 1038.) As to whether the surcharge was a tax on customers of the electric companies, the determinative factor, the court explained, was whether the law “required [the companies] to pass [the charge] on to their customers for payment.” (*Ibid.*, italics added.) The surcharge was not a tax on the federal government, the court then held, because the utilities, although “[authorized] ... to pass [it] on to their customers” (*id.* at p. 1039), were “not required” by law to do so (*id.* at p. 1038.) Notably, in reaching this conclusion, the [***894] court both followed the Kansas franchise fee decision discussed above and distinguished a Minnesota decision holding that “a franchise fee imposed” upon a gas company by a city *was* an unconstitutional tax “as applied to purchases of natural gas by an agency of the United States ... because the city *required* the utility to add the franchise tax to its rates.” (*Id.* at p. 1040, italics added.)

This long-standing and consistent precedent from both California and elsewhere no doubt explains why, as the majority [****80] notes, “plaintiffs do not contend” in this case that the Initial Term Fee “is a tax” that was imposed in violation of the state Constitution. (Maj. opn., *ante*, at p. 269.) However, under the majority's holding that charges passed on by utilities are the same, for tax purposes, as charges imposed directly on ratepayers, plaintiffs now can, and surely will, make this argument. Indeed, the majority expressly states that the differences between the Initial Term Fee and the Recovery [*291] Portion are “unrelated to the character or validity” of these charges. (Maj. opn., *ante*, at p. 269, fn. 10.) Thus, plaintiffs may now allege that even the Initial Term Fee is a tax because it is passed on to them through SCE's rates and it exceeds the value of the franchise rights SCE

received.⁶

In the same way, the majority's holding renders both the Broughton Act and the 1937 Act vulnerable to constitutional challenge. Notwithstanding our holding almost 100 years ago that the fees utilities must pay under the Broughton Act are *not* taxes under the state Constitution (*Tulare, supra*, 188 Cal. at p. 670), under the majority's holding, both these payments and similar payments required by the 1937 Act are invalid taxes to the extent [****81] they are passed on by utilities to customers through rates and they exceed the value of the franchise rights conveyed. Notably, nothing suggests that these statutorily established charges reflect the value of a franchise. Moreover, the majority's holding that the Constitution *requires* courts to determine the value of a franchise would seem to render the 1937 Act unconstitutional insofar as it provides that “[n]o franchise granted under this chapter shall ever be given any value before any court ... in any proceeding of any character in excess of the cost to the grantee of the necessary publication and any other sum paid by it to the municipality therefor at the time of acquisition.” (§ 6263.)

Finally, as a practical matter, the majority's approach is problematic in a number of ways. The majority mentions one: the inherent “difficulties” in “determining the value of a franchise.” (Maj. opn., *ante*, at p. 269.) The majority references several factors it says may bear on value: “market forces” and [**239] “bona fide negotiations.” (*Id.* at pp. 269–270.) It suggests there may be “other indicia of value” (*id.* at p. 270), but it declines to offer any

⁶According to the majority, the Ordinance's treatment of the Recovery Portion “was driven by the PUC's effort to ensure that a local government's higher-than-average charges are not unfairly imposed on ratepayers outside of the local government's jurisdiction.” (Maj. opn., *ante*, at p. 269, fn. 10.) As far as the record discloses, this is true only in the sense that the separate billing procedure the PUC permits, but does not require, utilities to employ enabled the City to *use SCE* to collect the additional 1 percent—which is a disguised tax—only from the City's taxpayers, and not from those who do not pay taxes to the City.

guidance as to what those other indicia might be, instead “leav[ing] th[e] issue to be ad [***895] dressed [****82] by expert opinion and subsequent case law” (*id.* at p. 270, fn. 11). But as we noted over 100 years ago, “[t]here are few subjects on which witnesses are more likely to differ than that of the value of property, and few are more difficult of satisfactory determination.” (*O’Hara v. Wattson* (1916) 172 Cal. 525, 528 [157 P. 608].) We also long ago recognized that “the value of franchises may be as various as the objects for which they exist, and the methods by which they are employed, and may change with every moment of time.” (*San Jose Gas Co. v. January* (1881) 57 Cal. 614, 616.) There are also uncertainties [*292] regarding the other side of the majority’s equation, i.e., the amount of the payment. As we have recognized, a utility’s annual receipts are “a most indefinite,” “elusive,” and “uncertain quantity” that is “dependent upon many conditions.” (*Thompson v. Board of Supervisors* (1896) 111 Cal. 553, 558 [44 P. 230].) Moreover, the total compensation the Ordinance requires for granting the franchise is 2 percent of SCE’s “Gross Annual Receipts.” Given the majority’s view that all costs are necessarily passed along to customers, this entire 2 percent—not just the one percent Recovery Portion—will have to be considered in determining the amount of the charge and whether it bears a “reasonable relationship” to “value.” (Maj. opn., *ante*, at p. 254.) And even were it possible to determine [****83] with any certainty the value of the franchise and the amount of the charge, the majority fails to explain what constitutes a “reasonable relationship” between these amounts. (*Ibid.*) Presumably, exact correspondence is unnecessary, but what is necessary, the majority does not say. As we have explained, “the question whether a contract” that impacts a utility’s rates and services “is reasonable is one on which, except in clear cases, there is bound to be conflicting evidence and considerable leeway for conflicting opinions.” (*Pac. Tel., supra*, 34 Cal.2d at p. 828.)

Perhaps to justify its failure to offer any real

guidance on this admittedly “difficult[]” issue (maj. opn., *ante*, at p. 269), the majority notes that “[t]he parties’ briefs do not consider the means by which franchise rights might be valued.” (*Id.* at p. 270, fn. 11.) But there is a simple explanation for this silence: Neither party has suggested that the value of the franchise should even be a consideration in determining whether the Recovery Portion is a tax or a fee. On the contrary, upon the court’s inquiry at oral argument, the City expressly disclaimed this approach. It asserted that, as to fees voluntarily negotiated for the use of government property, courts should not be concerned [****84] about whether the fee is reasonably related to the benefits, and should not second-guess what a utility is willing to pay for its use of public property. Nor, the City argued, are courts well positioned to second-guess the economic decisions of other branches of government. The City also noted, like the majority, the inherent difficulties of making this kind of determination, asking rhetorically, “what’s the fair and rational rate of a parking meter,” or “to rent a duck boat on the lake at the county fairgrounds,” or “to rent a meeting room at the community center?” Bringing the question back to the facts of this case, the City rightly asked, “What are the limits of [a municipality’s] ability to monetize its rights of way?” Instead, the City urges us to follow “well settled” law by focusing on the “legal incidence” of the Recovery Portion, “i.e., who has a legal duty to pay it.” This test, the City asserts, is “logical” [****896] and “predictable,” is “within the competence of courts to distinguish fees from taxes,” and “better serves the needs of courts and the society they serve.”

[*293]

I agree with the City. Indeed, regarding the City’s comment about monetizing its rights of way, we have explained, [****85] as noted above, that a municipality’s power to permit utilities to use public property “on such terms as are satisfactory to it” includes the power to “require the payment of such compensation as seems proper,” and that courts therefore do not “question whether or not the amount charged is a reasonable charge.” (*Sunset*,

supra, 161 Cal. at p. 285.) It is for these reasons, among others, [**240] that I focus my analysis, as our precedent directs, on the legal incidence of the Recovery Portion, and do not endorse a vague, unprecedented, unworkable, and standardless test that requires courts to determine the extent to which a charge “bear[s] a reasonable relationship to the value of the property interests transferred” (maj. opn., *ante*, at p. 270), “the value of the franchise conveyed” (*ibid.*), or “the value of the franchise rights” (*id.* at p. 271).

There are myriad other ways in which the majority's approach—determining whether the amount of the charge bears a reasonable relationship to the value of the franchise conveyed—is problematic. It essentially requires courts to determine the adequacy of consideration, in contravention of the well-established “general contract principle that courts should *not* inquire into the adequacy of consideration.” [****86] (*Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 679 [254 Cal. Rptr. 211, 765 P.2d 373], italics added; see *Whelan v. Swain* (1901) 132 Cal. 389, 391 [64 P. 560] [“The law does not weigh the *quantum* of the consideration”].) The majority's approach also essentially transfers responsibility for determining the reasonableness of a utility's rates from the PUC to the courts, thus usurping the PUC's *constitutional* power and duty to “fix [utility] rates” (Cal. Const., art. XII, § 6) and supplanting the PUC's far superior ability, relative to courts, to review the reasonableness of rates (*Hansen v. City of San Buenaventura* (1986) 42 Cal.3d 1172, 1183 [233 Cal. Rptr. 22, 729 P.2d 186] [“judicial review of rates is not comparable to regulation by the P.U.C.”]; *County of Inyo v. Public Utilities Com.* (1980) 26 Cal.3d 154, 159–160 [161 Cal. Rptr. 172, 604 P.2d 566] [“PUC maintains an expert, independent staff to investigate rate requests” and “renders an independent decision on each record that it examines,” whereas courts “must limit ... review to the rates established by the involved utility and must depend upon the expert testimony presented by the parties”]; *Sale v. Railroad Commission* (1940) 15 Cal.2d 612, 617–

618 [104 P.2d 38]).

Given these difficulties and the lack of authority for the majority's approach, I disagree with the majority's conclusion that the Recovery Portion is not a tax unless it exceeds the reasonable value of the franchise. Instead, based on long-standing precedent, the purpose of Proposition 218 to limit local government revenue and enhance taxpayer consent, and the command [*294] that we liberally [****87] construe California Constitution, article XIII C to effectuate this purpose, I conclude that the Recovery Portion is a tax that the City may not impose without voter approval. I therefore dissent.

Appellants' petition for a rehearing was denied August 16, 2019. Corrigan, J., did not participate therein. Chin, J., was of the opinion that the petition should be granted.

End of Document

Kinlaw v. State of California

Supreme Court of California

August 30, 1991

No. S014349

Reporter

54 Cal. 3d 326 *; 814 P.2d 1308 **; 285 Cal. Rptr. 66 ***; 1991 Cal. LEXIS 3745 ****; 91 Daily Journal DAR 10744; 91 Cal. Daily Op. Service 7086

FRANCES KINLAW et al., Plaintiffs and Appellants, v. THE STATE OF CALIFORNIA et al., Defendants and Respondents

Prior History: [****1] Superior Court of Alameda County, No. 632120-4, Henry Ramsey, Jr., and Demetrios P. Agretelis, Judges.

Disposition: The judgment of the Court of Appeal is reversed.

Core Terms

funds, reimbursement, local agency, school district, costs, state mandate, local government, healthcare, medically indigent, merits, taxpayers, mandates, programs, effective, Finance, new program, obligations, financial responsibility, spending limit, expenditures, subvention, Italics, appropriations limit, appropriations, state-mandated, declaratory, budget, state and county, transferring, injunction

Case Summary

Procedural Posture

Defendant State of California and the Director of the Department of Health Services, challenged an order of the court of appeal (California), which ruled that plaintiffs, medically indigent adults and taxpayers, had standing to seek enforcement of Cal. Const. art., XIII B, § 6. The court of appeal held that their class action seeking declaratory and injunctive relief was not barred by the availability of administrative remedies.

Overview

Plaintiffs, medically indigent adults and taxpayers, filed a class-action suit against defendants, State of California and the Director of the Department of Health Services. Plaintiffs sought enforcement of Cal. Const. art. XIII B, § 6, which imposed on defendant state an obligation to reimburse local agencies for the cost of most programs and services they were required to provide pursuant to a state mandate. Plaintiffs requested restoration of Medi-Cal, from which they were removed under 1982 Stats. ch. 328, or reimbursement to the county for the cost of providing health care to them. The trial court granted summary judgment to defendants. On appeal, the court of appeal held that plaintiffs had standing and that the action was not barred by the availability of administrative remedies. Defendants appealed. The court reversed and concluded that plaintiffs lacked standing. The legislature adopted a comprehensive legislative scheme with the express intent of providing the exclusive remedy for a claimed violation of art. XIII, § 6. The administrative remedy created was adequate to fully implement art. XIII, § 6. Plaintiffs had no right to any reimbursement for health care services.

Outcome

The court reversed and ruled that plaintiffs, medically indigent adults and taxpayers, lacked standing. The legislature established administrative procedures for local agencies and school districts directly affected by a state mandate to seek reimbursement for the cost of programs and services. The legislature's comprehensive scheme

was the exclusive means by which the state's obligations were to be determined and enforced.

LexisNexis® Headnotes

Governments > State & Territorial
Governments > Finance

Governments > Legislation > Initiative &
Referendum

HN1[↓] State & Territorial Governments, Finance

Cal. Const. art. XIII B, § 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.

Governments > State & Territorial
Governments > Finance

HN2[↓] State & Territorial Governments, Finance

See Cal. Const. art. XIII B, § 6.

Governments > Local Governments > Finance

Public Health & Welfare
Law > Healthcare > General Overview

HN3[↓] Local Governments, Finance

1982 Cal. Stats. ch. 328 removed medically indigent adults from the state Medi-Cal program effective January 1, 1983.

Civil Procedure > ... > Jury Trials > Right to
Jury Trial > Actions in Equity

Governments > Local Governments > Claims
By & Against

HN4[↓] Right to Jury Trial, Actions in Equity

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 on State Mandates that a state mandate exists. Cal. Gov't Code §17612.

Administrative Law > Agency
Rulemaking > State Proceedings

HN5[↓] Agency Rulemaking, State Proceedings

The legislature enacted comprehensive administrative procedures for resolution of claims arising out of Cal. Const. art. XIII B, § 6. Cal. Gov't Code § 17500.

Administrative Law > Agency
Rulemaking > State Proceedings

Civil Procedure > Pleading &
Practice > Joinder of Claims &
Remedies > Joinder of Claims

Civil Procedure > Pleading &
Practice > Joinder of Claims &
Remedies > General Overview

HN6[↓] Agency Rulemaking, State Proceedings

The legislature created the Commission on State Mandates (Commission), Cal. Gov't Code § 17525, to adjudicate disputes over the existence of a state-mandated program, Cal. Gov't Code §§ 17551, 17557, and to adopt procedures for submission and

adjudication of reimbursement claims. Cal. Gov't Code § 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. Cal. Gov't Code § 17525. The legislation establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies, Cal. Gov't Code § 17554, establishes the method of payment of claims, Cal. Gov't Code §§ 17558, 17561, and creates reporting procedures which enable the legislature to budget adequate funds to meet the expense of state mandates. Cal. Gov't Code §§ 17562, 17600, 17612(a).

Administrative Law > Agency
Rulemaking > State Proceedings

HN7[↓] Agency Rulemaking, State Proceedings

Pursuant to procedures which the Commission on State Mandates (Commission) is authorized to establish, Cal. Gov't Code § 17553, local agencies and school districts are to file claims for reimbursement of state-mandated costs with the Commission, Cal. Gov't Code §§ 17551, 17560, and reimbursement is to be provided only through this statutory procedure. Cal. Gov't Code §§ 17550, 17552.

Governments > Local Governments > General Overview

HN8[↓] Governments, Local Governments

"Local agency" means any city, county, special district, authority, or other political subdivision of the state. Cal. Gov't Code § 17518.

Education Law > Administration &
Operation > Elementary & Secondary School
Boards > Authority of School Boards

HN9[↓] Elementary & Secondary School Boards, Authority of School Boards

"School district" means any school district, community college district, or county superintendent of schools. Cal. Gov't Code § 17519.

Administrative Law > Agency
Rulemaking > State Proceedings

HN10[↓] Agency Rulemaking, State Proceedings

The first reimbursement claim filed which alleges that a state mandate is created under a statute or executive order is treated as a "test claim." Cal. Gov't Code § 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. Cal. Gov't Code § 17553. Any interested organization or individual may participate in the hearing. Cal. Gov't Code § 17555.

Administrative Law > Judicial
Review > General Overview

Civil Procedure > ... > Writs > Common Law
Writs > Mandamus

Administrative Law > Agency
Rulemaking > State Proceedings

HN11[↓] Administrative Law, Judicial Review

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. Cal. Gov't Code § 17555. The Commission on State Mandates (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. Cal. Gov't Code § 17557. Procedures for determining whether local agencies have achieved statutorily authorized cost savings and for offsetting these savings against reimbursements are also provided. Cal. Gov't Code § 17620 et seq. Finally, judicial review of the Commission decision is available through petition for writ of mandate filed pursuant to Cal. Civ. Proc. Code § 1094.5. Cal. Gov't Code § 17559.

Administrative Law > Agency
Rulemaking > State Proceedings

HN12[↓] **Agency Rulemaking, State Proceedings**

The parameters and guidelines adopted by the Commission on State Mandates must be submitted to the controller, who is to pay subsequent claims arising out of the mandate. Cal. Gov't Code § 17558. Executive orders mandating costs are to be accompanied by an appropriations 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. Cal. Gov't Code § 17561(a) and (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. Cal. Gov't Code § 17562.

Administrative Law > Agency
Rulemaking > State Proceedings

HN13[↓] **Agency Rulemaking, State Proceedings**

The Commission on State Mandates is also required to make semiannual reports to the legislature of the number of mandates found and the estimated reimbursement cost to the state. Cal. Gov't Code § 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. Cal. Gov't Code § 17612. Additional procedures, enacted in 1985, create a system of state-mandate apportionments to fund reimbursement. Cal. Gov't Code § 17615 et seq.

Administrative Law > Agency
Rulemaking > State Proceedings

HN14[↓] **Agency Rulemaking, State Proceedings**

See Cal. Gov't Code § 17552.

Administrative Law > Separation of Powers > Constitutional Controls > General Overview

Constitutional Law > Substantive Due Process > Scope

Administrative Law > Agency
Rulemaking > State Proceedings

HN15[↓] **Separation of Powers, Constitutional Controls**

Unless the exercise of a constitutional right is unduly restricted, the court must limit enforcement to the procedures established by the legislature.

Governments > Local Governments > Finance

Public Health & Welfare
Law > Healthcare > General Overview

HN16[↓] **Local Governments, Finance**

Cal. Gov't Code § 17563 gives the local agency

complete discretion in the expenditure of funds received pursuant to Cal. Const. art. XIII B, § 6.

Governments > Local Governments > Finance

HN17 [📄] **Local Governments, Finance**

See Cal. Gov't Code § 17563.

Civil Procedure > Judgments > Declaratory Judgments > General Overview

Governments > Local Governments > Claims By & Against

Governments > Local Governments > Finance

Public Health & Welfare

Law > Healthcare > General Overview

HN18 [📄] **Judgments, Declaratory Judgments**

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 on State Mandates has determined that a mandate exists and the legislature has failed to include the cost in a local government claims bill, and only on petition by the county. Cal. Gov't Code § 17612.

Headnotes/Summary

Summary

CALIFORNIA OFFICIAL REPORTS 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

CA(1) [📄] (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. 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.

CA(2) [↓] (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 did 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 to fully 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 7 **Witkin**, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 112.]

Counsel: Stephen D. Schear, Stephen E. Ronfeldt,

Armando M. Menocal III, Lois Salisbury, Laura Schulkind and Kirk McInnis for Plaintiffs and Appellants.

Catherine I. Hanson, Astrid G. Meghrihan, Alice P. Mead, Alan K. Marks, County Counsel (San Bernardino), Paul F. Mordy, Deputy County Counsel, De Witt W. Clinton, County Counsel (Los Angeles), Robert M. Fesler, Assistant County Counsel, Frank J. DaVanzo, Deputy County Counsel, Weissburg & Aronson, Mark S. Windisch, Carl Weissburg and Howard W. Cohen as Amici Curiae on behalf of Plaintiffs and Appellants.

John K. Van de Kamp and Daniel E. Lungren, Attorneys General, N. Eugene Hill, Assistant Attorney General, Richard M. Frank, Asher Rubin and Carol Hunter, Deputy Attorneys General, for Defendants and Respondents.

Judges: Opinion by Baxter, J., with Lucas, C. J., Panelli, Kennard, and Arabian, JJ., concurring. Separate dissenting opinion by Broussard, J., with Mosk, J., concurring.

Opinion by: BAXTER

Opinion

[*328] [**1309] [***67] Plaintiffs, medically indigent adults and taxpayers, seek to enforce section 6 of [****2] 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.

[1310] [***68]** 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

HN1[↑] 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 **[****3]** 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] "**HN2[↑]** 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 **[****4]** fiscal year . . . shall be adjusted as follows: [para.] (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) (**HN3[↑]** 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 **[****5]** 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

[****6] [**1311] [***69] 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 [****7] 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

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.

HN4[↑] An injunction against enforcement of a state mandate is available only after the Legislature fails to include funding in a local

[****8] [*331] III

Enforcement of Article XIII B, Section 6

In 1984, almost five years after the adoption of article XIII B, HN5[↑] 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 [****9] 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, HN6[↑] the Legislature

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.

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 [**1312] [***70] 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 [****10] mandates (§§ 17562, 17600, 17612, subd. (a).)

HN7[↑] Pursuant to procedures which the Commission was authorized to establish (§ 17553), local agencies⁵ and school districts⁶ are to file claims for reimbursement of state-mandated costs with the Commission (§§ 17551, 17560), and reimbursement is to be provided [****11] only through this statutory procedure. (§§ 17550, 17552.)

HN10[↑] The first reimbursement claim filed

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 "**HN8**[↑] 'Local agency' means any city, county, special district, authority, or other political subdivision of the state." (§ 17518.)

⁶ "**HN9**[↑] 'School district' means any school district, community college district, or county superintendent of schools." (§ 17519.)

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.)

HN11[↑] 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 [****12] 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. **HN12**[↑] 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 [****13] 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.) HN13[↑] 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, [**1313] [***71] and an injunction against enforcement. (§ 17612.)

Additional procedures, enacted in 1985, create a system of state-mandate apportionments to fund reimbursement. (§ 17615 et seq.)

CA(1)[↑] (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 [****14] 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, HN14[↑] 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." [****15] (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

CA(2)[↑] (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].) [****16] 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. **HN15** [↑] Unless the exercise of a constitutional right is unduly restricted, the court must limit enforcement to the procedures established by the Legislature. (*People v. [**1314] [***72] Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 637 [268 P.2d 723]; [****17] *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, **HN16** [↑] section 17563 gives the [****18] local agency complete discretion in the expenditure of funds received pursuant to section 6, providing: "**HN17** [

↑] 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.*" [****19] (§ 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 [****20] 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. **HN18** [↑] The remedy for the failure to fund a program is a

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.

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 [****21] 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 [**1315] [***73] 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

[****22] 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

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.

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.

Dissent by: BROUSSARD

Dissent

ROUSSARD, 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. [****23] 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 [****24] 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 [**1316] [***74] 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 [****25] 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 [****26] 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. [****27] 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

Code sections 17000 and 17001, and by judicial action." (Maj. opn., ante, p. 336, fn. 8)

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

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.

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 [****28] 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 [*1317] [***75] 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 [****29] 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 [****30] 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

²It 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].)

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* (1st ed. 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, [****31] 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 [**1318] [***76] 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 [****32] to challenge a college district's rule barring a speaker from campus, but persons who merely planned to hear him speak did not.

[****33] 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 [****34] 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 [****35] 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

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.

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 [****36] 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 [**1319] [***77] 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 [****37] 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 [****38] 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 [****39] 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.

[****40] [**1320] [***78] 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

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.

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].) [****41]

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 [****42] 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.

[****43] Second, article XIII B was enacted to protect taxpayers, not governments. Section 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 [**1321] [***79] 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 [****44] 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 forgoing 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.

[****45] 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

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. [para.] (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.)

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 [****46] 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 [**1322] [****80] 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 [****47] 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 [****48] 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

⁶It 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*

[****49] 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 [**1323] [***81] 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 [****50] 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

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.

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. [****51]

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.

[****52] In 1982, the Legislature passed Assembly Bill No. 799 (1981-1982 Reg. Sess.;

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."

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 [***82] funding [**1324] 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 [****53] 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].) [****54] 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], [****55] 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

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."

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.)

[****56] 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 [**1325]

[***83] 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

[****57] "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*

⁹Section 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. . . ."

¹⁰Section 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.

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 [****58] 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 [****59] 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 [****1326**] [*****84**] 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 [******60**] 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 [******61**] 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, [******62**] 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. [para.] . . . 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 XIII B. That article imposed spending limits on state and local

governments, and it followed by one year the adoption by initiative of article XIII A, which severely limited the taxing [*353] power of local governments. . . . [para.] 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 [***85] tax money, [**1327] simply shift the cost of the programs to local government [****63] on the theory that the shift does not violate section 6 of article XIII B 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 of that article.*" (*Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d at pp. 835-836, fn. omitted, italics added.)

[****64] 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: [****65] "[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.

[****66] 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

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.

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 [**1328] [***86] the same level of [****67] 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

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.)

of services. But it cannot escape its responsibility entirely, leaving the counties with a state-mandated obligation and no money to pay for it.

[****68] 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 [****69] -- 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.

End of Document

Long Beach Unified Sch. Dist. v. State of California

Court of Appeal of California, Second Appellate District, Division Five

November 15, 1990

No. B033742

Reporter

225 Cal. App. 3d 155 *; 275 Cal. Rptr. 449 **; 1990 Cal. App. LEXIS 1198 ***

LONG BEACH UNIFIED SCHOOL DISTRICT,
Plaintiff and Appellant, v. THE STATE OF
CALIFORNIA et al., Defendants and Appellants;
MARK H. BLOODGOOD, as Auditor-Controller,
etc., et al., Defendants and Respondents

Subsequent History: [***1] Appellants' petitions for review by the Supreme Court were denied February 28, 1991. Lucas, C. J., did not participate therein.

Prior History: Superior Court of Los Angeles County, No. C606020, Robert I. Weil, Judge.

Disposition: We conclude that because the doctrines of collateral estoppel and waiver are inapplicable to the facts of this case, the trial court should have allowed State to challenge the decisions of the Board. However, we also determine, as a question of law, that the Executive Order requires local school boards to provide a higher level of service than is required constitutionally or by case law and that the Executive Order is a reimbursable state mandate pursuant to article XIII B, section 6 of the California Constitution. Former Revenue and Tax Code section 2234 does not provide reimbursement of the subject claim. Based on uncontradicted evidence, we modify the decision of the trial court by striking as sources of reimbursement the Special Fund for Economic Uncertainties "or similarly designated accounts." We also modify the judgment to include charging orders against certain funds appropriated through subsequent budget acts. We affirm the decision of the trial court that the Fines [***2] and Forfeitures Funds are not "reasonably available" to satisfy the Claim.

Finally, we remand the matter to the trial court to determine whether at the time of its order, unexpended, unencumbered funds sufficient to satisfy the judgment remained in the approved budget line item account numbers. The trial court is also directed to determine this same issue with respect to the charging order. The judgment is affirmed as modified. Each party is to bear its own costs on appeal.

Core Terms

reimbursement, executive order, costs, funds, appropriations, mandated, school district, budget, reasonably available, state mandate, trial court, expenditures, fiscal year, mandated costs, higher level of service, collateral estoppel, programs, local government, local agency, State-mandated, compliance, guidelines, special fund, designated, state controller, account number, decisions, Sections, entities, limitations

Case Summary

Procedural Posture

Appellant state challenged an order from the Superior Court of Los Angeles County (California) stating that it was required to reimburse cross-appellant school district for mandated expenditures to integrate the schools, and cross-appellant challenged that part of the order stating that certain funds were not available for this reimbursement.

Overview

The California Department of Education issued an executive order mandating expenditures to integrate

the schools, and when the legislature deleted the requested funding from its budget, cross-appellant school district filed a petition to compel reimbursement after the Board of Control approved the claim. The trial court stated that appellant state was required to make these reimbursements and designated specific funds as reasonably available for the payments, but also ruled that certain funds were not available for these payments. On appeal, the court affirmed the decision as modified, holding that the doctrines of collateral estoppel and waiver were inapplicable and that the trial court should have allowed appellant to challenge the initial decisions of Board of Control in this matter. However, the court concluded that as a matter of law the executive order was a reimbursable state mandate pursuant to Cal. Const. art. XIII B, § 6, not pursuant to former Cal. Rev. & Tax. Code § 2234. The court modified the decision by striking certain funds as sources of reimbursement and affirmed that portion of the order stating that certain funds were not available for the payments.

Outcome

The court affirmed the order stating that appellant state was required to reimburse cross-appellant school district for mandated expenditures to integrate the schools because the executive order was a reimbursable state mandate under the California constitution and modified the designated funds for payment. The case was remanded to determine if unexpended, unencumbered funds existed in the approved budget line item account numbers.

LexisNexis® Headnotes

Administrative Law > Judicial
Review > General Overview

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > Collateral Estoppel

Civil Procedure > Judgments > Preclusion of
Judgments > General Overview

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > General Overview

HN1 [↓] **Administrative Law, Judicial Review**

Collateral estoppel precludes a party from relitigating in a subsequent action matters previously litigated and determined. The traditional elements of collateral estoppel include the requirement that the prior judgment be "final."

Administrative Law > Agency
Adjudication > Decisions > Collateral Estoppel

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > Collateral Estoppel

Environmental Law > Administrative
Proceedings & Litigation > Judicial Review

Administrative Law > Judicial
Review > General Overview

Administrative Law > Judicial
Review > Remedies > Mandamus

Civil Procedure > Judgments > Preclusion of
Judgments > General Overview

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > General Overview

HN2 [↓] **Decisions, Collateral Estoppel**

Finality for the purposes of administrative collateral estoppel may be understood as a two-step process: (1) the decision must be final with respect to action by the administrative agency (Cal. Civ. Proc. Code § 1094.5(a)); and (2) the decision must have conclusive effect. A decision attains the requisite administrative finality when the agency has exhausted its jurisdiction and possesses no further power to reconsider or rehear the claim. Next, the decision must have conclusive effect. In other

words, the decision must be free from direct attack. A direct attack on an administrative decision may be made by appeal to the superior court for review by petition for administrative mandamus. Cal. Civ. Proc. Code § 1094.5. A decision will not be given collateral estoppel effect if such appeal has been taken or if the time for such appeal has not lapsed.

Civil Procedure > Appeals > Standards of Review

Civil Procedure > ... > Responses > Defenses, Demurrers & Objections > Waiver & Preservation of Defenses

HN3 [↓] **Appeals, Standards of Review**

A waiver occurs when 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.) Ordinarily, the issue of waiver is a question of fact which is binding on the appellate court if the determination is supported by substantial evidence. However, the question is one of law when the evidence is not in conflict and is susceptible of only one reasonable inference.

Governments > State & Territorial
Governments > Relations With Governments

HN4 [↓] **State & Territorial Governments, Relations With Governments**

See Cal. Const. art. XIII B, § 6.

Constitutional Law > State Constitutional Operation

HN5 [↓] **Constitutional Law, State Constitutional Operation**

In construing the meaning of the Cal. Const. art.

VIII B, § 6, the court must determine the intent of the voters by first looking to the language itself that should be construed in accordance with the natural and ordinary meaning of its words.

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview

Civil Procedure > ... > Jurisdiction > Subject Matter Jurisdiction > General Overview

Civil Procedure > ... > Writs > Common Law Writs > Mandamus

HN6 [↓] **Subject Matter Jurisdiction, Jurisdiction Over Actions**

Lack of subject matter jurisdiction may be raised at any time.

Governments > Legislation > Interpretation

Governments > Legislation > General Overview

HN7 [↓] **Legislation, Interpretation**

A statute should be construed with reference to the whole system of law of which it is a part in order to ascertain the intent of the legislature. The legislative history of a statute may be considered in ascertaining legislative design.

Constitutional Law > Separation of Powers

Governments > Courts > Authority to Adjudicate

HN8 [↓] **Constitutional Law, Separation of Powers**

A trial court cannot compel the legislature either to appropriate funds or to pay funds not yet

appropriated. Cal. Const. art. III, § 3; art. XVI, § 7. However, no violation of the separation of powers doctrine occurs when a trial court orders appropriate expenditures from already existing funds. The test is whether such funds are reasonably available for the expenditures in question. Funds are "reasonably available" for reimbursement when the purposes for which those funds were appropriated are generally related to the nature of costs incurred. There is no requirement that the appropriations specifically refer to the particular expenditure or must past administrative practice sanction coverage from a particular fund.

Headnotes/Summary

Summary

CALIFORNIA OFFICIAL REPORTS SUMMARY

A school district filed a claim with the state Board of Control asserting that its expenditures related to its efforts to alleviate racial and ethnic segregation in its schools had been mandated by the state through an executive order (in the form of regulations issued by the state Department of Education) and were reimbursable pursuant to former Rev. & Tax. Code, § 2234, and Cal. Const., art. XIII B, § 6. The board approved the claim, but the Legislature deleted the requested funding from an appropriations bill and enacted a "finding" that the executive order did not impose a statemandated local program. The district then filed a petition to compel reimbursement pursuant to Code Civ. Proc., § 1085, and a complaint for declaratory relief. The trial court ruled that the doctrines of administrative collateral estoppel and waiver prevented the state from challenging the board's decisions. The court's judgment in favor of the district identified certain funds previously appropriated by the Legislature as "reasonably available" for reimbursement of the claimed expenditures. (Superior Court of Los Angeles County, No. C606020, Robert I. Weil, Judge.)

The Court of Appeal modified the trial court's decision by striking as sources of reimbursement the Special Fund for Economic Uncertainties "or similarly designated accounts," and by including charging orders against certain funds appropriated through subsequent budget acts. The court affirmed the judgment as so modified and remanded to the trial court to determine whether at the time of its order, there were, in the funds from which reimbursement could properly be paid, unexpended, unencumbered funds sufficient to satisfy the judgment. The court held that since the doctrines of collateral estoppel and waiver were inapplicable to the facts of the case, the trial court should have allowed the state to challenge the board's decisions. However, the court also held that the executive order required local school boards to provide a higher level of service than is required constitutionally or by case law and that the order was a reimbursable state mandate pursuant to Cal. Const., art. XIII B, § 6. The court further held that former Rev. & Tax. Code, § 2234, did not provide reimbursement of the subject claim. (Opinion by Lucas, P. J., with Ashby and Boren, JJ., concurring.)

Headnotes

CA(1a) [↓] (1a) **CA(1b)** [↓] (1b) **CA(1c)** [↓] (1c)
CA(1d) [↓] (1d)

Judgments § 88—Collateral Estoppel—Finality of Judgment—Administrative Order—Where Appeal Still Possible.

--In an action by a school district against the state to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the doctrine of administrative collateral estoppel was inapplicable and did not prevent the state from litigating whether the state Board of Control properly considered the subject claim and whether the claim was reimbursable. The board had approved the claim but the Legislature had deleted the requested

funding from an appropriations bill. The board's decisions were administratively final, for collateral estoppel purposes, since no party requested reconsideration within the applicable 10-day period, and no statute or regulation provided for further consideration of the matter by the board. However, a decision will not be given collateral estoppel effect if an appeal has been taken or if the time for such appeal has not lapsed. The applicable statute of limitations for review of the board's decisions was three years, and the school district's action was filed before this period lapsed.

CA(2)[↓] (2)

Judgments § 88—Collateral Estoppel—Finality of Judgment.

--Collateral estoppel precludes a party from relitigating in a subsequent action matters previously litigated and determined. The traditional elements of collateral estoppel include the requirement that the prior judgment be "final."

CA(3a)[↓] (3a) CA(3b)[↓] (3b)

Administrative Law § 81—Judicial Review and Relief—Finality of Administrative Action—For Collateral Estoppel Purposes.

--Finality for the purposes of administrative collateral estoppel may be understood as a two-step process: the decision must be final with respect to action by the administrative agency, and the decision must have conclusive effect. A decision attains the requisite administrative finality when the agency has exhausted its jurisdiction and possesses no further power to reconsider or rehear the claim. To have conclusive effect, the decision must be free from direct attack.

CA(4)[↓] (4)

Limitation of Actions § 30—Commencement of Period.

--A statute of limitations commences to run at the point where a cause of action accrues and a suit may be maintained thereon.

CA(5a)[↓] (5a) CA(5b)[↓] (5b) CA(5c)[↓] (5c)

Estoppel and Waiver § 23—Waiver—State's Right to Contest Board of Control's Findings as to State-mandated Costs.

--In an action by a school district against the state to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the doctrine of waiver did not preclude the state from contesting the state Board of Control's previous findings that the subject claim was reimbursable (the Legislature subsequently deleted the requested funding from an appropriations bill). The statute of limitations applicable to an appeal by the state from the board's decisions had not run at the time the state raised its affirmative defenses in the district's action, and this assertion of defenses was inconsistent with an intent on the state's part to waive its right to contest the board's decisions.

CA(6)[↓] (6)

Estoppel and Waiver § 19—Waiver—Requisites.

--A waiver occurs when 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. Ordinarily the issue of waiver is a question of fact that is binding on the appellate court if the determination is supported by substantial evidence. However, the question is one of law when the evidence is not in conflict and is susceptible of only one reasonable inference.

CA(7)[↓] (7)

**Estoppel and Waiver § 6—Equitable Estoppel—
Challenge to State Board of Control's Findings as
to State-mandated Costs—Absence of Confidential
Relationship.**

--In an action by a school district against the state to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the state was not equitably estopped from challenging the state Board of Control's decisions finding that the subject claim was reimbursable as a state-mandated cost (the Legislature subsequently deleted the requested funding from an appropriations bill). In the absence of a confidential relationship, the doctrine of equitable estoppel is inapplicable where there is a mistake of law. There was no confidential relationship, and since the statute of limitations did not bar the state from litigating the mandate and reimbursability issues, the doctrine was inapplicable.

CA(8)[⚡] (8)

**Appellate Review § 145—Function of Appellate
Court—Questions of Law.**

--On appeal by the state in an action by a school district to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the appellate court's conclusion that the trial court erred in failing to consider the merits of the state's challenge to the state Board of Control's decisions that the subject claims were reimbursable as state-mandated costs did not require that the matter be remanded to the trial court for a full hearing, since the question of whether a cost is state-mandated is one of law.

CA(9a)[⚡] (9a) CA(9b)[⚡] (9b) CA(9c)[⚡] (9c)

**Schools § 4—School Districts; Financing; Funds—
Reimbursement of State-mandated Costs—
Desegregation Expenditures.**

--A school district was entitled to reimbursement pursuant to Cal. Const., art. XIII B, § 6 (reimbursement of local governments for state-mandated costs or increased levels of service), for expenditures related to its efforts to alleviate racial and ethnic segregation in its schools, since an executive order (in the form of regulations issued by the state Department of Education) required a higher level of service and constituted a state mandate. The requirements of the order went beyond constitutional and case law requirements in that they required specific actions to alleviate segregation. Although under Cal. Const., art. XIII B, § 6, subd. (c), the state has discretion whether to reimburse pre-1975 mandates that are either statutes or executive orders implementing statutes, it cannot be inferred from this exception that reimbursability is otherwise dependent on the form of the mandate. Further, the district's claim was not defeated by Gov. Code, §§ 17561 and 17514, limiting reimbursement to certain costs incurred after July 1, 1980, the effective date of Cal. Const., art. XIII B, since the limitations contained in those sections are confined to the exception contained in Cal. Const., art. XIII B, § 6, subd. (c).

CA(10)[⚡] (10)

**State of California § 11—Fiscal Matters—
Reimbursement to Local Governments for State-
mandated Costs.**

--The subvention requirement of Cal. Const., art. XIII B, § 6 (reimbursement of local governments for state-mandated costs or increased levels of service), is directed to state-mandated increases in the services provided by local agencies in existing "programs." The drafters and electorate had in mind the commonly understood meaning of the term--programs that carry out the governmental function of providing services to the public, or laws that, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

[See 9 **Witkin**, Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]

CA(11)[↓] (11)

Constitutional Law § 13—Construction of Constitutions—Language of Enactments.

--In construing a constitutional provision enacted by the voters, a court must determine the intent of the voters by first looking to the language itself, which should be construed in accordance with the natural and ordinary meaning of its words.

CA(12)[↓] (12)

State of California § 11—Fiscal Matters—Reimbursement to Local Governments for State-mandate Costs—Executive Order as Mandate.

--In Cal. Const., art. XIII B, § 6 (reimbursement of local governments for state-mandated costs or increased levels of service), "mandates" means "orders" or "commands," concepts broad enough to include executive orders as well as statutes. The concern that prompted the inclusion of § 6 in art. 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 that the state believed should be extended to the public. It is clear that the primary concern of the voters was the increased financial burdens being shifted to local government, not the form in which those burdens appeared.

CA(13)[↓] (13)

Administrative Law § 88—Judicial Review and Relief—Exhaustion of Administrative Remedies—Claim by School District for Reimbursement of State-mandated Costs.

--A school district did not fail to exhaust its

administrative remedies in seeking reimbursement for expenditures related to its efforts to alleviate racial and ethnic segregation, based on its claim that the expenditures were mandated by a state executive order, where the state Board of Control approved the district's reimbursement claim, even though the state Commission on State Mandates subsequently succeeded to the functions of the board and the district never made a claim to the commission. The board's decisions in favor of the district became administratively final before the commission was in place, and there was no evidence that the commission did not consider these decisions by the board to be final. Although the commission was given jurisdiction over all claims that had not been included in a local government claims bill enacted before January 1, 1985, the subject claim was included in such a bill (which was signed into law only after the recommended appropriation was deleted). Under the statutory scheme, the district pursued the only relief that a disappointed claimant at such a juncture could pursue--an action in declaratory relief to declare an executive order void or unenforceable and to enjoin its enforcement. There was no requirement to seek further administrative review.

CA(14)[↓] (14)

Courts § 20—Subject Matter Jurisdiction—When Issue May Be Raised.

--Lack of subject matter jurisdiction may be raised at any time.

CA(15a)[↓] (15a) CA(15b)[↓] (15b)

Schools § 4—School Districts; Financing; Funds—Reimbursement of State-mandated Costs—Desegregation Expenditures—Applicability of Statute Requiring Reimbursement of Subsequently Mandated Costs.

--A school district was not entitled to

reimbursement on the basis of former Rev. & Tax. Code, § 2234 (reimbursement of school district for costs it is incurring that are subsequently mandated by a state), for expenditures related to its efforts to alleviate racial and ethnic segregation in its schools, since the executive order (in the form of regulations issued by the state Department of Education) that required the district to take specific actions to alleviate segregation fell outside the purview of § 2234. The "subsequently mandated" provision of § 2234 originally was contained in sections that set forth specific date limitations, and the Legislature likewise intended to limit claims made pursuant to § 2234. The use of the language "subsequently mandated" merely describes an additional circumstance in which the state will reimburse costs. Since the executive order fell outside the January 1, 1978, limits set by Rev. & Tax. Code, § 2207.5, Rev. & Tax. Code, § 2234, did not provide reimbursement to the district.

CA(16)[⚡] (16)

Statutes § 39—Construction—Giving Effect to Statute—Conformation of Parts.

--A statute should be construed with reference to the whole system of law of which it is a part in order to ascertain the intent of the Legislature. The legislative history of the statute may be considered in ascertaining legislative design.

CA(17a)[⚡] (17a) CA(17b)[⚡] (17b) CA(17c)[⚡] (17c)

Constitutional Law § 40—Distribution of Governmental Powers—Judicial Power—Appropriation of Funds—Reimbursement of State-mandated Costs.

--In an action by a school district against the state to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the trial court's award of reimbursement to the district, on the ground that the

district's expenditures were mandated by an executive order, from appropriated funds and specified budgets and accounts did not constitute an invasion of the province of the Legislature or a judicial usurpation of the republican form of government guaranteed by U.S. Const., art. IV, § 4, except insofar as it designated the Special Fund for Economic Uncertainties as a source for reimbursement. The specified line item accounts for the Department of Education, the Commission on State Mandates, and the Reserve for Contingencies and Emergencies provided funds for a broad range of activities similar to those specified in the executive order and thus were reasonably available for reimbursement. However, remand to the trial court was necessary to determine whether these sources contained sufficient unexhausted funds to cover the award.

CA(18)[⚡] (18)

Constitutional Law § 40—Distribution of Governmental Powers—Judicial Power—Appropriation of Funds.

--A court cannot compel the Legislature either to appropriate funds or to pay funds not yet appropriated. However, no violation of the separation of powers doctrine occurs when a court orders appropriate expenditures from already existing funds. The test is whether such funds are reasonably available for the expenditures in question. Funds are "reasonably available" for reimbursement of local government expenditures when the purposes for which those funds were appropriated are generally related to the nature of costs incurred. There is no requirement that the appropriation specifically refer to the particular expenditure, nor must past administrative practice sanction coverage from a particular fund.

CA(19)[⚡] (19)

Appellate Review § 162—Modification—To Add Charge Order.

--An appellate court is empowered to add a directive that a trial court order be modified to include charging orders against funds appropriated by subsequent budgets acts.

CA(20)[↓] (20)

Schools § 4—School Districts; Financing; Funds— Reimbursement of State-mandated Costs— Desegregation Expenditures—Effect of Legislative Finding That Costs Not State-mandated.

--A school district was entitled to reimbursement pursuant to Cal. Const., art. XIII B, § 6 (reimbursement of local governments for state-mandated costs or increased levels of service), for expenditures related to its efforts to alleviate racial and ethnic segregation in its schools, notwithstanding that after the state Board of Control approved the district's reimbursement claim, the Legislature enacted a "finding" that the executive order requiring the district to undertake desegregation activities did not impose a state-mandated local program. Unsupported legislative disclaimers are insufficient to defeat reimbursement. The district had a constitutional right to reimbursement, and the Legislature could not limit that right.

CA(21)[↓] (21)

Schools § 4—School Districts; Financing; Funds— Reimbursement of State-mandated Costs— Desegregation Expenditures—Department of Education Budget as Source.

--In an action by a school district against the state to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the trial court, after finding that the executive order requiring the district to undertake desegregation activities was a reimbursable state mandate, did not err in ordering reimbursement to take place in part from the state Department of Education budget. Logic dictated

that department funding be the initial and primary source for reimbursement: given the fact that the executive order was issued by the department, the evidence overwhelmingly supported the trial court's finding of a general relationship between the department budget items and the reimbursable expenditures.

CA(22)[↓] (22)

Interest § 8—Rate—Reimbursement of School District's State-mandated Costs.

--In an action by a school district against the state to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the trial court, after finding that the executive order requiring the district to undertake desegregation activities was a reimbursable state mandate, did not err in awarding the district interest at the legal rate (Cal. Const., art. XV, § 1, par. (2)), rather than at the rate of 6 percent per annum pursuant to Gov. Code, § 926.10. Gov. Code, § 926.10, is part of the California Tort Claims Act (Gov. Code, § 900 et seq.), which provides a statutory scheme for the filing of claims against public entities for alleged injuries. It makes no provision for claims for reimbursement for state-mandated expenditures.

CA(23)[↓] (23)

Schools § 4—School Districts; Financing; Funds— Reimbursement of State-mandated Costs— Desegregation Expenditures—County Fines and Forfeitures Funds as Source.

--In an action by a school district against the state to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the trial court, after finding that the executive order requiring the district to undertake desegregation activities was a reimbursable state mandate, did not err in determining that moneys in the Fines and Forfeiture

Funds in the custody and possession of the county auditor-controller for transfer to the state treasury were not reasonably available for reimbursement purposes. There was no evidence in the record showing the use of those funds once they were transmitted to the state, nor was there any evidence indicating that those funds were then reasonably available to satisfy the district's claim. It could not be concluded as a matter of law that a general relationship existed between the funds and the nature of the costs incurred pursuant to the executive order. Further, there was no ground on which the funds could be made available to the district while in the possession of the auditor-controller.

Counsel: John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, Henry G. Ullerich and Martin H. Milas, Deputy Attorneys General, Joseph R. Symkowick and Joanne Lowe for Defendants and Appellants.

De Witt W. Clinton, County Counsel, and Lawrence B. Launer, Assistant County Counsel, for Defendants and Respondents.

Ball, Hunt, Hart, Brown & Baerwitz, Anthony Murray, Allan E. Tebbetts, Agnes H. Mulhearn, Ross & Scott, William D. Ross, Corin L. Kahn and Diana P. Scott for Plaintiff and Appellant.

Judges: Opinion by Lucas, P. J., with Ashby and Boren, JJ., concurring.

Opinion by: LUCAS

Opinion

[*163] [**454] Introduction

Long Beach Unified School District (LBUSD) filed a claim with the Board of Control of the State of California [***3] (Board), asserting that certain expenditures related to its efforts to alleviate racial and ethnic segregation in its schools had been mandated by the state through regulations (Executive Order) issued by the Department of

Education (DOE) and were [*164] reimbursable pursuant to former Revenue and Taxation Code section 2234 and article XIII B, section 6 of the California Constitution. The Board eventually approved the claim and reported to the Legislature its recommendation that funds be appropriated to cover the statewide estimated costs of compliance with the Executive Order. When the Legislature deleted the requested funding from an appropriations bill, LBUSD filed a petition to compel reimbursement (Code Civ. Proc., § 1085) and complaint for declaratory relief. The trial court held that the doctrines of administrative collateral estoppel and waiver prevented the state from challenging the decisions of the Board, and it gave judgment to LBUSD. It also ruled that certain funds previously appropriated by the Legislature were "reasonably available" for reimbursement of the claimed expenditures, subject to audit by the state Controller.

We conclude that the doctrines of collateral [***4] estoppel and waiver are inapplicable to the facts of this case. However, we determine as a question of law that the Executive Order requires local school boards to provide a higher level of service than is required either constitutionally or by case law and that the Executive Order is a reimbursable state mandate pursuant to article XIII B, section 6 of the California Constitution. We also decide that former Revenue and Taxation Code section 2234 does not provide for reimbursement of the claim.

Based on uncontradicted evidence, we modify the decision of the trial court regarding which budget line item account numbers provide "reasonably available" funds to reimburse LBUSD for appropriate expenditures under the claim. We further modify the decision to include charging orders against funds appropriated by subsequent budget acts. Finally, we remand the matter to the trial court to determine whether at the time of its order unexpended, unencumbered funds sufficient to satisfy the judgment remained in the approved budget line item account numbers. The trial court must resolve this same issue with respect to the

charging order.

[**455] Background and Procedural History

The California Property [***5] Tax Relief Act of 1972 (Stats. 1972, ch. 1406, § 1, p. 2931) limited the power of local governmental entities to levy property taxes. It also mandated that when the state requires such entities to provide a new program or higher level of service, the state must reimburse those costs. Over time, amendments to the California Constitution and numerous legislative changes impacted both the right and procedure for obtaining reimbursement.

[*165] Sometime prior to September 8, 1977, LBUSD, at its option, voluntarily began to incur substantial costs to alleviate the racial and ethnic segregation of students within its jurisdiction.

On or about the above date, DOE adopted certain regulations which added sections 90 through 101 to title 5 of the California Administrative Code, effective September 16, 1977. We refer to these regulations as the Executive Order.

The Executive Order and related guidelines for implementation required in part that school districts which identified one or more schools as either having or being in danger of having segregation of its minority students "shall, no later than January 1, 1979, and each four years thereafter, develop and adopt a reasonably feasible [***6] plan for the alleviation and prevention of racial and ethnic segregation of minority students in the district."

On or about June 4, 1982, LBUSD submitted a "test claim" (Claim)¹ to the Board for reimbursement of \$ 9,050,714 -- the total costs which LBUSD claimed it had incurred during fiscal years 1977-1978 through 1981-1982 for activities required by the Executive Order and guidelines. LBUSD cited

¹ Former Revenue and Taxation Code section 2218 defines "test claim" as "the first claim filed with the State Board of Control alleging that a particular statute or executive order imposes a mandated cost on such local agency or school district." (Stats. 1980, ch. 1256, § 7, p. 4249.)

former Revenue and Taxation Code section 2234 as authority for the requested reimbursement, asserting that the costs had been "subsequently mandated" by the state.²

[***7] The Board denied the Claim on the grounds that it had no jurisdiction to accept a claim filed under section 2234. LBUSD petitioned superior court for review of the Board decision. (Code Civ. Proc., § 1094.5.) That court concluded the Board had jurisdiction to accept a section 2234 claim and ordered it to hear the matter on its merits. The Board did not appeal this decision.

On February 16, 1984, the Board conducted a hearing to consider the Claim. LBUSD presented written and oral argument that the Claim was reimbursable pursuant to section 2234 and, in addition, under article XIII B, section 6 of the California Constitution. DOE and the State Department [*166] of Finance (Finance) participated in the hearing.³ [***8] The Board concluded that the Executive Order constituted a state mandate. On April 26, 1984, the Board adopted parameters and guidelines proposed by

² All statutory references are to the Revenue and Taxation Code unless otherwise stated.

Former section 2234 provided: "If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for such costs incurred after the operative date of such mandate." (Stats. 1980, ch. 1256, § 11, pp. 4251-4252.)

³ The DOE recommended that the Claim be denied on the grounds that the requirements of the Executive Order were constitutionally mandated and court ordered and because the Executive Order was effective prior to January 1, 1978 (issues discussed *post*). However, counsel for the DOE expressed dismay that school districts which had voluntarily instituted desegregation programs had been having problems receiving funding from the Legislature, while schools which had been forced to do so had been receiving "substantial amounts of money."

A spokesman from Finance recalled there had been some doubt whether the Board had jurisdiction to hear a 2234 claim. He stated that, assuming the Board did have jurisdiction, the Executive Order contained at least one state mandate, which possibly consisted of administrative kinds of tasks related to the identification of "problem areas and the like."

LBUSD for reimbursement of the expenditures. No state entity either sought reconsideration of the Board decisions, **[**456]** available pursuant to former section 633.6 of the California Administrative Code, ⁴ or petitioned for judicial review. ⁵

In December 1984, pursuant to former section 2255, the Board reported to the Legislature the number of mandates it had found and the estimated statewide costs of each mandate. **[***9]** With respect to the Executive Order mandate, the Board adopted an estimate by Finance that reimbursement of school districts, including LBUSD, for costs expended in compliance with the Executive Order would total \$ 95 million for fiscal years 1977-1978 through 1984-1985. The Board recommended that the Legislature appropriate that amount.

Effective January 1, 1985, the Commission on State Mandates (Commission) succeeded to the functions of the Board. (Gov. Code, §§ 17525, 17630.)

On March 4, 1985, Assembly Bill No. 1301 was introduced. It included an appropriation of \$ 95 million to the state controller "for payment of claims of school districts seeking reimbursable state-mandated costs incurred pursuant to [the Executive Order] . . ." On June 27, the Assembly amended the bill by deleting this \$ 95 million appropriation and adding a **[*167]** "finding" that the Executive Order did not impose a state-

⁴Former section 633.6 of the California Administrative Code (now renamed California Code of Regulations) provided in relevant part: "(b) Request for Reconsideration. [para.] (1) A request for reconsideration of a Board determination on a specific test claim . . . shall be filed, in writing, with the Board of Control, no later than ten (10) days after any determination regarding the claim by the Board . . ." (Title 2, Cal. Admin. Code)

⁵Former section 2253.5 provided: "A claimant or the state may commence a proceeding in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure to set aside a decision of the Board of Control on the grounds that the board's decision is not supported by substantial evidence. The court may order the board to hold another hearing regarding such claim and may direct the board on what basis the claim is to receive a rehearing." (Stats. 1978, ch. 794, § 8, p. 2551.)

mandated local program. ⁶ On September 28, 1985, the Governor approved the bill as amended.

[*10]** On June 26, 1986, LBUSD petitioned for writ of mandate (Code Civ. Proc., § 1085) and filed a complaint for declaratory relief against defendants State of California; Commission; Finance; DOE; holders of the offices of State Controller and State Treasurer and holder of the office of Auditor-Controller of the County of Los Angeles, and their successors in interest. LBUSD requested issuance of a writ of mandate commanding the respondents to comply with section 2234 (fn. 2, *ante*) ⁷ **[***11]** and, in an amended petition, its successor, Government Code section 17565, and with California Constitution, article XIII B, section 6. ⁸ It further requested respondents to reimburse LBUSD \$ 24,164,593 for fiscal years 1977-1978 through 1982-1983, \$ 3,850,276 for fiscal years 1983-1984 and 1984-1985, and accrued interest, for activities mandated by the Executive Order.

The trial court let stand the conclusion of the Board that the Executive Order constituted a reimbursable state mandate and ruled in favor of LBUSD. No party requested a statement of decision.

The judgment stated that the Executive Order

⁶Former Section 2255 provided in part: "(b) If the Legislature deletes from a local government claims bill funding for a mandate imposed either by legislation or by a regulation . . . , it may take one of the following courses of action: (1) Include a finding that the legislation or regulation does not contain a mandate . . ." (Stats. 1982, ch. 1638, § 7, p. 6662.)

⁷The language of Government Code section 17565 is nearly identical to that of section 2234 (fn. 2, *ante*), and provides: "If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate." (Stats. 1986, ch. 879, § 10, p. 3043.)

⁸Article XIII B, section 6 provides in pertinent 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"

constituted a reimbursable state mandate which state entities could not challenge because of the doctrines of administrative collateral estoppel and waiver. It provided that certain previously appropriated [**457] funds were "reasonably available" to reimburse LBUSD for its claimed expenditures, applicable interest, and court costs. The judgment also stated that funds denominated the "Fines and Forfeitures Funds," under the custody of the Auditor-Controller of the County of Los Angeles, were not reasonably available. The judgment further decreed [***12] that the State Controller retained the right to audit the claims and records of LBUSD to verify the amount of the reimbursement award sum.

[*168] State respondents (State) and DOE separately filed timely notices of appeal, and LBUSD cross-appealed.⁹

Discussion

State asserts that neither the doctrine of collateral estoppel nor the doctrine of waiver is applicable to this case, the costs incurred by LBUSD are not reimbursable, and the remedy authorized by the trial court is inconsistent with California law and invades the province of the Legislature, a violation of article IV, section 4 of the United States Constitution.

The [***13] thrust of the DOE appeal is that its budget is not an appropriate source of funding for the reimbursement.

LBUSD has argued in its cross-appeal that an additional source of funding, the "Fines and Forfeiture Funds," should be made available for reimbursement of its costs and, in supplementary briefing, requests this court to order a modification of the judgment to include as "reasonably available

funding" specific line item accounts from the 1988-1989 and 1989-1990 state budgets.

I. State Not Barred From Challenging Decisions of the Board

A. Administrative Collateral Estoppel

CA(1a)[↑] (1a) State first contends that the doctrine of administrative collateral estoppel is not applicable to the facts of this case and does not prevent State from litigating whether the Board properly considered the subject claim and whether the claim is reimbursable.

CA(2)[↑] (2) HN1[↑] Collateral estoppel precludes a party from relitigating in a subsequent action matters previously litigated and determined. (*Teitelbaum Furs, Inc. v. Dominion Ins. Co., Ltd.* (1962) 58 Cal.2d 601, 604 [25 Cal.Rptr. 559, 375 P.2d 439].) The traditional elements of collateral estoppel include the requirement [***14] that the prior judgment be "final." (*Ibid.*)

CA(3a)[↑] (3a) HN2[↑] Finality for the purposes of administrative collateral estoppel may be understood as a two-step process: (1) the decision must be final with [*169] respect to action by the administrative agency (see *Code Civ. Proc.*, § 1094.5, subd. (a)); and (2) the decision must have conclusive effect (*Sandoval v. Superior Court* (1983) 140 Cal.App.3d 932, 936-937 [190 Cal.Rptr. 29]).

A decision attains the requisite administrative finality when the agency has exhausted its jurisdiction and possesses "no further power to reconsider or rehear the claim. [Fn. omitted]" (*Chas. L. Harney, Inc. v. State of California* (1963) 217 Cal.App.2d 77, 98 [31 Cal.Rptr. 524].)

⁹ Although an "Amended Notice to Prepare Clerk's Transcript" filed by DOE on April 11, 1988, requests the clerk of the superior court to incorporate in the record its notice of appeal filed April 1, 1988, this latter document does not appear in the record before us, and the original apparently is lost within the court system. Respondent LBUSD received a copy of the notice on April 4, 1988.

CA(1b)^[↑] **(1b)** In the case at bar, former section 633.6 of the Administrative Code provided a 10-day period during which any party could request reconsideration of any Board determination (fn. 4, *ante*). The Board decided on February 16, 1984, that the Executive Order constituted a state mandate, and on April 26, 1984, it adopted parameters and guidelines for the reimbursement of the claimed expenditures. No party requested [***15] reconsideration, no statute or regulation provided for further consideration of the matter by the Board (see, e.g., *Olive Proration etc. Com. v. Agri. etc. Com.* (1941) 17 Cal.2d 204, 209 [109 P.2d 918]), and the decisions became administratively final on February [**458] 27, 1984, and May 7, 1984, respectively¹⁰ (*Ziganto v. Taylor* (1961) 198 Cal.App.2d 603, 607 [18 Cal.Rptr. 229]).

CA(3b)^[↑] **(3b)** Next, the decision must have conclusive effect. (*Sandoval v. Superior Court, supra*, 140 Cal.App.3d 932, 936-937.) In other words, the decision must be free from direct attack. (*People v. Sims* (1982) 32 Cal.3d 468, 486 [186 Cal.Rptr. 77, 651 P.2d 321].) A direct attack on an administrative decision may be made by appeal to the superior court for review [***16] by petition for administrative mandamus. (*Code Civ. Proc.*, § 1094.5.)

CA(1c)^[↑] **(1c)** A decision will not be given collateral estoppel effect if such appeal has been taken or if the time for such appeal has not lapsed. (*Sandoval v. Superior Court, supra*, 140 Cal.App.3d at pp. 936-937; *Producers Dairy Delivery Co. v. Sentry Ins. Co.* (1986) 41 Cal.3d 903, 911 [226 Cal.Rptr. 558, 718 P.2d 920].) The

¹⁰ We take judicial notice pursuant to *Evidence Code* section 452, subdivision (h), that February 26, 1984, and May 6, 1984, fall on Sundays.

applicable statute of limitations for such review in the case at bar is three years. (*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 534 [234 Cal.Rptr. 795]; *Green v. Obledo* (1981) 29 Cal.3d 126, 141, fn. 10 [172 Cal.Rptr. 206, 624 P.2d 256].)

CA(4)^[↑] **(4)** A statute of limitations commences to run at the point where a cause of action accrues and a suit may be maintained thereon. (*Dillon v. Board of Pension Comm'rs.* (1941) 18 Cal.2d 427, 430 [116 P.2d 37, 136 A.L.R. 800].)

CA(1d)^[↑] **(1d)** In the instant case, State's causes of action accrued when the Board made the two decisions [***17] adverse to State on February 16 and April 26, 1984, [*170] as discussed. State did not request reconsideration, and the decisions became administratively final on February 27 and May 7, 1984.¹¹ [***18] For purposes of discussion, we will assume the applicable three-year statute of limitations period for the two Board decisions commenced on February 28 and May 8, 1984, and ended on February 28 and May 8, 1987.¹² LBUSD filed its petition for ordinary mandamus (*Code Civ. Proc.*, § 1085) and complaint for declaratory relief on June 26, 1986. At that point, the limitations periods had not run against State and the Board decisions lacked the necessary finality to satisfy that requirement of the doctrine of

¹¹ We do not address the contention of LBUSD that State failed to exhaust its administrative remedies (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 292 [109 P.2d 942, 132 A.L.R. 715]; *Morton v. Superior Court* (1970) 9 Cal.App.3d 977, 982 [88 Cal.Rptr. 533]) and therefore State cannot assert its affirmative defenses in response to the petition and complaint of the school district. Traditionally, the doctrine has been raised as a bar only with respect to the party seeking judicial relief, not against the responding party (*ibid.*); we have found no case holding otherwise.

¹² If State had sought reconsideration and its request been denied, or if its request had been granted but the matter again decided in favor of LBUSD, the Board decision would have been final 10 days after the Board action, and at that point the statute would have commenced to run against State.

administrative collateral estoppel.¹³

[***19] [**459] *B. Waiver*

CA(5a)[↑] (5a) State also asserts that the doctrine of waiver is not applicable.

CA(6)[↑] (6) HN3[↑] A waiver occurs when 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 [*171] a reasonable belief that it has been waived. [Citations.]" (*Carmel Valley Fire Protection Dist. v. State of California, supra*, 190 Cal.App.3d at p. 534.) Ordinarily, the issue of waiver is a question of fact which is binding on the appellate court if the determination is supported by substantial evidence. (*Napa Association of Public Employees v. County of Napa* (1979) 98 Cal.App.3d 263, 268 [159

Cal.Rptr. 522].) However, the question is one of law when the evidence is not in conflict and is susceptible of only one reasonable inference. (*Glendale Fed. Sav. & Loan Assn. v. Marina View Heights Dev. Co.* (1977) 66 Cal.App.3d 101, 151-152 [135 Cal.Rptr. 802].)

CA(5b)[↑] (5b) In the instant case, the right to contest the findings of the Board is at issue, and there is no dispute that [***20] the state was aware of the existence of this right. As discussed, the statute of limitations had not run when State raised its affirmative defenses, and during this time State could have filed a separate petition for administrative mandamus.

CA(7)[↑] (7) (See fn. 14.)

CA(5c)[↑] (5c) State's assertion of its affirmative defenses during this period is inconsistent with an intent to waive its right to contest the Board decisions, and therefore the doctrine of waiver is not applicable.¹⁴

[***21] *II. Issue of State Mandate*

CA(8)[↑] (8) Ordinarily, our conclusion that the trial court erred in failing to consider the merits of the State's challenge to the decisions of the Board would require that the matter be remanded to the trial court for a full hearing. However, because the question of whether a cost is state mandated is one of law in the instant case (cf. *Carmel Valley Fire Protection Dist. v. State of California, supra*, 190

¹³ State argues that its statute of limitations did not commence until the legislation was enacted without the appropriation (Sept. 28, 1985), citing *Carmel Valley Fire Protection Dist. v. State of California, supra*, 190 Cal.App.3d at page 548. However, *Carmel Valley* held that the claimant does not exhaust its administrative remedies and cannot come under the court's jurisdiction until the legislative process is complete, which occurred in that case when the legislation was enacted without the subject appropriations. At that point, *Carmel Valley* reasoned, the state had breached its duty to reimburse, and the claimant's right of action in traditional mandamus accrued. (*Ibid.*) However, *Carmel Valley* decided, as do we in the case at bar, that the state's statute of limitations commenced on the date the Board made decisions adverse to its interests. (*Id.* at p. 534.)

In addition, we see no reason to permit State to rely on the fortuitous actions of the Legislature, an independent branch of government, to bail it out of obligations established in the distant past by state agents -- especially given the lengthy three-year statute of limitations. (Compare, e.g., *Gov. Code*, § 11523 [mandatory time limit within which to petition for administrative mandamus can be 30 days after last day on which administrative reconsideration can be ordered]; *Lab. Code*, § 1160.8, and *Jackson & Perkins Co. v. Agricultural Labor Relations Board* (1978) 77 Cal.App.3d 830, 834 [144 Cal.Rptr. 166] [30 days from issuance of board order even if party has filed a motion to reconsider].)

¹⁴ LBUSD contends that State should be equitably estopped from challenging the Board decisions. In the absence of a confidential relationship, the doctrine of equitable estoppel is inapplicable where there is a mistake of law. (*Gilbert v. City of Martinez* (1957) 152 Cal.App.2d 374, 378 [313 P.2d 139]; *People v. Stuyvesant Ins. Co.* (1968) 261 Cal.App.2d 773, 784 [68 Cal.Rptr. 389].) There is no confidential relationship herein, and since we conclude as a matter of law and contrary to the trial court that the statute of limitations does not bar State from litigating the mandate and reimbursability issues, the doctrine is inapplicable.

Cal.App.3d at p. 536), we now decide that the expenditures are reimbursable pursuant to article XIII B, section 6 of the California Constitution and that no relief is available under section 2234.¹⁵

[***22] [*172] *A. Recovery Under Article XIII B, Section 6*

CA(9a)[↑] (9a) On November 6, 1979, California voters passed initiative measure Proposition 4, which added article XIII B to the state Constitution. This measure, a corollary to the previously passed Proposition 13 (art. XIII A, which restricts governmental taxing authority), placed limits on the growth of state and local government appropriations. It also provided reimbursement to local governments for the costs of complying with certain requirements mandated by the state. LBUSD argues that section 6 of this provision is an additional ground for reimbursement.

1. The Executive Order Requires a Higher Level of Service

In relevant part article XIII B, section 6 (Section 6) provides: **HN4[↑]** "Whenever the Legislature or any state agency mandates a new program or higher level of service on any [*460] 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"

CA(10)[↑] (10) The subvention requirement of Section 6 "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].) [***23] "[T]he 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." (*Ibid.*)

CA(9b)[↑] (9b) In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly governmental function. (Cf. *Carmel Valley Fire Protection Dist. v. State of California, supra*, 190 Cal.App.3d at p. 537.) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a "program" within the meaning of Section 6.

State argues that the Executive Order does not mandate a higher level of service -- or a new program -- because school districts in California have a constitutional duty to make an effort to eliminate racial segregation in the public schools. In support of its argument, State cites *Brown v. Board of Education* (1952) 347 U.S. 483, 495 [98 L.Ed. 873, 881, 74 S.Ct. 686, 38 A.L.R.2d 1180]; [***24] *Jackson v. Pasadena City School District* (1963) 59 Cal.2d 876, 881 [31 Cal.Rptr. 606, 382 P.2d 878]; *Crawford v. Board of Education* (1976) 17 Cal.3d 280 [130 Cal.Rptr. 724, 551 P.2d 28] and cases cited therein; and *National Assn. for Advancement of Colored People v. San Bernardino [173] City Unified Sch. Dist.* (1976) 17 Cal.3d 311 [130 Cal.Rptr. 744, 551 P.2d 48]. These cases show that school districts do indeed have a constitutional obligation to alleviate racial segregation, and on this ground the Executive Order does not constitute a "new program." However, although school districts are required to "take steps, insofar as reasonably feasible, to alleviate racial imbalance in schools regardless of its cause[]" (*Crawford, supra*, at p. 305, italics

¹⁵We invited State, DOE, and LBUSD to submit additional briefing on the following issues: "1. Can it be determined as a question of law whether sections 90 through 101 of Title 5 of the California Administrative Code [Executive Order] constitute a state mandate within the meaning of article XIII B, section 6 of the California Constitution? 2. Do the above sections constitute such mandate?" State and LBUSD submitted additional argument; DOE declined the invitation.

omitted, citing *Jackson*), the courts have been wary of requiring specific steps in advance of a demonstrated need for intervention (*Crawford*, at pp. 305-306; *Jackson*, *supra*, at pp. 881-882; *Swann v. Board of Education* (1971) 402 U.S. 1, 18-21 [28 L.Ed.2d 554, 567-570, 91 S.Ct. 1267]). [***25] On the other hand, courts have required specific factors be considered in determining whether a school is segregated (*Keyes v. School District No. 1, Denver, Colo.* (1973) 413 U.S. 189, 202-203 [37 L.Ed.2d 548, 559-560, 93 S.Ct. 2686]; *Jackson*, *supra*, at p. 882).

The phrase "higher level of service" is not defined in article XIII B or in the ballot materials. (*County of Los Angeles v. State of California*, *supra*, 43 Cal.3d 46, 50.) 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. (*Id.*, at pp. 54-56.) However, a review of the Executive Order and guidelines shows that a higher level of service is mandated because their requirements go beyond constitutional and case law requirements. Where courts have *suggested* that certain steps and approaches may be helpful, the Executive Order and guidelines *require* specific actions. For example, school districts are to conduct mandatory biennial [***26] racial and ethnic surveys, develop a "reasonably feasible" plan every four years to alleviate and prevent segregation, include certain specific elements in each plan, and take mandatory steps to involve the community, including public hearings which have been advertised in a specific manner. While all these steps fit within the "reasonably feasible" description of *Jackson* and *Crawford*, the point is that these steps are no longer merely being suggested as options which the local school district may [**461] wish to consider but are required acts. These requirements constitute a higher level of service. We are supported in our conclusion by the report of the Board to the Legislature regarding its decision that the Claim is reimbursable: "[O]nly those costs that are above and beyond the regular level of service for like pupils in the district are

reimbursable."

2. *The Executive Order Constitutes a State Mandate*

For the sake of clarity we quote Section 6 in full: "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 [*174] reimburse such local government for the [***27] 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: [para.] (a) Legislative mandates requested by the local agency affected; [para.] (b) Legislation defining a new crime or changing an existing definition of a crime; or [para.] (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.) This amendment became effective July 1, 1980. (Art. XIII B, § 10.) Again, the Executive Order became effective September 16, 1977.

State argues there is no constitutional ground for reimbursement because (a) with reference to the language of exception (c) of Section 6, the Executive Order is neither a statute nor an executive order or regulation implementing a statute; (b) recent legislation limits reimbursement to certain costs incurred after July 1, 1980, the effective date of the constitutional amendment; and (c) LBUSD failed to exhaust administrative procedures for reimbursement of Section 6 claims (Gov. Code, § 17500 et seq.). We conclude that recovery is available [***28] under Section 6.

(a) *Form of Mandate*

State argues the Executive Order is not a state mandate because, with reference to exception (c) of Section 6, it is neither a statute nor an executive order implementing a statute.

CA(11)[↑] (11) HN5[↑] In construing the meaning of Section 6, we must determine the intent of the voters by first looking to the language itself (*County of Los Angeles v. State of California, supra*, 43 Cal.3d 46, 56), which "should be construed in accordance with the natural and ordinary meaning of its words." [Citation.]" (*ITT World Communications, Inc. v. City and County of San Francisco* (1985) 37 Cal.3d 859, 865 [210 Cal.Rptr. 226, 693 P.2d 811].) The main provision of Section 6 states that whenever the Legislature or any state agency "mandates" a new program or higher level of service, the state must provide reimbursement.

CA(12)[↑] (12) We understand the use of "mandates" in the ordinary sense of "orders" or "commands," concepts broad enough to include executive orders as well as statutes. As has been noted, "[t]he concern which prompted the inclusion of section 6 in article XIII B was the perceived [***29] 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.) It is clear that the primary concern of the voters was the increased financial [*175] burdens being shifted to local government, not the form in which those burdens appeared.

We derive support for our interpretation by reference to the ballot summary presented to the electorate. (Cf. *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].) The legislative analyst determined that the amendment would limit the rate of growth of governmental appropriations, require the return of taxes which exceeded amounts appropriated, and "[r]equire the state to reimburse local governments for the costs of complying with 'state mandates.'" [***462] The term "state mandates" was [***30]

defined as "requirements imposed on local governments by legislation *or executive orders*." (Italics added; Ballot Pamp., Proposed Amend. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979) p. 16.)

CA(9c)[↑] (9c) Although exception (c) of Section 6 gives the state discretion whether to reimburse pre-1975 mandates which are either statutes or executive orders implementing statutes, we do not infer from this exception that reimbursability is otherwise dependent on the form of the mandate. We conclude that since the voters provided for mandatory reimbursement except for the three narrowly drawn exceptions found in (a), (b), and (c), there was no intent to exclude recovery for state mandates in the form of executive orders. Further, as State sets forth in its brief, the adoption of the Executive Order was "arguably prompted" by the decision in *Crawford v. Board of Education, supra*, 17 Cal.3d 280, a case decided after the 1975 cutoff date of exception (c). Since case law and statutory law are of equal force, there appears to be no basis on which to exclude executive orders which implement case law or constitutional law [***31] while permitting reimbursement for executive orders implementing statutes. We see no relationship between the proposed distinction and the described purposes of the amendment (*County Los Angeles v. State of California, supra*, 43 Cal.3d at p. 56; *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1545 [263 Cal.Rptr. 351]).

(b) *Recent Legislative Limits*

State contends that LBUSD cannot claim reimbursement under Section 6 because Government Code sections 17561 (Stats. 1986, ch. 879, § 6, p. 3041) and 17514 (Stats. 1984, ch. 1459, § 1, p. 5114) limit such recovery to mandates created by statutes or executive orders implementing statutes, and only for costs incurred after July 1, 1980.

As discussed above, the voters did not intend to limit reimbursement of costs only to those incurred

pursuant to statutes or executive orders implementing [*176] statutes except as set forth in exception (c) of Section 6. We presume that when the Legislature passed Government Code sections 17561 and 17514 it was aware of Section 6 as a related law and intended to maintain a consistent [***32] body of rules. (*Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 7 [128 Cal.Rptr. 673, 547 P.2d 449].) As discussed above, the limitations suggested by State are confined to exception (c).

Further, the state must reimburse costs incurred pursuant to mandates enacted after January 1, 1975, although actual payments for reimbursement were not required to be made prior to July 1, 1980, the effective date of Section 6. (*Carmel Valley Fire Protection Dist. v. State of California, supra*, 190 Cal.App.3d at pp. 547-548; *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182, 191-194 [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.)

(c) Administrative Procedures

The Legislature passed Government Code section 17500 et seq. (Stats. 1984, ch. 1459, § 1, p. 5113), effective January 1, 1985 (Stats. 1984, ch. 1459, § 1, p. 5123), to aid the implementation of Section 6 and to consolidate the procedures for reimbursement [***33] under statutes found in the Revenue and Taxation Code. This legislation created the Commission, which replaced the Board, and instituted a number of procedural changes. (Gov. Code, §§ 17525, 17527, subd. (g), 17550 et seq.) The Legislature intended the new system to provide "the sole and exclusive procedure by which a local agency or school district" could claim reimbursement. (Gov. Code, § 17552.)

CA(13)[↑] (13) State argues that since LBUSD never made its claim before the Commission, it failed to exhaust its administrative [**463] remedies and cannot now receive reimbursement under section 6.

As discussed, the Board decisions favorable to LBUSD became administratively final in 1984. The Commission was not in place until January 1, 1985. There is no evidence in the record that the Commission did not consider these decisions to be final.

State argues the Commission was given jurisdiction over all claims which had not been included in a local government claims bill enacted before January 1, 1985. (Gov. Code, § 17630.) State is correct. However, the subject claim was included in such a bill, but the bill was signed into law after the recommended appropriation had been deleted. Under the statutory [***34] scheme, the only relief offered a disappointed claimant at such juncture is an action in declaratory relief to declare a subject executive order void [*177] (former Rev. & Tax Code, § 2255, subd. (c); Stats. 1982, ch. 1638, § 7, pp. 6662-6663) or unenforceable (Gov. Code, § 17612, subd. (b); Stats. 1984, ch. 1459, § 1, p. 5121) and to enjoin its enforcement. LBUSD pursued this remedy and in addition petitioned for writ of mandate (Code Civ. Proc., § 1085) to compel reimbursement. There is no requirement to seek further administrative review. Indeed, to do so after the Legislature has spoken would appear to be an exercise in futility.

We conclude that Section 6 provides reimbursement to LBUSD because the Executive Order required a higher level of service and because the Executive Order constitutes a state mandate.

B. Section 2234

As set forth in the procedural history of this case, the Board originally declined to consider the Claim as a claim made under section 2234 on the ground that it lacked jurisdiction to do so. LBUSD petitioned for judicial relief, and the trial court held that the Board had jurisdiction and must consider the claim on its merits. The Board did not [***35] appeal that decision. State raised the jurisdiction issue as an affirmative defense to the second

petition for writ of mandate filed by LBUSD and presents it again for our consideration.

CA(14)[↑] (14) Of course, **HN6[↑]** lack of subject matter jurisdiction may be raised at any time. (*Stuck v. Board of Medical Examiners* (1949) 94 Cal.App.2d 751, 755 [211 P.2d 389].)

Former section 2250 provided: "The State Board of Control, pursuant to the provisions of this article, shall hear and decide upon a claim by a local agency or school district that such local agency or school district has not been reimbursed for *all costs mandated by the state as required by Section 2231 or 2234*. [para.] Notwithstanding any other provision of law, this article shall provide the sole and exclusive procedure by which the Board of Control shall hear and decide upon a claim that a local agency or school district has not been reimbursed for *all costs mandated by the state as required by Section 2231 or 2234*." (Italics added; Stats. 1978, ch. 794, § 5, p. 2549.) Given the clear, unambiguous language of the statute, there is no need for construction. (*West Covina Hospital v. Superior Court* (1986) 41 Cal.3d 846, 850 [226 Cal.Rptr. 132, 718 P.2d 119, 60 A.L.R.4th 1257].)

[***36] **CA(15a)[↑]** (15a) We conclude that the Board had jurisdiction to consider a claim filed under former section 2234. However, as discussed below, the 1977 Executive Order falls outside the purview of section 2234.

Former section 2231 provided: "(a) . . . The state shall reimburse each school district only for those 'costs mandated by the state', as defined in [*178] Section 2207.5." (Stats. 1982, ch. 1586, § 3, p. 6264.) In part, former section 2207.5 defines "costs mandated by the state" as increased costs which a school district is required to incur as a result of certain new programs or certain increased program levels or services mandated by an executive order issued *after* January 1, 1978. (Stats. 1980, ch. 1256, § 5, pp. 4248-4249.) As previously stated, the Executive Order in the case at bar was issued September 8, 1977.

Former section 2234, pursuant to which LBUSD initially filed its claim, does not itself contain language indicating a time limitation: "If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the [***464] local agency or school district for such costs incurred after the operative [***37] date of such mandate." (Stats. 1980, ch. 1256, § 11, p. 4251.)

State asserts that the January 1, 1978, limitation of sections 2231 and 2207.5 applies to section 2234, preventing reimbursement for costs expended pursuant to the September 8, 1977, Executive Order; LBUSD argues section 2234 is self-contained and without time limitation.

CA(16)[↑] (16) It is a fundamental rule of statutory construction that **HN7[↑]** a statute should be construed with reference to the whole system of law of which it is a part in order to ascertain the intent of the Legislature. (*Moore v. Panish* (1982) 32 Cal.3d 535, 541 [186 Cal.Rptr. 475, 652 P.2d 32]; *Pitman v. City of Oakland* (1988) 197 Cal.App.3d 1037, 1042 [243 Cal.Rptr. 306].) The legislative history of a statute may be considered in ascertaining legislative design. (*Walters v. Weed* (1988) 45 Cal.3d 1, 10 [246 Cal.Rptr. 5, 752 P.2d 443].)

The earliest version of section 2234 is found in former section 2164.3, subdivision (f), which provided reimbursement to a city, county, or special district for "a service or program [provided] at its [***38] option which is subsequently mandated by the state" Reimbursement was limited to costs mandated by statutes or executive orders enacted or issued after January 1, 1973. (Stats. 1972, ch. 1406, § 3, pp. 2962-2963.)

In 1973, section 2164.3 was amended to provide reimbursement to school districts for costs mandated by statutes enacted after January 1, 1973 (subd. (a)), *but it expressly excluded school*

districts from reimbursement for costs mandated by executive orders (subd. (d)). (Stats. 1973, ch. 208, § 51, p. 565.) Later that same year, the Legislature repealed section 2164.3 (Stats. 1973, ch. 358, § 2, p. 779) and added section 2231, which took over the pertinent [*179] reimbursement provisions of section 2164.3 virtually unchanged. (Stats. 1973, ch. 358, § 3, pp. 779, 783-784.)

In 1975, the Legislature removed the time limitation language from section 2231 and incorporated it into a new section, 2207. (Stats. 1975, ch. 486, § 1.8, pp. 997-998.) After this change, section 2231 then provided in pertinent part: "(a) The state shall reimburse each local agency for all 'costs mandated by the state', as defined in Section 2207. *The state shall reimburse each school [***39] district only for those 'costs mandated by the state' specified in subdivision (a) of Section 2207*" (Italics added; Stats. 1975, ch. 486, § 7, pp. 999-1000.) Subdivision (a) of section 2207 limited reimbursement solely to costs mandated by statutes enacted after January 1, 1973.

At this same juncture, the Legislature further amended section 2231 by deleting the provision for "subsequently mandated" services or programs and incorporating that provision into a new section, 2234 (Stats. 1975, ch. 486, § 9, p. 1000), the section under which LBUSD would eventually make its claim. The substance of section 2234 (see fn. 2, *ante*) remained unchanged until its repeal in 1986. (Stats. 1977, ch. 1135, § 8.6, p. 3648; Stats. 1980, ch. 1256, § 11, pp. 4251-4252; Stats. 1986, ch. 879, § 25, p. 3045.)

Next, section 2231 was amended to show that with regard to school districts, "costs mandated by the state" were now defined by a new section, 2207.5. (Stats. 1977, ch. 1135, § 7, pp. 3647-3648.) Section 2207.5 limited reimbursement to costs mandated by statutes enacted after January 1, 1973, and executive orders issued after January 1, 1978. (Stats. 1977, ch. 1135, § 5, pp. [***40] 3646-3647.) (No further pertinent amendments to section 2231 occurred; see Stats. 1978, ch. 794, § 1.1, p.

2546; Stats. 1980, ch. 1256, § 8, pp. 4249-4250; Stats. 1982, ch. 734, § 3, p. 2912.) The distinction between statutes and executive orders was preserved when section 2207.5 was amended in 1980 (Stats. 1980, ch. 1256, § 5, pp. 4248-4249) and was in effect at the time of the Board hearing.

CA(15b)[7] (15b) This survey teaches us that with respect to the reimbursement process, the Legislature has treated school districts differently than it has treated other local government entities. The Legislature initially did not give school districts the right to recover costs mandated by executive orders; and when this option was made available, the [**465] effective date differed from that applicable to other entities. The Legislature consistently limited reimbursement of costs by reference to the effective dates of statutes and executive orders and nothing indicates the state intended recovery of costs to be open-ended.

[*180] Because the "subsequently mandated" provision of section 2234 originally was contained in sections which set forth specific date limitations (former sections 2164.3 and 2231), we conclude [***41] the Legislature likewise intended to limit claims made pursuant to section 2234. The use of the language "subsequently mandated" merely describes an additional circumstance in which the state will reimburse costs, provided the claimant meets other requirements. Since the September 1977 Executive Order falls outside the January 1, 1978, limit set by section 2207.5, section 2234 does not provide for reimbursement to LBUSD.

III. The Award

The full text of the award as provided by the judgment is set forth in an appendix to this opinion. In part, the judgment states that there are appropriated funds in budgets for the DOE, the Commission, the Reserve for Contingencies or Emergencies, and the Special Fund for Economic Uncertainties, "or similarly designated accounts" which are "reasonably available" to reimburse

LBUSD for the state mandated costs it has incurred. (Appendix, pars. 3, 2.) The State Controller is commanded to pay the claims plus interest "at the legal rate" from the described appropriations for fiscal years 1984-1985 through 1987-1988 and "subsequently enacted State Budget Acts." (Appendix, par. 7.) The judgment declares that the deletion of funding for reimbursement [***42] of costs incurred in compliance with the Executive Order was invalid and unconstitutional. (Appendix, par. 12.) Finally, the Fines and Forfeiture Funds in the custody of the Auditor-Controller of Los Angeles County are held to be not reasonably available for reimbursement. (Appendix, par. 5.)

A. State Position

CA(17a)[↑] (17a) State contends the trial court's award is contrary to California law, asserting that it constitutes an invasion of the province of the Legislature and therefore a judicial usurpation of the republican form of government guaranteed by the United States Constitution, Article IV, section 4.

CA(18)[↑] (18) **HN8[↑]** A court cannot compel the Legislature either to appropriate funds or to pay funds not yet appropriated. (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]; Carmel Valley Fire Protection Dist. v. State of California, supra, 190 Cal.App.3d at p. 538.) However, no violation of the separation of powers doctrine occurs when a court orders appropriate expenditures from already existing funds. (Mandel, at p. 540; Carmel Valley, at [***43] pp. 539-540.) The test is whether such funds are "reasonably available for the [*181] expenditures in question . . ." (Mandel, at p. 542; Carmel Valley, at pp. 540-541.) Funds are "reasonably available" for reimbursement when the purposes for which those funds were appropriated are "generally related to

the nature of costs incurred . . ." (Carmel Valley, at p. 541.) There is no requirement that the appropriation specifically refer to the particular expenditure (Mandel at pp. 543-544, Carmel Valley at pp. 540; Committee to Defend Reproductive Rights v. Cory (1982) 132 Cal.App.3d 852, 857-858 [183 Cal.Rptr. 475]), nor must past administrative practice sanction coverage from a particular fund (Carmel Valley, at p. 540.)

CA(17b)[↑] (17b) As previously stated, the trial court found the subject funds were "reasonably available." No party requested a statement of decision, and therefore it is implied that the trial court found all facts necessary to support its judgment. (Michael [**466] U. v. Jamie B. (1985) 39 Cal.3d 787, 792-793 [218 Cal.Rptr. 39, 705 P.2d 362]; Homestead Supplies, Inc. v. Executive Life Ins. Co. (1978) 81 Cal.App.3d 978, 984 [147 Cal.Rptr. 22].) [***44] We now examine the record to ascertain whether substantial evidence supports the decision of the trial court.

The Board having approved reimbursement under the Executive Order, reported to the Legislature that "[t]he categories of reimbursable costs include, but are not limited to: (1) voluntary pupil assignment or reassignment programs, (2) magnet schools or centers, (3) transportation of pupils to alternative schools or programs, (5) [*sic*, no item (4)] racially isolated minority schools, (6) costs of planning, recruiting, administration and/or evaluation, and (7) overhead costs." The guidelines set out comprehensive steps to be taken by school districts in order to be in compliance with the Executive Order.

The peremptory writ of mandate, issued the same date as the judgment, designated funds in specific account numbers and, in addition, a special fund as available for reimbursement. We take judicial notice of the relevant budget enactments and Government Code sections 16418 and 16419 (Evid. Code, §§ 459, subd. (a), 452) and address

these designations seriatim.

The line item account numbers for the DOE for fiscal years 1984-1985 through 1987-1988 set forth in the writ are [***45] as follows: 6100-001-001, 6100-001-178, 6100-015-001, 6100-101-001, 6100-114-001, 6100-115-001, 6100-121-001, 6100-156-001, 6100-171-178, 6100-206-001, 6100-226-001.

An examination of the relevant budget acts Statutes 1985, chapter 111; Statutes 1986, chapter 186; Statutes 1987, chapter 135; and final budgetary changes as published by the Department of Finance for each year, shows [*182] that appropriations in the 11 DOE line item account numbers have supported a very broad range of activities including reimbursement of costs for both mandated and voluntary integration programs, assessment programs, child nutrition, meals for needy pupils, participation in educational commissions, administration costs of various programs, proposal review, teacher recruitment, analysis of cost data, school bus driver instructor training, shipping costs for instructional materials, local assistance for school district transportation aid, summer school programs, local assistance to districts with high concentrations of limited- and non-English-speaking children, adult education, driver training, Urban Impact Aid, and cost of living increases for specific programs. Further evidence regarding the [***46] uses of these funds is found in the deposition testimony of William C. Pieper, Deputy Superintendent for Administration with the State Department of Education, who stated that local school districts were being reimbursed for the costs of desegregation programs from line item account numbers 6100-114-001 and 6100-115-001 in the 1986 State Budget Act.

Comparing the requirements of the Executive Order and guidelines with the broad range of activities supported by the DOE budget, we conclude that the subject funds, although not specifically appropriated for the reimbursement in question, were generally related to the nature of the costs incurred.

With regard to the Commission, the writ sets out three line item account numbers: 8885-001-001; 8885-101-001; and 8885-101-214. A review of the relevant budget acts shows that the first line item provides funding for support of the Commission, and line item number 8885-101-001 provides funding specifically for local assistance "in accordance with the provisions of Section 6 of Article XIII B of the California Constitution . . ." (Stats. 1986, ch. 186.) Line item number 8885-101-214 also provides funds for "local assistance." Since the Commission [***47] was created specifically to effect reimbursements for qualifying claims, we conclude there is a general relationship between the purpose of the appropriations and the requirements of the Executive Order.

Line item 9840-001-001 of the Reserve for Contingencies or Emergencies defines "contingencies" as "proposed expenditures [**467] arising from unexpected conditions or losses for which no appropriation, or insufficient appropriation, has been made by law and which, in the judgment of the Director of Finance, constitute cases of actual necessity." (All relevant budget acts.) In the instant case, previous to the issuance of the Executive Order, LBUSD could not have anticipated the expenditures necessary to bring it into compliance. Further, the Legislature refused to appropriate the necessary funds [*183] to directly reimburse the district for these expenditures. The necessity exists by virtue of the writ and judgment issued by the trial court. Therefore, this line item, and three others which also support the reserve (9840-001-494, 9840-001-988, 9840-011-001) are generally related to the costs.¹⁶

¹⁶ The costs do not come within past or current definitions of "emergency," which are, respectively, as follows. "[P]roposed expenditures arising from unexpected conditions or losses for which no appropriation, or insufficient appropriation, has been made by law and which in the judgment of the Director of Finance require immediate action to avert undesirable consequences or to preserve the public peace, health or safety." (Fiscal years 1984-1985, 1985-1986.) "[E]xpenditure incurred in response to conditions of disaster or extreme peril which threaten the health or safety of persons or property within the state." (Fiscal years 1986-1987 forward.)

[***48] Finally the writ lists as sources of reimbursement the Special Fund for Economic Uncertainties "or similarly designated accounts" An examination of Government Code sections 16418 and 16419 relating to the special fund shows only one use of this reserve: establishment of the Disaster Relief Fund "for purposes of funding disbursements made for response to and recovery from the earthquake, aftershocks, and any other related casualty." No evidence in the record indicates a general relationship between this purpose and the costs incurred by LBUSD. We conclude, therefore, that this source of funding cannot be used for reimbursement. This source is stricken from the judgment.

The description of further sources of funding as "similarly designated accounts" fails to sufficiently identify these sources and we therefore strike this part of the judgment.

In a supplemental brief, LBUSD requests this court to take judicial notice of the Budget Acts of 1988-1989 (Stats. 1988, ch. 313) and 1989-1990 (Stats. 1989, ch. 93) pursuant to the Evidence Code (Evid. Code, §§ 451, subd. (a), 452, subd. (a), 452, subd. (c), 459) and to order that the amounts set forth in the judgment and writ be [***49] satisfied from specific line item accounts in these later budgets and from the Special Fund for Economic Uncertainties.¹⁷

CA(19)[↑] (19) "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. [Citation.]" (Carmel Valley, supra, 190 Cal.App.3d

¹⁷LBUSD identifies the line items accounts as follows: DOE -- 6110-001-001, 6110-001-178, 6110-015-001, 6110-101-001, 6110-114-001, 6110-115-001, 6110-121-001, 6110-156-001, 6110-171-178, 6110-226-001, 6110-230-001; Commission -- 8885-001-001, 8885-101-001, 8885-101-214; Reserve for Contingencies or Emergencies -- 9840-001-001, 9840-001-494, 9840-001-988, 9840-011-001.

at p. 557.)

CA(17c)[↑] (17c) We have reviewed the designated budget acts and conclude that the specified line item accounts for DOE, the Commission, [*184] and the Reserve for Contingencies and Emergencies provide funds for a broad range of activities similar to those set out above and therefore [***50] are generally related to the nature of the costs incurred. However, for the reasons previously discussed, we decline to designate the Special Fund for Economic Uncertainties as a source for reimbursement.

While we have concluded that certain line item accounts are generally related to the nature of the costs incurred, there must also be evidence that at the time of the order the enumerated budget items contained sufficient funds to cover the award. (Gov. Code, § 12440; Mandel v. Myers, supra, 29 Cal.3d at p. 543; Carmel Valley, supra, 190 Cal.App.3d at p. 541; cf. Baggett v. Dunn (1886) 69 Cal. 75, 78 [10 P. 125]; Marshall v. Dunn (1886) 69 Cal. 223, 225 [10 P. 399].) The record before [***468] us contains evidence regarding balances at various points in time for some of the line item accounts, but that evidence is primarily in the form of uninterpreted statistical data. We have not found a clear statement which would satisfy this requirement. Furthermore, not every line item was in existence every fiscal year. In addition, those which [***51] entered the budgetary process did not always survive it unscathed. Therefore, we remand the matter to the trial court to determine with regard to the line item account numbers approved above whether funds sufficient to satisfy the award were available at the time of the order. (Cf. County of Sacramento v. Loeb (1984) 160 Cal.App.3d 446, 454-455 [206 Cal.Rptr. 626].) If the trial court determines that the unexhausted funds remaining in the specified appropriations are insufficient, the trial court order can be further amended to reach subsequent appropriated funds. (County of Sacramento at p. 457; Serrano v. Priest (1982) 131 Cal.App.3d 188, 198 [182 Cal.Rptr.

387].)

CA(20)[↑] (20) Having concluded that certain appropriations are generally available to reimburse LBUSD, we turn to an additional issue raised by State: that the "finding" by the Legislature that the Executive Order does not impose a "state-mandated local program" prevents reimbursement.

Unsupported legislative disclaimers are insufficient to defeat reimbursement. (*Carmel Valley, supra*, 190 Cal.App.3d at pp. 541-544.) As discussed, [***52] LBUSD, pursuant to Section 6, has a constitutional right to reimbursement of its costs in providing an increased service mandated by the state. The Legislature cannot limit a constitutional right. (*Hale v. Bohannon* (1952) 38 Cal.2d 458, 471 [241 P.2d 4].)

B. DOE Contentions

DOE is sympathetic to LBUSD's position. On appeal, it takes no stand on the issue whether the Executive Order constitutes a state mandate within [*185] the meaning of Section 6.

CA(21)[↑] (21) The thrust of its appeal is that, if there is a mandate, the DOE budget is an inappropriate source of funding in comparison with other budget line item accounts included in the order.

We conclude to the contrary because logic dictates that DOE funding be the initial and primary source for reimbursement. As discussed, the test set forth in *Mandel* and *Carmel Valley* is whether there is a general relationship between budget items and reimbursable expenditures. Since the Executive Order was issued by DOE, it is not surprising that the evidence overwhelmingly supports the finding of the trial court that this general relationship exists with regard to the DOE budget.

While we also have concluded [***53] that certain line item accounts for entities other than DOE are also appropriate sources of funding, the record does not provide the statistical data necessary to

determine how far the order will reach with regard to these additional sources of support.

DOE also contends that reimbursement for expenditures in fiscal years 1977-1978, 1978-1979, and 1979-1980 cannot be awarded under Section 6 because the amendment was not effective until July 1, 1980. As discussed, this argument has been previously rejected. (*Carmel Valley Fire Protection Dist. v. State of California, supra*, 190 Cal.App.3d at pp. 547-548; *City of Sacramento v. State of California, supra*, 156 Cal.App.3d 182, 191-194, disapproved on other grounds in *County of Los Angeles v. State of California, supra*, 43 Cal.3d 46, 58, fn. 10.)

CA(22)[↑] (22) Finally, DOE contends that interest should have been awarded at the rate of 6 percent per annum pursuant to Government Code section 926.10 rather than at the legal rate provided under article XV, section 1, paragraph (2) of the California Constitution.

Government Code section [***54] 926.10 is part of the California Tort Claims Act (Gov. Code, § 900 et seq.) which provides a statutory scheme for the filing of claims against public entities for alleged injuries; it makes no provision for claims for reimbursement [**469] for state mandated expenditures. In *Carmel Valley* a judgment awarding interest at the legal rate was affirmed. (*Carmel Valley Fire Protection Dist. v. State of California, supra*, 190 Cal.App.3d at p. 553.) We decline the invitation of DOE to apply another rule.

C. Cross Appeal of LBUSD

CA(23)[↑] (23) LBUSD seeks reversal of that part of the judgment holding that monies in the Fines and Forfeitures Funds in the custody and possession of [*186] cross-respondent Auditor-Controller of the County of Los Angeles (County Controller) for transfer to the state treasury are not reasonably available for reimbursement of its state

mandated expenditures.¹⁸

[***55] As previously stated, funds are "reasonably available" when the purposes for which those funds were appropriated are generally related to the nature of the costs incurred. (*Carmel Valley, supra*, 190 Cal.App.3d at pp. 540-541.) LBUSD does not cite, nor have we found, any evidence in the record showing the use of those funds once they are transmitted to the state and that those funds are then "reasonably available" to satisfy the Claim. We cannot conclude as a matter of law that a general relationship exists between those funds and the nature of the costs incurred pursuant to the Executive Order. LBUSD has failed to carry its burden of proof and the trial court correctly decided these funds were not "reasonably available" for reimbursement.

Nor have we concluded that there is any ground on which the funds could be made available to LBUSD while in the possession of the county Auditor-Controller. The instant case differs from *Carmel Valley* wherein we affirmed an order which authorized a county to satisfy its claims against the state by offsetting fines and forfeitures it held which were due the state. The *Carmel Valley, supra*, 190 Cal.App.3d 521, [***56] holding was based on the right of offset as "a long-established principle of equity." (*Id.* at p. 550.) That is a different standard than the standard of "generally related to the nature of costs incurred." In the case at bar there is no set-off relationship between county and LBUSD.

We conclude that because the doctrines of collateral estoppel and waiver are inapplicable to the facts of this case, the trial court should have allowed State to challenge the decisions of the Board. However, we also determine, as a question

of law, that the Executive Order requires local school boards to provide a higher level of service than is required constitutionally or by case law and that the Executive Order is a reimbursable state mandate pursuant to article XIII B, section 6 of the California Constitution. Former Revenue and Tax Code section 2234 does not provide reimbursement of the subject claim.

[*187] Based on uncontradicted evidence, we modify the decision of the trial court by striking as sources of reimbursement the Special Fund for Economic Uncertainties "or similarly designated accounts." We also modify the judgment to include charging orders against [***57] certain funds appropriated through subsequent budget acts.

We affirm the decision of the trial court that the Fines and Forfeitures Funds are not "reasonably available" to satisfy the Claim.

Finally, we remand the matter to the trial court to determine whether at the time of its order, unexpended, unencumbered funds sufficient to satisfy the judgment remained in the approved budget line item account numbers. The trial court is also directed to determine this same issue with respect to the charging order.

The judgment is affirmed as modified. Each party is to bear its own costs on appeal.

[*188] [**470] Appendix

The superior court judgment provides in pertinent part: "It Is Ordered, Adjudged and Decreed That: "1. The requirements contained in Title 5, California Administrative Code, Sections 90-101 constitute a reimbursable State-mandate which cannot be challenged by State Respondents or Respondent DOE because of the doctrines of administrative collateral estoppel and waiver.

"2. There are appropriated funds from specified line items in the 1984, 1985, 1986 and 1987 budgets which are 'reasonably available' to reimburse Petitioner for State-mandated costs it has occurred [*sic*] as [***58] a result of its compliance with the

¹⁸In its first amended petition, LBUSD listed the following code sections as appropriate sources of reimbursement: " Penal Code Sections 1463.02, 1463.03, 1403.5A and 1464; Government Code Sections 13967, 26822.3 and 72056; Health and Safety Code Section 11502; and Vehicle Code Sections 1660.7, 42003, and 41103.5."

requirements of Title 5, California Administrative Code, Sections 90-101.

"3. The funds appropriated by the Legislature for:

"(a) the support of the Department of Education, including, but not limited, to the Department's General Fund;

"(b) the Commission on State Mandates, including, but not limited to the State Mandates Claim Fund; and

"(c) the 'Reserve for Contingencies or Emergencies', 'Special Fund for Economic Uncertainties' or similarly designated accounts, are 'reasonably available' and may properly be and should be encumbered and expended for the reimbursement of State-mandated costs in the amount of \$ 28,014,869.00, plus applicable interest, as incurred by Petitioner and as computed by Petitioner in compliance with Parameters and Guidelines adopted by the State Board of Control.

"4. The law in effect at the time that Petitioner's claim was processed provided for the computation of a specific claim amount for specific fiscal years based on Parameters and Guidelines, or claiming instructions, adopted in April 1984 and a Statewide Cost Estimate adopted on August 23, 1984, both of which are administrative actions of the State Board of Control [***59] which have not been challenged by State Respondents. The computations made pursuant to the Parameters and Guidelines and Statewide Cost Estimate are specific and ascertainable and subject to audit by the State Controller under Government Code section 17558.

"5. The Court decrees that State funds entitled the 'Fines and Forfeitures Funds' under the custody and control of Respondent Bloodgood, are not reasonably available for satisfaction of Petitioner's claim for reimbursement of State-mandated costs.

"6. A peremptory writ of mandamus shall issue under the seal of this Court, commanding State Respondents and Respondent Doe to comply with

Article XIII B, Section 6 of the California Constitution and Government Code Section 17565 and reimburse petitioner for:

"(a) State-mandated costs in the amount of \$ 24,164,593.00, incurred as a result of its compliance with the requirements of Title 5, California Administrative Code, Sections 90-101 during fiscal years 1977-78 through 1982-1983, plus interest at the legal rate from September 28, 1985; and

"(b) State-mandated costs in the amount of \$ 3,850,276.00, incurred as a result of Petitioner's compliance with the requirements of Title 5, California [***60] Administrative Code, Sections 90-101 during fiscal years 1983-84 and 1984-85, plus interest at the legal rate from September 28, 1985.

"7. Said peremptory writ shall command Respondent Gray Davis, State Controller, or his successor-in-interest, to pay the claims of Petitioner, plus interest at the legal rate from [*189] September 28, 1985 from the appropriations in the State Budget Acts for the 1984-85, 1985-86, 1986-87 and 1987-88 fiscal years, and the subsequently enacted State Budget Acts, which include, or will include appropriations for:

"(a) the support of the Department of Education, including, but not limited to the Department's General Fund;

"(b) the Commission on State Mandates, including, but not limited to the State Mandates Claim Fund; and

"(c) the 'Reserve for Contingencies or Emergencies', Special Fund for Economic [**471] Uncertainties' or similarly designated accounts, which are 'reasonably available' to be encumbered and expended for the reimbursement of State-mandated costs incurred by Petitioner and further shall compel Elizabeth Whitney, Acting State Treasurer, or her successor-in-interest, to make

payments on the warrants drawn by Respondent Gray Davis, State Controller [***61] upon their presentation for payment by Petitioner without offset or attempt to offset against other monies due and owing Petitioner until Petitioner is reimbursed for all such costs.

"8. Said Peremptory Writ of Mandate also shall command Respondent Jesse R. Huff, Director of the State Department of Finance, to perform such actions as may be necessary to effect reimbursement required by other portions of this Judgment, including but not limited to, those actions specified in Chapter 135, Statutes of 1987, Section 2.00, pp. 549-553, or with respect to the Special Fund for Economic Uncertainties.

"9. Pending the final disposition of this proceeding, State Respondents and Respondent DOE, 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 or restrained from directly or indirectly expending from the appropriations described in Paragraph No. 7 hereinabove any sums greater than that which would leave in said appropriations at the conclusion of the respective fiscal years an amount less than the reimbursement amounts claimed by Petitioner together with interest at the legal rate through [***62] payment of said reimbursement amount. Said amounts are hereinafter referred to collectively as the 'reimbursement award sum'.

"10. Pending the final disposition of this proceeding State Respondents and Respondent DOE, 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 causing to revert the reimbursement award sum from the appropriations described in Paragraph No. 7 hereinabove 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.

"11. The State Respondents and Respondent Doe have a continuing obligation to reimburse Petitioner for costs incurred in compliance with the requirements contained in Title 5, California Administrative Code, Section 90-101 in the fiscal years subsequent to its [sic] claims for expenditures in fiscal years 1977-78 through 1984-85 as set forth in the First Amended Petition, as amended, and the accompanying Motion For the Issuance Of A Writ Of Mandate.

"12. The deletion of funding [***63] for reimbursement of State-mandated costs incurred in compliance with Title 5, California Administrative Code, Sections 90-101 from Chapter 1175, Statutes of 1985 was invalid and unconstitutional.

"13. Respondent Gray Davis, State Controller, shall retain the right to audit the claims and records of the Petitioner pursuant to Government Code Section 17561(d) to verify the actual dollar amount of the reimbursement award sum.

"14. The Court reserves and retains jurisdiction to effect any appropriate remedy at law or equity which may be necessary to enforce its judgment or order.

[*190] "15. Petitioner shall recover from State Respondents and Respondent DOE costs in this proceeding in the amount of 1,863.54.


 Go _____ to _____ table 1

Table1 ([Return to related document text](#))

"Dated: 3-2, 1988

"/s/ Weil

"Robert I. Weil

"Judge of The Superior Court"

Table1 ([Return to related document text](#))

End of Document

Voices of the Wetlands v. State Water Resources Control Bd.

Supreme Court of California

August 15, 2011, Filed

S160211

Reporter

52 Cal. 4th 499 *; 257 P.3d 81 **; 128 Cal. Rptr. 3d 658 ***; 2011 Cal. LEXIS 8117 ****; 41 ELR 20268

VOICES OF THE WETLANDS, Plaintiff and Appellant, v. STATE WATER RESOURCES CONTROL BOARD et al., Defendants and Respondents; DUKE ENERGY MOSS LANDING, LLC, et al., Real Parties in Interest and Appellants.

record, decisions, cooling water, Warren-Alquist Act, technologies, cooling system, proceedings, issuance, costs, disproportionate, cost-benefit, final judgment, generating, environmental benefits, state water, modifications

Subsequent History: Reported at Voices of the Wetlands v. State Water Resources Control Board (Duke Energy Moss Landing, LLC), 2011 Cal. LEXIS 8766 (Cal., Aug. 15, 2011)

Time for Granting or Denying Rehearing Extended Voices of the Wetlands v. California State Water Resources Control Board (Duke Energy Moss Landing, LLC), 2011 Cal. LEXIS 9394 (Cal., Sept. 12, 2011)

Request denied by Voices of the Wetlands v. Cal. State Water Res. Control Bd., 2011 Cal. LEXIS 10654 (Cal., Oct. 12, 2011)

Prior History: [****1] Superior Court of Monterey County, No. M54889, Robert A. O'Farrell, Judge. Court of Appeal, Sixth Appellate District, No. H028021.

Voices of the Wetlands v. California State Water Resources Control Bd., 157 Cal. App. 4th 1268, 69 Cal. Rptr. 3d 487, 2007 Cal. App. LEXIS 2024 (Cal. App. 6th Dist., 2007)

Core Terms

Regional, Energy, water board, certification, renewal, plant, powerplant, mandamus, reconsideration, regulations, court of appeals, superior court, trial court, intake, administrative

Case Summary

Procedural Posture

Plaintiff, an environmental organization, filed an administrative mandamus action challenging the issuance of a National Pollutant Discharge Elimination System (NPDES) permit by defendant regional water board. The trial court denied the mandamus petition. The California Court of Appeal, Sixth Appellate District, affirmed the trial court's judgment. Plaintiff sought review.

Overview

The NPDES permit authorized a powerplant to draw cooling water from a harbor and slough. The court concluded that the trial court did not err in using an interlocutory remand to resolve perceived deficiencies in the regional water board's best technology available (BTA) finding. In compliance with the trial court's directive, the board engaged in a full reconsideration of the BTA issue, and gave all interested parties, including plaintiff, a noticed opportunity to appear and to present evidence, briefing, and argument pertinent to the BTA determination. The court rejected plaintiff's argument that Code Civ. Proc., § 1094.5, subd. (e), precluded the board from accepting and considering new evidence on remand absent a showing that such evidence could not have been produced at the original administrative proceeding, or was

improperly excluded therefrom. The court further concluded that the board did not err by basing its BTA determination on a finding that the costs of alternative cooling technologies for the powerplant were wholly disproportionate to the anticipated environmental benefits. The board's use of this standard was proper.

Outcome

The judgment of the appellate court was affirmed.

LexisNexis® Headnotes

Environmental

Law > ... > Enforcement > Discharge

Permits > State Water Quality Certifications

HN1 [⚡] **Discharge Permits, State Water Quality Certifications**

The discharge of a "pollutant" from a "point source" into navigable waters may only occur under the terms and conditions of National Pollutant Discharge Elimination System (NPDES) permit, which must be renewed at least every five years. 33 U.S.C. §§ 1311, 1342(a), (b). In California, NPDES permits, which must comply with all minimum federal clean water requirements, are issued under an EPA-approved state water quality control program administered, pursuant to the Porter-Cologne Water Quality Control Act, Wat. Code, § 13000 et seq., by the State Water Board and the nine regional water boards. Wat. Code, §§ 13372, 13377; 33 U.S.C., § 1342(b); 40 C.F.R. §§ 123.21-123.25 (2011); 39 Fed.Reg. 26061 (Jul. 16, 1974); 54 Fed.Reg. 40664-40665 (Oct. 31, 1989).

Administrative Law > Judicial

Review > Standards of Review > De Novo Standard of Review

Environmental

Law > ... > Enforcement > Discharge

Permits > State Water Quality Certifications

Administrative Law > Agency

Adjudication > Review of Initial Decisions

Administrative Law > Judicial

Review > Remedies > Mandamus

HN2 [⚡] **Standards of Review, De Novo Standard of Review**

Pursuant to the Porter-Cologne Water Quality Control Act, Wat. Code, § 13000 et seq., decisions and orders of a regional water board, including the issuance and renewal of National Pollutant Discharge Elimination System permits, are reviewable by administrative appeal to the State Water Board, and then by petition for administrative mandamus in the superior court. Code Civ. Proc., § 1094.5; Wat. Code, §§ 13320, 13330. In the mandamus proceeding, the superior court is obliged to exercise its independent judgment on the evidence before the administrative agency, i.e., to determine whether the agency's findings are supported by the weight of the evidence. § 1094.5, subd. (c); Wat. Code, § 13330, subd. (d).

Energy & Utilities Law > Electric Power

Industry > Siting of Facilities

HN3 [⚡] **Electric Power Industry, Siting of Facilities**

The Warren-Alquist State Energy Resources Conservation and Development Act, Pub. Resources Code, § 25000 et seq., mandates simplified and expedited processing and review of applications to certify the siting, construction, and modification of thermal powerplants. The Act accords the California Energy Commission the exclusive power to certify all sites and related facilities for thermal powerplants with generating capacities of 50 or more megawatts, whether a new site and related facility or a change or addition to an

existing facility. Pub. Resources Code, § 25500.

Energy & Utilities Law > Electric Power
Industry > Siting of Facilities

HN4 **Electric Power Industry, Siting of Facilities**

When a certification application for the siting, construction, and modification of a thermal powerplant is filed, the California Energy Commission undertakes a lengthy review process that involves multiple staff assessments, communication with other state and federal regulatory agencies, environmental impact analysis, and a series of public hearings. Pub. Resources Code, §§ 25519-25521. With one exception, the Commission may not certify a proposed facility that does not meet all applicable federal, state, regional, and local laws. Wat. Code, § 25525. Accordingly, the issuance of a certificate by the Commission shall be in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law, for such use of the site and related facilities, and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law. Wat. Code, § 25500.

Administrative Law > Judicial
Review > Reviewability > Jurisdiction &
Venue

Energy & Utilities Law > Administrative
Proceedings > Judicial Review > General
Overview

Energy & Utilities Law > Electric Power
Industry > Siting of Facilities

HN5 **Reviewability, Jurisdiction & Venue**

The Warren-Alquist State Energy Resources Conservation and Development Act, Pub. Resources Code, § 25000 et seq., constrains judicial review of a California Energy Commission powerplant certification decision. Pub. Resources Code, § 25531, subd. (a), establishes that the California Supreme Court alone has jurisdiction to review powerplant certification decisions by the Commission.

Administrative Law > Judicial
Review > Reviewability > General Overview

Energy & Utilities Law > Electric Power
Industry > Siting of Facilities

HN6 **Judicial Review, Reviewability**

See Pub. Resources Code, § 25531, subd. (c).

Governments > Legislation > Interpretation

HN7 **Legislation, Interpretation**

When interpreting statutes, a court begins with the plain, commonsense meaning of the language used by the legislature. If the language is unambiguous, the plain meaning controls. Potentially conflicting statutes must be read in the context of the entire statutory scheme, so that all provisions can be harmonized and given effect.

Administrative Law > Judicial
Review > Reviewability > Jurisdiction &
Venue

Energy & Utilities Law > Administrative
Proceedings > Judicial Review > General
Overview

Administrative Law > Judicial
Review > Remedies > Mandamus

Energy & Utilities Law > Electric Power

Industry > Siting of Facilities

HN8[↓] Reviewability, Jurisdiction & Venue

Pub. Resources Code, § 25531, subd. (a), of the Warren-Alquist State Energy Resources Conservation and Development Act, Pub. Resources Code, § 25000 et seq., specifies the extent of the California Supreme Court's exclusive direct review jurisdiction as mandated by the Act. Under § 25531, subd. (a), the decisions of the California Energy Commission on any application for certification of a site and related facility are subject to review by the Supreme Court. Read together with § 25531, subd. (a), § 25531, subd. (c), simply confirms that no other court may review directly a certification decision of the Commission, or may otherwise entertain a case or controversy that attacks such a decision indirectly by raising a matter the Commission determined, or could have determined, for purposes of the certification proceeding. Section 25531 neither states nor implies a legislative intent to interfere with normal mandamus review of the actions of another agency, simply because that agency, exercising functions within its exclusive authority, has independently decided an issue the Commission also must or might have addressed for its own purposes.

Administrative Law > Judicial
Review > Reviewability > General Overview

Environmental
Law > ... > Enforcement > Discharge
Permits > State Water Quality Certifications

Administrative Law > Judicial
Review > Remedies > Mandamus

HN9[↓] Judicial Review, Reviewability

Under the federal Clean Water Act, any facility that discharges wastewater into a navigable water source must have an unexpired permit, conforming to federal water quality standards, in order to do so. Only the State Water Board or a regional water

board may issue a federally compliant discharge permit; such a decision is entirely outside, and independent of, the California Energy Commission's authority. Under the Porter-Cologne Water Quality Control Act, Wat. Code, § 13000 et seq., judicial review of the decisions of these agencies, including those to grant or renew National Pollutant Discharge Elimination System permits, is by mandamus in the superior court.

Administrative Law > Judicial
Review > Reviewability > Jurisdiction &
Venue

Energy & Utilities Law > Electric Power
Industry > Siting of Facilities

Environmental
Law > ... > Enforcement > Discharge
Permits > State Water Quality Certifications

HN10[↓] Reviewability, Jurisdiction & Venue

Under the Warren-Alquist State Energy Resources Conservation and Development Act, Pub. Resources Code, § 25000 et seq., only the decisions of the California Energy Commission on any application for certification of a site and related facility are subject to exclusive review in the California Supreme Court, Pub. Resources Code, § 25531, subd. (a), and other courts are deprived of jurisdiction only of a case or controversy concerning a matter which was, or could have been, determined in a proceeding before the Commission. § 25531, subd. (c). A National Pollutant Discharge Elimination System (NPDES) permit decision by a regional water board is not a certification decision. Conversely, under the NPDES permit program, neither certification proceedings, nor findings the Commission may make in connection with such proceedings, can result in the issuance or renewal of an NPDES permit; only the State Water Board and the regional water boards may issue or renew such permits. Hence, a challenge to the issuance or renewal of an NPDES permit is not a case or

52 Cal. 4th 499, *499; 257 P.3d 81, **81; 128 Cal. Rptr. 3d 658, ***658; 2011 Cal. LEXIS 8117, ****1

controversy concerning a matter which was, or could have been, determined by the Commission.

HN13[↓] Remedies, Mandamus

See Code Civ. Proc., § 1094.5, subd. (f).

Administrative Law > Judicial
Review > Reviewability > General Overview

Energy & Utilities Law > Electric Power
Industry > Siting of Facilities

Environmental
Law > ... > Enforcement > Discharge
Permits > State Water Quality Certifications

HN11[↓] Judicial Review, Reviewability

Nothing in the Warren-Alquist State Energy Resources Conservation and Development Act, Pub. Resources Code, § 25000 et seq., states or implies that where a thermal powerplant has concurrently sought both a renewal from the Regional Water Board of its National Pollutant Discharge Elimination System permit, and a California Energy Commission certification to install additional generating capacity, the regional water board's decision, normally reviewable in the superior court pursuant to the Porter-Cologne Water Quality Control Act, Wat. Code, § 13000 et seq., is suddenly subject to the exclusive-review provisions of the Warren-Alquist Act. There is no basis for reading such a requirement into the latter statute.

Administrative Law > Judicial
Review > Remedies > Mandamus

Administrative Law > Judicial
Review > Remand & Remittitur

HN12[↓] Remedies, Mandamus

See Code Civ. Proc., § 1094.5, subd. (e).

Administrative Law > Judicial
Review > Remedies > Mandamus

Administrative Law > Judicial
Review > Remedies > Mandamus

Administrative Law > Judicial
Review > Remand & Remittitur

HN14[↓] Remedies, Mandamus

Properly understood and interpreted, Code Civ. Proc., § 1094.5, subs. (e) & (f), impose no absolute bar on the use of prejudgment limited remand procedures. Moreover, when a court has properly remanded for agency reconsideration on grounds that all, or part, of the original administrative decision has insufficient support in the record developed before the agency, the statute does not preclude the agency from accepting and considering additional evidence to fill the gap the court has identified.

Administrative Law > Judicial
Review > Remedies > Mandamus

Governments > Legislation > Expiration,
Repeal & Suspension

HN15[↓] Remedies, Mandamus

On its face, Code Civ. Proc., § 1094.5, subd. (f), indicates the form of final judgment the court may issue in an administrative mandamus action. Section 1094.5, subd. (f), states that the last step the trial court must take in the proceeding is either to command the agency to set aside its decision, or to deny the writ. Nothing in § 1094.5, subd. (f), purports to limit procedures the court may appropriately employ before it renders a final judgment. Code Civ. Proc., § 187, broadly provides that whenever the California Constitution or a statute confers jurisdiction on a court, all the means necessary to carry that jurisdiction into effect are

also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by the California Code of Civil Procedure or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of the Code. Section 1094.5, subd. (f), does not specifically point out the prejudgment procedures to be followed in an administrative mandamus action, nor do its terms prohibit the court from adopting a suitable process or mode of proceeding when addressing the issues presented. § 187. Hence, nothing in § 1094.5, subd. (f)'s language suggests an intent to limit or repeal § 187 for purposes of administrative mandamus actions.

Administrative Law > Judicial
Review > Remedies > Mandamus

Administrative Law > Judicial
Review > Remand & Remittitur

HN16[↓] Remedies, Mandamus

Code Civ. Proc., § 1094.5, subd. (f), provides that, when granting mandamus relief, the court may order the reconsideration of the case in the light of the court's opinion and judgment. This clearly implies that, in the final judgment itself, the court may direct the agency's attention to specific portions of its decision that need attention, and need not necessarily require the agency to reconsider, de novo, the entirety of its prior action. That being so, no reason appears why, in appropriate circumstances, the same objective cannot be accomplished by a remand prior to judgment. Indeed, such a device, properly employed, promotes efficiency and expedition by allowing the court to retain jurisdiction in the already pending mandamus proceeding, thereby eliminating the potential need for a new mandamus action to review the agency's decision on reconsideration.

Administrative Law > Judicial
Review > Remand & Remittitur

Constitutional Law > ... > Fundamental
Rights > Procedural Due Process > General
Overview

HN17[↓] Judicial Review, Remand & Remittitur

Any agency reconsideration must fully comport with due process, and may not simply allow the agency to rubber-stamp its prior unsupported decision.

Administrative Law > Judicial
Review > Remedies > Mandamus

Administrative Law > Judicial
Review > Remand & Remittitur

HN18[↓] Remedies, Mandamus

Code Civ. Proc., § 1094.5, subd. (f), imposes no blanket prohibition on the appropriate use, in an administrative mandamus action, of a prejudgment remand for agency reconsideration of one or more issues pertinent to the agency's decision. To the extent Resource Defense Fund v. Local Agency Formation Com., 191 Cal. App. 3d 886, 236 Cal. Rptr. 794 (1987), and Sierra Club v. Contra Costa County, 10 Cal. App. 4th 1212, 13 Cal. Rptr. 2d 182 (1992), have concluded otherwise, those decisions are disapproved.

Administrative Law > Judicial
Review > Administrative Record > General
Overview

Administrative Law > Judicial
Review > Remand & Remittitur

Administrative Law > Judicial
Review > Remedies > Mandamus

HN19[⚡] **Judicial Review, Administrative Record**

Code Civ. Proc., § 1094.5, subd. (e), is not intended to prevent the court, upon finding that the administrative record itself lacks evidence sufficient to support the agency's decision, from remanding for consideration of additional evidence. A more reasonable interpretation, which fully honors the statutory language, is that § 1094.5, subd. (e), simply prevents a mandamus petitioner from challenging an agency decision that is supported by the administrative record on the basis of evidence, presented to the court, which could have been, but was not, presented to the administrative body.

Administrative Law > Judicial Review > Administrative Record > General Overview

Administrative Law > Judicial Review > Remand & Remittitur

Administrative Law > Judicial Review > Remedies > Mandamus

HN20[⚡] **Judicial Review, Administrative Record**

Code Civ. Proc., § 1094.5, subd. (e), merely confirms that while, in most cases, the court is limited to the face of the administrative record in deciding whether the agency's decision is valid as it stands, in fairness, the court may consider, or may permit the agency to consider, extra-record evidence for a contrary outcome, if persuaded that such evidence was not available, or was improperly excluded, at the original agency proceeding.

Administrative Law > Judicial Review > Administrative Record > General Overview

Administrative Law > Judicial Review > Remand & Remittitur

Administrative Law > Judicial Review > Remedies > Mandamus

HN21[⚡] **Judicial Review, Administrative Record**

Code Civ. Proc., § 1094.5, subd. (e), promotes orderly procedure, and the proper distinction between agency and judicial roles, by ensuring that, with rare exceptions, the court will review a quasi-judicial administrative decision on the record actually before the agency, not on the basis of evidence withheld from the agency and first presented to the reviewing court. But once the court has reviewed the administrative record, and has found it wanting, § 1094.5 does not preclude the court from remanding for the agency's reconsideration in appropriate proceedings that allow the agency to fill the evidentiary gap. To the extent the analyses in Ashford v. Culver City Unified School Dist., 130 Cal. App. 4th 344, 29 Cal. Rptr. 3d 728 (2005), and Newman v. State Personnel Bd., 10 Cal. App. 4th 41, 12 Cal. Rptr. 2d 601 (1992), are inconsistent with these conclusions, those decisions are disapproved.

Headnotes/Summary**Summary****CALIFORNIA OFFICIAL REPORTS SUMMARY**

Plaintiff, an environmental organization, filed an administrative mandamus action challenging a regional water board's issuance of a National Pollutant Discharge Elimination System (NPDES) permit. The NPDES permit authorized a powerplant to draw cooling water from a harbor and slough. The trial court denied the mandamus petition. (Superior Court of Monterey County, No. M54889, Robert A. O'Farrell, Judge.) The Court of Appeal, Sixth Dist., No. H028021, affirmed the

trial court's judgment.

The Supreme Court affirmed the judgment of the Court of Appeal. The court concluded that the trial court did not err in using an interlocutory remand to resolve perceived deficiencies in the regional water board's best technology available (BTA) finding. In compliance with the trial court's directive, the board engaged in a full reconsideration of the BTA issue, and gave all interested parties, including plaintiff, a noticed opportunity to appear and to present evidence, briefing, and argument pertinent to the BTA determination. The court rejected plaintiff's argument that Code Civ. Proc., § 1094.5, subd. (e), precluded the board from accepting and considering new evidence on remand absent a showing that such evidence could not have been produced at the original administrative proceeding, or was improperly excluded therefrom. The court further concluded that the board did not err by basing its BTA determination on a finding that the costs of alternative cooling technologies for the powerplant were wholly disproportionate to the anticipated environmental benefits. The board's use of this standard was proper. (Opinion by Baxter, J., with Cantil-Sakauye, C. J., Kennard, Werdegar, Chin, Corrigan, JJ., and Kitching, J.,* concurring. Concurring opinion by Werdegar, J., with Cantil-Sakauye, C. J., concurring (see p. 539).) [*500]

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

CA(1)[↓] (1)

Pollution and Conservation Laws § 5—Porter-Cologne Act—NPDES Permit—Judicial Review—Administrative Mandamus.

Pursuant to the Porter-Cologne Water Quality

Control Act (Wat. Code, § 13000 et seq.) decisions and orders of a regional water board, including the issuance and renewal of National Pollutant Discharge Elimination System permits, are reviewable by administrative appeal to the State Water Resources Control Board, and then by petition for administrative mandamus in the superior court (Code Civ. Proc., § 1094.5; Wat. Code, §§ 13320, 13330). In the mandamus proceeding, the superior court is obliged to exercise its independent judgment on the evidence before the administrative agency, i.e., to determine whether the agency's findings are supported by the weight of the evidence.

CA(2)[↓] (2)

Electricity, Gas, and Steam § 2—Thermal Powerplants—Siting—Expedited Processing and Review of Applications.

The Warren-Alquist State Energy Resources Conservation and Development Act (Pub. Resources Code, § 25000 et seq.) mandates simplified and expedited processing and review of applications to certify the siting, construction, and modification of thermal powerplants. The act accords the State Energy Resources Conservation and Development Commission the exclusive power to certify all sites and related facilities for thermal powerplants with generating capacities of 50 or more megawatts, whether a new site and related facility or a change or addition to an existing facility (Pub. Resources Code, § 25500). When a certification application is filed, the commission undertakes a lengthy review process that involves multiple staff assessments, communication with other state and federal regulatory agencies, environmental impact analysis, and a series of public hearings (Pub. Resources Code, §§ 25519–25521). With one exception, the commission may not certify a proposed facility that does not meet all applicable federal, state, regional, and local laws (Wat. Code, § 25525). Accordingly, the issuance of a certificate by the commission is in lieu of any

* Associate Justice of the Court of Appeal, Second Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law, for such use of the site and related facilities, and supersedes any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law (Wat. Code, § 25500).

CA(3)[↓] (3)

Electricity, Gas, and Steam § 2—Thermal Powerplants—Certification Decision—Judicial Review.

The Warren-Alquist State Energy Resources Conservation and Development Act (Pub. Resources Code, § 25000 et seq.) constrains judicial review of a State Energy Resources [*501] Conservation and Development Commission powerplant certification decision. Pub. Resources Code, § 25531, subd. (a), establishes that the Supreme Court alone has jurisdiction to review powerplant certification decisions by the commission.

CA(4)[↓] (4)

Statutes § 29—Construction—Language—Legislative Intent—Plain Meaning.

When interpreting statutes, a court begins with the plain, commonsense meaning of the language used by the Legislature. If the language is unambiguous, the plain meaning controls. Potentially conflicting statutes must be read in the context of the entire statutory scheme, so that all provisions can be harmonized and given effect.

CA(5)[↓] (5)

Electricity, Gas, and Steam § 2—Thermal Powerplants—Certification Decision—Judicial Review—Case or Controversy.

Pub. Resources Code, § 25531, subd. (a), part of the Warren-Alquist State Energy Resources Conservation and Development Act (Pub. Resources Code, § 25000 et seq.), specifies the extent of the Supreme Court's exclusive direct review jurisdiction as mandated by the act. Under § 25531, subd. (a), the decisions of the State Energy Resources Conservation and Development Commission on any application for certification of a site and related facility are subject to judicial review by the Supreme Court. Read together with § 25531, subd. (a), § 25531, subd. (c), simply confirms that no other court may review directly a certification decision of the commission, or may otherwise entertain a case or controversy that attacks such a decision indirectly by raising a matter the commission determined, or could have determined, for purposes of the certification proceeding. Section 25531 neither states nor implies a legislative intent to interfere with normal mandamus review of the actions of another agency, simply because that agency, exercising functions within its exclusive authority, has independently decided an issue the commission also must or might have addressed for its own purposes.

CA(6)[↓] (6)

Pollution and Conservation Laws § 5—Porter-Cologne Act—NPDES Permit—Judicial Review—Administrative Mandamus.

Under the federal Clean Water Act of 1977 (Pub.L. No. 95-217 (Dec. 27, 1977) 91 Stat. 1566), any facility that discharges wastewater into a navigable water source must have an unexpired permit, conforming to federal water quality standards, in order to do so. Only the State Water Resources Control Board or a regional water board may issue a federally compliant discharge permit; such a decision is entirely outside, and independent of, the State Energy Resources Conservation and Development Commission's authority. Under the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.), judicial review of the

decisions of these agencies, including those to grant or renew National Pollutant Discharge Elimination System permits, is by mandamus in the superior court.

[*502] CA(7)[↓] (7)

Pollution and Conservation Laws § 5—NPDES Permit—Judicial Review—Jurisdiction—Case or Controversy.

Under the Warren-Alquist State Energy Resources Conservation and Development Act (Pub. Resources Code, § 25000 et seq.), only the decisions of the State Energy Resources Conservation and Development Commission on any application for certification of a site and related facility are subject to exclusive review in the Supreme Court (Pub. Resources Code, § 25531, subd. (a)), and other courts are deprived of jurisdiction only of a case or controversy concerning a matter which was, or could have been, determined in a proceeding before the commission (§ 25531, subd. (c)). A National Pollutant Discharge Elimination System (NPDES) permit decision by a regional water board is not a certification decision. Conversely, under the NPDES permit program, neither certification proceedings, nor findings the commission may make in connection with such proceedings, can result in the issuance or renewal of an NPDES permit; only the State Water Resources Control Board and the regional water boards may issue or renew such permits. Hence, a challenge to the issuance or renewal of an NPDES permit is not a case or controversy concerning a matter which was, or could have been, determined by the commission.

CA(8)[↓] (8)

Electricity, Gas, and Steam § 2—Thermal Powerplants—Certification Decision—Judicial Review—NPDES Permit.

Nothing in the Warren-Alquist State Energy

Resources Conservation and Development Act (Pub. Resources Code, § 25000 et seq.) states or implies that where a thermal powerplant has concurrently sought both a renewal from the Regional Water Board of its National Pollutant Discharge Elimination System permit, and a State Energy Resources Conservation and Development Commission certification to install additional generating capacity, the regional water board's decision, normally reviewable in the superior court pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) is suddenly subject to the exclusive review provisions of the Warren-Alquist Act. There is no basis for reading such a requirement into the latter statute.

CA(9)[↓] (9)

Administrative Law § 110—Judicial Review—Administrative Mandamus—Evidence—Remand.

Properly understood and interpreted, Code Civ. Proc., § 1094.5, subds. (e) & (f), impose no absolute bar on the use of prejudgment limited remand procedures. Moreover, when a court has properly remanded for agency reconsideration on grounds that all, or part, of the original administrative decision has insufficient support in the record developed before the agency, the statute does not preclude the agency from accepting and considering additional evidence to fill the gap the court has identified.

[*503] CA(10)[↓] (10)

Administrative Law § 99—Judicial Review—Administrative Mandamus—Final Judgment.

On its face, Code Civ. Proc., § 1094.5, subd. (f), indicates the form of final judgment the court may issue in an administrative mandamus action. Section 1094.5, subd. (f), states that the last step the trial court must take in the proceeding is either to command the agency to set aside its decision, or to deny the writ. Nothing in § 1094.5, subd. (f),

purports to limit procedures the court may appropriately employ before it renders a final judgment. Nothing in § 1094.5, subd. (f), purports to limit procedures the court may appropriately employ before it renders a final judgment. Code Civ. Proc., § 187, broadly provides that whenever the California Constitution or a statute confers jurisdiction on a court, all the means necessary to carry that jurisdiction into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding is not specifically pointed out by the Code of Civil Procedure or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of the code. Section 1094.5, subd. (f), does not specifically point out the prejudgment procedures to be followed in an administrative mandamus action, nor do its terms prohibit the court from adopting a suitable process or mode of proceeding when addressing the issues presented. Hence, nothing in § 1094.5, subd. (f)'s language suggests an intent to limit or repeal § 187 for purposes of administrative mandamus actions.

CA(11)[↓] (11)

Administrative Law § 99—Judicial Review— Administrative Mandamus—Remand.

Code Civ. Proc., § 1094.5, subd. (f), provides that, when granting mandamus relief, the court may order the reconsideration of the case in the light of the court's opinion and judgment. This clearly implies that, in the final judgment itself, the court may direct the agency's attention to specific portions of its decision that need attention, and need not necessarily require the agency to reconsider, de novo, the entirety of its prior action. That being so, no reason appears why, in appropriate circumstances, the same objective cannot be accomplished by a remand prior to judgment. Indeed, such a device, properly employed, promotes efficiency and expedition by allowing the court to retain jurisdiction in the already pending mandamus proceeding, thereby

eliminating the potential need for a new mandamus action to review the agency's decision on reconsideration.

CA(12)[↓] (12)

Administrative Law § 99—Judicial Review— Administrative Mandamus—Remand— Reconsideration—Due Process.

Any agency reconsideration must fully comport with due process, and may not simply allow the agency to rubberstamp its prior unsupported decision.

[*504] CA(13)[↓] (13)

Administrative Law § 99—Judicial Review— Administrative Mandamus—Remand— Reconsideration.

Code Civ. Proc., § 1094.5, subd. (f), imposes no blanket prohibition on the appropriate use, in an administrative mandamus action, of a prejudgment remand for agency reconsideration of one or more issues pertinent to the agency's decision. (Disapproving to the extent inconsistent: Resource Defense Fund v. Local Agency Formation Com. (1987) 191 Cal.App.3d 886 [236 Cal.Rptr. 794], and Sierra Club v. Contra Costa County (1992) 10 Cal.App.4th 1212 [13 Cal.Rptr.2d 182].)

CA(14)[↓] (14)

Administrative Law § 103—Judicial Review— Administrative Mandamus—Remand—Evidence.

Code Civ. Proc., § 1094.5, subd. (e), is not intended to prevent the court, upon finding that the administrative record itself lacks evidence sufficient to support the agency's decision, from remanding for consideration of additional evidence. A more reasonable interpretation, which fully honors the statutory language, is that § 1094.5, subd. (e), simply prevents a mandamus petitioner

from challenging an agency decision that is supported by the administrative record on the basis of evidence, presented to the court, which could have been, but was not, presented to the administrative body.

CA(15)[↓] (15)

Administrative Law § 103—Judicial Review— Administrative Mandamus—Remand—Evidence.

Code Civ. Proc., § 1094.5, subd. (e), merely confirms that while, in most cases, the court is limited to the face of the administrative record in deciding whether the agency's decision is valid as it stands, in fairness, the court may consider, or may permit the agency to consider, extra-record evidence for a contrary outcome, if persuaded that such evidence was not available, or was improperly excluded, at the original agency proceeding.

CA(16)[↓] (16)

Administrative Law § 103—Judicial Review— Administrative Mandamus—Remand—Evidence.

Code Civ. Proc., § 1094.5, subd. (e), promotes orderly procedure, and the proper distinction between agency and judicial roles, by ensuring that, with rare exceptions, the court will review a quasi-judicial administrative decision on the record actually before the agency, not on the basis of evidence withheld from the agency and first presented to the reviewing court. But once the court has reviewed the administrative record, and has found it wanting, § 1094.5 does not preclude the court from remanding for the agency's reconsideration in appropriate proceedings that allow the agency to fill the evidentiary gap. (Disapproving to the extent inconsistent: Ashford v. Culver City Unified School Dist. (2005) 130 Cal.App.4th 344 [29 Cal.Rptr.3d 728], and Newman v. State Personnel Bd. (1992) 10 Cal.App.4th 41 [12 Cal.Rptr.2d 601].)

[*505] CA(17)[↓] (17)

Electricity, Gas, and Steam § 2—Thermal Power Plant—NPDES Permit—Best Technology Available—Alternative Cooling Technologies—Wholly Disproportionate—Standard.

In a case in which a regional water board issued a National Pollutant Discharge Elimination System permit allowing a thermal powerplant to draw cooling water from a harbor and slough, the board did not err by basing its best technology available determination on a finding that the costs of alternative cooling technologies for the powerplant were wholly disproportionate to the anticipated environmental benefits.

[Manaster & Selmi, Cal. Environmental Law & Land Use Practice (2011) ch. 33, § 33.81; 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, §§ 889, 893, 896; 8 Witkin, Cal. Procedure (5th ed. 2008) Extraordinary Writs, § 325.]

Counsel: Earthjustice, Mills Legal Clinic of Stanford Law School, Deborah A. Sivas, Leah J. Russin and Holly D. Gordon for Plaintiff and Appellant.

Kurt R. Wiese, Barbara Baird; Daniel P. Selmi; John J. Sansone, County Counsel (San Diego), Paula Forbis, Deputy County Counsel; Law Offices of Nancy Diamond, Nancy Diamond; Steven M. Woodside, County Counsel (Sonoma) and Cory W. O'Donnell, Deputy County Counsel, for South Coast Air Quality Management District, San Diego County Air Pollution Control District, North Coast Unified Air Quality Management District and Northern Sonoma County Air Pollution Control District as Amici Curiae on behalf of Plaintiff and Appellant.

Bill Lockyer, Edmund G. Brown, Jr., and Kamala D. Harris, Attorneys General, Gordon Burns and Manuel M. Medeiros, State Solicitors General, J. Matthew Rodriguez, Chief Assistant Attorney General, Mary E. Hackenbracht and Kathleen

Kenealy, Assistant Attorneys General, John Davidson, Anita E. Ruud and Michael M. Edson, Deputy Attorneys General, for Defendants and Appellants.

Pillsbury Winthrop Shaw Pittman, [****2] Sarah G. Flanagan, John M. Grenfell and Blaine I. Green for Real Parties in Interest and Appellants.

Michael J. Levy and William M. Chamberlain for California Energy Commission as Amicus Curiae on behalf of Real Parties in Interest and Appellants.

Judges: Opinion by Baxter, J., with Cantil-Sakauye, C. J., Kennard, Werdegar, Chin, Corrigan, and Kitching, JJ., concurring. Concurring opinion by Werdegar, J., with Cantil-Sakauye, C. J., concurring.

Opinion by: Baxter [*506]

Opinion

[**84] [***662] **BAXTER, J.**—Voices of the Wetlands, an environmental organization, filed this administrative mandamus action in the Monterey County Superior Court to challenge the issuance, by the California Regional Water Quality Control Board, Central Coast Region (Regional Water Board), of a federally required permit authorizing the Moss Landing Power Plant (MLPP) to draw cooling water from the adjacent Moss Landing Harbor and Elkhorn [**85] Slough.¹ The case,

¹ In the case title in this court, and hereafter in our discussion, we refer to Voices of the Wetlands, the mandamus petitioner, as “plaintiff.” (See Cal. Style Manual (4th ed. 2000) § 6:28, pp. 230–231.) The mandamus petition named as respondents the State Water Resources Control Board (State Water Board) and the Regional Water Board. In the case title in this court, and hereafter as convenient in our discussion, we refer to these parties as “defendants.” (*Ibid.*) The mandamus petition also named Duke Energy North America LLC and its subsidiary, Duke Energy Moss Landing, LLC (collectively Duke), then the MLPP’s owners, as real parties in interest. At some point, apparently during the appellate process, the MLPP changed ownership. The current owner is Dynegy Moss Landing LLC (Dynegy), [****4] an entity unrelated to Duke. Dynegy has filed all pleadings and briefs in this court as the MLPP’s owner and as real party in interest. As Duke’s successor in

now more than a decade old, presents issues concerning the technological and environmental standards, and the procedures for administrative and judicial [****3] review, that apply when a thermal powerplant, while pursuing the issuance or renewal of a cooling water intake permit from a regional water board, also seeks necessary approval from another state agency, the State Energy Resources Conservation and Development Commission (Energy Commission), of a plan to add additional generating units to the plant, with related modifications to the cooling intake system.

Against a complex procedural backdrop, we will reach the following conclusions:

First, the superior court had jurisdiction to entertain the administrative mandamus petition here under review. We thus reject the contention of defendants and the real party in interest that, because the substantive issues plaintiff seeks to raise on review of the Regional Water Board’s decision [****5] to renew the plant’s cooling water intake permit were also involved in the Energy Commission’s approval of the plant expansion, statutes applicable to the latter process placed exclusive review jurisdiction in this court.

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Second, the trial court did not err when, after concluding that the original record before the Regional Water Board did not support the board’s finding on a single issue crucial to issuance of the cooling water intake permit, the court deferred a final judgment, ordered an interlocutory remand to the board for further “comprehensive” examination of that issue, then denied mandamus after determining that the additional evidence and

interest, Dynegy is entitled to continue the action in Duke’s name (*Code Civ. Proc.*, § 368.5), and Dynegy has not moved to substitute itself as a formally named party (see *Cal. Rules of Court*, rule 8.36(a)). Accordingly, to maintain title symmetry with the Court of Appeal decision, and to facilitate tracking and legal research by the bench, bar, and public, we have retained Duke in the case title in this court as the real parties in interest and appellants. (See Cal. Style Manual, *supra*, § 6:28, p. 230.) As the context dictates, our discussion hereafter refers variously to Duke, Dynegy, or “real party in interest” (singular or plural), or “the MLPP’s owner.”

analysis considered by the board on remand supported the board's reaffirmed finding.

Third, recent United States Supreme Court authority confirms that, when applying federal Clean Water Act of 1977 (CWA; Pub.L. No. 95-217 (Dec. 27, 1977) 91 Stat. 1566) standards [***663] for the issuance of this permit, the Regional Water Board properly utilized cost-benefit analysis, and in particular a “wholly disproportionate” cost-benefit standard, to conclude that the MLPP's existing cooling water intake design, as upgraded to accommodate the plant expansion, “reflect[ed] the *best technology available* for minimizing [****6] adverse environmental impact.” (CWA, § 316(b), codified at 33 U.S.C. § 1326(b), italics added (hereafter CWA section 316(b)).)

We decline to address several other issues discussed by the parties. For instance, plaintiff insists the Regional Water Board violated CWA section 316(b) by approving compensatory mitigation measures—a habitat restoration program funded by the MLPP's owner—as a means of satisfying the requirement to use the best technology available (BTA). The legal issue whether section 316(b) allows such an approach is certainly significant (see Riverkeeper, Inc. v. U.S. E.P.A. (2d Cir. 2007) 475 F.3d 83, 110 (*Riverkeeper II*); Riverkeeper, Inc. v. U.S. E.P.A. (2d Cir. 2004) 358 F.3d 174, 189–191 (*Riverkeeper I*)), and it has not been finally resolved.

However, the trial court found, as a matter of fact, that the Regional Water Board had not directly linked the habitat restoration [**86] program to its BTA determination. The Court of Appeal concluded that the trial court's no-linkage finding had substantial evidentiary support. Here, as in the Court of Appeal, defendants and real party in interest decline to pursue the legal issue, urging only that the trial court's factual finding should not be disturbed. [****7] As so framed, the issue presented is case and fact specific, and involves no significant question of national or statewide

importance. Accordingly, we exercise our discretion not to consider it. (See Cal. Rules of Court, rule 8.516(b)(3).) By so proceeding, we expressly do not decide whether compensatory mitigation and habitat restoration measures can be components of BTA, and we leave that issue for another day.

Finally, in its briefs on the merits, plaintiff advances issues it did not raise in its petition for review. Plaintiff now insists the evidence in the administrative record does not support the Regional Water Board's finding that the costs [*508] of alternative cooling technologies would be “wholly disproportionate” to their environmental benefits. Plaintiff also urges that even if the board properly considered compensatory restoration measures as a means of satisfying BTA, the record does not support its determination that the habitat restoration project it approved was sufficient to offset the environmental damage caused by the MLPP's cooling system.

These issues are case and fact specific, did not factor into our decision to grant review, and do not currently appear to be matters [****8] of significant national or statewide interest. Again, therefore, we decline to address them.

Accordingly, we will affirm the judgment of the Court of Appeal.

FACTS AND PROCEDURAL BACKGROUND

The MLPP, in operation under various owners for nearly 60 years, sits at the mouth of Elkhorn Slough, an ecologically rich tidal estuary that drains into Monterey Bay between the cities of Santa Cruz and Monterey. As a thermal powerplant, the MLPP uses superheated steam to generate electricity. The plant's cooling system appropriates water from Moss Landing Harbor, and water from the adjacent slough is also drawn into the system. The MLPP has traditionally employed a once-through cooling system, in which water continuously passes from the source through the plant, then back into the

source at a warmer temperature. The thermal effects of the cooling system aside, [***664] the intake current kills some aquatic and marine life by trapping larger organisms against the intake screens (impingement) and by sucking smaller organisms through the screens into the plant (entrainment).²

HNI[↑] Under the CWA, the MLPP must have a National Pollutant Discharge Elimination System (NPDES) permit in order to draw cooling water from the harbor and slough. The discharge of a “pollutant” from a “point source” into navigable waters may only occur under the terms and conditions of such a permit, which must be renewed at least every five years. (33 U.S.C. §§ 1311, 1342(a), (b).) In California, NPDES permits, which must comply with all minimum federal clean water requirements, are issued under an EPA-approved state water quality control program [***10] administered, pursuant to the [*509] Porter-Cologne Water Quality Control Act (Porter-Cologne Act; Wat. Code, § 13000 et seq.), by the State Water Board and the nine regional water boards. (*Id.*, §§ 13372, 13377; see 33 U.S.C. § 1342(b); 40 C.F.R. §§ 123.21–123.25 (2011); 39 Fed.Reg. 26061 (July 16, 1974); 54 Fed.Reg. 40664–40665 (Oct. 3, 1989).)

In 1999, Duke applied to the Energy Commission for approval of Duke's plan to modernize the MLPP by adding two new 530- [**87] megawatt gas-fired generators. These new units would supplement the two 750-megawatt generators, units 6 and 7, already in operation, and would replace units 1

through 5, older generators that were no longer being used. Pursuant to the Warren-Alquist State Energy Resources Conservation and Development Act (Warren-Alquist Act; Pub. Resources Code, § 25000 et seq.), the siting, construction, or modification of a thermal powerplant with a generating capacity in excess of 50 megawatts must be certified by the Energy Commission. (*Id.*, §§ 25110, 25120, 25500.) As set forth in greater detail below, the commission's certification must be consistent with all applicable federal laws (*id.*, §§ 25514, subd. (a)(2), 25525), and is “in lieu of [***11] any permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law” (*id.*, § 25500).

Concurrently with its Energy Commission application, Duke applied to the Regional Water Board for renewal of its NPDES permit—which was due to expire in any event—and to include therein terms and conditions consistent with operation of the new generators. In both applications, Duke proposed various modifications to the design and operation of the existing once-through cooling system, both to accommodate the new generators, and to minimize aquatic and marine mortality resulting from cooling water intake operations.³ However, the proposal did not contemplate [***665] conversion of the plant to either a closed-cycle or a dry-cooling system (see fn. 2, *ante*).

In order to renew the plant's NPDES permit, the Regional Water Board was required, among other

² Alternative cooling technologies exist, particularly including closed-cycle and dry-cooling systems. A closed-cycle system uses a holding [***9] basin, reservoir, or tower to retain, cool, and continuously recycle a single supply of cooling water within the plant. Such a system requires renewal from an outside water source only to replace evaporation loss. Dry cooling eliminates the need for cooling water, instead employing air as the cooling medium. These designs substantially reduce or eliminate impingement and entrainment damage, as compared to a once-through water cooling system, but they may produce their own adverse environmental effects, and converting an existing powerplant from a once-through system to closed-cycle or dry-cooling technology involves significant additional expense.

³ As the Regional Water Board's order issuing the NPDES permit explained, the MLPP had two cooling water intake stations, one which served the currently operational units 6 and 7, and the other, then inactive, which had served the retired units 1 through 5. Under the MLPP proposal, this latter station would be reactivated to serve the proposed new generators. Changes in [***12] the design and operation of the existing once-through cooling system would be employed to reduce impingement mortality, including alterations in the angles of the intake screens, the use of finer mesh on the screens, reductions in cooling water intake velocity made possible by the design of the new generators, and the elimination of a 350-foot tunnel in front of the intake screens.

things, to determine, under section 316(b) of the CWA, that “the location, design, construction, and capacity of [the MLPP’s] cooling water intake structures reflect[ed] the best technology available for minimizing adverse environmental impact [(i.e., BTA)].” (33 U.S.C. [*510] § 1326(b); see *id.*, §§ 1316(b)(1)(A), 1342(b)(1)(A).) In the year 2000, when the MLPP’s Energy Commission and Regional Water Board applications were pending, there were no federal regulations in place directing permitting agencies how to apply the BTA standard. When lacking regulatory guidance for applying the CWA’s NPDES permit standards, including section 316(b)’s BTA standard for cooling water intake structures, agencies were expected to exercise [****13] their “best professional judgment” on a case-by-case basis. (See, e.g., *Entergy Corp. v. Riverkeeper, Inc.* (2009) 556 U.S. 208, 213 [173 L.Ed.2d 369, 129 S.Ct. 1498, 1503] (*Entergy Corp.*); *National Resources Defense Council v. U.S. E.P.A.* (9th Cir. 1988) 863 F.2d 1420, 1425.)

The Energy Commission and Regional Water Board proceedings went forward concurrently, and were coordinated to a significant degree. As noted by the Court of Appeal, “the [Energy] Commission and the [Regional Water Board] formed a Technical Working Group (TWG) made up of representatives from various regulatory agencies, the scientific community, and Duke The TWG worked to design biological resource studies and then validate the results of those studies.’ ”

On October 25, 2000, after full agency review and opportunity for public comment, the Energy Commission approved the application for certification and authorized construction of the MLPP modernization project. Under the federal-compliance provisions of the Warren-Alquist Act, the commission addressed the BTA issue. In this regard, the commission determined that design alternatives to Duke’s proposed modifications of the MLPP’s cooling intake system either would not significantly [****14] reduce environmental

damage to the source of cooling water, or were economically infeasible, and that the proposed [**88] modifications represented the most effective economically feasible alternative considered. The commission thus concluded that this proposal represented BTA for purposes of section 316(b) of the CWA, though it “recommend[ed]” that, prior to each five-year renewal of the NPDES permit, the Regional Water Board require the plant’s owner to provide an analysis of “alternatives and modifications to the cooling water intake system 1.) which are feasible under [the California Environmental Quality Act] and 2.) [which] could significantly reduce entrainment impacts to marine organisms.”

As a separate condition of certification, the Energy Commission specified that the MLPP’s owner would provide \$ 7 million to fund an Elkhorn Slough watershed acquisition and enhancement project. The commission concluded that compliance with “existing and new permits, including the . . . NPDES . . . permit[,] will result in no significant water quality degradation.” Finally, the commission entered a formal finding that the conditions of certification, if implemented, would “ensure that the project [****15] will be designed, sited, and operated [***666] in conformity with applicable local, regional, state, and federal laws, [*511] ordinances, regulations, and standards, including applicable public health and safety standards, and air and water quality standards.”

On October 27, 2000, after similar full procedures, the Regional Water Board issued its revised Waste Discharge Requirements Order No. 00-041 (Order No. 00-041), which included NPDES permit No. CA0006254, applicable to the MLPP. The stated purpose of the order was to permit, pursuant to conditions and limitations specified in the order, the “discharge of industrial process wastewater, uncontaminated cooling water and storm water from the [MLPP].”

In finding No. 48 of its order, the Regional Water Board addressed CWA section 316(b)’s BTA

mandate, as required for issuance of the permit. The order recited that the powerplant “must use BTA to minimize adverse environmental impacts caused by the cooling water intake system. *If the cost of implementing any alternative for achieving BTA is wholly disproportionate to the environmental benefits to be achieved, the Board may consider alternative methods to mitigate these adverse environmental impacts. In [****16] this case the costs of alternatives to minimize entrainment impacts are wholly disproportionate to the environmental benefits.* However, Duke Energy will upgrade the existing intake structure for the new units to minimize the impacts due to impingement of larger fish on the traveling screens, and will fund a mitigation package to directly enhance and protect habitat resources in the Elkhorn Slough watershed” (Italics added.)

In finding No. 49, the Regional Water Board set forth the required cooling system modifications and the environmental results to be expected therefrom. Subsequent findings detailed the features of the habitat enhancement program to be funded by a \$ 7 million deposit from the powerplant's owner.

No person or entity sought administrative or judicial relief to stop or stay construction or operation of the plant additions and modifications under the terms and conditions of the Energy Commission's certification order, nor was any other form of judicial review of the commission's order pursued. The project to install the two new generating units at the MLPP, with attendant modifications to the cooling intake system, has since been constructed, and has been in operation [****17] since 2002.

Meanwhile, plaintiff did file with the State Water Board an administrative appeal of the Regional Water Board's Order No. 00-041. On June 21, 2001, the State Water Board rejected the appeal.

On July 26, 2001, plaintiff filed the instant petition for administrative mandamus (Code Civ. Proc., § 1094.5 (section 1094.5)) in the Monterey [*512] County Superior Court (No. M54889). The petition

claimed that the Regional Water Board had failed to comply with the CWA, in that the October 2000 NPDES permit issued to Duke did not satisfy the BTA requirement of section 316(b) of that statute. The prayer for relief asked that Order No. 00-041, issuing the permit, be set aside. However, plaintiff did not seek injunctive or other relief to halt, delay, or suspend the operative effect of the 2000 [**89] NPDES permit while the mandamus challenge was pending.⁴

Defendants and real parties in interest demurred to the petition, asserting, among other [***667] things, lack of subject matter jurisdiction, in that the claims for [****18] relief concerned matters determined by the Energy Commission, whose decisions the Warren-Alquist Act insulates from review by the superior court. The commission, as amicus curiae, filed a supporting memorandum. The trial court overruled the demurrers. Duke sought a writ of mandate in the Court of Appeal, Sixth Appellate District, to challenge this decision. (*Duke Energy Moss Landing v. Superior Court*, June 12, 2002, H024416.) The Court of Appeal summarily denied mandate.

The superior court then considered plaintiff's claims on the merits. On October 1, 2002, after a hearing, the court issued its intended decision. In this tentative ruling, the court rejected finding No. 48 of the Regional Water Board's Order No. 00-041—the board's determination that the MLPP's cooling water system satisfied BTA—concluding that this finding was not supported by the weight of the evidence. The intended decision proposed to order issuance of a peremptory writ of mandate, directing the board “to conduct a thorough and comprehensive analysis of [BTA] applicable to the [MLPP].” However, the intended decision specified that “[n]othing in this decision compels an interruption in the ongoing plant operation

⁴The 2000 NPDES permit here at issue expired in 2005. We are advised that the MLPP's cooling system is currently operating under an administrative extension of this permit. (See 40 C.F.R. § 122.6 (2011).)

[****19] during the ... board's review of this matter.”

On October 29, 2002, after receiving initial objections from real parties in interest, the court designated the intended decision as the statement of decision and ordered plaintiff to prepare a proposed judgment for review and signature. Plaintiff submitted a proposed judgment granting a peremptory writ of mandate and setting aside the challenged NPDES permit.

Defendants and real parties in interest objected that a judgment setting aside the permit would conflict with the intended decision's proviso that no interruption in current plant operations was being ordered, and would require the Regional Water Board to start the NPDES permit process over from “square one.” These parties submitted an alternative proposed judgment that [*513] granted the peremptory writ and remanded to the board “for further proceedings in [the board's] discretion that are consistent with this Judgment and the Statement of Decision,” again specifying that nothing in the judgment compelled an interruption in ongoing plant operations pending the board's review.

Ultimately, on March 7, 2003, the court issued an order which (1) stated that finding No. 48 was not supported by the weight of the evidence, [****20] (2) remanded Order No. 00-041 to the Regional Water Board “to conduct a thorough and comprehensive analysis with respect to Finding No. 48,” and (3) directed the board to advise the court when it had completed its proceedings on remand “so that the [c]ourt may schedule a status conference.” Plaintiff's petition for mandate in the Court of Appeal, seeking to set aside the March 7, 2003, order (*Voices of the Wetlands v. Superior Court* (Apr. 18, 2003, H025844)) was summarily denied.

On remand, the Regional Water Board issued a notice soliciting written testimony, evidence, and argument from the parties—including, for this purpose, both plaintiff and the Energy Commission—as to (1) what alternatives to once-

through cooling were effective to reduce entrainment, (2) the costs, feasibility, and environmental benefits of such alternatives, and (3) whether the costs of any such alternatives were wholly disproportionate to their environmental benefits. The parties, and the board's staff, thereafter submitted voluminous materials in conformity with the notice.

On May 15, 2003, the Regional Water Board held a public hearing on the issues specified in the remand order. Plaintiff [***668] participated in [****21] the hearing. The parties had the opportunity to summarize their evidence, cross-examine witnesses, and present closing arguments. Members of the public in attendance were also allowed to comment. The board members' discussion indicated a [**90] majority view that closed-cycle cooling, despite its ability to reduce entrainment, would actually have adverse effects on air and water quality and would reduce plant efficiency, and that more expensive cooling alternatives were not justified by their environmental benefits, given the overall good health of the adjacent marine habitat after 50 years of plant operations. These considerations, the board majority concluded, supported the original determination that the costs of alternatives to the MLPP's once-through cooling system were wholly disproportionate to the corresponding environmental benefits. By a four-to-one vote, the board approved a motion declaring that, for the reasons specified in the foregoing discussion, “Finding [No.] 48 in NPDES order 00041 is supported by the weight of the evidence.”

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Plaintiff filed an administrative appeal of the Regional Water Board's decision on remand. The State Water Board summarily denied the appeal on grounds [****22] that it failed to “raise substantial issues that are appropriate for review.”

On October 15, 2003, plaintiff filed a second superior court mandate petition (*Voices of the Wetlands v. California Regional Water Quality*

Control Bd. (Super. Ct. Monterey County, No. M67321)), attacking the Regional Water Board's resolution on remand on multiple grounds. On July 21, 2004, acting on the petition at issue here, No. M54889, the court issued a statement of decision resolving the postremand issues the parties had agreed remained open. In pertinent part, the court ruled that (1) the board's limitation on the scope of the remand issues complied with the court's remand order, (2) in deciding whether finding No. 48 had sufficient support, the court could consider the new evidence developed on remand, (3) plaintiff was correct that mitigation measures could not be considered in determining BTA (citing *Riverkeeper I, supra*, 358 F.3d 174), but the board had not used the \$ 7 million Elkhorn Slough habitat restoration plan as a "substitute" for selecting BTA, and the board's BTA determination "[did] not rest on that plan as the basis for its [BTA] finding," and (4) the board on remand conducted "a sufficiently [****23] comprehensive analysis of the potential technological alternatives" to once-through cooling, "and the record contains a realistic basis for concluding that the existing modified [cooling] system provides [BTA] for the [MLPP]."

On August 17, 2004, the court entered judgment denying a peremptory writ of mandate in No. M54889. On the parties' stipulation, the court thereafter entered an order of dismissal with prejudice in No. M67321.

Plaintiff appealed in No. M54889, urging that the trial court erred in ordering an interlocutory remand, and in denying mandate to overturn the NPDES permit on grounds that the Regional Water Board had improperly determined BTA. Defendants and real parties in interest cross-appealed on the issue whether the superior court had jurisdiction to entertain the mandamus petition.

Meanwhile, in July 2004, the EPA finally promulgated regulations setting BTA standards for the cooling systems of existing powerplants. (69 Fed.Reg. 41576 (July 9, 2004); see 40 C.F.R. §

125.90 et seq. (2011) (Phase II regulations).⁵ As explained [***669] in greater detail below, the Phase II regulations established national performance standards based on the impingement and [*515] entrainment mortality [****24] rates to be expected from closed-cycle cooling (see fn. 2, *ante*). However, the regulations allowed existing facilities to meet those standards by alternative cooling system technologies, or, where reliance on such a technology alone was less feasible, less cost effective, or less environmentally desirable, by using restoration measures as a supplementary aid to compliance. A facility could also obtain a site-specific determination of BTA based on performance "as close as practicable" to the national standards, where, in the particular case, the costs of strict compliance would be "significantly greater" than those considered by the EPA director when formulating the regulations (the "cost-cost" alternative), or than the environmental benefits [**91] to be expected (the "cost-benefit" alternative). (40 C.F.R. suspended § 125.94 (2011).)

In 2007, while the instant appeal was pending, the United States Court of Appeals for the Second Circuit issued its decision in *Riverkeeper II*, addressing the Phase II regulations.⁶ The *Riverkeeper II* court concluded that these regulations were invalid [****25] under section 316(b) of the CWA insofar as they permitted the use of (1) cost-benefit analysis (as opposed to stricter cost-effectiveness analysis)⁷ and (2) compensatory restoration measures for purposes of determining BTA. (*Riverkeeper II, supra*, 475 F.3d 83, 98–105, 108–110, 114–115.)

⁵The EPA had previously issued regulations governing BTA for the cooling systems of new powerplants (Phase I regulations).

⁶In *Riverkeeper I, supra*, 358 F.3d 174, the same court of appeals had previously considered challenges to the Phase I regulations.

⁷Thus, *Riverkeeper II* concluded that CWA section 316(b)'s BTA standard does allow selection of the least costly technology "whose performance does not essentially differ from the performance of the best-performing technology whose cost the industry reasonably can bear." (*Riverkeeper II, supra*, 475 F.3d 83, 101.)

Thereafter, the Court of Appeal for the Sixth Appellate District unanimously affirmed the trial court judgment in this case. The Court of Appeal concluded that (1) the superior court properly entertained the mandamus petition; (2) the court did not err by ordering, in advance of a final judgment, an interlocutory remand to the Regional Water Board; (3) the board properly considered new evidence on remand; (4) section 316(b) of the CWA does not permit the use of compensatory [****26] restoration measures as a factor in establishing BTA (citing *Riverkeeper II*), but substantial evidence in the administrative record supports the trial court's determination that the board did not employ mitigation measures as “ ‘a substitute for selecting the best technology available’ ”; (5) the board could properly conclude that BTA did not require the implementation of cooling technologies whose costs were “wholly disproportionate” to their environmental benefits; and (6) the administrative record substantially supports the trial court's ultimate determination that, in the MLPP's case, the costs of alternative technologies to once-through cooling were wholly disproportionate to the expected environmental results.

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Plaintiff sought review, raising three contentions: (1) section 316(b) of the CWA does not permit a cost-benefit analysis, such as the Regional Water Board's “wholly disproportionate” standard, in determining BTA; (2) the board improperly accepted compensatory restoration measures—specifically, the \$ 7 million Elkhorn Slough habitat enhancement program—as a factor in achieving BTA; and (3) the trial court improperly ordered an interlocutory remand after finding insufficient [****27] evidence to support the board's BTA finding. In its answer to the petition for review, Dynegy [***670] urged that if review was granted, we should conclude the superior court lacked subject matter jurisdiction, because the BTA determination was subsumed in the Energy Commission's powerplant certification, as to which review was solely in this court.

We granted review and deferred briefing pending the United States Supreme Court's resolution of the then pending petitions for certiorari in *Riverkeeper II*. The high court subsequently granted certiorari. In April 2009, the court issued its decision in *Entergy Corp.*, resolving certain of the issues addressed by the court of appeals in *Riverkeeper II*. Our discussion below proceeds accordingly.

DISCUSSION ⁸

A. Superior court jurisdiction.

HN2[↑] CA(1)[↑] (1) Pursuant to the Porter-Cologne Act, decisions and orders of the Regional Water Board, including the issuance and renewal of NPDES permits, are reviewable by administrative appeal to the State Water Board, and then by petition for administrative mandamus [**92] in the superior court. (§ 1094.5; Wat. Code, §§ 13320, 13330.) In the mandamus proceeding, the superior court is obliged to exercise its independent judgment on the evidence before the administrative agency, i.e., to determine whether the agency's findings are supported by the weight of the evidence. (§ 1094.5, subd. (c); Wat. Code, § 13330, subd. (d).)

Plaintiff pursued these avenues of relief. Nonetheless, defendants and Dynegy, joined by the Energy Commission as amicus curiae, urge at the outset that the superior court lacked jurisdiction to entertain plaintiff's petition for mandate in this case. The trial court and the Court of Appeal rejected this contention. We do so as well.

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CA(2)[↑] (2) The jurisdictional argument is based

⁸ The Energy Commission has filed an amicus curiae brief urging, in support of defendants and Dynegy, that the Regional Water Board's permit decision was properly reviewable only in this court. An amicus curiae brief in support of plaintiff has been jointly filed by the North Coast Unified Air Quality Management District, the Northern Sonoma County Air Pollution Control District, the South Coast Air Quality Management District, and the San Diego County [****28] Air Pollution Control District.

on HN3 the Warren-Alquist Act, which mandates simplified and expedited processing and review of applications to certify the siting, construction, and modification [****29] of thermal powerplants. [***671] The Warren-Alquist Act accords the Energy Commission “the exclusive power to certify all sites and related facilities” for thermal powerplants with generating capacities of 50 or more megawatts, “whether a new site and related facility or a change or addition to an existing facility.” (Pub. Resources Code, § 25500; see also *id.*, §§ 25110, 25119, 25120.) HN4 When a certification application is filed, the commission undertakes a lengthy review process that involves multiple staff assessments, communication with other state and federal regulatory agencies, environmental impact analysis, and a series of public hearings. (*Id.*, §§ 25519–25521.) With an exception not relevant here, the commission may not certify a proposed facility that does not meet all applicable federal, state, regional, and local laws. (*Id.*, § 25525.) Accordingly, “[t]he issuance of a certificate by the commission shall be in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law, for such use of the site and related facilities, and shall supersede any applicable statute, ordinance, or regulation [****30] of any state, local, or regional agency, or federal agency to the extent permitted by federal law.” (*Id.*, § 25500.)

HN5 CA(3) (3) The Warren-Alquist Act also constrains judicial review of an Energy Commission powerplant certification decision. Between 1996 and 2001, the statute provided that review of such a decision was exclusively by a petition for writ of review in the Court of Appeal or the Supreme Court. (Pub. Resources Code, former § 25531, subd. (a); Pub. Utilities Code, § 1759, subd. (a).)⁹ An emergency amendment to Public

Resources Code section 25531, subdivision (a), effective in May 2001, establishes that this court alone now has jurisdiction to review powerplant certification decisions by the commission. (Pub. Resources Code, § 25531, subd. (a), as amended by Stats. 2001, 1st Ex. Sess. 2001–2002, ch. 12, § 8, pp. 8101–8102.)

Subdivision (c) of Public Resources Code section 25531 further provides that HN6 “[s]ubject to the right of judicial review of decisions of the [Energy] [***518] [C]ommission,” as set forth in subdivision (a), “no court in this state has jurisdiction to hear or determine any case or controversy concerning any matter which was, or could have been, determined in a proceeding before the commission, or to stop or delay the construction or operation of any thermal powerplant except to enforce compliance with the provisions of a decision of the commission.”

Defendants [****32] and Dynegy urge as follows. Under the particular circumstances of this [***93] case, the fundamental issue presented—whether the MLPP's once-through cooling water intake system satisfied BTA for purposes of section 316(b) of the CWA—is one which “was, or could have been” (Pub. Resources Code, § 25531, subd. (c)), and indeed, had to be, determined in the certification proceeding before the Energy Commission. In order to certify the proposed expansion of the MLPP, the commission was required to find, and did find, that the project, including the intended modifications to the MLPP's cooling intake system, conformed to all applicable local, state, and federal

Code section 25531, subdivision (a), adopted as part of the Warren-Alquist Act in 1974, originally [****31] provided that review of powerplant siting decisions by the Energy Commission would be the same as for Public Utility Commission decisions granting or denying certificates of public convenience and necessity for powerplants. (Stats. 1974, ch. 276, § 2, pp. 501, 532.) In 1996, Public Utilities Code section 1759, subdivision (a), was amended to allow review of Public Utilities Commission decisions either by this court or by the Court of Appeal. (Stats. 1996, ch. 855, § 10, p. 4555.) The effect, under then unamended Public Resources Code section 25531, subdivision (a), was to establish similar review for Energy Commission powerplant siting certifications.

⁹ Adopted as part of the Public Utilities Act in 1951, Public Utilities Code section 1759, subdivision (a), originally provided for exclusive Supreme Court review of the Public Utility Commission's decisions and orders. (Stats. 1951, ch. 764, § 1759, p. 2091.) Public Resources

laws, including section 316(b). Hence, the “case or controversy” advanced by plaintiff “concern[s] a matter” within the commission's purview, and was thus subject to the Warren-Alquist Act's exclusive-review provisions, with which plaintiff did not comply.

Plaintiff makes the following response: Entirely aside from the plant expansion project, the MLPP cannot operate its cooling water intake system without a federally required, time-limited NPDES permit. Under both federal and state law, only the State Water Board and the regional water [****33] boards have authority in California to issue or renew such permits. Although the MLPP's NPDES permit renewal process coincided with its Energy Commission certification proceedings, and the two matters were significantly coordinated, it is the Regional Water Board's decision to renew the NPDES permit, not the Energy Commission's certification of the plant expansion, that is the subject of this “case or [***672] controversy.” The Porter-Cologne Act thus provides for mandamus review by the superior court of the Regional Water Board's permit decision.

Indeed, plaintiff emphasizes, such a conclusion in this case does not thwart the Warren-Alquist Act's purpose to expedite the certification of new powerplant capacity. Plaintiff notes that it never sought to stop, delay, or suspend the construction and operation of the MLPP expansion project in conformity with the Energy Commission's certification, including the approved modifications to the cooling water intake system, and the project has long since been implemented.

CA(4)[↑] (4) Applying well-established principles of statutory construction, we conclude, as did the Court of Appeal, that plaintiff has the better argument. HN7[↑] [*519] When interpreting statutes, we begin with [****34] the plain, commonsense meaning of the language used by the Legislature. (E.g., *Ste. Marie v. Riverside County Regional Park & Open-Space Dist.* (2009) 46 Cal.4th 282, 288 [93 Cal. Rptr. 3d 369, 206 P.3d

739].) If the language is unambiguous, the plain meaning controls. (*Ibid.*) Potentially conflicting statutes must be read in the context of the entire statutory scheme, so that all provisions can be harmonized and given effect. (*San Leandro Teachers Assn. v. Governing Bd. of San Leandro Unified School Dist.* (2009) 46 Cal.4th 822, 831 [95 Cal. Rptr. 3d 164, 209 P.3d 73].)

Here, however, there is no actual conflict. Under the plain language of the two statutory schemes, as applicable to this case, each agency—the Regional Water Board and the Energy Commission—had exclusive jurisdiction in a discrete area of thermal powerplant operations, and a distinct provision for judicial review applied in each case. Under the Warren-Alquist Act, the commission had sole authority to certify, i.e., to grant general permission for, the MLPP's proposal to install and operate additional generating capacity, and to modify other plant systems as necessary to accommodate this expansion. There is no question, under the unambiguous language of the Warren-Alquist Act, that the [****35] commission's certification order was subject to judicial review in this court alone. Plaintiff did not seek judicial review of the commission's certification decision, and that determination has long since become final and binding.

However, as defendants and Dynegy concede, regardless of any plans for new generating capacity that might involve the Energy Commission, a federal law, the CWA, obliged the MLPP to have in effect at all times a valid NPDES permit in order to cycle cooling water from Elkhorn Slough and Moss Landing Harbor in and out of the plant. The Porter-Cologne Act assigns the exclusive authority to issue, renew, and modify such permits to the State Water Board and the regional water boards. This statute further [**94] plainly specifies that these agencies' decisions are reviewable by mandamus in the superior court. Plaintiff mounted such a judicial challenge to the NPDES permit renewal granted to the MLPP by the Regional Water Board.

Defendants and Dynege note that the Warren-Alquist Act requires the Energy Commission, before issuing a powerplant certification, to find conformity with all “applicable local, regional, state, and federal standards, ordinances, or laws.” (Pub. Resources Code, § 25523, subd. (d)(1); [****36] see also *id.*, § 25514, subd. (a)(2).) Hence, these parties insist, the issue underlying this litigation—whether the MLPP’s cooling water intake system, with its proposed modifications, satisfied BTA for purposes of the CWA—is a “matter” which, in this particular instance, “was, or could have been, determined” by the Energy Commission (Pub. Resources Code, § 25531, subd. (c)) [****673] as a [*520] necessary component of its decision to certify the plant expansion. Accordingly, the argument runs, only this court had “jurisdiction to hear or determine any case or controversy concerning [that] matter.” (*Ibid.*)

We are not persuaded. When the judicial review provisions of the Warren-Alquist Act, as set forth in Public Resources Code section 25531, are read in context, the meaning of subdivision (c)’s critical phrase “any case or controversy concerning any matter which [****674] was, or could have been, determined in a proceeding before the [Energy] [C]ommission” is unmistakably clear.

CA(5)[↑] (5) We must analyze the words of subdivision (c) of Public Resources Code section 25531 in conjunction with subdivision (a) of the same section. HN8[↑] Subdivision (a) specifies the extent of this court’s exclusive direct review jurisdiction [****37] as mandated by the Warren-Alquist Act. Under subdivision (a), “[t]he decisions of the [Energy] [C]ommission *on any application for certification of a site and related facility* are subject to judicial review by the Supreme Court of California.” (Italics added.) Read together with subdivision (a), subdivision (c) simply confirms that no other court may review directly a *certification decision* of the commission, or may otherwise entertain a “case or controversy” that attacks *such a decision* indirectly by raising a “matter” the commission determined, “or could

have ... determined,” *for purposes of* the certification proceeding. Section 25531 neither states nor implies a legislative intent to interfere with normal mandamus review of the actions of *another* agency, simply because that agency, exercising functions within *its* exclusive authority, has independently decided an issue the commission also must or might have addressed for its own purposes.

The Energy Commission did find, in connection with the MLPP’s certification application, that the cooling system modifications proposed in connection with the expansion project satisfied the CWA’s BTA requirement. But the commission made this finding only [****38] to support its decision, under the Warren-Alquist Act, to certify the proposed expansion. If plaintiff had challenged this certification on grounds the commission’s BTA finding was improper, the “case or controversy concerning [that] matter” (Pub. Resources Code, § 25531, subd. (c)) could only have proceeded in accordance with the Warren-Alquist Act.

However, despite the interagency cooperation on the MLPP’s expansion application, and the agencies’ agreement that the plant’s cooling system satisfied BTA, the fact remains that only the Regional Water Board had authority, under the Porter-Cologne Act, and by EPA approval for purposes of the CWA, to determine the BTA issue *as necessary for renewal of the plant’s federally required NPDES permit.*

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[****675] Defendants and Dynege concede this exclusive administrative authority of the Regional Water Board. Nonetheless, they imply that the board’s BTA finding was ratified, adopted, and subsumed in the Energy Commission’s certification decision. Such is not the case. By law, each agency made an independent BTA determination, based on its distinct and separate regulatory function. Had the two agencies disagreed about BTA, the Energy Commission might still [****39] have been able to certify the plant expansion, but it could not have

overruled or countermanded a decision by the Regional Water Board to deny or condition an NPDES permit renewal [****95**] on grounds the plant's cooling system did not satisfy BTA.

It follows that, by attacking only the Regional Water Board's decision to renew the plant's federally required NPDES permit, plaintiff has not raised a "case or controversy concerning any matter which was, or could have been, determined in a proceeding before the [Energy] [C]ommission." (Pub. Resources Code, § 25531, subd. (c).) Hence, plaintiff's lawsuit, limited to an examination of the propriety of the permit renewal, is not affected by the judicial review provisions of the Warren-Alquist Act.

Defendants and Dynege point out that under the Warren-Alquist Act, "[t]he issuance of a certificate by the [Energy] [C]ommission" for the siting, construction, or expansion of a thermal powerplant "shall be in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law, for such use of the site and related facilities, and shall supersede any applicable statute, [******40**] ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law." (Pub. Resources Code, § 25500.) Under this provision, a commission certification clearly supplants and supersedes all state, county, district, and city permits and approvals that would otherwise be required for the siting, construction, and expansion of a thermal powerplant.

CA(6)[↑] (6) But Public Resources Code section 25500 acknowledges, as it must, the supremacy of *federal* law. **HN9**[↑] Under the CWA, a federal statute, any facility that discharges wastewater into a navigable water source, as the MLPP has always done, must have an unexpired permit, conforming to federal water quality standards, in order to do so. Pursuant to the regulatory approval of a "federal agency," the EPA, only the State Water Board or a regional water board may issue a federally

compliant discharge permit; such a decision is entirely outside, and independent of, the Energy Commission's authority. Under the Porter-Cologne Act, judicial review of the decisions of these agencies, including those to grant or renew NPDES permits, is by mandamus in the superior court.

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Defendants and Dynege nonetheless insist that [******41**] the NPDES permit at issue here is a *state*, not a federal, permit, as to which federal law requires no particular avenue of review beyond minimum standards of due process. Hence, these parties urge, the state agency's decision is entirely subject, within the limits of due process, to the state's own preferences for judicial review. Accordingly, they assert, California may conclude, and has concluded, that when the issuance of a wastewater discharge permit is linked to a powerplant certification proceeding, the Warren-Alquist Act's "one-stop shopping" requirement of exclusive review by this court prevails over the review provisions that would otherwise apply, under the Porter-Cologne Act, to decisions of the State Water Board and the regional water boards.

The contention lacks merit. It is true, as these parties observe, that the CWA does not directly delegate to a state agency the authority to administer the federal clean water program; instead, it allows the EPA director to "suspend" operation of the federal permit program in individual states in favor of EPA-approved permit systems that operate under those states' own laws in lieu of the federal framework. (33 U.S.C. § 1342(b); see [******42**] Shell Oil Co. v. Train (9th Cir. 1978) 585 F.2d 408, 410.) But the distinction is of little moment for our purposes. The state-administered program must conform to federal standards, and it must be approved by a federal agency, the EPA. In California, the EPA has approved a program under which the federally required permits are issued and renewed, not by the Energy Commission, but solely by the State Water Board and the regional water boards. (54 Fed.Reg. 40664-40665 (Oct. 3, 1989); 39 Fed.Reg. 26061 (July 16, 1974); Wat. Code, §

13377.)

CA(7)^(↑) (7) Defendants and Dynegy suggest that, even if this is so, federal law does not prohibit resort to the Warren-Alquist Act's restrictive provisions for judicial review in cases where, as here, a proceeding for issuance or renewal of an NPDES permit coincides with a powerplant certification proceeding before the Energy Commission. Perhaps not. But **HN10**^(↑) under the Warren-Alquist Act itself, only “[t]he decisions of the [Energy] [C]ommission [****96**] *on any application for certification of a site and related facility*” are subject to exclusive review in this court (Pub. Resources Code, § 25531, subd. (a), italics added), and other courts are deprived of jurisdiction [******43**] only of a “case or controversy concerning [a] matter which *was, or could have been*, determined in a proceeding before the commission” (*id.*, subd. (c), italics added).

As we have seen, an NPDES permit decision by a regional water board is not an Energy Commission certification decision. Conversely, under California's EPA-approved NPDES permit program, neither commission certification proceedings, nor findings the commission may make in connection with such proceedings, can result in the issuance or renewal of an NPDES permit; only [***523**] the State Water Board and the regional water boards may issue or renew such permits. Hence, a challenge to the issuance or renewal of an NPDES permit is not a “case or controversy concerning [a] matter which was, or could have been, determined” by the commission. (Pub. Resources Code, § 25531, subd. (c).)

HN11^(↑) **CA(8)**^(↑) (8) Nothing in the Warren-Alquist Act states or implies that where a powerplant has concurrently sought both a renewal from the Regional Water Board of its NPDES wastewater discharge permit, and an Energy Commission certification to install additional generating capacity, the regional water board's decision, normally reviewable in the superior court pursuant to [******44**] the Porter-Cologne Act, is

suddenly subject to the exclusive-review provisions of the Warren-Alquist Act. We see no basis for reading such a requirement into the latter statute.¹⁰

¹⁰Dynegy alludes to the portion of Public Resources Code section 25531, subdivision (c) which states that “[s]ubject to the right of judicial review [in this court] of decisions of the [Energy] [C]ommission, no court ... has jurisdiction ... to *stop or delay* the construction *or operation* of any thermal powerplant except to enforce compliance with ... a decision of the commission.” (Italics added.) Dynegy implies that because the superior court was thus deprived of authority to enforce any NPDES permit ruling it might make by “stop[ping] or delay[ing]” the wastewater discharge “operation[s]” of the MLPP, it must therefore have been deprived of all jurisdiction to entertain a challenge to the ruling. Like the Court of Appeal, we conclude we need not, and we do not, directly address whether the superior court had “stop or delay” authority, because no such stoppage or delay was sought or ordered in this case. But we do have serious doubts about Dynegy's premise. We have explained that under federal and California [******45**] water quality laws, all industrial facilities, including thermal powerplants, that discharge wastewater into navigable water sources may only do so under the terms of valid NPDES permits. The State Water Board and the regional water boards have exclusive authority and responsibility to issue, renew, and administer such permits, and a powerplant certification by the Energy Commission cannot operate “in lieu” (Pub. Resources Code, § 25500) of a properly issued, federally required NPDES permit. Review of a decision of the State Water Board or a regional water board is by mandamus in the superior court, which court, upon proper evidence and findings, may command the agency to “set aside [its] order or decision,” and direct the agency “to take such further action as is specially enjoined upon it by law.” (Code Civ. Proc., § 1094.5, subd. (f).) Of course, the agency's compliance with such an order withdraws the federal and state legal authority for the plant's wastewater discharge “operation[s].” Moreover, if the State Water Board or a regional water board perceives a “threatened or continuing” violation of the permit provisions, it may require the Attorney General to seek direct injunctive [******46**] relief against the violator. (Wat. Code, § 13386.)

Construed literally, the no “stop or delay” provision of Public Resources Code section 25531, subdivision (c), would entirely swallow these provisions as applied to thermal powerplants; it would *never* allow a superior court to prevent the illegal wastewater activities of such a plant “except to enforce compliance with ... a decision of the [Energy] [C]ommission”—an agency which, *even in connection with a powerplant certification*, has no direct authority over wastewater discharge violations, or the issuance, renewal, or administration of NPDES permits.

Fairly read in context, and properly harmonized with the requirements of federal and state water quality laws, the cited portion of Public Resources Code section 25531, subdivision (c), like the rest of the section, operates only with respect to “decisions” *properly*

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[***676] Defendants and Dynege stress that the purposes of the Warren-Alquist Act, including its “one stop” permit process and its provision for exclusive judicial review, are to [**97] consolidate the state's regulation of electrical generation and transmission facilities, and to expedite the operative effect of powerplant certifications by the Energy Commission. (See, e.g., Pub. Resources Code, § 25006; County of Sonoma v. State Energy Resources Conservation etc. Com. (1985) 40 Cal.3d 361, 368 [220 Cal. Rptr. 114, 708 P.2d 693]; Public Utilities Com. v. Energy Resources Conservation & Dev. Com. (1984) 150 Cal. App. 3d 437, 453 [197 Cal. Rptr. 866].) Superior court jurisdiction in this case, they urge, defeats these statutory aims.

However, as we have explained, a federal law, the CWA, requires all industrial facilities, including thermal powerplants, that discharge wastewater into navigable water sources to have in effect unexpired NPDES permits authorizing such discharge. This requirement is independent of the Energy Commission's certification, under California law, of an application to locate, construct, or expand such a powerplant. As defendants and Dynege concede, a state statute, the Porter-Cologne [****48] Act—specifically approved by the federal agency responsible for authorizing state administration of the CWA's requirements—assigns the issuance and renewal of NPDES permits exclusively to the State Water Board and the regional water boards. Although the Energy Commission must make a general finding, before issuing a powerplant certification, that the project conforms to all applicable local, regional, state, and federal laws, such a certification cannot contravene, subsume, encompass, supersede, substitute for, or operate in

*within the purview of the Energy Commission, i.e., powerplant certifications. The subdivision precludes any court except this court from “stop[ping] or delay[ing]” the “operation” of a thermal powerplant insofar as such “operation” is authorized by the Energy Commission's decision, under the Warren-Alquist Act, to certify [****47] the plant's siting, construction, or expansion.*

lieu of, the federally required NPDES permit.

The Porter-Cologne Act provides that review of NPDES permit decisions by the State Water Board or the regional water boards is in the superior court. No provision of either the Porter-Cologne Act or the Warren-Alquist Act states or suggests that these review provisions are altered simply because an NPDES permit issuance or renewal proceeding took place concurrently, or in connection, with a certification proceeding for the same powerplant. Hence, we have no basis to conclude that the purposes of the Warren-Alquist Act are impaired by recognizing superior court jurisdiction under the circumstances of this case.

For [****49] these reasons, we conclude that the superior court had subject matter jurisdiction of the instant mandamus proceeding.

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[***677] B. *Interlocutory remand.*

Plaintiff urges that under section 1094.5, once the trial court found insufficient evidence to support the Regional Water Board's finding No. 48 (the BTA finding), the court had no choice but to render a final mandamus judgment directing the board to set aside its Order No. 00-041, renewing the MLPP's wastewater discharge permit. The court thus erred, plaintiff insists, when it instead (1) retained jurisdiction pending an interlocutory remand to the board for reconsideration of finding No. 48; (2) allowed the board to take new evidence and reaffirm its finding; then (3) denied mandamus relief after concluding that the administrative record, as augmented on remand, supported the board's determination. We conclude that no error occurred.

Plaintiff bases its argument on two portions of section 1094.5—subdivisions (e) and (f). Subdivision (e) provides that HN12[↑] “[w]here the court finds that there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced or that was improperly

excluded at the hearing before [the [****50] agency], it may enter judgment as provided in subdivision (f) remanding the case to be reconsidered in the light of that evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case.” Subdivision (f) states that HN13[↑] “[t]he court shall enter judgment either commanding respondent [(the agency)] to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in the light of the court’s opinion and judgment”

Read together, plaintiff asserts, these provisions establish that the court (1) may order the administrative agency to reconsider its decision only as part of a final judgment [**98] granting a writ of mandate; (2) in such event, must specify that the entire “case” be reconsidered; and (3) may allow the agency, upon reconsideration, to accept and consider new evidence *only* when such evidence (a) could not earlier have been produced before the agency with due diligence or (b) was improperly excluded at the initial administrative hearing.

As plaintiff [****51] observes, defendants and Dynegy do not claim that the evidence the court found wanting was unavailable at the time of the Regional Water Board’s proceedings, or that the agency improperly rejected an attempt to present such evidence. Hence, plaintiff urges, upon concluding that the board’s BTA finding was not supported by the weight of the evidence then contained in the administrative record, the trial court was required to enter a final judgment granting the requested writ of mandamus and overturning the agency’s permit renewal order in its entirety.

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CA(9)[↑] (9) We conclude, however, that, HN14[↑] properly understood and interpreted,

subdivisions (e) and (f) of section 1094.5 impose no absolute bar on the use of prejudgment limited remand procedures such as the one employed here. Moreover, when a court has properly remanded for agency reconsideration on grounds that all, or part, of the original administrative decision has insufficient support in the record developed before the agency, the statute does not preclude the agency from accepting and considering additional evidence to fill the gap the court has identified.

CA(10)[↑] (10) To determine the meaning of these provisions, we must first examine their words, which [****52] have remained unchanged since section 1094.5 was adopted over six decades ago. (Stats. 1945, ch. 868, § 1, pp. 1636–1637.) The statutory language simply does not support the arbitrary and restrictive [***678] [***679] construction plaintiff advocates. HN15[↑] On its face, subdivision (f) of section 1094.5 indicates the form of *final judgment* the court may issue in an administrative mandamus action. Unremarkably, subdivision (f) states that the last step the trial court shall take in the proceeding is either to command the agency to set aside its decision, or to deny the writ. The trial court here followed that mandate; it issued a final judgment denying a writ of mandamus.

As defendants and Dynegy observe, nothing in subdivision (f) of section 1094.5 purports to limit procedures the court may appropriately employ *before* it renders a final judgment. A more general statute covers that subject. Code of Civil Procedure section 187, adopted in 1872, broadly provides that whenever the Constitution or a statute confers jurisdiction on a court, “all the means necessary to carry it [(that jurisdiction)] into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding *be not specifically [****53] pointed out* by this Code or the statute, *any suitable process or mode of proceeding may be adopted* which may appear most conformable to the spirit of this Code.” (Italics added.)

Subdivision (f) of section 1094.5 does not

“specifically point[] out” the prejudgment procedures to be followed in an administrative mandamus action, nor do its terms prohibit the court from “adopt[ing]” a “suitable process or mode of proceeding” when addressing the issues presented. (Code Civ. Proc., § 187.) Hence, we find nothing in subdivision (f)'s language that suggests an intent to limit or repeal Code of Civil Procedure section 187 for purposes of administrative mandamus actions. (See, e.g., *Ste. Marie v. Riverside County Regional Park & Open-Space Dist.*, *supra*, 46 Cal.4th 282, 296 [implied repeals disfavored].)

Extrinsic aids to interpretation do not persuade us otherwise. The limited available legislative history of section 1094.5 does not suggest the Legislature's intent to limit the application of Code of Civil Procedure section 187, [*527] as it might appropriately apply in administrative mandamus actions, or to categorically confine the mandamus court only to postjudgment remands. (See, e.g., Cal. Dept. of Justice, Inter-Departmental Communication to Governor re Sen. Bill No. 736 (1945 Reg. Sess.) June 7, 1945, pp. 1–3; Legis. Counsel, Rep. on Sen. Bill No. 736 (1945 Reg. Sess.) June 9, 1945, pp. 1–2.)

Decisions have long expressed the assumption that the court in a mandamus action has [**99] inherent power, in proper circumstances, to remand to the agency for further proceedings prior to the entry of a final judgment. (See, e.g., *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 81 [118 Cal. Rptr. 34, 529 P.2d 66] (*No Oil*) [professing no “question” of trial court's power in traditional mandamus to order interlocutory remand to agency for clarification of findings]; *Keeler v. Superior Court* (1956) 46 Cal.2d 596, 600 [297 P.2d 967] [noting there is “no question” of a court's power under Code Civ. Proc., § 187 to remand, prior to a final mandamus judgment, for further necessary and appropriate agency proceedings; “aside from” court's power under § 1094.5 to enter judgment remanding for consideration of evidence not available, or improperly excluded, in original

agency proceeding, “such a power to remand” prior to judgment “also exists under the inherent powers of the court”]; *Garcia v. California Emp. Stab. Com.* (1945) 71 Cal. App. 2d 107, 114 [161 P.2d 972] [****55] [in original mandamus action, Court of Appeal, without issuing final judgment, remanded for further agency proceedings after finding that evidence in administrative record was insufficient to support denial of unemployment [***680] benefits].) In *Rapid Transit Advocates, Inc. v. Southern Cal. Rapid Transit Dist.* (1986) 185 Cal. App. 3d 996 [230 Cal. Rptr. 225] (*Rapid Transit Advocates*), an administrative mandamus action governed by section 1094.5, the Court of Appeal, citing *No Oil* and *Keeler*, expressly upheld the trial court's order continuing the trial and remanding for clarification of the agency's findings. (*Rapid Transit Advocates, supra*, at pp. 1002–1003.)

We perceive no compelling reason why the Legislature would have wished to categorically bar interlocutory remands in administrative mandamus actions. Though its arguments have varied somewhat, we understand plaintiff to raise two basic objections to such a procedure.

First, plaintiff insists, the purpose of an administrative mandamus suit is to determine, once and for all, whether an agency has acted “without, or in excess of jurisdiction,” in that the agency “has not proceeded in the manner required by law, the order or decision is not supported by the findings, [****56] or the findings are not supported by the evidence.” (§ 1094.5, subd. (b).) If the agency's action, as originally presented for review, is found defective by these standards, plaintiff urges, that action must simply be set aside, and the administrative process—assuming further proceedings are appropriate at all—must begin anew. Plaintiff contends the instant trial court violated these [*528] principles by withholding final judgment on the validity of the Regional Water Board's NPDES permit determination while allowing the agency to reconsider, and justify, a single finding the court had deemed insufficiently

supported.

Second, plaintiff seems to suggest, a limited prejudgment remand raises the danger of a sham proceeding, in which interested parties are denied the opportunity to argue or present evidence, and the agency simply concocts a post hoc rationalization for the decision it has already made. Such concerns appear paramount in two Court of Appeal decisions that expressly disagreed with *Rapid Transit Advocates*, *supra*, 185 Cal. App. 3d 996, and broadly asserted that section 1094.5 bars interlocutory, as opposed to postjudgment, remands in administrative mandamus proceedings. (*Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1220–1222 [13 Cal. Rptr. 2d 182]; [****57] *Resource Defense Fund v. Local Agency Formation Com.* (1987) 191 Cal. App. 3d 886, 898–900 [236 Cal. Rptr. 794] (*Resource Defense Fund*)).

CA(11)[↑] (11) But considerations of fairness and proper agency decisionmaking do not justify the absolute prohibition for which plaintiff argues. Significantly, **HN16**[↑] subdivision (f) of section 1094.5 provides that, when granting mandamus relief, the court may “order the reconsideration of the case *in the light of the court's opinion and judgment.*” (Italics added.) This clearly implies that, in the final judgment itself, the court may direct the agency's attention to specific portions of its decision that need attention, and need not necessarily require the agency to reconsider, de novo, the entirety of its prior action. That being so, no reason appears why, in appropriate circumstances, the same objective [**100] cannot be accomplished by a remand prior to judgment. Indeed, such a device, properly employed, promotes efficiency and expedition by allowing the court to retain jurisdiction in the already pending mandamus proceeding, thereby eliminating the potential need for a new mandamus action to review the agency's decision on reconsideration.

CA(12)[↑] (12) We agree with plaintiff, and with the courts in *Sierra* [****58] *Club v. Contra Costa*

County and *Resource Defense Fund*, that **HN17**[↑] any agency reconsideration must fully comport with due process, and may not simply allow the agency to rubberstamp [***681] its prior unsupported decision. Indeed, the judgments in *Sierra Club v. Contra Costa County* and *Resource Defense Fund* could have been based solely on the conclusions of the Courts of Appeal in those cases that the particular agency decisions on remand suffered from such flaws.¹¹

[*529]

However, a limited interlocutory remand raises no greater inherent danger in these regards than does a final judgment ordering limited reconsideration, as expressly authorized by subdivision (f) of section 1094.5. No fundamental concerns about fair, sound, and complete agency decisionmaking impose the need for a categorical bar on such prejudgment remands.

¹¹ Thus, in *Resource Defense Fund*, a case involving the California Environmental Quality Act (CEQA), the trial court ordered an interlocutory remand to allow a city council to supply *missing* findings in support of an annexation approval. The order simply provided that the court would enter judgment after the council's action, or the expiration of 60 days. The Court of Appeal noted that this sparse and abbreviated procedure raised “serious questions of due process: it effectively precluded any possible challenge to the sufficiency of the evidence to support the new findings” and “fostered a *post hoc* rationalization” (*Resource Defense Fund*, *supra*, 191 Cal. App. 3d 886, 900.) In *Sierra Club v. Contra Costa County*, the trial court [****59] determined that an environmental impact report (EIR), required by CEQA, was inadequate because it failed to fully analyze, and the county board of supervisors had thus failed to fully consider, less environmentally damaging alternatives to a massive residential development approved by the board. The court nonetheless denied the mandamus relief requested by opponents of the development, “ ‘with the exception that the County should administratively make further findings on alternatives.’ ” (*Sierra Club v. Contra Costa County*, *supra*, 10 Cal.App.4th 1212, 1216.) The board then adopted supplemental findings. Promptly thereafter, the court found the EIR, as so augmented, to be “ ‘legally adequate in all respects,’ ” whereupon the court discharged the alternative writ and entered judgment for the county. (*Id.*, at pp. 1216–1217.) Besides finding that this procedure did not satisfy the specific requirements of CEQA, the Court of Appeal stressed that, as was the case in *Resource Defense Fund*, the trial court's procedure raised serious questions of due process by insulating the board's supplemental findings “from any meaningful challenge.” (*Sierra Club v. Contra Costa County*, *supra*, at p. 1221.) [****60]

CA(13) [↑] (13) Accordingly, we are persuaded that **HN18** [↑] subdivision (f) of section 1094.5 imposes no blanket prohibition on the appropriate use, in an administrative mandamus action, of a prejudgment remand for agency reconsideration of one or more issues pertinent to the agency's decision. We reject plaintiff's contrary argument. To the extent the Courts of Appeal in *Resource Defense Fund* and *Sierra Club v. Contra Costa County* concluded otherwise, we will disapprove those decisions.

We are further convinced that the interlocutory remand in this case was not employed, or conducted, improperly. Under the circumstances presented, the trial court's choice to utilize this device was eminently practical. Plaintiff's mandamus petition challenged only a single, discrete facet of the lengthy and complex NPDES permit order—the order's treatment of the BTA issue. [****61] The trial court ultimately concluded that a single finding on this issue—finding No. 48—lacked evidentiary and analytic support. Confronted with this situation, the trial court reasonably concluded it need not, and should not, enter a final judgment vacating the entire permit pending further consideration of that issue.

Such a judgment, even if it included an order narrowing the issues, would have required a new permit proceeding and, most likely, a new mandamus action to review the resulting decision. In the interim, the MLPP's authority to use the cooling system essential to its electrical generation operations [*530] would be cast in [***682] doubt. Instead, the court reasonably decided it could achieve the necessary further examination of the BTA issue by postponing a final judgment pending [**101] the Regional Water Board's focused reconsideration of that matter. The court thus properly exercised its inherent authority to adopt a “suitable process or mode of proceeding” in aid of its jurisdiction. (*Code Civ. Proc.*, § 187.)

Moreover, unlike the procedures at issue in *Resource Defense Fund* and *Sierra Club v. Contra*

Costa County, the instant remand was not unfair, and it produced no mere post hoc rationalization [****62] by the agency. On the contrary, in compliance with the trial court's directive, the Regional Water Board engaged in a full reconsideration of the BTA issue, and gave all interested parties, including plaintiff, a noticed opportunity to appear and to present evidence, briefing, and argument pertinent to the BTA determination.

Nor was the Regional Water Board's finding on remand insulated from meaningful review. Plaintiff was able to pursue, and did pursue, its statutory right to seek an administrative appeal of the board's BTA finding on remand, and then was allowed, in the resumed judicial proceedings, a full opportunity to dispute the foundation for that finding.

For all these reasons, we find no error in the trial court's use of an interlocutory remand to resolve perceived deficiencies in the Regional Water Board's BTA finding.

We similarly reject plaintiff's argument that subdivision (e) of section 1094.5 precluded the Regional Water Board from accepting and considering new evidence on remand absent a showing that such evidence could not have been produced at the original administrative proceeding, or was improperly excluded therefrom. We do not read subdivision (e) to impose such [****63] a limitation under the circumstances presented here.

As explained above, subdivision (e) of section 1094.5 provides that “[w]here the court finds that there *is relevant evidence*” (italics added) which could not with reasonable diligence have been produced, or was improperly excluded, in the administrative proceeding, the court may remand the case “to be reconsidered in the light of *that evidence*.” (Italics added.) To the extent this language is ambiguous, plaintiff extracts the most radical interpretation—that when a court, for whatever reason, directs or authorizes the agency to reconsider its prior decision, in whole or in part, the agency is always confined to the evidence it

previously received, with the exception of evidence the court determines was unavailable, or wrongly excluded, in the original administrative proceeding.

But the precise circumstances of this case illustrate why plaintiff's construction makes little sense. The instant trial court found that the Regional [*531] Water Board's finding No. 48 was *not sufficiently supported* by the original administrative record. The only possible cure for such a deficiency is the agency's reconsideration of its decision *on the basis of additional [****64] evidence*. Plaintiff's construction of subdivision (e) of section 1094.5 would categorically preclude the court, except in narrow circumstances, from authorizing the agency to reach a better considered and better supported result *on a sufficient record*. Unless those narrow exceptions applied, any reconsideration at all would thus simply be futile; the very flaw the court had found could not be remedied.

Yet section 1094.5 contains no other indication that the Legislature intended such a constraint on the scope of an agency reconsideration directed or authorized by the court. Indeed, subdivision (f) broadly provides that when the court directs the agency decision to be set aside, it “may order the reconsideration of the case in the [***683] light of the court's opinion and judgment ... but the judgment shall not limit or control in any way the discretion legally vested in the [agency].” The implication is plain that if, as here, the court finds the administrative record *insufficient* to support the original agency determination, it may order reconsideration *in the light of that judicial finding*—i.e., a reconsideration in which the agency may entertain all the additional evidence necessary [****65] to support its new decision.

Moreover, had the instant trial court simply vacated the Regional Water Board's issuance of the NPDES permit in this case, the MLPP's owner could, should, and would simply have commenced a new permit proceeding before the board. Plaintiff does not suggest that, in such a new proceeding, the [**102] board would be limited to the evidence it

had considered before, plus only previously unavailable or improperly excluded evidence. On the contrary, the board would have been empowered to receive and consider, *de novo*, all evidence pertinent to its decision whether to issue the requested permit. Accordingly, there is no reason to conclude the board lacks such authority when directed or ordered by the court to reconsider an insufficiently supported decision.

Albeit with little analysis, a number of decisions have expressed the unremarkable principle that, when an agency determination is set aside for *insufficiency of the evidence* in the administrative record, the proper course is to remand to the agency for further appropriate proceedings—presumably the agency's consideration of additional evidence as the basis for its decision on reconsideration. (See, e.g., *Fascination, Inc. v. Hoover* (1952) 39 Cal.2d 260, 268 [246 P.2d 656]; [****66] *La Prade v. Department of Water & Power* (1945) 27 Cal.2d 47, 53 [162 P.2d 13]; *Carlton v. Department of Motor Vehicles* (1988) 203 Cal. App. 3d 1428, 1434 [250 Cal. Rptr. 809].)

[*532]

CA(14)[↑] (14) Accordingly, we are persuaded that HN19[↑] section 1094.5, subdivision (e) is not intended to prevent the court, upon finding that the administrative record itself *lacks* evidence sufficient to support the agency's decision, from remanding for consideration of additional evidence. A more reasonable interpretation, which fully honors the statutory language, is that subdivision (e) simply prevents a mandamus petitioner from challenging an agency decision that *is* supported by the administrative record on the basis of evidence, presented to the court, which could have been, but was not, presented to the administrative body.

This interpretation adheres most closely to the literal words of section 1094.5, subdivision (e). As noted, the subdivision provides that when the court determines there “is relevant evidence” meeting the statutory criteria, it may remand to the agency for consideration of “that evidence,” or, in cases where

the court is authorized to weigh the evidence independently, the court may “admit *the evidence*” (italics added) in the judicial proceeding [****67] itself. Read most naturally, this language contemplates a situation in which a party to the mandamus action has actually proffered to the court specific evidence not included in the administrative record. Subdivision (e) provides that the court may remand for agency consideration of *such evidence*, or may consider the evidence itself, only if *that evidence* could not reasonably have been presented, or was improperly excluded, at the administrative proceeding.

CA(15)[↑] (15) Thus, HN20[↑] subdivision (e) of section 1094.5 merely confirms that while, in most cases, the court is limited to the face of the administrative record in deciding whether the agency's decision is valid as it stands, in fairness, the court may consider, or may permit the agency to consider, extra-record evidence for a contrary outcome, if persuaded that such evidence was not [***684] available, or was improperly excluded, at the original agency proceeding. (See No Oil, supra, 13 Cal.3d 68, 79, fn. 6 [in administrative mandamus action, “the court reviews the administrative record, receiving additional evidence only if that evidence was unavailable at the time of the administrative hearing, or improperly excluded from the record”].)

The limited available [****68] legislative history of Senate Bill No. 736 (1945 Reg. Sess.), in which section 1094.5 was adopted, is consistent with this view. The Department of Justice advised the Governor that the bill was designed to settle areas of confusion which had arisen about judicial review of administrative decisions, and would, as “a most important consideration, ... permit the court to remand administrative proceedings for further consideration by the administrative agency in cases where relevant evidence was not available or was wrongfully excluded from the administrative hearings *so that the administrative agency, rather than the court, may finally determine the whole proceeding and the court may in turn actually*

*review the administrative [**533] action. The latter consideration accords both to the administrative agency and the reviewing court their primary functions and the opportunity of carrying out the legislative intent in authorizing the administrative agency to conduct and determine its own proceedings.”* (Cal. [**103] Dept. of Justice, Inter-Departmental Communication to Governor re Sen. Bill No. 736 (1945 Reg. Sess.) June 7, 1945, p. 1, italics added.)

This explanation indicates an intent to provide that [****69] where the reviewing court learns of evidence the agency should have considered, but did not or could not do so for reasons beyond the control of the participants in the administrative proceeding, the court may give the agency, the appropriate primary decision maker, the opportunity to include this evidence in its determination, subject to the court's limited review of the resulting administrative record for abuse of discretion. Nothing suggests, on the other hand, that the court is powerless to allow reconsideration by the agency, with such additional evidence as the agency may find appropriate, when the court finds, in the first instance, that there is not enough evidence in the original administrative record to support the agency's decision.

The decisional law also generally supports our conclusion. Courts have most frequently applied subdivision (e) of section 1094.5 simply to determine whether and when an agency decision may be challenged on mandamus with evidence outside the administrative record.¹² On the

¹²E.g., Sierra Club v. California Coastal Com. (2005) 35 Cal.4th 839, 863 [28 Cal. Rptr. 3d 316, 111 P.3d 294] (in administrative mandamus action challenging coastal zone permit, evidence proffered by mandamus petitioner, which was not part of administrative record, that coastal commission members did not personally review final EIR before granting permit, could not be considered); State of California v. Superior Court (1974) 12 Cal.3d 237, 257 [115 Cal.Rptr. 497, 524 P.2d 1281] (in administrative mandamus action challenging coastal zone permit, mandamus petitioner was not entitled to propound interrogatories to determine whether coastal commission denied fair hearing by receiving, and relying upon, secret prehearing testimony by commission staff);

other [***685] hand, our research has disclosed only two decisions holding or suggesting that section 1094.5 [*534] precludes a remand for new evidence when, as happened here, the trial court [****70] finds that the existing administrative

Eureka Citizens for Responsible Government v. City of Eureka (2007) 147 Cal.App.4th 357, 366–367 [54 Cal. Rptr. 3d 485] (in administrative mandamus action by neighborhood organization challenging city's allowance of nonconforming school playground, court could not consider mandamus petitioner's proffer of correspondence to and from city officials, not included in administrative record, as evidence of school's "ongoing land use [****71] violations"); *Pomona Valley Hospital Medical Center v. Superior Court* (1997) 55 Cal.App.4th 93, 101–109 [63 Cal. Rptr. 2d 743] (under § 1094.5, subd. (e), discovery to obtain evidence that administrative hearing was not fair is permissible only if evidence sought is relevant and could not, with reasonable diligence, have been presented in administrative proceeding); *Fort Mojave Indian Tribe v. Department of Health Services* (1995) 38 Cal.App.4th 1574, 1591–1598 [45 Cal. Rptr. 2d 822] (expression of expert opinion that postdates administrative proceeding is not truly "new" evidence of "emergent facts" which would justify remand, at mandamus petitioner's behest, under § 1094.5, subd. (e)); *Elizabeth D. v. Zolin* (1993) 21 Cal.App.4th 347, 355–357 [25 Cal. Rptr. 2d 852] (in administrative mandamus action challenging suspension of driver's license on ground of licensee's seizure disorder, mandamus petitioner could obtain remand to Department of Motor Vehicles (DMV) under § 1094.5, subd. (e) for consideration of physician's declaration, which postdated DMV hearing, that disorder was being well controlled by medication); *Armondo v. Department of Motor Vehicles* (1993) 15 Cal.App.4th 1174, 1180 [19 Cal. Rptr. 2d 399] (in mandamus action challenging administrative suspension of driver's [****72] license based on breathalyzer results, court properly excluded, absent showing that § 1094.5, subd. (e) exception applied, petitioner's proffered evidence that local crime laboratory was not licensed to use particular breathalyzer model); *Tovota of Visalia, Inc. v. New Motor Vehicle Bd.* (1987) 188 Cal. App. 3d 872, 881–882 [233 Cal. Rptr. 708] (car dealer seeking mandamus review of administrative discipline could introduce evidence outside administrative record on issue of appropriate penalty only if such evidence could not, with reasonable diligence, have been presented in administrative proceeding); *Windigo Mills v. Unemployment Ins. Appeals Bd.* (1979) 92 Cal. App. 3d 586, 596–597 [155 Cal. Rptr. 63] (administrative mandamus petitioner may introduce evidence beyond administrative record if such evidence relates to events that postdate agency proceeding); see also *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 564 [38 Cal. Rptr. 2d 139, 888 P.2d 1268] (evidence outside administrative record was not admissible in traditional mandamus action to determine, under Pub. Resources Code, § 21168.5, a provision of CEQA, whether the agency's decision constituted a "prejudicial abuse of discretion," either because the agency " [did] not proceed[] in [****73] a manner required by law," or because its decision was not supported by "substantial evidence").

record simply fails to support the agency's original determination.

Thus, in *Ashford v. Culver City Unified School Dist.* (2005) 130 Cal.App.4th 344 [29 [**104] Cal. Rptr. 3d 728] (*Ashford*), the Court of Appeal held that except under the circumstances specifically set forth in subdivision (e) of section 1094.5, there was no ground for a remand to give a public employer a second chance to provide additional evidence in support of the original, inadequately founded, administrative decision to terminate an employee. (*Ashford, supra*, at pp. 350–354.) Similarly, in *Newman v. State Personnel Bd.* (1992) 10 Cal.App.4th 41 [12 Cal. Rptr. 2d 601] (*Newman*), the Court of Appeal concluded that the trial court erred when, after finding insufficient evidence in the administrative record to support the medical termination of a California Highway Patrol (CHP) employee, the court remanded for further proceedings. In the Court of Appeal's view, subdivision (f) of section 1094.5 prevented a remand for agency reconsideration when the agency had failed to reach a result substantially supported by the evidence. The Court of Appeal stated that the CHP had failed in its burden to prove grounds for the employee's dismissal, and was [****74] "not now entitled to a second opportunity to establish its case." (*Newman, supra*, at p. 49.)

Ashford and *Newman* illustrate circumstances in which due process principles entirely separate from section 1094.5 may preclude successive administrative proceedings. It may well be, as *Ashford* and *Newman* suggested, that there should be no second chance to muster sufficient evidence [***686] to impose administrative sanctions on a fundamental or vested right, such as the right against dismissal from tenured public employment except upon good cause. [**535]

But we find no such categorical bar in section 1094.5 itself. The quasi-judicial administrative proceedings governed by this statute include a wide variety of matters, including applications for

permits and licenses, that have nothing to do with disciplinary or punitive sanctions. Here, as plaintiff concedes, even if the instant trial court had vacated the MLPP's NPDES permit renewal for lack of evidence, the plant could, should, and would have begun anew the process for obtaining this permit, essential to the continuation of its electrical generation operations. In this new proceeding, the Regional Water Board could, should, and would have considered all evidence [****75] relevant to its permit decision, regardless of whether that evidence had been presented in the prior proceeding. No reason appears to construe section 1094.5 to preclude such new evidence when the court, having found insufficient record support for the agency's decision, remands for reconsideration of that matter.

CA(16)[↑] (16) In sum, **HN21[↑]** section 1094.5, subdivision (e), promotes orderly procedure, and the proper distinction between agency and judicial roles, by ensuring that, with rare exceptions, the court will review a quasi-judicial administrative decision on the record actually before the agency, not on the basis of evidence withheld from the agency and first presented to the reviewing court. But once the court has reviewed the administrative record, and has found it wanting, section 1094.5 does not preclude the court from remanding for the agency's reconsideration in appropriate proceedings that allow the agency to fill the evidentiary gap. To the extent the analyses in *Ashford* and *Newman* are inconsistent with these conclusions, we will disapprove those decisions.

Here, the trial court found that the administrative record did not support one finding by the agency in support of its issuance of a [****76] permit essential to the permittee's operations. Hence, the court acted properly by remanding to the agency for additional evidence and analysis on this issue. No error occurred.

C. “Best technology available” under CWA section 316(b).

As indicated, finding No. 48 of the Regional Water

Board's order issuing the MLPP's 2000 NPDES permit renewal addressed the requirement, under CWA section 316(b), that “the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.” (33 U.S.C. § 1326(b).) In this regard, the board determined that “[i]f the cost of implementing any alternative for achieving BTA is wholly disproportionate to the environmental benefits to be achieved, the Board may consider alternative [**105] methods to mitigate these adverse environmental impacts.” The board further found that, though the MLPP's existing once-through cooling system would be modified and upgraded in certain respects to minimize adverse impacts on aquatic life, [*536] proposed alternatives to this basic system were “wholly disproportionate to the environmental benefits.” After complying, on remand, with the superior court's [****77] directive to analyze the available technologies more closely, the board confirmed finding No. 48, and the superior court denied mandamus.

As we have noted, shortly before the superior court issued its final judgment, the EPA promulgated the Phase II regulations applying CWA section 316(b)'s BTA standard to *existing* electric powerplants. [***687] (69 Fed.Reg., *supra*, p. 41576; 40 C.F.R. § 125.90 et seq. (2011).) The Phase II regulations did not follow the approach of the Phase I regulations, which had required *new* powerplants either to adopt closed-cycle cooling systems or to achieve comparable environmental performance—i.e., up to 98 percent reductions in impingement and entrainment mortality relative to typical once-through systems. (69 Fed.Reg., *supra*, pp. 41576, 41601, 41605.) The EPA declined to impose such a stringent requirement on existing powerplants because it concluded that conversion to closed-cycle systems was impossible or economically impracticable for many existing facilities, that such conversions could have adverse impacts on the environment and on the plants' production and consumption of energy, and that

other, less costly technologies could approach the environmental benefits [****78] of closed-cycle systems. (*Id.*, at p. 41605.)

Instead, therefore, the Phase II regulations set national performance standards requiring an existing facility to reduce impingement and entrainment mortality rates by 60 to 95 percent compared to the rates estimated to arise from a typical once-through system at the site. (40 C.F.R. suspended §§ 125.93, 125.94(b)(1), (2) (2011).) The regulations provided alternative means of achieving compliance, based on a range of available technologies the EPA had determined were “commercially available and economically practicable.” (69 Fed.Reg., *supra*, pp. 41576, 41602.)

The Phase II regulations also allowed a powerplant to seek and receive a site-specific variance from the standards. Such a variance could be obtained by establishing that the plant's costs of literal compliance would be “significantly greater” than (1) the costs the EPA had considered in setting the performance standards or (2) “the benefits of complying” with the standards. (40 C.F.R. suspended § 125.94(a)(5)(i), (ii) (2011).) If a variance was granted, the plant would be required to employ remedial measures that yielded results “as close as practicable to the applicable [****79] performance standards.” (*Ibid.*)

While the instant appeal was pending, the Second Circuit addressed the Phase II regulations in *Riverkeeper II*. The federal court held that while section 316(b) of the CWA allows consideration of extreme forms of economic burden or unfeasibility, the Phase II regulations were invalid under [*537] section 316(b) insofar as, among other things, they determined BTA, or allowed such a site-specific determination, based on mere cost-benefit analysis—i.e., a simple comparison between the expense of a particular cooling system technology and its expected environmental benefits. (*Riverkeeper II, supra*, 475 F.3d 83, 98–105, 114–115.) Nonetheless, the Court of Appeal in this case

subsequently upheld the Regional Water Board's “wholly disproportionate” determination, concluding that it was not foreclosed by *Riverkeeper II*.

On review in this court, plaintiff, relying heavily on *Riverkeeper II*, renewed its argument that the Regional Water Board had employed a cost-benefit analysis forbidden by CWA section 316(b). At the time we granted review, petitions for certiorari were pending in *Riverkeeper II*. The United States Supreme Court thereafter granted certiorari and rendered [****80] its decision in *Entergy Corp. Entergy Corp.* reversed *Riverkeeper II*, unequivocally holding that “the EPA *permissibly* relied on cost-benefit analysis in setting the national performance standards and in providing for cost-benefit variances from those standards as part of the Phase II regulations. The Court of Appeals' reliance in part on the agency's use of cost-benefit [**106] analysis in invalidating the site-specific cost-benefit variance provision [citation] [****688] was therefore in error, as was its remand of the national performance standards for clarification of whether cost-benefit analysis was impermissibly used [citation].” (*Entergy Corp, supra*, 556 U.S. 208, 226 [129 S. Ct. 1498, 1510], italics added.)

In our view, this holding clearly disposes of plaintiff's general claim that CWA section 316(b) prohibited the Regional Water Board from premising its BTA finding on a comparison of costs and benefits. Though the Regional Water Board's 2000 decision to renew the MLPP's NPDES permit preceded the Phase II regulations, and was not based upon them, there is no reason to assume the Regional Water Board, using its “best professional judgment” in the preregulatory era, was forbidden to apply a form [****81] of analysis the United States Supreme Court has determined was properly employed in subsequent regulations interpreting the statute at issue.

Moreover, a portion of the majority's opinion in *Entergy Corp.*, though dictum, undermines plaintiff's further contention that the particular cost-

benefit standard employed by the Regional Water Board—i.e., whether the costs of alternatives to the MLPP's once-through cooling system were “wholly disproportionate” to the expected environmental benefits—was improper.

In his concurring and dissenting opinion in *Entergy Corp.*, Justice Breyer had asserted that, while he agreed some form of cost-benefit analysis was [*538] permissible under CWA section 316(b), the EPA had failed to explain why, in the Phase II regulations, it had abandoned its traditional “wholly disproportionate” standard in favor of one allowing site-specific variances where the costs of compliance were merely “ ‘significantly greater’ ” than the anticipated benefits to the environment. (*Entergy Corp.*, *supra*, 556 U.S. 208, 236 [129 S. Ct. 1498, 1515] (conc. & dis. opn. of Breyer, J.).)

In response, the majority noted that the issue raised by Justice Breyer had no bearing on the basic permissibility [****82] of cost-benefit analysis, “the only question presented here.” Nonetheless, the majority remarked, “It seems to us ... that the EPA's explanation was ample. [The EPA] explained that the ‘wholly out of proportion’ standard was inappropriate for the existing facilities subject to the Phase II rules because those facilities lack ‘the greater flexibility available to new facilities for selecting the location of their intakes and installing technologies at lower costs relative to the costs associated with retrofitting existing facilities,’ and because ‘economically impracticable impacts on energy prices, production costs, and energy production ... could occur if large numbers of Phase II existing facilities incurred costs that were more than “significantly greater” than but not “wholly out of proportion” to the costs in the EPA's record.’ [Citation.]” (*Entergy Corp.*, *supra*, 556 U.S. 208, 222, fn. 8 [129 S. Ct. 1498, 1510, fn. 8].)

CA(17)[↑] (17) The clear implication is that the “wholly disproportionate” standard of cost-benefit analysis—the very standard employed by the Regional Water Board in this case—is *more stringent* than section 316(b) of the CWA requires

for existing powerplants such as [****83] the MLPP. Rather, the *Entergy Corp.* majority suggested, the EPA was free, having “ampl[y]” explained and justified its choice, to select for such facilities a more lenient “significantly greater” standard of economic and environmental practicality. Under these circumstances, we discern no basis to hold that the board erred by basing its BTA determination on a finding that the costs of alternative cooling technologies for the MLPP were “wholly disproportionate” to the anticipated environmental benefits. We conclude [***689] that the board's use of this standard was proper.¹³ [*539]

[**107] DISPOSITION

The Court of Appeal's judgment is affirmed. To the extent the Court of Appeal decisions in *Ashford v. Culver City Unified School Dist.*, *supra*, 130 Cal.App.4th 344, *Sierra Club v. Contra Costa County*, *supra*, 10 Cal.App.4th 1212, *Newman v. State Personnel Bd.*, *supra*, 10 Cal.App.4th 41, and *Resource Defense Fund v. Local Agency Formation Com.*, *supra*, 191 Cal. App. 3d 886, are inconsistent with the views expressed herein, those decisions are disapproved.

¹³Following the *Riverkeeper II* decision, the EPA withdrew the Phase II regulations (72 Fed.Reg. 37107–37109 (July 9, 2007)), and they have not been reissued. We have taken judicial notice that in May 2010, seeking to fill the regulatory vacuum, the State Water Board adopted a Statewide Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling (2010 Power Plant Cooling Policy). Under this policy, the State Water Board, rather than the regional water boards, will issue all NPDES permits to affected powerplants. Thermal powerplants with once-through cooling systems will be required, by specified [****84] compliance dates, to reduce intake flow rates to mandated levels, or to adopt other operational and/or structural controls to achieve commensurate reductions in impingement and entrainment mortality. In the interim, affected plants must adopt mitigating measures to control impingement and entrainment damage.

Several powerplant owners, including Dynegey, have filed a petition for mandate challenging the 2010 Power Plant Cooling Policy. (*Genon Energy, Inc. v. State Water Resources Control Board* (Super. Ct. Sacramento County, Oct. 27, 2010, No. 2010-80000701).)

Cantil-Sakauye, C. J., Kennard, J., Werdegar, J., Chin, J., Corrigan, J., and Kitching, J.,” concurred.

Concur by: Werdegar

Concur

WERDEGAR, J., Concurring.—I fully concur in the majority opinion. I write separately only to point out a limitation on the scope of our decision today.

The majority correctly holds that Code of Civil Procedure section 1094.5, governing the procedure to be followed in adjudicating petitions for writ of administrative mandate, does not preclude a trial court from ordering an interlocutory remand requiring agency reconsideration of one or more specific findings or decisions; nor is the agency precluded, under this statute, from considering new evidence on such a remand. (Maj. opn., *ante*, at pp. 529–530.) Because the remand order at issue in this case related to compliance with a provision of the federal Clean Water Act of 1977 (33 U.S.C. § 1326(b)) rather than to compliance with the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.), the majority has no occasion here to consider whether a trial court may, similarly, order remand for reconsideration of an agency decision for compliance with CEQA without issuing a writ of mandate.

Public Resources Code section 21168.9, subdivision (a) [****86] provides that if a court finds a public agency's finding or decision to have been made in violation of CEQA, “the court shall enter an order that includes one or more of the following” mandates. The statute specifically outlines the scope of the mandate to be issued, including as necessary that the agency void its findings [*540] and decisions, take any actions

required to come into compliance with CEQA, and in the meantime suspend any part of the project at issue that might cause an adverse environmental effect. (Pub. Resources Code, § 21168.9, subd. (a)(1)–(3).) [***690] Balancing these commands with protections against an overbroad writ, the statute limits the order to “only those mandates which are necessary to achieve compliance with this division and only those specific project activities in noncompliance with this division,” provided the noncomplying portion of the decision or finding is severable from the complying portion. (*Id.*, subd. (b).) The order is to be made by “peremptory writ of mandate,” and the trial court is to retain jurisdiction “by way of a return to the peremptory writ” to ensure agency compliance. (*Ibid.*)

Consequently, while CEQA challenges are often brought through a petition [****87] for administrative mandate under Code of Civil Procedure section 1094.5, CEQA contains its own detailed and balanced remedial scheme, offering protections for both agencies and those challenging agency action under CEQA. I do not read the majority's analysis of the administrative mandate procedure in this non-CEQA case as speaking to the procedures to be followed when an agency's action is found to have violated CEQA.

Cantil-Sakauye, C. J., concurred.

End of Document

* Associate Justice of the Court of Appeal, Second Appellate [****85] District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

EXHIBIT F
LOS ANGELES COUNTY FLOOD
CONTROL DISTRICT CODE
(EXCERPT)

16.01 Title.

This Chapter shall be known as the "The Los Angeles Region Safe, Clean Water Program" ordinance.

(Ord. 2018-0044 § 1, 2018.)

16.02 Purpose.

This ordinance is adopted to achieve the following purposes and directs that the provisions hereof be interpreted in order to:

- A. Impose a Special Parcel Tax upon Parcels of property within the boundaries of the District at the rate of two and one-half (2.5) cents per square foot of Impermeable Area, except as exempted, to be used for the purposes set forth herein.
- B. Provide funding for Programs and Projects to increase Stormwater and Urban Runoff capture and reduce Stormwater and Urban Runoff pollution in the District, including Projects and Programs providing a Water Supply Benefit, Water Quality Benefit, and Community Investment Benefit.

(Ord. 2018-0044 § 1, 2018.)

16.04 Expenditure Plan.

The District shall expend all Special Parcel Tax revenues consistent with the expenditure plan contained in this section.

- A. The District shall use the Special Parcel Tax revenues to pay the costs and expenses of carrying out Projects and Programs to increase Stormwater or Urban Runoff capture or reduce Stormwater or Urban Runoff pollution in the District in accordance with criteria and procedures established in this Chapter and Chapter 18 of this code. Projects and Programs funded by the revenues from the Special Parcel Tax may provide a Water Supply Benefit, Water Quality Benefit, and Community Investment Benefit. The District shall allocate the revenues derived from the Special Parcel Tax as follows:
 - 1. Ten percent (10%) shall be allocated to the District for implementation and administration of Projects and Programs, and for the payment of the costs incurred in connection with the levy and collection of the Special Parcel Tax and the distribution of the funds generated by imposition of the Special Parcel Tax in accordance with the criteria and procedures established in this Chapter.
 - 2. Forty percent (40%) shall be allocated to Municipalities within the District, in the same proportion as the amount of revenues collected within each Municipality, to be expended by those cities within the cities' respective jurisdictions and by the County within the unincorporated areas that are within the boundaries of the District, for the implementation, operation and maintenance, and administration of Projects and Programs, in accordance with the criteria and procedures established in this Chapter.
 - 3. Fifty percent (50%) shall be allocated to pay for the implementation, operation and maintenance, and the administration of Projects and Programs implemented through the Regional Program, including Projects and Programs identified in approved regional plans such as stormwater resource plans developed in accordance with Part 2.3 (commencing with section 10560) of Division 6 of the Water Code, watershed management programs developed pursuant to waste discharge requirements for municipal separate storm sewer system (MS4) discharges within the coastal watersheds of the County, issued by the Los Angeles Regional Water Quality Control Board, and other regional water management plans, as appropriate, in accordance with the criteria and procedures established in this

Chapter and Chapter 18 of this code. Funds allocated to the Regional Program shall be distributed among the nine (9) Watershed Areas in proportion to the funds generated in each Watershed Area.

- B. The District, and Municipalities within the boundaries of the District, may use the funds from the Special Parcel Tax to finance bonds issued by the District or Municipalities so long as the bond proceeds are used for Projects and Programs that are eligible for funding under the SCW Program.

(Ord. 2019-0042 § 2, 2019; Ord. 2018-0044 § 1, 2018.)

16.08 Special Parcel Tax Rate.

- A. Commencing the fiscal year 2019-20, an annual special parcel tax in the amount of two and one-half (2.5) cents per square foot of Parcel Impermeable Area, is hereby imposed upon all Parcels located within the District, except as provided in Section 16.09 of this Chapter. All revenues from the Special Parcel Tax shall be used to fund Projects and Programs consistent with the expenditure plan as set forth in Section 16.04 of this Chapter, and to fund the costs incurred in connection with the levy and collection of the tax and distribution of the funds.
- B. All laws and procedures regarding exemptions, due dates, installment payments, corrections, cancellations, refunds, late payments, liens and collections for the secured roll ad valorem property taxes shall be applicable to the collection of the Special Parcel Tax. The secured roll tax bills shall be the only notices required for the levying of the Special Parcel Tax. The Auditor-Controller shall place the Special Parcel Tax on the secured tax roll for the initial fiscal year 2019-20, and for subsequent fiscal years. The Treasurer shall collect the Special Parcel Tax for the initial Fiscal Year 2019-20, and for subsequent fiscal years, on the tax roll at the same time and in the same manner, and subject to the same penalties as the ad valorem property taxes fixed and collected by or on behalf of the County. The County shall be entitled to deduct its reasonable costs incurred in collecting the Special Parcel Tax before such tax is remitted to the District, including all costs incurred in connection with the levy and collection of the tax and distribution of the funds.
- C. The District shall establish and administer an appeals process to address and correct errors in the levy of the Special Parcel Tax. Parcel owners or any other person or entity subject to the Special Parcel Tax may seek review of the amount of their tax on the following grounds:
1. Mathematical error in the calculation of the tax; or
 2. Significant discrepancy between the assessed and the actual Impermeable Area.
- D. The Auditor-Controller shall file a report with the Board by no later than January 1, 2021, and by January 1 of each year thereafter, stating the amount of funds collected pursuant to this ordinance. The report may relate to the calendar year, fiscal year, or other appropriate annual period, as the Auditor-Controller may determine, and may be incorporated into or filed with the annual budget, audit, or other appropriate routine report to the Board.
- E. Nothing in this ordinance shall limit a Parcel owner's ability to pass through the Special Parcel Tax to a tenant, subject to all applicable rent control ordinances, contractual provisions in the specific lease, federal subsidized housing requirements, and other applicable laws.

(Ord. 2018-0044 § 1, 2018.)

BURHENN & GEST LLP
624 SOUTH GRAND AVENUE
SUITE 2200
LOS ANGELES, CALIFORNIA 90017-3321
(213) 688-7715
FACSIMILE (213) 624-1376
WWW.BURHENNGEST.COM

WRITER'S DIRECT NUMBER
(213) 629-8787

WRITER'S E-MAIL ADDRESS
HGEST@burhennigest.com

October 4, 2022

Via Drop Box

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Re: Auditor-Controller's Authority to File Test Claim for the Los Angeles County Flood Control District

Dear Ms. Halsey:

This letter is submitted in support of the Los Angeles County Auditor-Controller's authority to submit the Test Claim for the Los Angeles County Flood Control District.

2 Cal. Code Reg. §1183.1(a)(5) provides that an "officer with authority delegated by the governing body by ordinance or resolution may file on behalf of a special district." That is the case here. Section 3 of the Los Angeles County Flood Control Act provides that "The . . . county auditor . . . shall be ex officio officers, assistants, deputies, clerks and employees respectively of said Los Angeles County Flood Control District, and shall respectively perform, unless otherwise provided by said board of supervisors, the same various duties for said district as for said Los Angeles County without additional compensation in order to carry out the provisions of this act."

Accordingly, under the Flood Control Act, the Auditor-Controller has been delegated the authority to perform the same acts for the Flood Control District that it performs for the County itself. Section 1183.1(a)(1) recognizes that the County Auditor-Controller is authorized to file a test claim on behalf of the County and thus the Auditor-Controller, having been delegated the authority to perform the same duties for the Flood Control District, is authorized to file a test claim for the District.

BURHENN & GEST LLP

Ms. Heather Halsey

Page 2

October 4, 2022

Attached for your convenience is Section 3 of the Los Angeles County Flood Control Act. Please call the undersigned if you have any questions.

I declare under penalty of perjury that the foregoing, signed on October 4, 2022, is true and correct to the best of my personal knowledge, information or belief.



Howard Gest

Claimant Representative

Address, phone and e-mail set forth
above

Cal Uncod Water Deer, Act 470 § 3

Deering's California Codes are current through Chapter 175 of the 2022 Regular Session.

Deering's California Codes Annotated > WATER—UNCODIFIED ACTS (§§ 1 — 28) > ACT 470 Los Angeles County Flood Control Act (1915 ch 755) (§§ 1 — 23)

§ 3. Board of supervisors; Rules and regulations; Ex officio officers, assistants; Adoption, certification, recordation and publication of ordinances, etc.

The Board of Supervisors of Los Angeles County shall be, and they are hereby designated as, and empowered to act as, ex officio the board of supervisors of said Los Angeles County Flood Control District, and said board of supervisors is hereby authorized to adopt reasonable rules and regulations to facilitate the exercise of its powers and duties herein set forth.

The county counsel, county clerk, county assessor, county tax collector, county auditor, director of personnel, and county treasurer of the County of Los Angeles, and their successors in office, and all other officers of said Los Angeles County, their assistants, deputies, clerks and employees, shall be ex officio officers, assistants, deputies, clerks and employees respectively of said Los Angeles County Flood Control District, and shall respectively perform, unless otherwise provided by said board of supervisors, the same various duties for said district as for said Los Angeles County without additional compensation in order to carry out the provisions of this act. The district shall reimburse the county for all costs and expenses incurred by reason of the performance of said duties, including the duties performed by members of the board of supervisors, for the district.

All ordinances, resolutions and other legislative acts for said district shall be adopted by said board of supervisors and certified to, recorded and published, in the same manner except as herein otherwise expressly provided, as are ordinances, resolutions or other legislative acts for the County of Los Angeles.

History

Added Stats 1915 ch 755 p 1502. Amended Stats 1939 ch 608 § 8 p 2027; Stats 1941 ch 597 § 1 p 1982; Stats 1945 ch 966 § 1 p 1864; Stats 1953 ch 856 § 1 p 2185; Stats 1968 ch 557 § 3.

Deering's California Codes Annotated
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End of Document

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 October 14, 2022, I served the:

- **Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date issued October 14, 2022**
- **Test Claim filed by the County of Los Angeles and the Los Angeles County Flood Control District on July 22, 2022**

California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2021-0105, 22-TC-01

Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105: Parts III.A.1, A.3.a, A.3.b, A.5.a, A.5.b, A.5.c, A.6; Parts IV.A.2 and B and Attachments J through S (except Attachments K, L and N); Part VII and Attachment E; Parts VIII.D.1, D.3, D.4; Parts VIII.F.3.c.i, F.3.c.ii, F.3.c.iii; Parts VIII.G.4.a, G.5.a, G.5.b.i, G.5.b.ii; Parts VIII.H.2 and H.5.b; and Parts VIII.I.5, I.6, I.8., effective September 11, 2021
County of Los Angeles and Los Angeles County Flood Control District, Claimants

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 October 14, 2022 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: 10/14/22

Claim Number: 22-TC-01

Matter: California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2021-0105

Claimants: County of Los Angeles
Los Angeles County Flood Control District

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.)

Adaoha Agu, *County of San Diego Auditor & Controller Department*
Projects, Revenue and Grants Accounting, 5530 Overland Avenue, Ste. 410 , MS:O-53, San Diego, CA 92123
Phone: (858) 694-2129
Adaoha.Agu@sdcounty.ca.gov

Marni Ajello, Attorney, Office of Chief Counsel, *State Water Resources Control Board*
San Francisco Bay Regional Water Quality Control Board, 1001 I Street, 22nd Floor, Sacramento, CA 95814
Phone: (916) 327-4439
marnie.ajello@waterboards.ca.gov

Lili Apgar, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-0254
lapgar@sco.ca.gov

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Tamarin Austin, Attorney, Office of Chief Counsel, *State Water Resources Control Board*
San Francisco Bay Regional Water Quality Control Board, 1001 I Street, 22nd Floor, Sacramento, CA 95814
Phone: (916) 341-5171
Tamarin.Austin@waterboards.ca.gov

Aaron Avery, Legislative Representative, *California Special Districts Association*

1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
Aarona@csda.net

Arlene Barrera, Auditor-Controller, *County of Los Angeles*

Claimant Contact

Auditor-Controller's Office, 500 West Temple Street, Room 525, Los Angeles, CA 90012
Phone: (213) 974-8302
abarrera@auditor.lacounty.gov

Guy Burdick, Consultant, *MGT Consulting*

2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 833-7775
gburdick@mgtconsulting.com

Allan Burdick,

7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*

Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Annette Chinn, *Cost Recovery Systems, Inc.*

705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinnrcs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*

925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Kris Cook, Assistant Program Budget Manager, *Department of Finance*

915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Kris.Cook@dof.ca.gov

Donna Ferebee, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-8918
donna.ferebee@dof.ca.gov

Tim Flanagan, Office Coordinator, *Solano County*

Register of Voters, 678 Texas Street, Suite 2600, Fairfield, CA 94533
Phone: (707) 784-3359
Elections@solanocounty.com

Jennifer Fordyce, Assistant Chief Counsel, *State Water Resources Control Board*

Office of Chief Counsel, 1001 I Street, 22nd floor, Sacramento, CA 95814
Phone: (916) 324-6682
Jennifer.Fordyce@waterboards.ca.gov

Sophie Froelich, Attorney III, *State Water Resources Control Board*

1001 I Street, 22nd Floor, Sacramento, CA 95812

Phone: (916) 319-8557
Sophie.Froelich@waterboards.ca.gov

Howard Gest, *Burhenn & Gest, LLP*

Claimant Representative

624 South Grand Avenue, Suite 2200, Los Angeles, CA 90402

Phone: (213) 629-8787

hgest@burhenngest.com

Catherine George Hagan, Senior Staff Counsel, *State Water Resources Control Board*
c/o San Diego Regional Water Quality Control Board, 2375 Northside Drive, Suite 100, San Diego,
CA 92108

Phone: (619) 521-3012

catherine.hagan@waterboards.ca.gov

Heather Halsey, Executive Director, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562

heather.halsey@csm.ca.gov

Chris Hill, Principal Program Budget Analyst, *Department of Finance*

Local Government Unit, 915 L Street, Sacramento, CA 95814

Phone: (916) 445-3274

Chris.Hill@dof.ca.gov

Tiffany Hoang, Associate Accounting Analyst, *State Controller's Office*

Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816

Phone: (916) 323-1127

THoang@sco.ca.gov

Jessica Jahr, *State Water Resources Control Board*

1001 I Street, 22nd floor, Sacramento, CA 95814

Phone: (916) 341-5168

Jessica.Jahr@waterboards.ca.gov

Jason Jennings, Director, *Maximus Consulting*

Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236

Phone: (804) 323-3535

SB90@maximus.com

Angelo Joseph, Supervisor, *State Controller's Office*

Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816

Phone: (916) 323-0706

AJoseph@sco.ca.gov

Anita Kerezsi, *AK & Company*

2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446

Phone: (805) 239-7994

akcompanysb90@gmail.com

Nicole Kuenzi, *State Water Resources Control Board*

1001 I Street, Sacramento, Calif

Phone: (916) 341-5199

nicole.kuenzi@waterboards.ca.gov

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*

Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Michael Lauffer, Chief Counsel, *State Water Resources Control Board*
1001 I Street, 22nd Floor, Sacramento, CA 95814-2828
Phone: (916) 341-5183
michael.lauffer@waterboards.ca.gov

Kim-Anh Le, Deputy Controller, *County of San Mateo*
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 599-1104
kle@smcgov.org

Fernando Lemus, Principal Accountant - Auditor, *County of Los Angeles*
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
flemus@auditor.lacounty.gov

Erika Li, Chief Deputy Director, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0766
ELuc@sco.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Darryl Mar, Manager, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
DMar@sco.ca.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Marilyn Munoz, Senior Staff Counsel, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-8918
Marilyn.Munoz@dof.ca.gov

Geoffrey Neill, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814

Phone: (916) 327-7500
gneill@counties.org

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Adriana Nunez, Staff Counsel, *State Water Resources Control Board*
1001 I Street, Sacramento, CA 95814
Phone: (916) 322-3313
Adriana.nunez@waterboards.ca.gov

Patricia Pacot, Accountant Auditor I, *County of Colusa*
Office of Auditor-Controller, 546 Jay Street, Suite #202 , Colusa, CA 95932
Phone: (530) 458-0424
ppacot@countyofcolusa.org

Arthur Palkowitz, *Artiano Shinoff*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@as7law.com

Mark Pestrella, Chief Engineer, *Los Angeles County Flood Control District*
900 South Fremont Avenue, Alhambra, CA 91803
Phone: (626) 458-4001
mpestrella@dpw.lacounty.gov

Darrin Polhemus, Deputy Director, *State Water Resources Control Board*
Division of Drinking Water, , ,
Phone: (916) 341-5045
Darrin.Polhemus@waterboards.ca.gov

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@sbcountyatc.gov

Renee Purdy, Executive Officer, *Los Angeles Regional Water Quality Control Board*
320 West 4th Street, Suite 200, Los Angeles, CA 90013-2343
Phone: (213) 576-6686
rpurdy@waterboards.ca.gov

Jonathan Quan, Associate Accountant, *County of San Diego*
Projects, Revenue, and Grants Accounting, 5530 Overland Ave, Suite 410, San Diego, CA 92123
Phone: 6198768518
Jonathan.Quan@sdcountry.ca.gov

David Rice, *State Water Resources Control Board*
1001 I Street, 22nd Floor, Sacramento, CA 95814
Phone: (916) 341-5161
davidrice@waterboards.ca.gov

Ivar Ridgeway, *Los Angeles Regional Water Quality Control Board*
320 West 4th Street, Suite 200, Los Angeles, CA 90013-2343
Phone: (213) 576-6686
iridgeway@waterboards.ca.gov

Teresita Sablan, *State Water Resources Control Board*

1001 I Street, 22nd Floor, Sacramento, CA 95814
Phone: (916) 341-5174
Teresita.Sablan@waterboards.ca.gov

Cindy Sconce, Director, *MGT*
Performance Solutions Group, 3600 American River Drive, Suite 150, Sacramento, CA 95864
Phone: (916) 276-8807
csconce@mgtconsulting.com

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Christina Snider, Senior Deputy County Counsel, *County of San Diego*
1600 Pacific Highway, Room 355, San Diego, CA 92101
Phone: (619) 531-6229
Christina.Snider@sdcounty.ca.gov

Eileen Sobeck, Executive Director, *State Water Resources Control Board*
1001 I Street, 22nd Floor, Sacramento, CA 95814-2828
Phone: (916) 341-5183
Eileen.Sobeck@waterboards.ca.gov

Sean Sterchi, *State Water Resources Control Board*
Division of Drinking Water, 1350 Front Street, Room 2050, San Diego, CA 92101
Phone: (619) 525-4159
Sean.Sterchi@waterboards.ca.gov

Brittany Thompson, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Brittany.Thompson@dof.ca.gov

Jolene Tollenaar, *MGT Consulting Group*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Evelyn Tseng, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814

Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Antonio Velasco, Revenue Auditor, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3143
avelasco@newportbeachca.gov

Emel Wadhvani, Senior Staff Counsel, *State Water Resources Control Board*
Office of Chief Counsel, 1001 I Street, Sacramento, CA 95814
Phone: (916) 322-3622
emel.wadhvani@waterboards.ca.gov

Ada Waelder, Legislative Analyst, Government Finance and Administration, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
awaelder@counties.org

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Jacqueline Wong-Hernandez, Deputy Executive Director for Legislative Affairs, *California State Association of Counties (CSAC)*
1100 K Street, Sacramento, CA 95814
Phone: (916) 650-8104
jwong-hernandez@counties.org

Elisa Wynne, Staff Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
elisa.wynne@sen.ca.gov