

SAN BERNARDINO COUNTY MS4 TENTATIVE ORDER NO. R8-2009-0036
Comments/Responses

Summary of Comments and Responses on the San Bernardino County Draft MS4 Permit (1st draft, June 26, 2009)

Item No.	Commenting Parties & Page Numbers	Section No & Topic	Comment (Most comments are verbatim from the comment letters)	Response/Change(s) made
1	SBCFCD, Att-A Draft Comment Letter 090909- final, 2	High Priority Areas of Concern, Economic Issues	The Permittees are experiencing an economic downturn that is more severe than at anytime since the first-term MS4 Permit was adopted in 1990. The draft Permit contains more requirements than in any previous permits and several new programs have been added. Therefore, the Permittees propose a prioritization approach to maximize effectiveness of available resources.	The Permittees have proposed a risk-based prioritization approach to address pollution problems resulting from urban storm water runoff. The draft Order recognizes this approach. Please note that certain schedules, such as TMDL compliance dates, specified in the Permit were established through a Basin Plan amendment process with public participation. The draft Order reflects the schedules specified in the Basin Plan. Further, a majority of the new components of the permit are administrative, procedural and planning improvements to better integrate the storm water program with other programs.
2	SBCFCD, Att-A Draft Comment Letter 090909- final, 2	Technical Issues, Reporting Schedule	The Permittees request a number of changes to the reporting schedule contained in the draft Permit based on a prioritized scheme for implementing various program elements.	Staff reviewed the recommendations and have made changes where appropriate.
3	SBCFCD, Att-A Draft Comment Letter 090909- final, 3	Reporting Schedule, Priority Activities	The draft Order identifies certain priorities: incorporation of LID, revision of WQMP, establishment of LIP. These are proposed for completion within 18 months of permit adoption.	Some of the recommended changes are reflected in the revised draft.
4	SBCFCD, Att-A Draft Comment Letter 090909- final, 3	Reporting Schedule, Program Enhancements	The Permittees request that the reporting schedule for program enhancements be provided additional time from 18 to 36 months from Permit adoption.	Staff reviewed the current status of a number of program elements and determined that some of the Permittees have already implemented some of the program enhancements required under the draft Order. As such, some of the revised schedules may not be fully consistent with the Permittees recommendations.
5	SBCFCD, Att-A Draft Comment Letter 090909- final, 3	Reporting Schedule, New Programs	The Permittees request additional time to implement and report some of the newly incorporated elements of the draft Permit, such as residential programs and mobile businesses.	Some schedules have been adjusted in the October 22, 2009 draft. However, there are programs that the Permittees should consider developing and implementing in cooperation with other MS4 permittees in the Region. It is expected that such joint approaches could save resources and reduce the time needed for development and implementation.
6	SBCFCD, Att-A Draft Comment Letter 090909- final, 3	Priority Activities, LID	The Permittees have serious concerns about the feasibility of incorporating certain LID elements in the draft Permit. The Permittees agree with the schedule established in the draft Permit for the development of LID elements, where it is determined that such elements are feasible. The Permittees propose to incorporate a feasibility analysis into the LID process. However, it may not be possible to implement all the LID program elements within the specified 12 month time frame, particularly those elements that may require changes to municipal codes.	The permit requires identification of barriers to LID implementation within 12 months of order adoption. We recognize that where it is necessary to revise municipal codes, additional time may be needed.
7	SBCFCD, Att-A Draft Comment Letter 090909- final, 4	Priority Activities, WQMP	The Permittees agree to the schedule for WQMP development and implementation as established by the draft Permit, and do not request any changes to the reporting schedule associated with WQMP revisions.	Comment noted.
8	SBCFCD, Att-A Draft Comment Letter 090909- final, 4	Priority Activities, LIP	Permittees request the schedule for development of the LIP be revised as follows: (1) within 6 months of Permit issuance, the Permittees will develop an area-wide model LIP for use by individual Permittees; (2) within 18 months of Permit adoption, the Permittees will prepare and adopt LIPs for each of their jurisdictions.	We agree with the proposed revisions.

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9	SBCFCD, Att-A Draft Comment Letter 090909-final, 4	Priority Activities, LIP	Revise the schedule in the reporting table to (1) incorporate preparation of an area-wide LIP model; (2) change the schedule for Principal Permittee and Co-Permittees LIP adoption; and (3) change the schedule for incorporation of de minimus discharge information.	We agree with the proposed revisions.
10	SBCFCD, Att-A Draft Comment Letter 090909-final, 4	Section IX.F Program enhancements, Septic System Program	The Permittees request that this schedule be extended to 36 months (since this is an enhancement to an existing program and its completion is a lower priority)	Staff believes that this extension is not appropriate as the Septic System Program itself was an element of the 2002 MS4 Permit.
11	SBCFCD, Att-A Draft Comment Letter 090909-final, 5	Section XII.E Public Education BMP Guidance	The Permittees request that this schedule be extended to 24 months. Existing BMP education programs already address most pollutant sources.	We agree to the proposed extension.
12	SBCFCD, Att-A Draft Comment Letter 090909-final, 5	Sections XI.I.2 & XI.J.3 Post-Construction Database Activities	The Permittees request that this schedule be extended to 18 months.	We do not agree to the proposed extension as this is a continuation of the 2002 MS4 program element.
13	SBCFCD, Att-A Draft Comment Letter 090909-final, 5	Section X.A.3 Risk-Based Inspections	The Permittees request that this schedule be extended to 24 months. An existing inspection program is already in place. Development of a risk-based program was a recommendation in the ROWD and the Permittees request sufficient time to develop this revised approach for conducting inspections.	We agree to the proposed extension.
14	SBCFCD, Att-A Draft Comment Letter 090909-final, 5	Section III.A.1.n Program Guidance Review & Revision	The Permittees request that the reporting schedule for this permit activity be extended to 18 months. This extension will allow much more thorough consideration of LID and WQMP changes when reviewing program guidance.	We agree to the proposed extension.
15	SBCFCD, Att-A Draft Comment Letter 090909-final, 5	Section XVIII.B Effectiveness Evaluation	We request that the schedule be revised so that this evaluation could be done with the second annual report after Permit adoption. This provides an opportunity to the Permittees to include an evaluation of new or enhanced program elements such as LID, WQMP, LIP, etc.	We agree to the proposed extension.
16	SBCFCD, Att-A Draft Comment Letter 090909-final, 6	Section X.D.6, X.D.7 New Program, Mobile Business BMP	The Permittees request that this schedule be extended to 36 months for the following reasons: (1) The establishment of a mobile business BMP program represents a new stormwater program element; and (2) the development of new BMP materials, notification program, and enforcement strategy will require additional resources and should take into consideration the risk-based inspection program recommended for completion within 24 months (see above).	We agree to the proposed extension.
17	SBCFCD, Att-A Draft Comment Letter 090909-final, 6	Section X.E.1 New Program, Residential BMPs	The Permittees request that this schedule be extended to 36 months and that the reporting requirement in X.E.7 be adjusted accordingly. This requirement creates a new BMP program which will require significant coordination and outreach with Homeowner Associations (HOA).	We agree to the proposed extension.

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18	SBCFCD, Att-A Draft Comment Letter 090909-final, 6	Section VII.D New Program, Pathogen Control Ordinance	The Permittees request that this schedule be extended to 48 months. This program element will be developed while developing the residential BMP program. A draft ordinance would be completed within 36 months of permit adoption. An additional 12 months is requested to provide time for each Permittee to work through the ordinance adoption process.	We believe that a 36 month timeline is reasonable to accomplish this task.
19	SBCFCD, Att-A Draft Comment Letter 090909-final, 6	Section XI.D.6, XIII.E New Program, Regional Treatment BMPs	The Permittees request that the schedule for completion of these activities be extended to 36 months for the following reasons: (1) this activity represents a new stormwater program element and for fiscal reasons, additional time is needed to get budget allocation and approvals; (2) the requirement to evaluate retrofit opportunities is an extension of the original ROWD recommendation which was focused only on regulatory issues; and (3) combining the two regional treatment BMP permit tasks adds value since the evaluation of regulatory issues will be done in the context of potential retrofit projects.	Some clarifications have been added to the second draft of the Permit. However, we do not agree with combining the language in Section XI.D.6 into XIII.E as it would limit the regional treatment control BMPs only to municipal facilities and projects.
20	SBCFCD, Att-A Draft Comment Letter 090909-final, 7-9	Other Permit Requirements, Watershed Action Plan	The Permittees request a revised schedule and an alternative approach to achieving the objectives of the WAP.	Comment noted. The October 22, 2009 draft incorporates an alternative approach for WAP.
21	SBCFCD, Att-A Draft Comment Letter 090909-final, 9-10	Section XVI Other Permit Requirements, Training	The Permittees request that the reporting schedule be revised to extend the time over which revisions to the existing program are completed: (1) Within 24 months, the Permittees will update their existing training program to incorporate new or revised program elements related to the development of the LID program, revised WQMP, and establishment of LIPs for each Permittee.; (2) Within 36 months, the Permittees will update training program elements to incorporate new or enhanced stormwater program elements due for completion within 36 months of permit adoption; (3) Within 48 months, the Permittees will completely revise training program that includes any enhanced or new program elements not previously addressed, e.g., watershed planning.	The phased approach is consistent with the schedules for other program elements.
22	SBCFCD, Att-A Draft Comment Letter 090909-final, 10	Other Permit Requirements, Monitoring	The reporting schedule includes the following requirement: "Submit plan to determine dry weather N/TDS baseline concentration within Permittees' jurisdiction" within 18 months of Order adoption. This section cites MRP III.F; this may not be correct. Please provide clarification regarding the basis for this requirement.	Please see Fact Sheet, page 9/42, Section V.1.A.1 for the basis. MRP, Section IV.B.3.b. IC/ID monitoring requirement has been revised to show this timeline and deliverable.
23	SBCFCD, Att-A Draft Comment Letter 090909-final, 10	Section XI New Development - Road Project WQMP Category	The Permittees propose to develop standard design and post-development BMP guidance to be incorporated into projects for public streets, roads, highways, and freeway improvements. The Permittees propose a 24-month schedule for this task.	We agree that a standard design criteria is a good approach for addressing pollutants in storm water runoff from public streets. The October 22, 2009 draft provides an opportunity for such an approach.

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24	SBCFCD, Att-A Draft Comment Letter 090909-final, 11	Legal Issues, TMDLs	The Permittees believe that it is inappropriate to impose the TMDL-based numeric limits set forth in the draft Permit. The Permittees request that a BMP-based approach be used to meet TMDL requirements.	The draft Order requires the Permittees to meet the WLAs specified in the Basin Plan. The draft Order includes the WLAs in the approved TMDLs. The WLAs are expressed as water quality-based effluent limits. Compliance determination with the WLAs are based on the progress of implementation of the approved plans and programs as per the TMDLs. The draft Order requires assessment and implementation of BMPs that would effectively lead towards compliance with the WLAs. The approach specified in the proposed draft reflects a BMP iterative approach consistent with the federal regulations and guidance.
25	SBCFCD, Att-A Draft Comment Letter 090909-final, 11	Legal Issues, WLA & Effluent Limits	The Regional Board acknowledged a non-traditional NPDES permitting strategy for urban storm water runoff. The Fact Sheet (p. 24) states, "Due to economic and technical infeasibility of full-scale end-of-pipe treatments and the complexity of urban storm water runoff quality and quantity, MS4 permits generally include narrative requirements for the implementation of BMPs in place of numeric effluent limits." Consistent with this finding, the Permit should not include any numeric effluent limits.	The USEPA, in its September 9, 2009 comments on the draft Order, has indicated that incorporating WLAs as numeric limits is appropriate. Federal regulations, 40 CFR 122.44(d)(vii)(B) states, "Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7." 40 CFR 130.20(h) states that WLAs constitute a type of water quality-based effluent limitation. Consistent with the federal laws and regulations and guidance from the State Board and the USEPA, the draft Order includes the WLAs as water quality-based effluent limitations. It obligates the Permittees to implement the plans and programs as per the approved TMDLs.
26	SBCFCD, Att-A Draft Comment Letter 090909-final, 11	Legal Issues, WLA & Effluent Limits	This non-traditional NPDES permitting strategy is integral to the "maximum extent practicable" (MEP) standard that Congress imposed on urban storm water runoff in Section 402(p)(3) of the Clean Water Act. BMPs are the most appropriate form of effluent limitations to satisfy technology requirements and water quality-based requirements in MS4 permits." See 64 Fed. Reg. 68722, 68770 col. 3 (Dec. 8, 1999).	Please note that the receiving water limitations and the compliance determination for WLAs are based on an iterative BMP implementation process as per the approved TMDL implementation plans.
27	SBCFCD, Att-A Draft Comment Letter 090909-final, 11	Legal Issues, WLA & Effluent Limits	EPA guidance confirms the appropriateness of BMPs to meet water quality-based requirements, including TMDLs. See, e.g., Memorandum from Robert H. Wayland to EPA Regional Water Division Directors titled, "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs (Nov. 22, 2002) (clarifying that limits for NPDES-regulated storm water discharges subject to TMDL WLAs "may be expressed in the form of BMPs" and further, that "[i]f BMPs alone adequately implement the WLAs, then additional controls are not necessary."). In short, EPA's guidance calls for the imposition of BMPs to meet TMDL requirements, unless/until those BMPs are shown to be inadequate.	With regard to the quoted USEPA memo, please refer the USEPA September 9, 2009 comment on the draft MS4 Permit. The draft Order recognizes the BMP iterative approach for compliance with the WLAs.

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28	SBCFCD, Att-A Draft Comment Letter 090909-final, 12	Legal Issues, WLA & Effluent Limits	EPA's decisional law also confirms this BMP approach. For example, in the NPDES case titled, In re: Government of the District of Columbia Municipal Separate Storm Sewer System, 2002 EPA App. LEXIS 1 (NPDES Appeal Nos. 00-14 and 01-09) (Feb. 20, 2002), EPA's Environmental Appeals Board determined that BMPs could lawfully be imposed in lieu of numeric effluent limits to meet the requirements of a TMDL.	The draft Order provides for compliance with the WLAs based on a BMP iterative process.
29	SBCFCD, Att-A Draft Comment Letter 090909-final, 12	Legal Issues, WLA & Effluent Limits	In the Blue Ribbon Panel Report, The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities (June 19, 2006): "It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges.". Instead of numeric limits, the panel recommended a BMP-based storm water control strategy, consistent with prevailing EPA policy and practice.	The draft Order provides for compliance with the WLAs based on a BMP iterative process.
30	SBCFCD, Att-A Draft Comment Letter 090909-final, 12	Legal Issues, WLA & Effluent Limits	In any event, the "assumptions and requirements" of the TMDL should control the permitting process. See 40 CFR 122.44(d)(vii)(B). The relevant TMDLs neither assume nor require numeric limits in the draft Permit. The MSAR Watershed Bacterial Indicator TMDL specifically assumes that the WLA will be implemented through the Permittee's Bacterial Indicator Urban Source Evaluation Plan, Municipal Storm Water Management Program, and Water Quality Management Plan, all of which are predicated on BMPs rather than numeric limits.	The draft Order implements the approved TMDLs consistent with the implementation plans and USEPA regulations.
31	SBCFCD, Att-A Draft Comment Letter 090909-final, 12	Legal Issues, WLA & Effluent Limits	In short, the proposed TMDL-based numeric limits are unacceptable. Simply deferring them beyond the permit term will not address the Permittee's concerns. Deferring them raises other issues, including antibacksliding. We urge the Regional Board to remove the TMDL-based numeric limits and replace them with narrative BMP-based requirements.	The draft Order includes a commitment to reopen the Permit to incorporate any revised TMDLs. Also see USEPA's September 9, 2009 comment on anti-backsliding issues which indicates that anti-backsliding should not hinder implementation of a fully approved WLA.
32	SBCFCD, Att-A Draft Comment Letter 090909-final, 13	Legal Issues, Antibacksliding	The proposed permit language may unintentionally undermine ongoing plans to develop site-specific water quality objectives throughout the area. The SWQSTF is completing a project to update water quality standards for recreational uses in the Santa Ana Region. Big Bear Lake TMDL Task Force is preparing a lake management plan to adopt biocriteria as a better measure of water quality and ecological integrity. It is likely that the current numeric water quality objectives will be revised in the near future.	The draft Order recognizes the ongoing work being conducted by the SWQSTF. Staff do not anticipate any legal impediments to incorporating revised or amended water quality standards or WLAs once those are approved through the regulatory process.
33	SBCFCD, Att-A Draft Comment Letter 090909-final, 13	Legal Issues, Antibacksliding	Because the wasteload allocations for nutrients and bacteria are expressed as numeric effluent limitations anti-backsliding provisions of the Clean Water Act (§402[o]) may preclude adoption of less stringent limits even if the underlying water quality objectives are changed. See the attached article by Melissa Thorne.	Please see USEPA's September 9, 2009 comment that incorporation of revised TMDLs and WLAs in future permits based on revised water quality objectives approved by USEPA would not constitute back-sliding as long as antidegradation requirements are satisfied as part of the TMDL/WLA revision. We don't believe the efforts of the SWQTF would be undermined if the changes are consistent with the antidegradation policy.

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34	SBCFCD, Att-A Draft Comment Letter 090909-final, 13	Legal Issues, Antibacksliding	We recommend that the text (in the revised MS4 Permit) be rewritten to avoid any unintentional application of the anti-backsliding rules. The permit should require dischargers to implement BMPs designed to achieve the wasteload allocation (WLA) rather than imposing the WLA directly as a numeric effluent limit.	The permit requires the Permittees to develop and implement BMPs designed to achieve the WLAs and to evaluate the effectiveness of those BMPs. The WLAs are expressed as water quality-based effluent limits. The Regional Board reserves the right to reopen the Permit to incorporate any fully approved WLAs including any revised WLAs.
35	SBCFCD, Att-A Draft Comment Letter 090909-final, 13	Legal Issues, Antibacksliding	The use of performance-based permit conditions would obligate the Permittees to develop appropriate BMPs, submit the plan to the Regional Board for approval, implement the BMP plan upon approval of the Regional Board, monitor progress toward achieving the WLA, and revise the plan as necessary to assure effectiveness. Failure to submit the necessary plan, or to implement the BMPs in a timely manner, or to monitor/report pollutant load reductions would be deemed permit violations.	The draft Permit requires revision of the MSWMP to include a plan and a schedule to implement appropriate BMPs consistent with the approved TMDL implementation plan. It also includes an iterative BMP implementation process to achieve compliance with the approved WLAs.
36	SBCFCD, Att-A Draft Comment Letter 090909-final, 14	Legal Issues, Antibacksliding	Such an approach preserves the regulatory flexibility, nothing precludes the Regional Board from using numeric effluent limits to assure compliance with the WLAs at some future date if the performance-based approach proves unsuccessful. Since compliance with the WLA is not mandated until 2015 (a year after the proposed permit is due to expire), there is no essential regulatory purpose served by imposing numeric effluent limits so early in the process.	The draft Order includes the WLAs as per the approved TMDLs. The Permittees are required to monitor the effectiveness of the BMPs implemented to evaluate progress towards attainment of the WLAs.
37	SBCFCD, Att-A Draft Comment Letter 090909-final, 14	Legal Issues, Antibacksliding	There appears to be considerable uncertainty as to whether anti-backsliding rules apply to effluent limits where the final compliance date is beyond the current permit term. However, EPA guidance indicates that anti-backsliding does apply to any effluent limit, regardless of the compliance date, unless that limit is challenged at the time the permit is issued (see EPA Memorandum entitled: "Interim Guidance on Implementation of Section 402[o] Anti-backsliding Rules for Water Quality-based Permits, 1989, Section II-A @ pg. 3).	The draft Order recognizes the WLAs in the approved TMDLs including the compliance dates specified therein. If the WLAs are revised, this Order will be reopened to incorporate any revised WLAs that are fully approved through the regulatory process.
38	SBCFCD, Att-A Draft Comment Letter 090909-final, 14	Legal Issues, Antibacksliding	Therefore, the MS4 permittees may be forced to challenge the effluent limits solely to prevent unintentional application of the anti-backsliding rules. Three scenarios are given as examples to demonstrate Permittees' concerns.	We believe that the proposed Order is consistent with the Clean Water Act and its implementing regulations, including guidance from the USEPA.
39	SBCFCD, Att-A Draft Comment Letter 090909-final, 16	Legal Issues, Antibacksliding, Conclusion	We suggest that all references to the wasteload allocations be given in the Fact Sheet and that only actions required to demonstrate compliance with the TMDL be expressed in Section V of the draft Permit. Proposed revisions to the existing Order are provided in Attachment 1-B: TMDL-Related Proposed Text.	Section V of the draft Permit is the appropriate section to specify the TMDL implementation requirements; the Fact Sheet only provides background information and basis for the requirements. Most references are included in the Fact Sheet.

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40	SBCFCD, Att-A Draft Comment Letter 090909-final, 16	Legal Issues, The draft Permit Proposes To Include Coverage For Areas Not Under The Jurisdiction Of The Permittees	The Fact Sheet for the draft Permit expressly recognizes that "areas not under the jurisdiction of the Permittees are excluded from coverage under this permit. These excluded areas and activities include the following: federal lands and state properties, including, but not limited to, military bases, national forests, hospitals, schools, colleges and universities, and highways; Native American tribal lands; agricultural lands; and utilities and special districts."	The draft Order recognizes the fact that certain state and federal facilities are exempt from compliance with local requirements. The draft Order requires the Permittees to notify these entities of their responsibility to comply with storm water pollution control measures prior to accepting any runoff from facilities owned or operated by these entities.
41	SBCFCD, Att-A Draft Comment Letter 090909-final, 16	Legal Issues, The draft Permit Proposes To Include Coverage For Areas Not Under The Jurisdiction Of The Permittees	The draft Permit seeks to regulate drainage from development projects outside the Permittees' jurisdiction.	The draft Order requires the Permittees to notify these entities of their responsibility to comply with the storm water pollution control measures.
42	SBCFCD, Att-A Draft Comment Letter 090909-final, 17	Section XI.A.5 Legal Issues, The draft Permit Proposes To Include Coverage For Areas Not Under The Jurisdiction Of The Permittees	The draft Order requires the Permittees to control the discharge of pollutants from facilities over which the Permittees have no jurisdiction. Therefore, provisions such as XI.A.5 should be deleted from the draft Permit.	The draft Order requires the Permittees to notify these entities of their responsibility to comply with the storm water pollution control measures.
43	SBCFCD, Att-A Draft Comment Letter 090909-final, 17	Section XI.A.5 Legal Issues, The draft Permit Proposes To Include Coverage For Areas Not Under The Jurisdiction Of The Permittees	The County and the District propose to implement a notification system pursuant to which they will notify these out-of-jurisdiction entities and the Regional Board if the Permittees become aware that discharges from the out-of-jurisdiction entities are causing or contributing to water quality standards violations in the receiving waters.	The October 22, 2009 draft of the Permit includes this notification requirement as proposed by the Permittees.
44	SBCFCD, Att-A Draft Comment Letter 090909-final, 17-18	Section II.B.6 Legal Issues, Unfunded Mandate Language	Contrary to language in Section II.B.6 of the draft Permit, the Permittees believe that, to the extent the draft Permit purports to impose requirements that exceed the mandate established by federal water quality laws and regulations, it constitutes an unfunded mandate subject to subvention.	This Permit implements federal Clean Water Act, consistent with its implementing regulations.
45	SBCFCD, Att-A Draft Comment Letter 090909-final, 18	Section II.B.6 Legal Issues, Unfunded Mandate Language	Contrary to the requirements mandated by federal law, the draft Permit seeks to impose numeric effluent limits for storm water discharges where TMDLs have been adopted. The Fact Sheet states that, "where TMDLs have been adopted for specific pollutants, the Permittees will shift available resources to be compliance-focused, to achieve compliance with water quality objectives." (p. 22). In doing so, the draft Permit mandates costs that exceed the mandate under the provisions of the federal Clean Water Act (and its implementing regulations) applicable to storm water discharges.	TMDL development for the impaired water bodies is a federal mandate. The draft Permit implements the TMDLs approved by the USEPA consistent with the federal mandate. Cost considerations were a part of the TMDL development.

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46	SBCFCD, Att-A Draft Comment Letter 090909-final, 18	Section II.B.6 Legal Issues, Unfunded Mandate Language	Other examples in the draft Permit provisions which the Permittees believe constitute unfunded mandates include, but are not necessarily limited to, the following: (1) the requirement to establish significant new surveillance, monitoring, inspection and enforcement authority in local ordinances; (2) the requirement for the Permittees to impose controls on discharges from facilities and areas that are outside the jurisdiction of Permittees (such as federal and State properties); and (3) the requirement to establish a technical advisory committee and incorporate certain elements into a Watershed Action Plan, such as incentivized development strategies for redevelopment, brownfield development, high density, vertical density, and mixed-use projects, among other things.	We disagree. Federal storm water regulations require municipal permittees to 1)secure adequate legal authority to inspect and enforce its stormwater ordinances, 2) the Permittees are required to control the discharge of pollutants in storm water runoff to the MEP standard - passive acceptance of discharges into its MS4 (including from non-jurisdictional entities) that may cause or contribute to exceedances of receiving water quality standards does not constitute MEP, 3) the Watershed Action Plan is consistent with USEPA watershed based permitting approach (see Fact Sheet, Section VIII) and green infrastructure initiatives.
47	SBCFCD, Att-A Draft Comment Letter 090909-final, 18	Section II.B.6 Legal Issues, Unfunded Mandate Language	More generally, the draft Permit seeks to require the Permittees to implement a watershed approach (and requires the Permittees to implement and monitor the effectiveness of a Watershed Action Plan). The Regional Board is shifting to the Permittees responsibilities that are uniquely assigned to and are the responsibility of the State, without providing a subvention of funds. The Permittees do not have authority to levy service charges, fees, or assessments to pay for compliance with all of the provisions of this Order. The Permittees request that these and other such requirements contained in the draft Permit which constitute unfunded mandates be deleted from the draft.	The watershed approach is consistent with the USEPA's watershed based permitting approach. The State/Regional Board has not shifted any of their responsibilities to the Permittees. The requirements in this draft Order are consistent with federal laws and regulations and do not constitute unfunded mandates.
48	SBCFCD, Att-A Draft Comment Letter 090909-final, 19	Draft San Bernardino County MS4 Permit Monitoring and Reporting Program (MRP)	(1) the Draft MRP lacks a cohesive and logical organization; and (2) the Draft MRP does not provide an adequate link to Findings II.E.21 and II.E.22 of the draft Permit, i.e., identification of the list of pollutants of concern to support a risk-based approach to monitoring. ...we recommend that the MRP should be organized around two monitoring efforts: the Integrated Watershed Monitoring Program (IWMP) and participation in the various regional Monitoring Programs. The IWMP should primarily focus on the monitoring needed to support our risk-based Stormwater Management Program, while the Regional Monitoring would support the ongoing efforts that the SBCFCD and others have agreed to conduct to further the understanding of water quality issues in the region. We have provided a suggested outline for the MRP in an attachment to this letter.	We are in general agreement with the monitoring and reporting program recommended by the Permittees and have amended the program to include those elements.
49	SBCFCD, Att-A Draft Comment Letter 090909-final, 19	Draft San Bernardino County MS4 Permit Monitoring and Reporting Program (MRP)	The components of the IWMP would consist of: (1) Existing Baseline Monitoring; (2) Mass Emissions Monitoring; (3) Illicit Discharge/Illicit Connections Monitoring.; (4) Hydromodification Monitoring, and; (5) Source Identification and Special Studies.	Agreed. See revised MRP.
50	SBCFCD, Att-A Draft Comment Letter 090909-final, 19	Draft San Bernardino County MS4 Permit Monitoring and Reporting Program (MRP)	For each component of the IWMP, clear monitoring requirements should be included to the (maximum) extent possible. These requirements should include constituents to be collected, method of collection, frequency of collection, site locations, etc.	Agreed. See revised MRP.

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Item No.	Commenting Parties & Page Numbers	Section No & Topic	Comment (Most comments are verbatim from the comment letters)	Response/Change(s) made
51	SBCFCD, Att-A Draft Comment Letter 090909-final, 120	Draft San Bernardino County MS4 Permit Monitoring and Reporting Program (MRP)	The Regional Monitoring Section of the MRP would present a summary of the various organizations involved in monitoring activities in the permitted area. Each Regional Monitoring Plan conducted by these various organizations would be individually described, including whether a Monitoring Plan has been completed or is required to be developed. The Regional Monitoring Section should consist of: (1) • TMDL related monitoring; (2) Regional Bioassessment (SCCWRP Technical Report 539); (3) LID BMP Monitoring (BMP Effectiveness Assessment)	See revisions to the MRP.
52	SBCFCD, Att-A Draft Comment Letter 090909-final, 20	Draft San Bernardino County MS4 Permit Monitoring and Reporting Program (MRP)	The Regional Monitoring Section should reference and include as appendices the Monitoring Plans of the various Regional monitoring efforts.	We agree, to the extent that the monitoring plans and efforts fulfill permit requirements.
53	SBCFCD, Att-A Draft Comment Letter 090909-final, 20	Draft San Bernardino County MS4 Permit Monitoring and Reporting Program (MRP)	The Permittees recommend that Sections I (General) and II (Objectives) include language linking MRP program goals and objectives to the risk-based analysis. The Permittees will periodically evaluate data to determine if re-prioritization of monitoring resources is necessary. For the next few years, it is clear that the focus on monitoring efforts needs to be on the highest priority water quality concern: bacterial indicators.	See revisions based on these comments in the October 22, 2009 draft of the Permit.
54	SBCFCD, Att-A Draft Comment Letter 090909-final, 20	MRP Specific Comments, #1	Suggested additional language for Section (I) (B), "...or methods documented in the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP)."	Language incorporated in I.C.
55	SBCFCD, Att-A Draft Comment Letter 090909-final, 20	MRP Specific Comments, #2	Section (I) (C) would be more appropriately located in the Reporting Section of the MRP.	Language now in Section VII. B, Program Effectiveness Assessment and Reporting.
56	SBCFCD, Att-A Draft Comment Letter 090909-final, 20	MRP Specific Comments, #3	Suggest revised language for Section (I) (E) to reflect changes to the MRP structure described above.	MRP revised to reflect the suggested change.
57	SBCFCD, Att-A Draft Comment Letter 090909-final, 20-21	MRP Specific Comments, #4	For Section (I) (F), it is suggested that instead of a coordinated watershed monitoring plan, the MRP refer to a Coordinated Watershed Quality Assurance Program Plan (QAPP). The currently developed QAPPs for TMDL monitoring, LID Monitoring, and the Regional Bioassessment could be used for the Coordinated Watershed QAPP as appropriate. A separate section discussing the QAPP could be created following the Objectives section, as suggested in the attached outline. A discussion of the relationship of the Coordinated Watershed QAPP and SWAMP quality assurance documents should be included in this Section. Sections (I) (F) and (.) (G) could be combined and moved to the new Section. Suggested revised language for Section (I) (F) provided.	MRP revised to reflect the suggested change.

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58	SBCFCD, Att-A Draft Comment Letter 090909-final, 21	MRP Specific Comments, #5	The objectives of the MRP (Section (II.)) should be simplified and streamlined.	See revisions to the objectives.
59	SBCFCD, Att-A Draft Comment Letter 090909-final, 21	MRP Specific Comments, #6	The IWMP Section should be moved to a first-level Section. The contents of Section (III.) (A.) should be moved under the IWMP Section.	Suggestion accepted. See revision under Section IV. Integrated Watershed Monitoring
60	SBCFCD, Att-A Draft Comment Letter 090909-final, 22	MRP Specific Comments, #7	Section (III.) (B.) would be more appropriately located in the suggested Coordinated Watershed QAPP section. The language should be revised to read "compatible with" SWAMP. Additionally, a new SWAMP QAPP was completed in July 2009.	Suggestion accepted; see revisions to the MRP.
61	SBCFCD, Att-A Draft Comment Letter 090909-final, 22	MRP Specific Comments, #8	Section (III.) (D.) is very vague. It is suggested that it be incorporated into the Objectives Section, or be clarified to state a specific monitoring task.	Language deleted.
62	SBCFCD, Att-A Draft Comment Letter 090909-final, 22	MRP Specific Comments, #9	The Draft MRP indicates that the mass emissions monitoring stations will be used to characterize urban runoff. However, the Los Angeles Regional Board uses mass emissions monitoring to characterize the receiving water. We suggest that the mass emission stations be renamed to be consistent between Regional Boards. If the mass emissions stations are intended to monitor urban runoff, it may be clearer to call them urban discharge monitoring stations. ...We disagree with the stated objective that the urban runoff data should be used to determine whether the MS4 is contributing to an exceedance of water quality standards. Proposed changes to the Mass Emission Section are provided.	See revisions to the MRP.
63	SBCFCD, SB MS4 Supplemental Comments draft 091609, 2-3	De Minimus Discharges from Permittee Owned and/or Operated Facilities/Activities	Under Order R8-2009-0003 (the "de minimus permit"), certain types of municipal separate storm sewer system (MS4) permittee discharge activities will no longer be regulated under this Order but will be regulated under the area-wide MS4 permits to streamline the regulatory process for these discharges. The Permittees have questions and concerns about how the de minimus discharge provisions are incorporated into the draft Permit in Section V.B. The present wording is confusing .. and there are other inconsistencies between the draft Permit and Order 2009-0003... The draft Permit also introduces confusion regarding exactly what de minimus discharges are regulated; whether they are discharges to the MS4, from the MS4, or to surface waters or waters of the US.	Section V on Effluent Limitations and Discharge Specifications have been revised. Section V.A covers authorized discharges; Section V.B covers both discharges and de-minimus discharges from Permittee-owned facilities and/or operated facilities/activities. Activities that would not fall under the de-minimus permit from the municipalities' facilities/activities are deleted from this Section V.B.1. Section V.B.2-V..B.5 identifies requirements for other non-stormwater discharges.

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64	SBCFCD, SB MS4 Supplemental Comments draft 091609, 3	De Minimus Discharges from Permittee Owned and/or Operated Facilities/Activities	Under Order R8-2009-0003, Section II.E, ""If the Regional Water Board issues an NPDES permit or WDRs, the applicability of this Order to the specified discharge is immediately terminated on the effective date of the NPDES permit or WDRs." Yet, the Draft Permit appears to require the Permittees to continue to comply with certain provisions of Order 2009-0003 (such as the monitoring and reporting provisions). . . If the intention is basically to transfer coverage of the specified discharges, can the Draft Permit still reference the provisions, in whole or in part, of Order 2009-0003? If the intent is to regulate de minimus discharges from Permittees' own facilities in the Draft Permit (instead of in Order 2009-0003), we believe it creates too much confusion and will not streamline the existing approach. Accordingly, we propose that the de minimus discharges continue to be regulated under Order 2009-0003 and that only a reference to this fact be included in the Draft Permit.	Please see the October 22, 2009 draft of the Permit. The Permittees do have the option to be regulated under Order No. R8-2009-0003 for their de-minimus types of discharges.
65	SBCFCD, SB MS4 Supplemental Comments draft 091609, 3	De Minimus Discharges from Permittee Owned and/or Operated Facilities/Activities	Section V.B.1 through 7 incorporates conditions that are not presently contained within the de minimus permit (e.g., planned discharges shall be dechlorinated to a concentration of 0.1 ppm). These also include added provisions to address hydrologic conditions of concern (HCOCs) and erosion, and a requirement to minimize various forms of irrigation runoff, specifically through "public education and water conservation efforts," among other things....Because these discharges, by their nature are de minimus, which is defined as "posing an insignificant threat to water quality," we disagree with these "stated conditions" to the extent they are not presently part of the de minimus permit.	See revisions in October 22, 2009 draft of the Permit.
66	SBCFCD, SB MS4 Supplemental Comments draft 091609, 3-4	Concerns Regarding Specifications of Numeric Effluent Limits	Co-permittees had recommended that the Regional Board require MS4s to adopt BMPs in order to implement the TMDL rather than impose numeric effluent limits at this time. It is difficult and infeasible to impose numeric effluent limits for storm water discharges at this time due to the following factors: 1) need to specify the official point-of-compliance and frequency of water quality sampling; 2) effluent limits need to reflect the Regional Board's finding that "Certain activities that generate pollutants present in storm water may be beyond the ability of Permittees to prevent or eliminate. . .The Draft Permit limits the total concentration of bacteria and total mass of phosphorus flowing from MS4 facilities into waters of the U.S. without regard for whether these pollutants originated from natural or other uncontrollable sources..	The October 22, 2009 draft relies on an iterative BMP implementation process to determine compliance with the WLAs in the approved TMDLs.

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67	SBCFCD, SB MS4 Supplemental Comments draft 091609, 4	Concerns Regarding Specifications of Numeric Effluent Limits	3) The effluent limit(s) would have to reflect the Regional Board's finding that the "Permittees lack legal jurisdiction over storm water discharges into their systems from State and federal facilities,....., wastewater management agencies and other point and non-point source discharges [CalTrans, dairies, etc) otherwise permitted by the Regional Board. The Regional Board recognizes that the Permittees should not be held responsible for such facilities and/or discharges". As written, the Draft Permit limits the total concentration of bacteria and total mass of phosphorus flowing from MS4 facilities into waters of the U.S. without regard for whether these pollutants originated from urban sources outside the Permittee's legal jurisdiction.	The October 22, 2009 draft relies on an iterative BMP implementation process to determine compliance with the WLAs in the approved TMDLs.
68	SBCFCD, SB MS4 Supplemental Comments draft 091609, 4	Concerns Regarding Specifications of Numeric Effluent Limits	4) The effluent limits for bacteria are specified as both a geometric mean and a 10% maximum exceedance value. The latter is significantly more restrictive than the former and is inconsistent with U.S. EPA's 1986 water quality criteria guidance for bacteria. We recommend that only the geometric mean values be used as effluent limits	The WLAs are from the approved TMDLs. The methodology for determining compliance is consistent with the implementation plans.
69	SBCFCD, SB MS4 Supplemental Comments draft 091609, 4	Concerns Regarding Specifications of Numeric Effluent Limits	5) The effluent limits are expressed as maximum concentrations or quantities without regard for whether there is any practicable means to achieve such values. This is contrary to the Regional Board's stated intent to achieve compliance by requiring discharger to implement Best Management Practices to the maximum extent practicable (MEP).	Please note that the October 22, 2009 draft of the Order specifies that compliance determination shall be based on the Permittees progress towards achieving the WLAs through implementation of BMPs.
70	SBCFCD, SB MS4 Supplemental Comments draft 091609, 4-5	Concerns Regarding the Watershed Action Plan	The Permittees share the Regional Board's desire to develop a more integrated planning and approval process, but believe the Watershed Action Plan (WAP), as written, is largely redundant with existing efforts and other obligations described elsewhere in the permit. ..The Permittees have developed a GIS-based mapping tool to aid in managing the stormwater program. ... This new tool provides the primary mechanism through which the Permittees intend to integrate all future efforts to manage new development, protect water quality, and coordinate the planning/permitting processes. It is more productive and cost-effective to rely primarily on the existing GIS mapping tool than to shift resources to an entirely new initiative such as the WAP.	Comment noted. Section XI.B (Watershed Action Plan) has been revised to incorporate proposed draft language.
71	SBCFCD, SB MS4 Supplemental Comments draft 091609, 5	Concerns Regarding the Watershed Action Plan	We are particularly concerned that the Regional Board directs the Permittees to form a Technical Advisory Committee (TAC) and specifies the municipal staff positions that must participate. It is up to the Permittees to determine whether or not a TAC is needed and who should serve on that committee. Nor may the Board stipulate which governmental and non-governmental agencies the MS4s must consult when preparing a program implementation strategy ... It is inappropriate for the Regional Board to specify the method(s) of compliance.	Comment noted. The October 22, 2009 draft has revised the requirements for the WAP. The revised WAP specifies coordinated watershed management through the areawide LIP.

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72	SBCFCD, SB MS4 Supplemental Comments draft 091609, 5	Concerns Regarding the Watershed Action Plan	The proposed permit instructs the Permittees to "integrate...water conservation and re-use...with land use planning policies and ordinances". Such requirements, along with similar mandates to "incorporate ... Smart Growth principles and New Urbanism" exceed the Regional Board's authority to reduce pollution by regulating the discharge of waste into waters of the state.	Comment noted. Although we believe that Smart Growth and New Urbanism are tools that should be in the toolbox for managing impacts to water quality from urbanization, references to these tools have been deleted. This gives the Permittees the flexibility in determining the tools to utilize for Hydromodification Management Plan as well as in addressing 303(d) impaired water bodies.
73	SBCFCD, SB MS4 Supplemental Comments draft 091609, 5	Concerns Regarding the Watershed Action Plan	While it is permissible for the Regional Board to establish and enforce water quality objectives for total suspended sediment, it is unreasonable for the Board to require dischargers to prepare a report to "address sediment yield and balance on a watershed, subwatershed and regional basis to ensure that sediment supply is appropriate for post-development flow"	Comment noted. We have revised the WAP section of the draft Order. Section XI.B.3.a.viii requires the Permittees to: "Identify potential causes of identified stream degradation including a consideration of sediment yield and balance on a watershed or subwatershed basis."
74	SBCFCD, SB MS4 Supplemental Comments draft 091609, 5-6	Concerns Regarding the Watershed Action Plan (WAP)	The draft text regarding the WAP imposes a new obligation to implement "control measures to minimize the impact of urbanization on water quality" in advance of a properly approved TMDL...It is improper to assume that the MS4s have any direct responsibility or control over some of the pollutants named on California's 303(d) list ... The Regional Board should not require MS4s to undertake any special measures to control such pollutants prior to conducting a public hearing to adopt a TMDL with an urban wasteload allocation.	The section on WAP (Section XI.B.3.a.4) has been revised, see October 22, 2009 draft of the Order.
75	SBCFCD, SB MS4 Supplemental Comments draft 091609, 6	Concerns Regarding the Watershed Action Plan	The Watershed Action Plan will shift scarce resources away from meaningful program implementation back to a less useful planning exercise.	We have revised the Watershed Action Plan consistent with the Permittees' current approach using the GIS/HCOG mapping as a central tool.
76	SBCFCD, SB MS4 Supplemental Comments draft 091609, 6	Concerns Regarding the Watershed Action Plan	We recommend that the requirement to prepare and submit a Watershed Action Plan be deleted from the permit (including related references in the MRP). And, in its place, the MS4s will proceed with Phase II of the current effort to implement the GIS mapping tool.	An integrated approach to address water quality and quantity is critical for the successful implementation of various elements of the proposed Permit. The WAP should be used as a tool to integrate solutions to water quality and hydromodification concerns. Please see the revised section in the October 22, 2009 draft.
77	SBCFCD, SB MS4 Supplemental Comments draft 091609, 7	WQMP, CEQA, AND, 401 Certification Coordination	The Draft Permit specifies that Permittees "shall require submittal of a preliminary project-specific WQMP" and that, "the need for a 401 Certification for the project shall be identified early in the CEQA review to enable coordination with Regional Board 401 staff on the preliminary WQMP prior to City/County approval of the WQMP" The Permittees can advise project applicants about the 401 program requirements as early as possible within the development review process, and potentially require preliminary WQMPs as appropriate. We request clarification regarding how "early in CEQA review" is expected.	Section XI.C, Consideration of Watershed Protection Principles in CEQA and Planning Processes have been revised. Section XI.C.2 states "For any project that may require a Clean Water Act Section 401 Water Quality Standards Certification from the State, the permittees shall coordinate project review with Regional Board staff pursuant to the requirements of CEQA" We expect that any necessary coordination on the Preliminary WQMP will take place in these early CEQA consultation meetings.

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78	SBCFCD, SB MS4 Supplemental Comments draft 091609, 7	WQMP, CEQA, AND, 401 Certification Coordination	The Permittees are being asked to integrate their various departments involved in project planning and review (Planning, Engineering, Building and Safety, Public Works) process to improve project design and implementation of watershed objectives. Therefore, the Permittees request a complementary interdepartmental integration between the Stormwater and 401 Certification Programs at the Regional Board. Regional developers, local jurisdictions, and regulatory agencies would benefit from such integration. As a first step, we request that Regional Board 401 staff participate in the review and approval of the WQMP Guidance and Template as required by the Draft Permit.	Regional Board's Planning and 401 staff have participated in the development of appropriate sections of this draft Order and we will continue to coordinate with all relevant sections within the Regional Board office to avoid unnecessary delays in project approvals. The CEQA process is the earliest opportunity to identify the need for 401 Certification and coordination on specific mitigation of water quality impacts identified in the preliminary WQMP.
79	SBCFCD, SB MS4 Supplemental Comments draft 091609, 7	Economics	The Permittees briefly described the significant economic constraints that have arisen since submission of the ROWD in 2006. ...The Permittees are requesting that they be permitted to prioritize the tasks specified in the draft Order and use their limited resources to implement highest priority items first and to execute interdependent programs in a logical order.	We are aware of the difficult economic times, and have considered these factors in the schedules specified in the draft Order.
80	SBCFCD, SB MS4 Supplemental Comments draft 091609, 7-8	Draft Glossary	Permittees believe the definitions should be contained either in the Glossary or in the body of the Draft Permit, but not in both. Further, many of the definitions are unnecessarily complicated and include examples and explanations that could inadvertently impose requirements on Permittees above and beyond those set forth in the Clean Water Act or the Porter-Cologne Water Quality Control Act	Footnotes and definitions in the Glossary have been made consistent. In certain instances, to improve readability, definitions are also included in the Order as footnotes.
81	SBCFCD, SB MS4 Supplemental Comments draft 091609, 7-8	Schedule Clarification	The Gantt chart version of our alternative schedule, submitted September 9, 2009 had an error regarding the LIP implementation dates. We are proposing that the area-wide Model LIP would be due within 6 months of Permit adoption and the Permittee-specific LIPs would be adopted 12 months later—18 months after Permit adoption.	The October 22 draft has incorporated the suggested changes.
82	USEPA Region 9, 1	Fact Sheet page 7 of 42	The Clean Water Act's Agricultural exemption is overstated. This text should be revised to: "However, the CWA specifically excludes discharges composed entirely of return flows from irrigated agriculture and nonpoint source agricultural activities".	The Fact Sheet has been revised as suggested.
83	USEPA Region 9, 1	LID Requirements	USEPA...supports the LID provisions in the draft MS4 Permit for San Bernardino County, as they are consistent with the Orange County MS4 Permit.	Comment acknowledged.
84	USEPA Region 9, 2	Section XI.E.6.d.ii.b LID and Hydromodification	A numeric percentage should be included to clarify "not significantly different" in defining conditions that would not represent a HCOC.	The draft Order revised to state "A difference of 5% or less is considered insignificant " to clarify acceptable deviation.
85	USEPA Region 9, 1	TMDLs	EPA supports the draft permit's incorporation of TMDLS.... Permit is consistent with the approach taken in the Orange County MS4 Permit.	Acknowledged.

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86	USEPA Region 9, 2	TMDLs	In contrast to Orange County permit, neither of the two TMDLs have compliance dates within the 5-year term. This provides ample opportunity for the permittees to prepare for compliance with the two TMDLs by Dec 31, 2015.	Acknowledged.
87	USEPA Region 9, 2	TMDLs	USEPA is pleased to see the applicable WLAs incorporated into this draft permit as numeric effluent limits (consistent with Orange County permit). The numeric limits results in clear, measurable, and enforceable permit requirements.	Acknowledged. When the TMDL was adopted, the Regional Board found that implementing a wide range of BMPs was expected to achieve compliance with the WLAs. In order to assure consistency with the assumptions and requirements of the TMDL, the draft Order includes water quality based effluent limits that obligate the Permittees to implement the necessary BMPs as per the approved implementation plans.
88	USEPA Region 9, 2	TMDLs	USEPA disagrees with the proposed alternative approach, which would require implementation of BMPs theorized to be sufficient for compliance with WLAs, rather than including numeric requirements.	Acknowledged. The WLAs are included in the draft Order consistent with the federal laws and regulations. The Permittees are required to comply with the WLAs by the deadlines specified in the approved TMDLs. The implementation plan for the TMDLs specifies control measures that the Permittees are required to implement. Compliance determination is going to be based on implementation of these plans and progress towards achieving the WLAs based on monitoring results.
89	USEPA Region 9, 2	TMDLs	The EPA Guidance (Establishing TMDLs Wasteload Allocations for Storm Water Sources and NPDES Permit Requirements Based on those WLAs) states that when a non-numeric limit (i.e., BMP-based limit) is imposed in a permit, "the permit's administrative record, including the fact sheet,, needs to support that the BMPs are expected to be sufficient to implement the WLA in the TMDL." .. USEPA has found that permitting agencies typically do not have the necessary supporting documentation ... to demonstrate that the specific BMPs are...sufficient to implement WLAs.	The draft Order implements the WLAs as approved by the USEPA.
90	USEPA Region 9, 3	TMDLs	The draft permit is consistent with EPA's guidance that a permitting agency may use numeric effluent limits where the record does not demonstrate that non-numeric BMP controls will be sufficient to implement the WLA... We support the Region in its efforts to include MS4 permit conditions that are increasingly proscriptive to ensure water quality is protected.	Comment noted.
91	USEPA Region 9, 3	TMDLs conclusion	The draft permit's approach for incorporating WLAs as numeric limits is appropriate, and we strong recommend against making any revisions to the draft permit that would make the TMDL provision inconsistent the this Boards Orange County MS4 permit.	Acknowledged.
92	USEPA Region 9, 3	Section V.D.1.d.ii QBEL-TMDLs , Middle Santa Ana River (MSAR) Bacteria TMDL	Clarify the term "triennial bacterial source reduction" in the permit... USEPA suggests the San Bernardino MS4 Permit include language similar to the draft MS4 Permit for Riverside County, which also incorporates WLAs from this TMDL.	Permit language revised as suggested.

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93	USEPA Region 9, 3-4	Section V.D.1.d.iv.c WQBEL-TMDLs , Middle Santa Ana River (MSAR) Bacteria TMDL	This part requires updates in the 2010 annual report and each "triennial review year" thereafter describing revisions to the MSWMP, LIP, and WQMP which may be needed to meet the TMDL requirements. USEPA recommends more frequent (annual reporting); as well as more detailed descriptions of the actions taken to meet bacterial source reduction goals.	The requirements have been revised consistent with the TMDL implementation plans.
94	USEPA Region 9, 4	Section V.D.1.a WQBEL-TMDLs , Middle Santa Ana River (MSAR) Bacteria TMDL	The City of Upland should be included in the list of permittees in the MSAR Watershed. The word "Ana" is missing from the title.	Permit language changed as suggested.
95	USEPA Region 9, 4	Section V.D.2.h WQBEL-TMDLs , Big Bear Lake Nutrient TMDL	This section indicates that compliance with the WLA would be determined by watershed modeling. USEPA recommends additional clarification and detail in the fact sheet/permit as to how this would be conducted.	Additional clarifications have been added to the finding.
96	4USEPA Region 9, 4	Section V.D.2.i WQBEL-TMDLs , Big Bear Lake Nutrient TMDL	USEPA suggests that exceedances predicted through the modeling ... also be a trigger for additional evaluation and report with proposed additional actions.	See revised language.
97	USEPA Region 9, 4	Big Bear Lake Nutrient TMDL	A reference to the bacteria TMDL have been inadvertently included in the section of Attachment 5 to the permit which addresses the nutrient TMDL	Text corrected.
98	USEPA Region 9, 4	Section V.D.4 WQBEL-TMDLs, Big Bear Lake Mercury TMDL	Finding F.5.d of the permit refers to a requirement for a Watershed Action Plan to be prepared and implemented by the Permittees. This requirement does not seem to be reflected in the permit. USEPA recommends clarification of this.	Sections II. G .15 & G.16 (Findings), and specifically Section XI. B, & XI.E (Permit) addresses the Watershed Action Plan.
99	USEPA Region 9, 5	Section V.D.4 WQBEL-TMDLs, Big Bear Lake Mercury TMDL	Clarify the intent of the permit in classifying the construction sites discharging into Big Bear lake as "high priority".	Construction sites discharging into Big Bear Lake are considered as "high priority" as mercury loadings have been demonstrated to be proportional to fine sediment and sediment loads. See Finding F.5.a.
100	NRDC, 2	Section XI.E.5 Alternative and In-Lieu programs (In second draft, this is Section XI.G)	NRDC does not support allowing water treated or filtered through bio-treatment BMPs to count toward the onsite, 85th percentile storm retention obligation that otherwise applies to projects under Permit XI.E.5. For the reasons explained below, the use of bio-treatment (which we do not oppose when onsite retention of the design storm is technically infeasible) should trigger the requirement to provide offsite mitigation or in-lieu funds under Permit XI.F.	The onsite volume retention standard is not compromised by allowing other LID BMPs, including onsite biotreatment. As noted in footnote 85 (footnote 91 in the October 22, 2009 draft), XI.E.3 and XI.E.4., bio-treatment BMPs are only to be considered if other preferred LID BMPs are not feasible. In addition, the Permittees are required to develop specific design, operation and maintenance criteria for bio-treatment systems.

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101	NRDC, 2	Section XI.E.5 Alternative and In-Lieu programs (In second draft, this is Section XI.G)	The critical difference between the Ventura County MS4 permit and the LID performance standard in the draft Permit is that, in Ventura County, bio-treatment cannot count toward a site's LID volumetric obligations. As currently drafted, the Permit would allow a site that demonstrated technical infeasibility to discharge potentially all of its stormwater to the storm sewer system without undertaking any offsite mitigation. As bio-treatment BMPs are almost undoubtedly not 100% effective at removing pollutants from runoff, a site employing bio-treatment should be required to employ offsite mitigation in such situations. The use of Bio-treatment BMPs at a site should trigger the offsite mitigation or in-lieu payment requirements.	A properly designed, operated and maintained bio-treatment system should be capable of promoting evapotranspiration, volume retention, pollutant treatment as well as to manage time of concentration. Where a combination of onsite strategies, including onsite bio-treatment BMPs do not yield the desired volume capture, the permit requires offsite biotreatment and in-lieu programs. Language clarified as above.
102	NRDC, 2	Section XI.E.5 Alternative and In-Lieu programs (In second draft, this is Section XI.G)	Requiring offsite mitigation or in-lieu payment would also mean that San Bernardino County would get the benefit of a no pollution discharge standard whenever that could be feasibly implemented—a critical step forward because the water retained could be infiltrated or otherwise reused.	Acknowledged. The permit includes an onsite volume retention standard that would reduce the discharge and off-site mitigation or in-lieu options.
103	NRDC, 2-3	Section XI.E.5 Alternative and In-Lieu programs (In second draft, this is Section XI.G)	Infiltration or reuse not only implements the MEP requirement contained in the Clean Water Act; a standard that requires retention of the design storm with no runoff when possible is directly responsive to the Governors proclamation that ordered public water agencies to essentially "find" more water through a variety of activities, including "...efforts to protect water quality or water supply."	Comment noted. The draft Order requires infiltration, reuse and evapotranspiration unless these are infeasible.
104	NRDC, 3	Section XI.E.5 Alternative and In-Lieu programs (In second draft, this is Section XI.G)	The footnotes in this section (on bio-treatment) serves merely as an "out" from the onsite retention standard that will minimize environmental performance. "Bio-treat" is a subjective term open to interpretation—as is the requirement to "properly" engineer or maintain the systems."	We disagree; the draft Order does not allow the Permittees to approve bio-treatment systems without evaluating the feasibility of other LID BMPs using the technically-based feasibility criteria. Also see the revised footnote 91 in the October 22, 2009 draft (footnote 85 in the June 26, 2009 draft).
105	NRDC, 3	Section XI.E.5 Alternative and In-Lieu programs (In second draft, this is Section XI.G)	Clarify language in Footnote 85 should bio-treatment BMPs remain as part of the main LID standard or do not trigger offsite mitigation or in-lieu payment requirements.	Please see revised language, footnote 91 in the October 22, 2009 draft.
106	NRDC, 3	Section XI.E.5 Alternative and In-Lieu programs (In second draft, this is Section XI.G)	Make the following clarifications in Footnote 85: It should state that bio-treatment only be considered if infiltration, harvesting and reuse, and evapotranspiration are not feasible, and: "LID bio-treatment BMPs shall be designed to accommodate the design flow at a surface loading rate no greater than 5 inches per hour and shall have a total volume, including pore spaces and prefilter detention volume, no less than the runoff volume generated by the design storm depth times 0.75. Runoff from impervious areas also may be dispersed to pervious landscaped areas in a ratio not to exceed 2 parts impervious area to one part pervious landscaped area. Pervious landscaped areas must be designed to pond and infiltrate runoff produced by the design storm depth."	The draft Order requires the Permittees to develop design standards for the bio-treatment system. We have added a clarification to footnote 85 (June 26, 2009 draft; footnote 91 in the October 22, 2009 draft).

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107	NRDC, 3-4	General	NRDC does not agree that the permit should require less in San Bernardino than that which this Board included in the recently adopted North Orange County Permit.	We agree with this comment. The San Bernardino County draft MS4 Permit is not any less protective of water quality than the Orange County MS4 Permit that the Board adopted on May 22, 2009.
108	NRDC, 4	General, Conclusion	(These) important but limited improvements will significantly improve the effectiveness of the permit, and we urge that the Board implement these modifications before it is adopted.	Comment noted. Some of the changes in the October 22, 2009 draft reflects changes requested by NRDC.
109	IEW, 1-2	Section XI.A.1 – General Requirements	The section be modified to add "...and have developed a SWPPP" following the requirement for the applicant to obtain a WDID number.	Since the Regional Boards enforce the General Permits issued by the State, the local jurisdictions may not have the authority to require the dischargers to produce a SWPPP at the time a local permit is needed.
110	IEW, 2	Section XI.A.4 – General Requirements	Section A.4 describes a frequent event effecting a significant portion of San Bernardino County which results in our office being contacted by distraught property owners that now have a flooding problem on their hands, including bills from weed management and vector control that forces them to litigate against the source of the runoff.	Comment noted.
111	IEW, 2	Section XI.B.1 - Watershed Action Plan	Waterkeeper is concerned that this section provides the impetus for one year of uncoordinated activity. The water quality problems cannot be further delayed by an unreasonably distant drafting and implementation of a Watershed Action Plan.	This section has been modified to identify specific tasks within specified timelines. Please note that most other elements of the program are being implemented in the absence of a Watershed Action Plan.
112	IEW, 2	Section XI.B.2 - Watershed Action Plan	In recognition of impaired water quality and serious drought conditions resulting in the Governor's issuance of an order "...to join with other appropriate agencies to launch a statewide water conservation campaign", the Regional Board should revise Section B.2 to require the Principal Permittee to facilitate the formation of a Technical Advisory Committee to develop a Watershed Action Plan within 6 months of the adoption of the Permit.	While we recognize water conservation as one component of the solution to water quality and quantity issues in the permit area, development and implementation of strategies, policies and tools to address water quality and stream protection through coordinated land use planning and development as urbanization continues are the main focus of the Watershed Action Plan (WAP). We believe 6 months may not be sufficient to meaningfully develop the WAP.
113	IEW, 2	Section XI.B.3.b - Watershed Action Plan	The Permit should be revised to omit "...that are vulnerable to geomorphological changes due to hydromodification," because, by their nature, all unarmored channels are vulnerable.	There are unlined channels within the permit area that are engineered and regularly maintained and may not be vulnerable.
114	IEW, 2	Section XI.B.3.c - Watershed Action Plan	Section XI.B.3.c is subject to a number of interpretations and Waterkeeper suggests the subsection is revised for clarity to ensure proper compliance with the meaning the Regional Board intends to apply to the subsection.	This subsection has been revised; see October 22, 2009 draft.

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115	IEW, 2-3	Section XI.C.1 - Consideration of Watershed Protection Principles in CEQA & Planning Docs	Section XI.C.1: Waterkeeper identified a potential timing conflict between the mandate that within twelve months after the adoption of the Permit, each Permittee shall complete a review of CEQA, the general plan, development standards, zoning codes, conditions of approval, development project guidance, and WQMP despite the fact that the Watershed Action Plan is not scheduled to be completed for eighteen months. ...Waterkeeper suggests, in connection with suggestions previously mentioned, that the Regional Board retain the deadline in this section and modify the deadlines in earlier sections in order to reach compliance.	We believe that the specified timeframes are appropriate and represent the minimum needed for a complete review of watershed protection principles, including any barriers for implementation of LID, and to develop strategies and tools within each jurisdiction.
116	IEW, 3	Section XI.C.3.a - Consideration of Watershed Protection Principles in CEQA & Planning Docs	Section XI.C.3.a: Regional Board should change "limit" to "avoid" and include "...and flood plains..." after "drainage systems."	This recommendation is being considered..
117	IEW, 3	Section XI.D.4.h - WQMP for Priority Projects	Footnote 80 should be modified to include further information concerning the rationale for a waiver for the specific high pollution areas described. Even after reading "Managing Wet Weather with Green Infrastructure: Green Streets" the provision of waivers in this section requires additional clarity	This section of the draft Order has been revised, see October 22, 2009 draft..
118	IEW, 3	Section XI.D.5 - WQMP for Priority Projects	Waterkeeper is concerned over the likelihood that the "obligation to install structural BMPs at new development" if the "BMPs are constructed with the requisite capacity to serve the entire common project" will actually be achieved.	The draft Order requires the Permittees ensure that the structural BMPS that they approve are properly constructed, operated and maintained. See Section XI.I
119	IEW, 3	Section XI.D.5 - WQMP for Priority Projects	Waterkeeper has concerns with WQMP's that defer installation of permanent treatment BMPs until such time that the Home Owner's Association (HOA) can provide them. We feel strongly that this caveat should not be allowed and that it is the responsibility of the project proponent to complete the project in its entirety.	The Order does not defer completion of the treatment BMPs to HOAs. The Permittees are required to verify that the approved treatment control BMPs are built according to the specifications and operating. See Section XI.I of the draft Order.
120	IEW, 3	Section XI.E.2.h - LID and Hydromodification Management	Revise this subsection to define "narrow streets." ... if the Regional Board intends to utilize the definition as it is understood in the EPA document then it should directly reference that document to provide Permittees with proper notice.	Various municipalities have defined and adopted standards for narrow streets. See http://www.stormwatercenter.net/Assorted%20Fact%20Sheets/Tool4_Site_Design/narrow_streets.htm . We expect the Permittees to investigate various options as they go through this evaluation.
121	IEW, 4	Section XI.E.5 - LID and Hydromodification Management	...modify the language of the section and change the last sentence to "Any portion of the design capture volume that cannot be infiltrated, harvested...."	See revisions to Section XI.E.4 of the October 22, 2009 draft Order.
122	IEW, 4	Section XI.F.1 Alternatives and In-Lieu Program	This section places an understandable but improper emphasis on cost as the central measure of infeasibility. Section would be improved by listing factors of infeasibility such as construction that is lot-line to lot-line, subterranean parking, high groundwater, unfavorable or unstable soil conditions where infiltration is attempted,.....	This section refers to technical and economic infeasibility; the examples of technical infeasibility would be most useful in the revised WQMP Guidance and Template.

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123	IEW, 4	Section XI.F.3 Alternatives and In-Lieu Program	Waterkeeper strongly encourages the revision of this section to ensure that if a waiver is granted then an urban runoff fund "shall" be established even if the Permittees failed to collectively or individually propose to establish such a fund.	The fund is one option to consider if the LID or treatment performance standards are not met. It would not be appropriate to make it the only option.
124	IEW, 4	General Classifications	Waterkeeper requests a determination from Regional Board counsel what the implications would be as a result of the following expected actions: In the event that a REC-1 waterbody listed for fecal coliform impairment undergoes a Use Attainability Analysis (UAA) to change the beneficial use to REC-2 ...while simultaneously the fecal coliform objectives are removed from the Basin Plan and replaced with an E. Coli objective - ..what would the new bacteria objective be? Would the waterbody still be impaired? Does this constitute back-sliding?	<p>The Regional Board will be using the USEPA's established procedures for conducting use attainability analysis as contained in 40 CFR 131.10(g)(1)-(6). Under 40 CFR 131.10(g), states may remove a designated use which is not an existing use, or establish sub-categories of a use if the state can demonstrate that attaining the designated use is not feasible. Any new water quality standards adopted for E. Coli by the Regional Board will be consistent the federal water quality criteria and protective of the designated beneficial uses. The September 9, 2009 comment letter from USEPA indicates that incorporation of revised TMDLS and WLAs in future permits based on revised water quality objectives approved by USEPA would not constitute back-sliding as long as antidegradation requirements are satisfied as part of the TMDL/WLA revision.</p> <p>If the anti-backsliding provisions of CWA section 402(o) apply to the effluent limitation being made less stringent, the effluent limitation may be revised to be less stringent if one of the "anti-backsliding" exceptions applies. For example, CWA section 402(o)(1) prohibits revision of an effluent limitation established on the basis of CWA sections 301(b)(1)(C), 303(d) or 303(e) unless one of the exceptions in CWA section 303(d)(4) are met. CWA section 303(d)(4)(A) would allow the relaxation of an effluent limitation based on a TMDL or other waste load allocation in waters not attaining a water quality criterion if the cumulative effect of all revised effluent limitations would assure attainment of the revised criterion or the designated use which is not being attained has been removed. In waters attaining a water quality criterion, CWA section 303(d)(4)(B) would allow relaxation of an effluent limitation based on a TMDL or other waste load allocation or any water quality standard or any other permitting standard if such revised limitation was consistent with the state's anti-degradation requirements.</p>
125	IEW, 4	General Classifications	We also expect many REC-1 waters to be changed to REC-2, and many REC-2 waters changed to REC-X as a results of UAAs. The resulting scenarios should be analyzed and solutions considered to avoid degradation of water quality or back-sliding of regulations.	Comment noted. As stated in response to comments on Item 124, above, the UAA will be conducted in accordance with federal regulations contained in 40 CFR 131.10(g)(1)-(6). The anti-backsliding issue has been addressed by the USEPA in its September 9, 2009 comments on the draft Order.

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126	IEW, 4	Risk Sciences - Task Force Suggestion	Tim Moore of Risk Sciences suggested, .. supported by the San Bernardino County Permittees, that the task force model used in TMDL implementation be incorporated into the MS4 permit. Although Waterkeeper usually supports the collaborative "task force" approach for TMDL implementation, we cannot support this approach to be used in permitting as part of the MS4 permit. Showing "good faith efforts" should not be the bar by which permittees are measured. We foresee this approach causing an unending chain of meetings for both the Regional Board staff and permittees resulting in little action, deferred compliance, a false sense of accomplishment on behalf of co-permittees and even less enforcement.	The TMDL requirements are consistent with the approved TMDL implementation plans.
127	IEW, 4	Section XI.D Technical and Formatting Issues	Section .. is improperly numbered and should be renumbered to reflect the reordering of subsection 5 which is repeated twice.	Corrected.
128	IEW, 5	Section XI.E.6.d.iv.e Technical and Formatting Issues	Section should be redrafted to reference subsections "b, c, and d" instead of subsections "1, 2, and 3."	Corrected.
129	IEW, 5	Conclusion	Regional Board should be resolute in ensuring the adoption of this Permit... Although the global recession has impacted San Bernardino County to a significant degree, the Regional Board must remember that recessions are transitory and cannot be allowed to dictate foundational regulatory mandates such as those under the (Clean Water) Act.	Comment noted.
130	IEW, 5	Conclusion	Regional Board should avoid granting extensions ...The granting of an extension would unreasonably delay attaining increased water quality objectives and recharging depleted groundwater through the wider implementation of LID. principles.	Regional Board staff considered all factors in proposing some modifications to the schedules.
131	Construction Industry Coalition on Water Quality (CICWQ)	II.G.7. New Development/Significant Redevelopment	An EIA (effective impervious area) metric is not a good performance indicator for LID (low impact developments) BMPs. Finding No. 7.	Use of EIA as a performance measure has been deleted from the draft Order.
132	Construction Industry Coalition on Water Quality (CICWQ)	Section XI: New Development (Including Significant Redevelopment)	LID BMPs that retain stormwater on site should be used when it is optimal to do so. However, such BMPs should not be mandated as a permit condition thereby excluding other LID options. Such an approach would impose a universal hydrology standard mandating the on-site retention of a certain volume of water, regardless of likely water quality implications. Vegetated LID BMPs such as biotreatment and biofiltration must be available to a project developer to meet the LID standard without the requirement to perform an infeasibility analysis. ... The draft Order is weighted heavily and unnecessarily in favor of infiltration over more appropriate LID BMPs for a given site's setting and context. Biofiltration, bioretention, filter strips, and other BMPs based on using vegetation to promote stormwater treatment should be added to the suite of LID BMPs available to project proponents without performing an infeasibility analysis.	The draft Order has a priority ranking of various types of potential LID BMPs. Infiltration, harvesting and re-use and evapotranspiration are generally considered as the first tier preferred BMPs because of multiple benefits, such as removal of pollutants, recharge and minimizing hydrologic conditions of concern. The draft Order does not exclude other LID options. A rigorous analysis is required before using less effective LID BMPs.

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133	Construction Industry Coalition on Water Quality (CICWQ)	Use the broader definition of LID as per USEPA publications.	CICWQ continues to point out to the Regional Board that the narrow LID that staff is requiring in the permit to meet the volume capture standard is inconsistent with the USEPA guidance which promotes filtration and biotreatment as part of LID.	The draft Order provides an option to the project proponents to use biotreatment when other more effective LID techniques such as infiltration, harvesting and reuse and evapotranspiration are not feasible.
134	Construction Industry Coalition on Water Quality (CICWQ)	XI.D.4.h roadway improvement projects	Public works projects fitting this category have special limitations and the preparation and maintenance of a WQMP document for each individual project would be unduly burdensome. The Permittees should be given the option to incorporate USEPA Guidance, "Managing Wet Weather with Green Infrastructure: Green Streets" to the MEP.	The draft Order provides the option of using the USEPA guidance. In addition, the Permittees have the option of developing appropriate standards for road projects (see Section XI.F, October 22, 2009 draft). It is anticipated that road projects within new developments will be addressed in the WQMP for the new development.
135	Mark Diamond	Section XI.D.3 New Development, WQMP	The purpose and level of detail in a Preliminary WQMP need to be more clearly defined, including the role of the Preliminary WQMP as the project moves into detailed design. For example, once a Preliminary WQMP is approved, does it prohibit a significant change in BMPs as the project moves into final design? If significant changes are permitted, the potentially valuable role of a Preliminary WQMP will be reduced. If the Preliminary WQMP is required, as currently written, there should be an approval of the Preliminary WQMP prior to the project receiving any approvals from the Agency. For example, a project that will go to a Planning Commission or a Design Review Board to receive conditions/approvals, should have an approved Preliminary WQMP before that approval is granted. This ensures that environmental concerns are considered by Planning Commissions and Design Review Boards or their equals. Keep in mind, that once a Planning Commission reviews a project, it becomes very difficult, time consuming, and expensive to make changes.	A preliminary WQMP should be used as a tool to identify opportunities to address water quality and quantity problems early in the planning process. If the storm water control measures are properly identified (including LID BMPs and HCOC concerns) and designed in the preliminary WQMP, further design changes may not be necessary as the project goes through various stages of approval. However, to the extent that the LID and HCOC performance standards are met in the final WQMP, changes in design or layout would be acceptable.
136	Mark Diamond	Section XI.D.4 New Development, WQMP	Section XIV.E suggests that WQMPs are required for Agency projects; therefore, the introduction paragraph before the 10 Priority Categories should clarify that the requirements apply to private projects, public projects, and agency projects, including projects of non-permitted agencies such as schools, water districts, state agencies, and federal agencies such as the the Postal Service. Furthermore, for categories where examples of private projects are provided, examples of public projects should be provided as well. For example, in Priority Category b, construction of libraries, city halls, city yards, municipal offices, etc. could be provided as examples. For Priority Category d, restaurants should not be the issue, rather, food preparation facilities should be the issue as this will pull in both restaurants as well as catering kitchens, school kitchens, and other types of facilities that prepare or process food and thus generate pollutants of concern related to foods.	The approved Model WQMP specifies that WQMPs are required for public project or municipal projects as well as for private projects. This draft Order does not change that applicability. The permittees do not have jurisdiction over certain entities such as school districts and federal facilities, Section XI.A.5 of the draft Order requires the Permittees to notify these entities of the state's General Construction activities permit's post-construction standards prior to accepting connections into their MS4s. For the permit area, a WQMP approved by the owner of the MS4 would constitute compliance with the state's post-construction standards. Please note that all pollutant sources are not fully addressed in the priority categories. These priority categories are those considered as the highest priority pollutant sources.

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137	Mark Diamond	Section XI.D.4 New Development, WQMP	For Priority Category a, clarify what happens when a project expands impervious areas by exactly 50% - the current wording leaves loophole since one criteria is for less than 50% and the other criteria is for greater than 50%. For Priority Category g, clarify whether earth or gravel parking areas meet the category definition. For Priority Category i, why limit this to 'retail' gasoline facilities? Private and public, non retail fueling facilities usually have the same issues as retail gasoline outlets. For Priority Category j, clarify whether this is really a category or an exemption. If it is a Priority Category, it is not clear and needs to be clarified. If it is an exemption, it should not be item j, but perhaps incorporated into the introduction paragraph that introduces the categories.	Please see the revised October 22, 2009 draft. Some of these concerns have been addressed in the revised draft. Category g already provides a definition of the parking lot. As indicated above, these priority categories are not all inclusive; the list includes what is generally considered as the highest priority pollutant sources.
138	Mark Diamond	Section XI.D.4 New Development, WQMP	Page 69 of 114, this heading and those that follow are incorrectly numbered, and should be XI.D.5. Comments that follow quote the numbering in the draft permit.	The section numbers have been corrected.
139	Mark Diamond	Section XI.D.4 New Development, WQMP	Why would you include a BMP to address a pollutant listed for a receiving water if the project is not reasonably expected to generate the pollutant? The process should be to address all pollutants likely to be generated by the project to the level required to protect receiving waters, and for pollutants for which the receiving water is listed, those pollutants should receive higher levels of attention by way of more effective BMPs.	The approved WQMP template requires the project proponents to address all pollutants that are likely to be generated by the project.
140	Mark Diamond	Section XI.D.4 New Development, WQMP	The terminology "unless formally substantiated as unwarranted" is too vague. What is unwarranted to a developer and what is unwarranted to an agency or the Board could likely be two very different things. Without clarification or clear criteria, this wording will result in many problems.	The WQMP template has a list of specific source control BMPs. All those BMPs are not universally applicable and in such cases, the project proponent should justify if a particular BMP cannot be implemented.
141	Mark Diamond	Section XI.D.5 New Development, WQMP	The WEF formula was clearly limited to planning level use only, and should not be used for design. Site specific or regionally specific data should be used instead. Suggest dropping this option.	These are options that are available to the permittees. The current WQMP template specifies a methodology for the permit area.
142	Mark Diamond	Section XI.D.7.c New Development, WQMP	Please define "commercial parking lot".	A designated paved open area where automobiles associated with business or commerce may be left when not in use. For purposes of this permit, the large commercial parking lots should include open parking lots for large shopping centers and large businesses with more than 250 parking spaces.
143	Mark Diamond	Section XI.D.7.c New Development, WQMP	All underground treatment devices should have pretreatment, not just gas stations. The pretreatment for underground infiltration BMPs needs to be medium or highly effective.	Comment noted; see Section XI.D.9 Groundwater Protection

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144	Mark Diamond	Section XI.D.7.d New Development, WQMP	This is overly restrictive. Infiltration is essential at the many commercial warehouse facilities where all major activities are done inside. Since these facilities have such a high impervious ratio, infiltration is needed. It is suggested that facilities that store and transfer freight should be written in as an exemption, perhaps called out by SIC code.	Section XI.D.9 does not prohibit infiltration BMPs at commercial warehouse facilities.
145	Mark Diamond	Section XI.F.5.c Alternatives and In-Lieu Programs	High density development alone is not compatible with water quality protection as it results in large, dense, and impervious areas that generate many pollutants in a concentrated, untreatable mass. High density development is only compatible with water quality when the density is balanced with creation of open space. Suggest dropping this example in the credit list, or more carefully setting criteria for how it must be applied to quality for a credit (density offset by created open space that buffers the higher and pollutant loads.	Comment noted. We expect that any credit system that is developed for high density development should be balanced with the creation of open space.
146	Mark Diamond	Section XI.F.5.i Alternatives and In-Lieu Programs	"In-fill projects" needs to be carefully defined. Some developers and maybe even some agencies feel that since a project is in a Census urban area, the project is infill, which is not what others would say. So, clarify. What is meant by "in-fill"	The revised WQMP that includes the feasibility criteria should be the appropriate document to further define what constitutes an "in-fill" development project.
147	Mark Diamond	Section XI.H.3 Field Verification of BMPs	Treatment BMPs, once completed and operational, need to be inspected during their first rainy season to make sure they are working. At this time, Bonds are still often in place and can be used to get things that are not working fixed. As currently written, it could be three rainy seasons before an operating BMP is inspected, and this is just too long to wait to find out of something is working.	Section XI.I requires a field verification inspection prior to issuance of occupancy permits to determine that post-construction BMPs are functioning properly.
148	Mark Diamond	Section XI.J.3 Operation & Maintenance of Post-Construction BMPs	The database development and population needs to be accelerated, as the longer one waits the more work it will be to get the job done. This can be done in two stages. First, collect information about WQMP projects, with a suggestion of going back two or three years, and getting this information in hard copy form or optional electronic form. Then, once the electronic database is complete, the collected data can be used to populate the database. Going back 3 years is important because it will provide a look at what types of BMPs have been going in and what types of BMPs are having problems and which ones are working well.	Currently majority of the Permittees keep records of the WQMPs they approve along with the post-construction BMP information. The draft Order requires the Permittees to incorporate additional parameters such as GIS coordinates into these databases.
149	Mark Diamond	Section XI.K.1	Clarify that the existing requirements prevail until an updated WQMP is approved	No clarification needed; see Section XI.D.1.