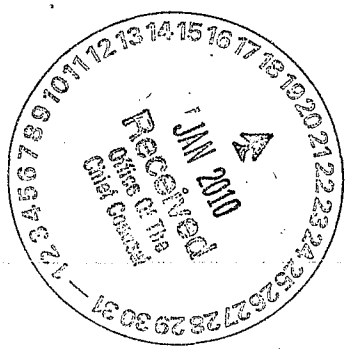

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the matter of the Petition of: THE CITY OF ALISO VIEJO FOR REVIEW OF ACTION BY THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION, IN ISSUING ORDER NO. R9-2009-0002 (NPDES NO. CAS0108740)	PETITION FOR REVIEW [Water Code § 13320(a)]

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Attorneys for Petitioner:

City of Aliso Viejo, California

I.

INTRODUCTION

Petitioner City of Aliso Viejo, California ("City") seeks review of the California Regional Water Quality Control Board, San Diego Region's ("Regional Board") actions in adopting Order No. R9-2009-0002 (NPDES No. CAS0108740) ("Permit"), on December 16, 2009. A copy of the Permit is attached hereto as Exhibit "A" and incorporated herein by reference.[1]

The City is a municipal corporation organized pursuant to California law and the California Constitution. As of 2009, the City has an estimated population of 43,000 people, and is located in Orange County, approximately 50 miles south of the City of Los Angeles. The City owns and operates a municipal separate storm sewer system ("MS4") within the Regional Board's jurisdiction and as such is subject to regulation under the Permit. At all times mentioned herein, the City has acted pursuant to applicable legal requirements, and with great concern for the impacts that discharges from its MS4 may have on surrounding surface waters, and the environment in general.

II.

BACKGROUND

The City fully supports the Permit's goal of attaining water quality improvement throughout south Orange County. In order to ensure that this goal could be attained with minimal negative repercussions for the City, the City participated in the Permit development process. Although the Regional Board removed or modified some requirements, as adopted the Permit retains requirements exceed applicable law.

Development of the Permit took three years and at least five drafts. The Regional Board issued the first draft on February 9, 2007, a second draft in July, 2007 and a third draft in December, 2007. The third version was planned for adoption as Order Number R9-2008-0001 at the Regional Board's regularly scheduled meeting on February 13, 2008. At the hearing however the Regional Board decided against Permit adoption, voting at the Executive Officer's request to

[1] As of January 15, 2010, the San Diego Regional Board has not released a final version of the Permit. Attached in Exhibit A is the August 12, 2009 draft, along with the errata approved by the Regional Board at the December 16, 2009 hearing.

remove the Permit from consideration and allow revisions requested by the United States Environmental Protection Agency.

The Regional Board independently developed the next draft of the Permit and released it for comment on March 13, 2009. Following an informational hearing, the Regional Board issued a revised draft on August 12, 2009, and scheduled an adoption hearing for November 18, 2009. At the November, 2009 hearing, the Regional Board accepted the majority of the Permit's provisions, but directed its staff to remove the Permit's numeric effluent limit requirements, and issue a final draft of the Permit that instead converted the numeric effluent limits into "Non-storm Water Action Levels." This was a very positive change in the Permit, but it did not address a number of the other concerns expressed by the City. The Regional Board held a final hearing approving these changes, and adopted the Permit on December 16, 2009.

The adopted version of the Permit includes provisions that exceed the requirements of federal law, and/or are beyond the authority of the Regional Board to impose. The new provisions include the removal of formally "exempt" non-storm water discharges, the imposition of retrofitting of existing development, the requirements to meet non-attainable numeric standards for both wet weather and dry weather discharges, and the standards applicable for low impact development (LID), hydromodification, and Total Maximum Daily Loads (TMDLs).

As described more fully below, by adopting the Permit in its current form the Regional Board exceeded state and federal law by among other things: (1) adopting a regulatory scheme that dictates the manner of compliance in violation of California Water Code section 13360; (2) failing to base its decision on sound science and rationale as reflected in the findings and administrative record; and (3) imposing requirements that exceed Clean Water Act standards, and/or the Regional Board's authority under state and federal law.

The City therefore submits this Petition pursuant to Water Code section 13320 and Title 23 of the California Code of Regulations, and respectfully requests that the State Board correct the Regional Board's actions.

III.

NAME AND ADDRESS OF PETITIONER

The names and contact information for Petitioner is as follows:

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IV.

THE ACTION OR INACTION OF THE REGIONAL WATER BOARD BEING PETITIONED

The City seeks review of the Regional Board's actions in adopting Order No. R9-2009-0002 (NPDES No. CAS0108740) on December 16, 2009. A copy of the Permit is attached hereto as Exhibit "A" and incorporated herein by reference.[2]

V.

DATE THE REGIONAL BOARD ACTED

The Regional Board adopted Order No. R9-2009-0002 (NPDES No. CAS0108740) on December 16, 2009.

[2] As stated in footnote 1, above, as of January 15, 2010, the San Diego Regional Board has not released a final version of the Permit. This raises significant issues regarding when the Regional Board's action occurred. Out of an abundance of caution, the City files this Petition within thirty days of the Regional Board's hearing approving the Petition.

VI.

STATEMENT OF THE REASONS THE ACTION WAS INAPPROPRIATE OR IMPROPER

The Regional Board exceeded its legal authority, thereby abusing its discretion when issuing the Permit. Among other things, the Regional Board imposed requirements in the Permit that exceed its authority under state and federal law, are not supported by the evidence in the record, and/or exceed the requirements of state and federal law. Specifically, in adopting the Permit the Regional Board:

(1) imposed low impact development ("LID") requirements on projects within the City that dictate the means of compliance with the Permit and the Maximum Extent Practicable ("MEP") standard in violation of California Water Code section 13360,

(2) limited the use of equally effective traditional best management practices ("BMPs") in place of LID BMPs, without making the necessary findings, or basing its decision on substantial evidence in the administrative record;

(3) required the City to prohibit irrigation runoff in contravention of Clean Water Act regulations, and without substantial evidence that an outright ban was necessary to meet the MEP standard;

(4) subverted the City's land use authority in violation of the California Environmental Quality Act, and the California Constitution by requiring the City to develop retrofit requirements for existing development, and imposing this requirement without sufficient findings or substantial evidence that such requirements were necessary to meet the MEP standard;

(5) required compliance with wet weather "Storm Water Action Levels" that are unlawfully tied to compliance with the MEP standard;

(6) required compliance with dry weather "Non-storm Water Action Levels" based on an artificial, separate compliance standard for discharges of "non-stormwater" *from* the MS4;

(7) required compliance with dry weather "Non-storm Water Action Levels" that were developed without consideration of existing discharges, locally developed data on pollutant loads, or attainability, and without substantial evidence that the levels were necessary to meet the MEP discharge standard;

(8) abused its discretion by holding the City liable for discharges from natural sources not subject to regulation under the Clean Water Act, and from third parties over which the City has little to no control;

(9) violated the MEP standard by imposing Permit requirements that are inconsistent with the MEP standard as set forth in the Large MS4 Permits for north Orange County, the rest of the state of California, and the United States, thereby subjecting the City to disparate regulatory schemes;

(10) required compliance with waste load allocations (WLAs) of fully approved and adopted TMDLs as "Water Quality Based Effluent Limitations" without making the necessary findings, or basing its decision on substantial evidence in the administrative record, and without clarifying that they are to be achieved through an iterative, BMP based process;

(11) failed to consider the factors and make the findings required by California Water Code sections 13000, 13241, and 13263, which require the Regional Board to consider, among other things, the overall costs and benefits associated with its actions, and the impact that its decisions may have on the use of recycled water; and

(12) imposed requirements that exceed the requirements of the Clean Water Act and its associated federal regulations, and thereby imposed a state mandated program that is not supported with a subvention of funds.

The City, other Permittees and interested parties submitted comment letters to the Regional Board during the Permit renewal process raising these concerns. The City additionally made oral comments at the Permit adoption hearings in support of its comment letters, and the

comments of the other Permittees to again raise the above listed concerns. The Regional Board nonetheless adopted the Permit over these objections, in violation of state and federal law.

VII.

HOW PETITIONER IS AGGRIEVED

Petitioner City of Aliso Viejo owns and operates an MS4 within the Regional Board's jurisdiction and as such is subject to regulation under the Permit. The City, along with other Permittees, is required to implement the Permit's programs, and comply with its technical limitations. The City is aggrieved because the challenged Permit requirements exceed the Regional Board's authority. These requirements will require the City to impose severe restrictions on development within City limits, hinder the City's ability to exercise its land use authority in a manner that benefits its residents' economic and environmental interests, and require the City to invest significant time and resources complying with arbitrarily selected "Action Levels."

VIII.

ACTIONS PETITIONER REQUESTS THE STATE WATER BOARD TAKE

The City respectfully requests that the State Board remand the Permit to the Regional Board, and direct the Regional Board to amend the Permit to address the deficiencies raised in Section VI, above.

IX.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION

Petitioners have requested that this Petition be held in abeyance, and reserve the right to supplement the legal arguments and authorities raised in Section VI, above, with additional memoranda of points and authorities if and when the Petition is activated.

X.

STATEMENT OF COPIES FURNISHED

In accordance with the requirements of Title 23, Section 2050(a)(8) of the California Code of Regulations, a copy of this Petition has been sent to the California Regional Water Quality Control Board, San Diego Region.

XI.

STATEMENT OF ISSUES RAISED

As illustrated in Exhibit "B" attached hereto and incorporated herein, Petitioners, and/or other interested parties submitted written and oral comments on the Permit outlining the above described issues. Through their written and oral comments, Petitioners requested that the Regional Board revise the Permit to address Petitioner's concerns.

XII.

CONCLUSION

For the reasons set forth in this Petition and in the related documents filed herewith, Petitioner City of Aliso Viejo respectfully requests that the State Water Resources Control Board remand the Permit to the Regional Board with direction to revise it to address the concerns raised herein, and take any other actions that the State Board deems necessary and appropriate to address the City's claims.

Dated: January 15, 2010

BEST BEST & KRIEGER LLP

By: _____

SHAWN HAGERTY
J.G. ANDRE MONETTE
Attorneys for Petitioners

City of Aliso Viejo

EXHIBIT "A"

C. NON-STORM WATER DRY WEATHER ACTION LEVELS

1. Each Copermittee, beginning no later than-May 1, 2011~~the one year following adoption of this Order~~, shall implement the non-storm water dry weather action level(NAL) monitoring as described in Attachment E of this Order.

2. In response to an exceedance of a NAL, each Copermittee must investigate and identify the source of the exceedance in a timely manner. However, if any Copermittee identifies exceedances of NALs that prevent them from adequately conducting source investigations in a timely manner, then the Copermittees may submit a prioritization plan and timeline that identifies the timeframe and planned actions to investigate and report their findings on all of the exceedances. Following the source investigation and identification, the Copermittees must submit an action report dependant on the source of the pollutant exceedance as follows:

   a. If the Copermittee identifies the source of the exceedance as natural (non-anthropogenically influenced) in origin, and in conveyance into the MS4; then the Copermittee shall report their findings and documentation of their source investigation to the Regional Board within fourteen days of the source identification.

   b. If the Copermittee identifies the source of the exceedance as an illicit discharge or connection, then the Copermitees must eliminate the discharge to their MS4 and report the findings, including any enforcement action(s) taken, and documentation of the source investigation to the Regional Board within fourteen days of the source identification. If the Copermittee is unable to eliminate the source of discharge within fourteen days, then the Copermittee must submit, as part of their action report, their plan and timeframe to eliminate the source of the exceedance. Those dischargers seeking to continue such a discharge must become subject to a separate NPDES permit prior to continuing any such discharge.

   c. If the Copermittee identifies the source of the exceedance as an exempted category of non-storm water discharges, then the Copermittees must determine if this is an isolated circumstance or if the category of discharges must be ~~subsequently~~ addressed through the prevention or prohibition of that category of discharge as an illicit discharge. The Copermittee must submit their findings including a description of the steps taken to address the discharge and the category of discharge, to the Regional Board for review with the next subsequent annual report. Such description shall include relevant updates to or new ordinances, orders, or other legal means of addressing the category of discharges. The Copermittees must also submit a summary of their findings with the Report of Waste Discharge.

d. If the Copermittee identifies the source of the exceedance as a non-storm water discharge in violation or potential violation of an existing separate NPDES permit (e.g. the groundwater dewatering permit), then the Copermittee must report, within three business days, the findings to the Regional Board including all pertinent information regarding the discharger and discharge characteristics.

e. If the Copermittee is unable to identify the source of the exceedance after taking and documenting reasonable steps to do so, then the Copermittee must identify the pollutant as a high priority pollutant of concern in the tributary subwatershed, perform additional focused sampling and update their programs within a year to reflect this priority. The Copermittee's annual report shall include these updates to their program including, where applicable, updates to their watershed workplans (Section G.2), retrofitting consideration (Section F.3.d) and program effectiveness work plans (Section J.4).

f. The Copermittees, or any interested party, may evaluate existing NALs and propose revised NALs for future Board consideration.

f. ~~If any Copermittee identifies a significant number of exceedances of NALs that prevent them from adequately conducting source investigations in a timely manner, then the Copermittees may submit a prioritization plan and timeline that identifies the timeframe and planned actions to investigate and report their findings on all of the exceedances.~~

3. An exceedance of an NAL does not alone constitue a violation of the provisions of this Order, but an exceedance of an NAL may indicate lack of compliance with the requirement that Copermittees effectively prohibit all types of unauthorized non-storm water discharges into the MS4 or other prohibitions set forth in Sections A and B of this Order. Failure to timely implement required actions specified in this Order following an exceedance of an NAL constitutes a violation of this Order. However, neither compliance with NALs nor compliance with required actions following observed exceedances, excuses any non-compliance with the requirement to effectively prohibit all types of unauthorized non-storm water discharges into the MS4s or any non-compliance with the prohibitions in Sections A and B of this Order. NALs provide an assessment of the effectiveness of the prohibition of non-storm water discharges and of the appropriateness of exempted non-storm water discharges. During any annual reporting period in which one or more exceedances of NALs have been documented the Copermittee must submit with their next scheduled annual report, a report describing whether and how the observed exceedances did or did not result in a discharge from the MS4 that caused, or threatened to cause or contribute to a condition of pollution, contamination, or nuisance in the receiving water.

Attachment E: Monitoring and Reporting

Pg. 12, C. Non-Storm Water Dry Weather Action Levels

Each Copermittee must collaborate with the other Copermittees to conduct, and report on a year-round watershed based Dry Weather Non-storm Water MS4 Discharge Monitoring Program. The monitoring program implementation, analysis, assessment, and reporting must be conducted on a watershed basis for each of the hydrologic units. The monitoring program must be designed to assess compliance with non-storm water dry weather action levels in section C of this Order, adopted dry weather Total Maximum Daily Loads Waste Load Allocations and assessment of the contribution of dry weather flows to 303(d) listed impairments. The monitoring program must include the following components;

c. Conduct Dry Weather Non-storm Water Effluent Analytical Monitoring

The Copermittees must commence implementation of dry weather effluent analytical monitoring under the requirements of this Order no later than May 1, 2011. ~~one year following adoption of this Order.~~ If monitoring indicates an illicit connection or illegal discharge, conduct the follow-up investigation and elimination activities as described in submitted dry weather field screening and analytical monitoring procedures and found in sections C, F.4.d and F.4.e of Order No. R9-2009-0002.

Until the dry weather non-storm water effluent analytical monitoring program is implemented under the requirements of this Order, each Copermittee must continue to implement dry weather field screening and analytical monitoring as it was most recently implemented pursuant to Order No. 2002-01.

California Regional Water Quality Control Board
San Diego Region

Waste Discharge Requirements for Discharges of Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watershed of the County of Orange, The Incorporated Cities of Orange County, and The Orange County Flood Control District Within the San Diego Region

Tentative Order No. R9-2009-0002
NPDES NO. CAS0108740
PUBLIC RELEASE DRAFT
August 12, 2009

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
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http://www.waterboards.ca.gov/sandiego

To request copies of the Orange County Municipal Storm Water Permit, please contact Ben Neill, Water Resources Control Engineer at (858) 467 – 2983, bneill@waterboards.ca.gov

Documents also are available at: http://www.waterboards.ca.gov/sandiego

WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES OF RUNOFF FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s) DRAINING THE WATERSHED OF THE COUNTY OF ORANGE, THE INCORPORATED CITIES OF ORANGE COUNTY, AND THE ORANGE COUNTY FLOOD CONTROL DISTRICT WITHIN THE SAN DIEGO REGION

Adopted by the
California Regional Water Quality Control Board
San Diego Region
on MM DD, 2009

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
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STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor
LINDA S. ADAMS, Agency Secretary, California Environmental Protection Agency

California Regional Water Quality Control Board
San Diego Region

Richard Wright *Chair*	County Government
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Wayne Rayfield	Water Quality
Grant Destache	Industrial Water Use
George Loveland	Water Supply
Marc Luker	Undesignated (Public)

John H. Robertus, *Executive Officer*
Michael P. McCann, *Assistant Executive Officer*

This permit was prepared under the direction of

David T. Barker P.E., *Chief, Water Resource Protection Branch*

by

Jimmy G. Smith, *Senior Environmental Scientist*
Ben Neill, *Water Resource Control Engineer*
Chad Loflen, *Environmental Scientist*

Table of Contents

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds that:

A. BASIS FOR THE ORDER

1. This Order is based on the federal Clean Water Act (CWA), the Porter-Cologne Water Quality Control Act (Division 7 of the Water Code, commencing with Section 13000), applicable State and federal regulations, all applicable provisions of statewide Water Quality Control Plans and Policies adopted by the State Water Resources Control Board (State Board), the Water Quality Control Plan for the San Diego Basin adopted by the Regional Board, the California Toxics Rule, and the California Toxics Rule Implementation Plan.

2. This Order reissues National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0108740, which was first adopted by the Regional Board on July 16, 1990 (Order No. 90-38), and then reissued on August 8, 1996 (Order No. 96-03) and February 13, 2002 (Order No. R9-2002-01). On August 21, 2006, in accordance with Order No. R9-2002-01, the County of Orange, as the Principal Copermittee, submitted a Report of Waste Discharge (ROWD) for reissuance of the municipal separate storm sewer system (MS4) Permit.

3. This Order is consistent with the following precedential Orders adopted by the State Water Resources Control Board (State Board) addressing MS4 NPDES Permits: Order 99-05, Order WQ-2000-11, Order WQ 2001-15, Order WQO 2002-0014, and Order WQ-2009-0008 (*SWRCB/OCC FILE A-1780).*

B. REGULATED PARTIES

1. Each of the persons in Table 1 below, hereinafter called Copermittees or dischargers, owns or operates an MS4, through which it discharges runoff into waters of the United States within the San Diego Region. These MS4s fall into one or more of the following categories: (1) a medium or large MS4 that services a population of greater than 100,000 or 250,000 respectively; or (2) a small MS4 that is "interrelated" to a medium or large MS4; or (3) an MS4 which contributes to a violation of a water quality standard; or (4) an MS4 which is a significant contributor of pollutants to waters of the United States (waters of the U.S).

Table 1. Municipal Copermittees

1. City of Aliso Viejo	8. City of Mission Viejo
2. City of Dana Point	9. City of Rancho Santa Margarita
3. City of Laguna Beach	10. City of San Clemente
4. City of Laguna Hills	11. City of San Juan Capistrano
5. City of Laguna Niguel	12. County of Orange
6. City of Laguna Woods	13. Orange County Flood Control District
7. City of Lake Forest	

C. DISCHARGE CHARACTERISTICS

1. Runoff discharged from an MS4 contains waste, as defined in the California Water Code (CWC), and pollutants that adversely affect the quality of the waters of the State. The discharge of runoff from an MS4 is a "discharge of pollutants from a point source" into waters of the U.S. as defined in the CWA.

2. MS4 storm water and non-storm water discharges are likely to contain pollutants that cause or threaten to cause a violation of water quality standards, as outlined in the Regional Board's Water Quality Control Plan for the San Diego Basin (Basin Plan). Storm water and non-storm water discharges from the MS4 are subject to the conditions and requirements established in the San Diego Basin Plan for point source discharges. These surface water quality standards must be complied with at all times, irrespective of the source and manner of discharge.

3. The most common categories of pollutants in runoff include total suspended solids, sediment, pathogens (e.g., bacteria, viruses, protozoa); heavy metals (e.g., copper, lead, zinc and cadmium); petroleum products and polynuclear aromatic hydrocarbons; synthetic organics (e.g., pesticides, herbicides, and PCBs); nutrients (e.g., nitrogen and phosphorus fertilizers), oxygen-demanding substances (decaying vegetation, animal waste), detergents, and trash.

4. The discharge of pollutants and/or increased flows from MS4s may cause or threaten to cause the concentration of pollutants to exceed applicable receiving water quality objectives and/or impair or threaten to impair designated beneficial uses resulting in a condition of pollution (i.e., unreasonable impairment of water quality for designated beneficial uses), contamination, or nuisance.

5. Pollutants in runoff can threaten and adversely affect human health. Human illnesses have been clearly linked to recreating near storm drains flowing to coastal waters. Also, runoff pollutants in receiving waters can bioaccumulate in the tissues of invertebrates and fish, which may be eventually consumed by humans.

6. Runoff discharges from MS4s often contain pollutants that cause toxicity to aquatic organisms (i.e., adverse responses of organisms to chemicals or physical agents ranging from mortality to physiological responses such as impaired reproduction or growth anomalies). Toxic pollutants impact the overall quality of aquatic systems and beneficial uses of receiving waters.

7. The Copermittees discharge runoff into lakes, drinking water reservoirs, rivers, streams, creeks, bays, estuaries, coastal lagoons, the Pacific Ocean, and tributaries thereto within one of the eleven hydrologic units (San Juan Hydrologic Unit) comprising the San Diego Region as shown in Tables 2a and 2b. Some of the receiving water bodies have been designated as impaired by the Regional Board and the United States Environmental Protection Agency (USEPA) in 2006 pursuant to CWA section 303(d). Also shown in the Tables are the watershed management

areas (WMAs) as defined in the Regional Board report, Watershed Management Approach, January 2002.

Table 2a. Common Watersheds and CWA Section 303(d) Impaired Waters

Regional Board Watershed Management Area (WMA)	**Hydrologic Area (HA) or Hydrologic Subarea (HSA) of the San Juan Hydrologic Unit**	**Major Receiving Water Bodies**	**303(d) Pollutant(s)/stressor or Water Quality Effect[1]**
Laguna Coastal Streams	Laguna HA, excluding Aliso HSA and Dana Point HSA	Laguna Canyon Creek, Pacific Ocean	Bacterial indicators Sediment toxicity
Aliso Creek	Aliso HSA	Aliso Creek, English Canyon, Pacific Ocean	Toxicity Phosphorus Bacterial indicators Benzo[b]fluoranthene Dieldrin Sediment Toxicity
Dana Point Coastal Streams	Dana Point HSA	Dana Point Harbor, Salt Creek, Pacific Ocean	Bacterial indicators
San Juan Creek	Mission Viejo HA	San Juan Creek, Trabuco Creek, Oso Creek, Canada Gobernadora, Bell Canyon, Verdugo Canyon, Pacific Ocean	Bacterial indicators DDE Chloride Sulfates Total dissolved solids
San Clemente Coastal Streams	San Clemente HA	Prima Deshecha, Segunda Deshecha, Pacific Ocean	Bacterial indicators Phosphorus Turbidity
San Mateo Creek	San Mateo HA	San Mateo Creek, Christianitos Creek, Pacific Ocean	

[1] The listed 303(d) pollutant(s) do not necessarily reflect impairment of the entire corresponding WMA or all corresponding major surface water bodies. The specific impaired portions of each WMA are listed in the State Water Resources Control Board's 2006 Section 303(d) List of Water Quality Limited Segments.

Table 2b. Common Watersheds and Municipalities

Municipality	Laguna Coastal Streams	Aliso Creek	Dana Point Coastal Streams	San Juan Creek	San Clemente Coastal Streams	San Mateo Creek
Aliso Viejo	☑	☑				
Dana Point			☑	☑		
Laguna Beach	☑	☑				
Laguna Hills *		☑		☑		
Laguna Niguel		☑	☑	☑		
Laguna Woods *		☑				
Lake Forest *		☑				
Mission Viejo		☑		☑		
Rancho Santa Margarita				☑		
San Clemente					☑	☑
San Juan Capistrano				☑		
County of Orange *	☑	☑	☑	☑	☑	☑
Orange County Flood Control District *	☑	☑	☑	☑	☑	
* Municipality also includes areas within watersheds of the Santa Ana Regional Board that are outside the scope of this Order						

8. Trash is a persistent pollutant which can enter receiving waters from the MS4 resulting in accumulation and transport in receiving waters over time. Trash poses a serious threat to the Beneficial Uses of the receiving waters, including, but not limited to, human health, rare and endangered species, navigation and human recreation.

9. The Copermittees' water quality monitoring data submitted to date documents persistent violations of Basin Plan water quality objectives for various runoff-related pollutants (fecal coliform bacteria, total suspended solids, turbidity, metals, etc.) at various watershed monitoring stations. Persistent toxicity has also been observed at some watershed monitoring stations. In addition, bioassessment data indicates that the majority of urbanized receiving waters have Poor to Very Poor Index of Biotic Integrity ratings. In sum, the above findings indicate that runoff discharges are causing or contributing to water quality impairments, and are a leading cause of such impairments in Orange County.

10. When natural vegetated pervious ground cover is converted to impervious surfaces such as paved highways, streets, rooftops, and parking lots, the natural absorption and infiltration abilities of the land are lost. Therefore, runoff leaving a developed area is significantly greater in runoff volume, velocity, and peak flow rate than pre-development runoff from the same area. Runoff durations can also increase as a result of flood control and other efforts to control peak flow rates. Increased volume, velocity, rate, and duration of runoff, and decreased natural clean sediment loads,

greatly accelerate the erosion of downstream natural channels. Significant declines in the biological integrity and physical habitat of streams and other receiving waters have been found to occur with as little as a 3-5 percent conversion from natural to impervious surfaces. The increased runoff characteristics from new development must be controlled to protect against increased erosion of channel beds and banks, sediment pollutant generation, or other impacts to beneficial uses and stream habitat due to increased erosive force.

11. Development creates new pollution sources as human population density increases and brings with it proportionately higher levels of car emissions, car maintenance wastes, municipal sewage, pesticides, household hazardous wastes, pet wastes, trash, etc. which can either be washed or directly dumped into the MS4. As a result, the runoff leaving the developed urban area is significantly greater in pollutant load than the pre-development runoff from the same area. These increased pollutant loads must be controlled to protect downstream receiving water quality.

12. Development and urbanization especially threaten environmentally sensitive areas (ESAs), such as water bodies designated as supporting a RARE beneficial use (supporting rare, threatened or endangered species) and CWA 303(d)-impaired water bodies. Such areas have a much lower capacity to withstand pollutant shocks than might be acceptable in other areas. In essence, development that is ordinarily insignificant in its impact on the environment may become significant in a particularly sensitive environment. Therefore, additional control to reduce storm water pollutants from new and existing development may be necessary for areas adjacent to or discharging directly to an ESA.

13. Although dependent on several factors, the risks typically associated with properly managed infiltration of runoff (especially from residential land use areas) are not significant. The risks associated with infiltration can be managed by many techniques, including (1) designing landscape drainage features that promote infiltration of runoff, but do not "inject" runoff (injection bypasses the natural processes of filtering and transformation that occur in the soil); (2) taking reasonable steps to prevent the illegal disposal of wastes; (3) protecting footings and foundations; (4) ensuring that each drainage feature is adequately maintained in perpetuity; and (5) pretreatment.

14. Non-storm water (dry weather) discharge from the MS4 is not considered a storm water (wet weather) discharge and therefore is not subject to regulation under the Maximum Extent Practicable (MEP) standard from CWA 402(p)(3)(B)(iii), which is explicitly for "Municipal ... *Stormwater Discharges* (emphasis added)" from the MS4. Non-storm water discharges, per CWA 402(p)(3)(B)(ii), are to be effectively prohibited. Such dry weather non-storm water discharges have been shown to contribute significant levels of pollutants and flow in arid, developed Southern California watersheds and are to be effectively prohibited under the Clean Water Act.

15. Non-storm water discharges to the MS4 granted an influent exception [i.e., which are exempt from the effective prohibition requirement set forth in CWA section 402(p)(3)(B)(ii)] under 40 CFR 122. 26 are included within this Order. Any exempted discharges identified by Copermittees as a source of pollutants are subsequently required to be *addressed* (emphasis added) as illicit discharges through prohibition and incorporation into existing IC/ID programs. The Copermittees have identified landscape irrigation, irrigation water and lawn water, previously exempted discharges, as a source of pollutants and conveyance of pollutants to waters of the United States.

D. RUNOFF MANAGEMENT PROGRAMS

1. General

a. This Order specifies requirements necessary for the Copermittees to reduce the discharge of pollutants in storm water runoff to the maximum extent practicable (MEP). However, since MEP is a dynamic performance standard, which evolves over time as runoff management knowledge increases, the Copermittees' runoff management programs must continually be assessed and modified to incorporate improved programs, control measures, best management practices (BMPs), etc. in order to achieve the evolving MEP standard. Absent evidence to the contrary, this continual assessment, revision, and improvement of runoff management program implementation is expected to ultimately achieve compliance with water quality standards in the Region.

b. The Copermittees have generally been implementing the jurisdictional runoff management programs required pursuant to Order No. 2002-01 since February 13, 2003. Prior to that, the Copermittees were regulated by Order No. 96-03 since August 8, 1996. Runoff discharges, however, continue to cause or contribute to violations of water quality standards as evidenced by the Copermittees monitoring results.

c. This Order contains new or modified requirements that are necessary to improve Copermittees' efforts to reduce the discharge of pollutants in storm water runoff to the MEP and achieve water quality standards. Some of the new or modified requirements, such as the revised Watershed Runoff Management Program section, are designed to specifically address high priority water quality problems. Other new or modified requirements address program deficiencies that have been noted during audits, report reviews, and other Regional Board compliance assessment activities.

d. Updated Jurisdictional Runoff Management Plans (JRMPs) and Watershed Runoff Management Plans (WRMPs), which describe the Copermittees' runoff management programs in their entirety, are needed to guide the Copermittees' runoff management efforts and aid the Copermittees in tracking runoff management program implementation. It is practicable for the Copermittees to

update the JRMPs and WRMPs within one year, since significant efforts to develop these programs have already occurred.

e. Pollutants can be effectively reduced in storm water runoff by the application of a combination of pollution prevention, source control, and treatment control BMPs. Pollution prevention is the reduction or elimination of pollutant generation at its source and is the best "first line of defense." Source control BMPs (both structural and non-structural) minimize the contact between pollutants and flows (e.g., rerouting run-on around pollutant sources or keeping pollutants on-site and out of receiving waters). Treatment control BMPs remove pollutants that have been mobilized by wet-weather or dry-weather flows.

f. Runoff needs to be addressed during the three major phases of urban development (planning, construction, and use) in order to reduce the discharge of pollutants from storm water to the MEP, effectively prohibit non-storm water discharges and protect receiving waters. Development which is not guided by water quality planning policies and principles can unnecessarily result in increased pollutant load discharges, flow rates, and flow durations which can negatively impact receiving water beneficial uses. Construction sites without adequate BMP implementation result in sediment runoff rates which greatly exceed natural erosion rates of undisturbed lands, causing siltation and impairment of receiving waters. Existing development generates substantial pollutant loads which are discharged in runoff to receiving waters.

g. Annual reporting requirements included in this Order are necessary to meet federal requirements and to evaluate the effectiveness and compliance of the Copermittees' programs.

h. This Order establishes Storm Water Action Levels (SALs) for selected pollutants based on USEPA Rain Zone 6 (arid southwest) Phase I MS4 monitoring data for pollutants in storm water. The SALs were computed using the statistical based population approach, one of three approaches recommended by the California Water Board's Storm Water Panel in its report, 'The Feasibility of Numerical Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities (June 2006). SALs are identified in Section D of this Order. Copermittees shall implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water from the permitted areas so as not to exceed the SALs. Exceedance of SALs may indicate inadequacy of programmatic measures and BMPs required in this Order.

2. Development Planning

a. The Standard Storm Water Mitigation Plan (SSMP) requirements contained in this Order are consistent with Order WQ-2000-11 adopted by the State Water Resources Control Board (State Board) on October 5, 2000. In the precedential order, the State Board found that the design standards, which essentially require that runoff generated by 85 percent of storm events from specific development categories be infiltrated or treated, reflect the MEP standard. The order also found that the SSMP requirements are appropriately applied to the majority of the Priority Development Project categories contained in Section D.1 of this Order. The State Board also gave Regional Water Quality Control Boards the needed discretion to include additional categories and locations, such as retail gasoline outlets (RGOs), in SSMPs.

b. Controlling runoff pollution by using a combination of onsite source control and site design BMPs augmented with treatment control BMPs before the runoff enters the MS4 is important for the following reasons: (1) Many end-of-pipe BMPs (such as diversion to the sanitary sewer) are typically ineffective during significant storm events. Whereas, onsite source control BMPs can be applied during all runoff conditions; (2) End-of-pipe BMPs are often incapable of capturing and treating the wide range of pollutants which can be generated on a sub-watershed scale; (3) End-of-pipe BMPs are more effective when used as polishing BMPs, rather than the sole BMP to be implemented; (4) End-of-pipe BMPs do not protect the quality or beneficial uses of receiving waters between the pollutant source and the BMP; and (5) Offsite end-of-pipe BMPs do not aid in the effort to educate the public regarding sources of pollution and their prevention.

c. Use of Low-Impact Development (LID) site design BMPs at new development, redevelopment and retrofit projects can be an effective means for minimizing the impact of storm water runoff discharges from the development projects on receiving waters. LID is a site design strategy with a goal of maintaining or replicating the pre-development hydrologic regime through the use of design techniques. LID site design BMPs help preserve and restore the natural hydrologic cycle of the site, allowing for filtration and infiltration which can greatly reduce the volume, peak flow rate, velocity, and pollutant loads of storm water runoff. Current runoff management, knowledge, practices and technology have resulted in the use of LID BMPs as an acceptable means of meeting the storm water MEP standard.

d. Retail Gasoline Outlets (RGOs) are significant sources of pollutants in storm water runoff. RGOs are points of convergence for motor vehicles for automotive related services such as repair, refueling, tire inflation, and radiator fill-up and consequently produce significantly higher loadings of hydrocarbons and trace metals (including copper and zinc) than other developed areas.

e. Industrial sites are significant sources of pollutants in runoff. Pollutant concentrations and loads in runoff from industrial sites are similar or exceed pollutant concentrations and loads in runoff from other land uses, such as commercial or residential land uses. As with other land uses, LID site design, source control, and treatment control BMPs are needed at industrial sites in order to meet the MEP standard. These BMPs are necessary where the industrial site is larger than 10,000 square feet. The 10,000 square feet threshold is appropriate, since it is consistent with requirements in other Phase I NPDES storm water regulations throughout California.

f. If not properly designed or maintained, certain BMPs implemented or required by municipalities for runoff management may create a habitat for vectors (e.g. mosquitoes and rodents). Proper BMP design and maintenance to avoid standing water, however, can prevent the creation of vector habitat. Nuisances and public health impacts resulting from vector breeding can be prevented with close collaboration and cooperative effort between municipalities, the Orange County Vector Control District, and the California Department of Public Health during the development and implementation of runoff management programs.

g. The increased volume, velocity, frequency and discharge duration of storm water runoff from developed areas has the potential to greatly accelerate downstream erosion, impair stream habitat in natural drainages, and negatively impact beneficial uses. Development and urbanization increase pollutant loads in storm water runoff and the volume of storm water runoff. Impervious surfaces can neither absorb water nor remove pollutants and thus lose the purification and infiltration provided by natural vegetated soil. Hydromodification measures for discharges to hardened channels are needed for the future restoration of the hardened channels to their natural state, thereby restoring the chemical, physical, and biological integrity and Beneficial Uses of local receiving waters.

3. **Construction and Existing Development**

a. In accordance with federal NPDES regulations and to ensure the most effective oversight of industrial and construction site discharges, discharges of runoff from industrial and construction sites are subject to dual (State and local) storm water regulation. Under this dual system, each Copermittee is responsible for enforcing its local permits, plans, and ordinances, and the Regional Board is responsible for enforcing the General Construction Activities Storm Water Permit, State Board Order 99-08 DWQ, NPDES No. CAS000002 (General Construction Permit) and the General Industrial Activities Storm Water Permit, State Board Order 97-03 DWQ, NPDES No. CAS000001 (General Industrial Permit) and any reissuance of these permits. NPDES municipal regulations require that municipalities develop and implement measures to address runoff from industrial and construction activities. Those measures may require the implementation of additional BMPs than are required under the statewide general permits for activities subject to both State and local regulation.

b. Identification of sources of pollutants in runoff (such as municipal areas and activities, industrial and commercial sites/sources, construction sites, and residential areas), development and implementation of BMPs to address those sources, and updating ordinances and approval processes are necessary for the Copermittees to ensure that discharges of pollutants from its MS4 in storm water are reduced to the MEP and that non-storm water discharges are not occurring. Inspections and other compliance verification methods are needed to ensure minimum BMPs are implemented. Inspections are especially important at high risk areas for pollutant discharges.

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

d. As operators of the MS4s, the Copermittees cannot passively receive and discharge pollutants from third parties. By providing free and open access to an MS4 that conveys discharges to waters of the U.S., the operator essentially accepts responsibility for discharges into the MS4 that it does not prohibit or control. These discharges may cause or contribute to a condition of contamination or a violation of water quality standards.

e. Waste and pollutants which are deposited and accumulate in MS4 drainage structures will be discharged from these structures to waters of the U.S. unless they are removed. These discharges may cause or contribute to, or threaten to cause or contribute to, a condition of pollution in receiving waters. For this reason, pollutant discharges from storm water into MS4s must be reduced using a combination of management measures, including source control, and an

effective MS4 maintenance program must be implemented by each Copermittee.

f. Enforcement of local runoff related ordinances, permits, and plans is an essential component of every runoff management program and is specifically required in the federal storm water regulations and this Order. Each Copermittee is individually responsible for adoption and enforcement of ordinances and/or policies, implementation of identified control measures/BMPs needed to prevent or reduce pollutants in storm water runoff, and for the allocation of funds for the capital, operation and maintenance, administrative, and enforcement expenditures necessary to implement and enforce such control measures/BMPs under its jurisdiction. Education is an important aspect of every effective runoff management program and the basis for changes in behavior at a societal level. Education of municipal planning, inspection, and maintenance department staffs is especially critical to ensure that in-house staffs understand how their activities impact water quality, how to accomplish their jobs while protecting water quality, and their specific roles and responsibilities for compliance with this Order. Public education, designed to target various urban land users and other audiences, is also essential to inform the public of how individual actions affect receiving water quality and how adverse effects can be minimized.

g. Public participation during the development of runoff management programs is necessary to ensure that all stakeholder interests and a variety of creative solutions are considered.

h. Retrofitting existing development with storm water treatment controls, including LID, is necessary to address storm water discharges from existing development that may cause or contribute to a condition of pollution or a violation of water quality standards. Although SSMP BMPs are required for redevelopment, the current rate of redevelopment will not address water quality problems in a timely manner. Cooperation with private landowners is necessary to effectively identify, implement and maintain retrofit projects for the preservation, restoration, and enhancement of water quality.

4. **Watershed Runoff Management**

a. Since runoff within a watershed can flow from and through multiple land uses and political jurisdictions, watershed-based runoff management can greatly enhance the protection of receiving waters. Such management provides a means to focus on the most important water quality problems in each watershed. By focusing on the most important water quality problems, watershed efforts can maximize protection of beneficial use in an efficient manner. Effective watershed-based runoff management actively reduces pollutant discharges and abates pollutant sources causing or contributing to watershed water quality problems. Watershed-based runoff management that does not actively reduce pollutant discharges and abate pollutant sources causing or contributing to watershed water quality problems can necessitate implementation of the iterative process outlined in section A.3 of the Tentative Order. Watershed management of runoff does not require Copermittees to expend resources outside of their jurisdictions. Watershed management requires the Copermittees within a watershed to develop a watershed-based management strategy, which can then be implemented on a jurisdictional basis.

b. Some runoff issues, such as general education and training, can be effectively addressed on a regional basis. Regional approaches to runoff management can improve program consistency and promote sharing of resources, which can result in implementation of more efficient programs.

c. It is important for the Copermittees to coordinate their water quality protection and land use planning activities to achieve the greatest protection of receiving water bodies. Copermittee coordination with other watershed stakeholders, especially the State of California Department of Transportation, the United States Department of Defense, and water and sewer districts, is also important.

E. STATUTE AND REGULATORY CONSIDERATIONS

1. The Receiving Water Limitations (RWL) language specified in this Order is consistent with language recommended by the USEPA and established in State Board Water Quality Order 99-05, *Own Motion Review of the Petition of Environmental Health Coalition to Review Waste Discharge Requirements Order No. 96-03, NPDES Permit No. CAS0108740*, adopted by the State Board on June 17, 1999. The RWL in this Order require compliance with water quality standards, which for storm water discharges is to be achieved through an iterative approach requiring the implementation of improved and better-tailored BMPs over time. Compliance with receiving water limits based on applicable water quality standards is necessary to ensure that MS4 discharges will not cause or contribute to violations of water quality standards and the creation of conditions of pollution.

2. The Water Quality Control Plan for the San Diego Basin (Basin Plan), identifies the following beneficial uses for surface waters in Orange County: Municipal and Domestic Supply (MUN)[2], Agricultural Supply (AGR), Industrial Process Supply (PROC), Industrial Service Supply (IND), Ground Water Recharge (GWR), Contact Water Recreation (REC1), Non-contact Water Recreation (REC2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), Wildlife Habitat (WILD), Rare, Threatened, or Endangered Species (RARE), Freshwater Replenishment (FRSH), Hydropower Generation (POW), and Preservation of Biological Habitats of Special Significance (BIOL). The following additional beneficial uses are identified for coastal waters of Orange County: Navigation (NAV), Commercial and Sport Fishing (COMM), Estuarine Habitat (EST), Marine Habitat (MAR), Aquaculture (AQUA), Migration of Aquatic Organisms (MIGR), Spawning, Reproduction, and/or Early Development (SPWN), and Shellfish Harvesting (SHELL).

3. This Order is in conformance with State Board Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality Waters in California*, and the federal Antidegradation Policy described in 40 CFR 131.12.

4. Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) requires coastal states with approved coastal zone management programs to address non-point pollution impacting or threatening coastal water quality. CZARA addresses five sources of non-point pollution: agriculture, silviculture, urban, marinas, and hydromodification. This NPDES permit addresses the management measures required for the urban category, with the exception of septic systems. The adoption and implementation of this NPDES permit relieves the Copermittee from developing a non-point source plan, for the urban category, under CZARA. The Regional Board addresses septic systems through the administration of other programs.

[2] Subject to exceptions under the "Sources of Drinking Waters" Policy (Resolution No. 89-33)

5. Section 303(d)(1)(A) of the CWA requires that "Each state must identify those waters within its boundaries for which the effluent limitations...are not stringent enough to implement any water quality standard (WQS) applicable to such waters." The CWA also requires states to establish a priority ranking of impaired water bodies known as Water Quality Limited Segments and to establish Total Maximum Daily Loads (TMDLs) for such waters. This priority list of impaired water bodies is called the Section 303(d) List. The current Section 303(d) List was approved by the State Board on October 25, 2006. On June 28, 2007 the 2006 303(d) list for California was given final approval by the United States Environmental Protection Agency (USEPA).

6. This Order does not constitute an unfunded local government mandate subject to subvention under Article XIIIB, Section (6) of the California Constitution for several reasons, including, but not limited to, the following. First, this Order implements federally mandated requirements under federal Clean Water Act section 402. (33 U.S.C. § 1342(p)(3)(B).) Second, the local agency Copermittees' obligations under this Order are similar to, and in many respects less stringent than, the obligations of non-governmental and new dischargers who are issued NPDES permits for storm water and non-storm water discharges. Third, the local agency Copermittees have the authority to levy service charges, fees, or assessments sufficient to pay for compliance with this Order. Fourth, the Copermittees have requested permit coverage in lieu of compliance with the complete prohibition against the discharge of pollutants contained in federal Clean Water Act section 301, subdivision (a) (33 U.S.C. § 1311(a)) and in lieu of numeric restrictions on their storm water discharges. Fifth, the local agencies' responsibility for preventing discharges of waste that can create conditions of pollution or nuisance from conveyances that are within their ownership or control under State law predates the enactment of Article XIIIB, Section (6) of the California Constitution. Likewise, the provisions of this Order to implement total maximum daily loads (TMDLs) are federal mandates. The federal Clean Water Act requires TMDLs to be developed for water bodies that do not meet federal water quality standards. (33 U.S.C. sec. 1313(d).) Once the U.S. Environmental Protection Agency or a state develops a TMDL, federal law requires that permits must contain effluent limitations consistent with the assumptions of any applicable wasteload allocation. (40 C.F.R. sec. 122.44(d)(1)(vii)(B).)

7. Runoff treatment and/or mitigation must occur prior to the discharge of runoff into receiving waters. Treatment BMPs must not be constructed in waters of the U.S. or State unless the runoff flows are sufficiently pretreated to protect the values and functions of the water body. Federal regulations at 40 CFR 131.10(a) state that in no case shall a state adopt waste transport or waste assimilation as a designated use for any waters of the U.S. Authorizing the construction of an runoff treatment facility within a water of the U.S., or using the water body itself as a treatment system or for conveyance to a treatment system, would be tantamount to accepting waste assimilation as an appropriate use for that water body. Furthermore, the construction, operation, and maintenance of a pollution control facility in a water body can negatively impact the physical, chemical, and biological integrity, as well

as the beneficial uses, of the water body. Without federal authorization (e.g., pursuant to Clean Water Act Section 404), waters of the U.S. may not be converted into, or used as, waste treatment or conveyance facilities. Similarly, waste discharge requirements pursuant to California Water Code Section 13260 are required for the conversion or use of waters of the State as waste treatment or conveyance facilities. Diversion from waters of the U.S./State to treatment facilities and subsequent return to waters of the U.S. is allowable, provided that the effluent complies with applicable NPDES requirements.

8. The issuance of waste discharge requirements and an NPDES permit for the discharge of runoff from MS4s to waters of the U.S. is exempt from the requirement for preparation of environmental documents under the California Environmental Quality Act (CEQA) (Public Resources Code, Division 13, Chapter 3, section 21000 et seq.) in accordance with the CWC section 13389.

9. Multiple water bodies in Orange County have been identified as impaired and placed on the 303(d) list. In 2004, Bacteria Impaired Waters TMDL Project II included six bacteria impaired shorelines in Dana Point Harbor and San Diego Bay: Baby Beach in Dana Point Harbor and Shelter Island Shoreline Park, B Street, G Street Pier, Tidelands Park, and Chula Vista Marina in San Diego Bay. Since then, only Baby Beach in Dana Point Harbor and Shelter Island Shoreline Park in San Diego Bay can be confirmed as still impaired by indicator bacteria. On June 11, 2008 the Regional Board adopted a Basin Plan amendment to incorporate *Bacteria Impaired Waters TMDL Project II for San Diego Bay and Dana Point Harbor Shorelines*. On June 16, 2009, the State Board approved the Basin Plan amendment. This action meets requirements of section 303(d) of the Clean Water Act (CWA). The Basin Plan amendment process is authorized under section 13240 of the Water Code.

10. Storm water discharges from developed and developing areas in Orange County are significant sources of certain pollutants that cause, may be causing, threatening to cause or contributing to water quality impairment in the waters of Orange County. Furthermore, as delineated in the CWA section 303(d) list in Table 3, the Regional Board has found that there is a reasonable potential that municipal storm water and non-storm water discharges from MS4s cause or may cause or contribute to an excursion above water quality standards for the following pollutants: Indicator Bacteria, Phosphorous, Toxicity and Turbidity. In accordance with CWA section 303(d), the Regional Board is required to establish Total Maximum Daily Loads (TMDLs) for these pollutants to these waters to eliminate impairment and attain water quality standards. Therefore, certain early pollutant control actions and further pollutant impact assessments by the Copermittees are warranted and required pursuant to this Order.

Table 3. 2006 Section 303(d) Listed Waterbodies in So. Orange County

Waterbody	Pollutant
Aliso Creek	Indicator Bacteria, Phosphorus, Toxicity
Aliso Creek Mouth	Indicator Bacteria
Dana Point Harbor	Indicator Bacteria
English Canyon Creek	Benzo[b]fluoranthene, Dieldrin, Sediment Toxicity
Laguna Canyon Channel	Sediment Toxicity
Oso Creek (at Mission Viejo Golf Course)	Chloride, Sulfates, Total Dissolved Solids
Pacific Ocean Shoreline, Aliso HSA	Indicator Bacteria
Pacific Ocean Shoreline, Dana Point HSA	Indicator Bacteria
Pacific Ocean Shoreline, Laguna Beach HSA	Indicator Bacteria
Pacific Ocean Shoreline, Lower San Juan HSA	Indicator Bacteria
Pacific Ocean Shoreline, San Clemente HA	Indicator Bacteria
Pacific Ocean Shoreline, San Joaquin Hills HSA	Indicator Bacteria
Prima Deshecha Creek	Phosphorus, Turbidity
San Juan Creek	DDE, Indicator Bacteria
San Juan Creek (mouth)	Indicator Bacteria
Segunda Deshecha Creek	Phosphorus, Turbidity

11. This Order incorporates only those MS4 Waste Load Allocations (WLAs) developed in TMDLs that have been adopted by the Regional Water Board and have been approved by the State Board, Office of Administrative Law and U.S. EPA. Approved TMDL WLAs are to be addressed using water quality-based effluent limitations (WQBELs) calculated as numeric limitations (either in the receiving waters and/or at the point of MS4 discharge) and/or as BMPs. In most cases, the numeric limitation must be achieved to ensure the adequacy of the BMP program. Waste load allocations for storm water and non-storm water discharges have been included within this Order only if the TMDL has received all necessary approvals. This Order establishes WQBELs and conditions consistent with the requirements and assumptions of the WLAs in the TMDLs as required by 40 CFR 122.33(d)(1)(vii)(B).

    A TMDL is the total amount of a particular pollutant that a water body can receive and still meet Water Quality Standards (WQSs), which are comprised of Water Quality Objectives (WQOs), Beneficial Uses and the States Policy on Maintaining

High Quality Waters[3]. The WQOs serve as the primary basis for protecting the associated Beneficial Use. The Numeric Target of a TMDL interprets and applies the numeric and/or narrative WQOs of the WQSs as the basis for the WLAs.

This Order addresses TMDLs through Water Quality Based Effluent Limitations (WQBELs) that must be consistent with the assumptions and requirements of the WLA[4]. Federal guidance[5] states that when adequate information exists, storm water permits are to incorporate numeric water quality based effluent limitations. In most cases, the numeric target(s) of a TMDL are a component of the WQBELs. When the numeric target is based on one or more numeric WQOs, the numeric WQOs and underlying assumptions and requirements will be used in the WQBELs as numeric effluent limitations by the end of the TMDL compliance schedule, unless additional information is required. When the numeric target interprets one or more narrative WQOs, the numeric target may assess the efficacy and progress of the BMPs in meeting the WLAs and restoring the Beneficial Uses by the end of the TMDL compliance schedule.

This Order fulfills a component of the TMDL Implementation Plan adopted by this Regional Board on June 11, 2008 for indicator bacteria in Baby Beach by establishing WQBELs expressed as both BMPs to achieve the WLAs and as numeric limitations[6] for the City of Dana Point and the County of Orange. The establishment of WQBELs expressed as BMPs should be sufficient to achieve the WLA specified in the TMDL. The Waste Load Allocations (WLAs) and Numeric Targets are the necessary metrics to ensure that the BMPs achieve appropriate concentrations of bacterial indicators in the receiving waters.

12. This Order includes WQBELs for non-storm water discharges from the MS4. WQBELs included in this Order have been established for pollutants which have the reasonable potential to cause or contribute to an excursion of numeric or narrative water quality criteria as defined in the Basin Plan, the Water Quality Control Plan for Ocean Waters of California (Ocean Plan), and the State Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (State Implementation Policy or SIP). This is consistent with existing Regional Board requirements in Orders for other non-storm water discharges throughout the region, including those which discharge into and from the MS4. NPDES regulations require that all permit limitations be expressed, unless impracticable, as both average monthly limitations (AMEL) and maximum daily limitations (MDEL) for all discharges other than privately owned treatment works (40 CFR 122.45(d)).

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[3] State Water Resources Control Board, Resolution No. 68-16
[4] 40 CFR 122.44(d)(1)(vii)(B)
[5] USEPA, *Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits,* 61 FR 43761, August 26, 1996
[6] The Waste Load Allocations are defined in Resolution No. R9-2008-0027, A Resolution to Adopt an Amendment to the *Water Quality Control Plan for the San Diego Basin (9)* to Incorporate Total Maximum Daily Loads for Indicator Bacteria, Baby Beach in Dana Point Harbor and Shelter Island Shoreline Park in San Diego Bay.

F. PUBLIC PROCESS

1. The Regional Board has notified the Copermittees, all known interested parties, and the public of its intent to consider adoption of an Order prescribing waste discharge requirements that would serve to renew an NPDES permit for the existing discharge of runoff.

2. The Regional Board has held public hearings on April 11, 2007, February 13, 2008, July 1, 2009, and MM DD, 2009 and heard and considered all comments pertaining to the terms and conditions of this Order.

IT IS HEREBY ORDERED that the Copermittees, in order to meet the provisions contained in Division 7 of the California Water Code (CWC) and regulations adopted thereunder, and the provisions of the Clean Water Act (CWA) and regulations adopted thereunder, must each comply with the following:

A. PROHIBITIONS AND RECEIVING WATER LIMITATIONS

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

2. Storm water discharges from MS4s containing pollutants which have not been reduced to the maximum extent practicable (MEP) are prohibited.[7]

3. Discharges from MS4s that cause or contribute to the violation of water quality standards (designated beneficial uses, water quality objectives developed to protect beneficial uses, and the State policy with respect to maintaining high quality waters) are prohibited.

   a. Each Copermittee must comply with section A.3 and section A.4 as it applies to Prohibition 5 in Attachment A of this Order through timely implementation of control measures and other actions to reduce pollutants in storm water discharges in accordance with this Order, including any modifications. If exceedance(s) of water quality standards persist notwithstanding implementation of this Order, the Copermittee must assure compliance with section A.3 and section A.4 as it applies to Prohibition 5 in Attachment A of this Order by complying with the following procedure:

      (1) Upon a determination by either the Copermittee or the Regional Board that storm water MS4 discharges are causing or contributing to an exceedance of an applicable water quality standard, the Copermittee must notify the Regional Board within 30 days and thereafter submit a report to the Regional Board that describes best management practices (BMPs) that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedance of water quality standards. The report may be incorporated in the Annual Report unless the Regional Board directs an earlier submittal. The report must include an implementation schedule. The Regional Board may require modifications to the report;

      (2) Submit any modifications to the report required by the Regional Board within 30 days of notification;

[7] This prohibition does not apply to MS4 discharges which receive subsequent treatment to reduce pollutants to the MEP prior to entering receiving waters (e.g., low flow diversions to the sanitary sewer).

(3) Within 30 days following approval of the report described above by the Regional Board, the Copermittee must revise its Jurisdictional Runoff Management Program and monitoring program to incorporate the approved modified BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required; and

(4) Implement the revised Jurisdictional Runoff Management Program and monitoring program in accordance with the approved schedule.

b. The Copermittee must repeat the procedure set forth above to comply with the receiving water limitations for continuing or recurring exceedances of the same water quality standard(s) unless directed to do otherwise by the Regional Board Executive Officer.

c. Nothing in section A.3 must prevent the Regional Board from enforcing any provision of this Order while the Copermittee prepares and implements the above report.

4. In addition to the above prohibitions, discharges from MS4s are subject to all Basin Plan prohibitions cited in Attachment A to this Order.

B. NON-STORM WATER DISCHARGES

1. Each Copermittee must effectively prohibit all types of non-storm water discharges into its MS4 unless such discharges are either authorized by a separate National Pollutant Discharge Elimination System (NPDES) permit; or not prohibited in accordance with sections B.2 and B.3 below.

2. The following categories of non-storm water discharges are not prohibited unless a Copermittee or the Regional Board identifies the discharge category as a source of pollutants to waters of the U.S. Where the Copermittee(s) have identified a category as a source of pollutants, the category shall be addressed as an illicit discharge and prohibited through ordinance, order or similar means. The Regional Board may identify categories of discharge that either requires prohibition or other controls. For such a discharge category, the Copermittee, under direction of the Regional Board, must either prohibit the discharge category or develop and implement appropriate control measures to prevent the discharge of pollutants to the MS4 and report to the Regional Board pursuant to Section K.1 and K.3 of this Order.

a. Diverted stream flows;
b. Rising ground waters;
c. Uncontaminated ground water infiltration [as defined at 40 CFR 35.2005(20)] to MS4s;

d. Uncontaminated pumped ground water[8];
e. Foundation drains[8];
f. Springs;
g. Water from crawl space pumps[8];
h. Footing drains[8];
i. Air conditioning condensation;
j. Flows from riparian habitats and wetlands;
k. Water line flushing[9,10];
l. Discharges from potable water sources not subject to NPDES Permit No. CAG679001, other than water main breaks;
m. Individual residential car washing; and
n. Dechlorinated swimming pool discharges[11].

3. Emergency fire fighting flows (i.e., flows necessary for the protection of life or property) do not require BMPs and need not be prohibited. As part of the Jurisdictional Runoff Management Plan (JRMP), each Copermittee must develop and implement a program to address pollutants from non-emergency fire fighting flows (i.e., flows from controlled or practice blazes and maintenance activities) identified by the Copermittee to be significant sources of pollutants to waters of the United States.

a. Building fire suppression system maintenance discharges (e.g. sprinkler line flushing) contain waste. Therefore, such discharges are to be prohibited by the Copermittees as illicit discharges through ordinance, order, or similar means.

4. Each Copermittee must examine all dry weather effluent analytical monitoring results collected in accordance with section F.4 of this Order and Receiving Waters and MS4 Discharge Monitoring and Reporting Program No. R9-2009-0002 to identify water quality problems which may be the result of any non-prohibited discharge category(ies) identified above in section B.2. Follow-up investigations must be conducted as necessary to identify and control any non-prohibited discharge category(ies) listed above.

[8] Requires enrollment under Order R9-2008-002. Discharges into the MS4 require authorization from the owner and operator of the MS4 system.
[9] This exemption does not include fire suppression sprinkler system maintenance and testing discharges. Those discharges may be regulated under Section B.3.
[10] Requires enrollment under Order R9-2002-0020.
[11] Including saline swimming pool discharges directly to a saline water body.

C. NON-STORM WATER DRY WEATHER NUMERIC EFFLUENT LIMITATIONS

1. Section C of this Order incorporates numeric effluent limitations (NELs) to assure non-storm water dry weather discharges from the Copermittee's MS4s into receiving waters are not causing, threatening to cause or contributing to a condition of pollution or nuisance and to protect designated Beneficial Uses. Compliance with numeric limitations does not excuse compliance with the non-storm water discharge prohibition in Section B.1. Compliance with NELs provides an assessment of the effectiveness of the prohibition of non-storm water discharges and of the appropriateness of exempted non-storm water discharges.[12] Compliance with Section C of this Order requires that an exceedance of an NEL must result in one of the following outcomes:

   a. Copermittees investigate the source of the exceedance and determine that it is natural (non-anthropogencially influenced) in origin and conveyance. The findings are to be conveyed to the Regional Board for review and acceptance.

   b. Copermittees investigate the source of the exceedance and determine that the source is an illicit discharge or connection. The Copermitees are to eliminate the discharge to their MS4 and report the findings, including any enforcement action(s) taken, to the Regional Board. Those seeking to continue such a discharge must become subject to a separate NPDES permit.

   c. Copermittees investigate the source of the exceedance and determine that the source is an exempted non-storm water discharge. The Copermittees shall investigate the appropriateness of the discharge continuing to be exempt and report the findings to the Regional Board.

2. Each Copermittee, beginning no later than the 3rd year following adoption of this Order, shall begin the non-storm water dry weather numeric effluent monitoring as described in Attachment E of this Order.

3. Each Copermittee shall implement all measures to comply (as described in C.1) with the numeric limitations in Section C of this Order. This Permit does not regulate natural sources and conveyances of constituents listed in Table 4. To be relieved of the requirements to meet NELs and to continue monitoring a station, the Copermittee must demonstrate that the likely and expected cause of the NEL exceedance is not anthropogenic in nature.

4. Monitoring of effluent will occur at the end-of-pipe prior to discharge into the receiving waters, with a focus on Major Outfalls, as defined in 40 CFR 122.26(B 5-6) and Attachment E of this Order. The Copermittees must develop their monitoring plans to sample a representative percentage of major outfalls and identified stations

[12] If the Copermittee can show that the exceedance of the NEL was caused by the intentional act of a third party, in violation of Copermittee ordinances, the Copermittee may not be subject to Mandatory Minimum Penalties in accordance with CWC §13385 (j)(1)(B).

within each hydrologic subarea. At a minimum outfalls that exceed NELs must be monitored in the subsequent year. Any station that does not exceed an NEL for 3 years may be replaced with a different station.

5. Each Copermittee shall monitor for and attain the non-storm water dry weather numeric limitations, which are incorporated into this Order as follows:

a. Discharges to inland surface waters: Non-storm water discharges from the MS4 to inland surface waters shall not contain pollutants in excess of the following effluent limitations:

Table 4.a.1: General Constituents

Parameter	Units	AMEL	MDEL	Instantaneous Maximum	Basis
Fecal Coliform	MPN/ 100 ml	200[A] 400[B]	-		BPO
Enterococci	MPN/ 100 ml	33	-	104[C]	BPO/OP
Turbidity	NTU	-	20		BPO
pH	Units	Within limit of 6.5 to 8.5 at all times			BPO
Dissolved Oxygen	mg/L	Not less than 5.0 in WARM waters and not less than 6.0 in COLD waters			BPO
Total Nitrogen	mg/L	-	1.0	See MDEL	BPO
Total Phosphorus	mg/L	-	0.1	See MDEL	BPO
Methylene Blue Active Substances	mg/L	-	0.5	See MDEL	BPO

A – Based on a minimum of not less than five samples for any 30-day period
B – During any 30 day period
C – This Value has been set to Ocean Plan Criteria for Designated Beach Areas
BPO – Basin Plan Objective
OP – Ocean Plan
MDEL – Maximum Daily Effluent Limitation
AMEL – Average Monthly Effluent Limitation

Table 4.a.2: Priority Pollutants

		Freshwater (CTR)		Saltwater (CTR)	
Parameter	Units	AMEL	MDEL	AMEL	MDEL
Cadmium	ug/L	*	*	16	8
Copper	ug/L	*	*	5.8	2.9
Chromium III	ug/L	*	*	-	-
Chromium VI (hexavalent)	ug/L	16	8.1	83	41
Lead	ug/L	*	*	14	2.9
Nickel	ug/L	*	*	14	6.8
Silver	ug/L	*	*	2.2	1.1
Zinc	ug/L	*	*	95	47

CTR – California Toxic Rule
* - Effluent limitations developed on a case-by-case basis (see below)

The Effluent Limitations for Cadmium, Copper, Chromium (III), Lead, Nickel, Silver and Zinc will be developed on a case-by-case basis because the freshwater criteria are based on site-specific water quality data (receiving water hardness). For these priority pollutants, the following equations (40 CFR 131.38.b.2) will be required:

Cadmium (Total Recoverable) = exp(0.7852[ln(hardness)] -2.715)
Chromium III (Total Recoverable) = exp(0.8190[ln(hardness)] + .6848)
Copper (Total Recoverable) = exp(0.8545[ln(hardness)] - 1.702)
Lead (Total Recoverable) = exp(1.273[ln(hardness)] - 4.705)
Nickel (Total Recoverable) = exp(.8460[ln(hardness)] + 0.0584)
Silver (Total Recoverable) = exp(1.72[ln(hardness)] - 6.52)
Zinc (Total Recoverable) = exp(0.8473[ln(hardness)] + 0.884)

b. Discharges to bays, harbors and lagoons/estuaries: Non-storm water discharges from the MS4 to Dana Point Harbor and to saline lagoons/estuaries shall not contain pollutants in excess of the following effluent limitations:

Table 4.b: General Constituents

Parameter	Units	AMEL	MDEL	Instantaneous Maximum	Basis
Total Coliform	MPN/100 ml	1,000	-	10,000	BPO
Fecal Coliform	MPN/100 ml	200[A],400[B]	-		BPO
Enterococci	MPN/100 ml	35	-	104[C]	BPO
Turbidity	NTU	75	-	225	OP
pH	Units	Within limit of 6.0 to 9.0 at all times			OP
Priority Pollutants	ug/L	See limitations in Table 4.a.2			

A – Based on a minimum of not less than five samples for any 30-day period
B – During any 30 day period
C – Designated Beach Areas
OP – California Ocean Plan 2005 BPO – Basin Plan Objective
MDEL – Maximum Daily Effluent Limitation AMEL – Average Monthly Effluent Limitation

c. Discharges to the surf zone: Non-storm water discharges from the MS4 to the surf zone shall not contain pollutants in excess of the following effluent limitations:

Table 4.c: General Constituents

Parameter	Units	AMEL	MDEL	Instantaneous Maximum	Basis
Total Coliform	MPN/100 ml	1,000	-	10,000 1,000[A]	OP
Fecal Coliform	MPN/100 ml	200[B]	-	400	OP
Enterococci	MPN/100 ml	35	-	104[C]	OP

A – Total coliform density shall not exceed 1,000 per 100 ml when the ratio of fecal/total coliform exceeds 0.1
B – During any 30 day period
C – Designated Beach Areas
OP – California Ocean Plan 2005

D. STORM WATER ACTION LEVELS

1. Beginning Year 3 after Order adoption date, a running average of twenty percent or greater of exceedances of any discharge of storm water from the MS4 to waters of the United States that exceed the Storm Water Action Levels (SALs) for the pollutants listed in Table 5 (below) will require each Copermittee to affirmatively augment and implement all necessary storm water controls and measures to reduce the discharge of the associated class of pollutants(s) to the MEP standard. The Copermittees must utilize the exceedance information when adjusting and executing annual work plans, as required by this Order. Copermittees shall take the magnitude, frequency, and number of constituents exceeding the SAL(s), in addition to receiving water quality data and other information, into consideration when reacting to SAL exceedances in an iterative manner. Failure to appropriately consider and react to SAL exceedances in an iterative manner creates a presumption that the Copermittee(s) have not complied with the MEP standard.

   Table 5. Storm Water Action Levels

Pollutant	Action Level
Turbidity (NTU)	126
Nitrate & Nitrite total (mg/L)	2.6
P total (mg/L)	1.46
Cd total (µg/L)	3.0
Cu total (µg/L)	127
Pb total (µg/L)	250
Ni total (µg/L)	54
Zn total (µg/L)	976

2. The end-of-pipe assessment points for the determination of SAL compliance are all major outfalls, as defined in 40 CFR 122.26(b)(5) and (b)(6). The Copermittees must develop their monitoring plans to sample a representative percent of the outfalls within each hydrologic subarea. At a minimum, outfalls that exceed SALs must be monitored in the subsequent year. Any station that does not exceed an SAL for 3 years may be replaced with a different station. SAL samples must be 24 hour time weighted composites.

3. The absence of SAL exceedances does not relieve the Copermittees from implementing all other required elements of this Permit.

4. This Permit does not regulate natural sources and conveyances of constituents listed in Table 5. To be relieved of the requirements to prioritize pollutant/watershed combinations for BMP updates and to continue monitoring a station, the Copermittee must demonstrate that the likely and expected cause of the SAL exceedance is not anthropogenic in nature.

5. The SALs will be reviewed and updated at the end of every permit cycle. The data collected pursuant to D.2 above can be used to create SALs based upon local data. It is the goal of the SALs, through the iterative and MEP process, to have outfall storm water discharges meet all applicable water quality standards.

E. LEGAL AUTHORITY

1. Each Copermittee must establish, maintain, and enforce adequate legal authority to control pollutant discharges into and from its MS4 through ordinance, statute, permit, contract or similar means. Nothing herein shall authorize a Co-Permittee or other discharger regulated under the terms of this order to divert, store or otherwise impound water if such action is reasonably anticipated to harm downstream water right holders in the exercise of their water rights. This legal authority must, at a minimum, authorize the Copermittee to:

   a. Control the contribution of pollutants in discharges of runoff associated with industrial and construction activity to its MS4 and control the quality of runoff from industrial and construction sites. This requirement applies both to industrial and construction sites which have coverage under the statewide general industrial or construction storm water permits, as well as to those sites which do not. Grading ordinances must be updated and enforced as necessary to comply with this Order;

   b. Prohibit all identified illicit discharges not otherwise allowed pursuant to section B.2

   c. Prohibit and eliminate illicit connections to the MS4;

   d. Control the discharge of spills, dumping, or disposal of materials other than storm water to its MS4;

   e. Require compliance with conditions in Copermittee ordinances, permits, contracts or orders (i.e., hold dischargers to its MS4 accountable for their contributions of pollutants and flows);

   f. Utilize enforcement mechanisms to require compliance with Copermittee storm water ordinances, permits, contracts, or orders;

   g. Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Copermittees. Control of the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements with other owners of the MS4 such as the State of California Department of Transportation, the United States Department of Defense, or Native American Tribes is encouraged;

h. Carry out all inspections, surveillance, and monitoring necessary to determine compliance and noncompliance with local ordinances and permits and with this Order, including the prohibition on illicit discharges to the MS4. This means the Copermittee must have authority to enter, monitor, inspect, take measurements, review and copy records, and require regular reports from industrial facilities discharging into its MS4, including construction sites;

i. Require the use of BMPs to prevent or reduce the discharge of pollutants into MS4s from storm water to the MEP; and

j. Require documentation on the effectiveness of BMPs implemented to reduce the discharge of storm water pollutants to the MS4 to the MEP.

2. Each Copermittee must submit within 365 days of adoption of this Order, a statement certified by its chief legal counsel that the Copermittee has taken the necessary steps to obtain and maintain full legal authority to implement and enforce each of the requirements contained in 40 CFR 122.26(d)(2)(i)(A-F) and this Order except for the updated requirements for low impact development and hydromodification in section F.1. Each Copermittee must submit as part of its updated SSMP, a statement certified by its chief legal counsel that the Copermittee has taken the necessary steps to obtain and maintain full legal authority to implement and enforce the low impact development and hydromodification requirements in section F.1. These statements must include:

a. Identification of all departments within the jurisdiction that conduct runoff related activities, and their roles and responsibilities under this Order. Include an up to date organizational chart specifying these departments and key personnel.

b. Citation of runoff related ordinances and the reasons they are enforceable;

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

d. A description of how runoff related ordinances are implemented and appealed; and

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

F. JURISDICTIONAL RUNOFF MANAGEMENT PROGRAM (JRMP)

Each Copermittee must implement all requirements of section F of this Order no later than 365 days after adoption of the Order, unless otherwise specified in this Order. Prior to 365 days after adoption of the Order, each Copermittee must at a minimum implement its Jurisdictional RMP document, as the document was developed and amended to comply with the requirements of Order No. R9-2002-001.

Each Copermittee must develop and implement an updated JRMP for its jurisdiction. Each updated JRMP must meet the requirements of section F of this Order, reduce the discharge of storm water pollutants from the MS4 to the MEP, and prevent runoff discharges from the MS4 from causing or contributing to a violation of water quality standards.

1. DEVELOPMENT PLANNING COMPONENT

Each Copermittee must implement a program which meets the requirements of this section and (1) reduces Development Project discharges of storm water pollutants from the MS4 to the MEP, (2) prevents Development Project discharges from the MS4 from causing or contributing to a violation of water quality standards, (3) prevents illicit discharges into the MS4; and (4) manages increases in runoff discharge rates and durations from Development Projects that are likely to cause increased erosion of stream beds and banks, silt pollutant generation, or other impacts to beneficial uses and stream habitat due to increased erosive force.

a. GENERAL PLAN

Each Copermittee must revise as needed its General Plan or equivalent plan (e.g., Comprehensive, Master, or Community Plan) for the purpose of providing effective water quality and watershed protection principles and policies that direct land-use decisions and require implementation of consistent water quality protection measures for all development and redevelopment projects.

b. ENVIRONMENTAL REVIEW PROCESS

Each Copermittee must revise as needed its current environmental review processes to accurately evaluate water quality impacts and cumulative impacts and identify appropriate measures to avoid, minimize and mitigate those impacts for all Development Projects.

c. APPROVAL PROCESS CRITERIA AND REQUIREMENTS FOR ALL DEVELOPMENT PROJECTS

For all proposed Development Projects, each Copermittee during the planning process, and prior to project approval and issuance of local permits, must prescribe the necessary requirements so that Development Project discharges of

storm water pollutants from the MS4 will be reduced to the MEP, will not cause or contribute to a violation of water quality standards, and will comply with Copermittee's ordinances, permits, plans, and requirements, and with this Order.

Performance Criteria: Discharges from each approved development project must be subject to the following management measures:

(1) Source control BMPs that reduce storm water pollutants of concern in runoff, including prevention of illicit discharges into the MS4; prevention of irrigation runoff; storm drain system stenciling or signage; properly designed outdoor material storage areas; properly designed outdoor work areas; and properly designed trash storage areas;

(2) The following LID BMPs listed below shall be implemented at all Development Projects where applicable and feasible.
  (a) Conserve natural areas, including existing trees, other vegetation, and soils.
  (b) Construct streets, sidewalks, or parking lot aisles to the minimum widths necessary, provided that public safety is not compromised.
  (c) Minimize the impervious footprint of the project.
  (d) Minimize soil compaction to landscaped areas.
  (e) Minimize disturbances to natural drainages (e.g., natural swales, topographic depressions, etc.)
  (f) Disconnect impervious surfaces through distributed pervious areas.

(3) Buffer zones for natural water bodies, where feasible. Where buffer zones are infeasible, require project proponent to implement other buffers such as trees, access restrictions, etc;

(4) Measures necessary so that grading or other construction activities meet the provisions specified in section F.2 of this Order; and

(5) Submittal of proof of a mechanism under which ongoing long-term maintenance of all structural post-construction BMPs will be conducted.

(6) Infiltration and Groundwater Protection

To protect groundwater quality, each Copermittee must apply restrictions to the use of treatment control BMPs that are designed to primarily function as centralized infiltration devices (such as large infiltration trenches and infiltration basins). Such restrictions must be designed so that the use of such infiltration treatment control BMPs must not cause or contribute to an exceedance of groundwater quality objectives. At a minimum, each treatment control BMP designed to primarily function as a centralized infiltration device must meet the restrictions below, unless it is demonstrated that a restriction is not necessary to protect groundwater quality. The Copermittees may

collectively or individually develop alternative restrictions on the use of treatment control BMPs which are designed to primarily function as centralized infiltration devices. Alternative restrictions developed by the Copermittees can partially or wholly replace the restrictions listed below. The restrictions are not intended to be applied to small infiltration systems dispersed throughout a development project.

(a) Runoff must undergo pretreatment such as sedimentation or filtration prior to infiltration;

(b) All dry weather flows containing significant pollutant loads must be diverted from infiltration devices and treated through other BMPs;

(c) Pollution prevention and source control BMPs must be implemented at a level appropriate to protect groundwater quality at sites where infiltration treatment control BMPs are to be used;

(d) Infiltration treatment control BMPs must be adequately maintained so that they remove storm water pollutants to the MEP;

(e) The vertical distance from the base of any infiltration treatment control BMP to the seasonal high groundwater mark must be at least 10 feet. Where groundwater basins do not support beneficial uses, this vertical distance criteria may be reduced, provided groundwater quality is maintained;

(f) The soil through which infiltration is to occur must have physical and chemical characteristics (such as appropriate cation exchange capacity, organic content, clay content, and infiltration rate) which are adequate for proper infiltration durations and treatment of runoff for the protection of groundwater beneficial uses;

(g) Infiltration treatment control BMPs must not be used for areas of industrial or light industrial activity; areas subject to high vehicular traffic (25,000 or greater average daily traffic on main roadway or 15,000 or more average daily traffic on any intersecting roadway); automotive repair shops; car washes; fleet storage areas (bus, truck, etc.); nurseries; and other high threat to water quality land uses and activities as designated by each Copermittee unless first treated or filtered to remove pollutants prior to infiltration and a comprehensive site-specific evaluation has been conducted; and

(h) Infiltration treatment control BMPs must be located a minimum of 100 feet horizontally from any water supply wells.

(7) Where feasible, landscaping with native or low water species shall be preferred in areas that drain to the MS4 or to waters of the United States.

(8) Where a development project, greater than 100 acres in total project size or smaller than 100 acres in size yet part of a larger common plan of development that is over 100 acres, has been prepared using watershed and/or sub-watershed based water quality, hydrologic, and fluvial geomorphologic planning principles that implement regional LID BMPs in accordance with the sizing and location criteria of this Order and acceptable to the Regional Board, such standards shall govern review of projects with respect to Section F.1 of this Order and shall be deemed to satisfy this Order's requirements for LID site design, buffer zone, infiltration and groundwater protection standards, source control, treatment control, and hydromodification control standards. Regional BMPs must clearly exhibit that they will not result in a net impact from pollutant loadings over and above the impact caused by capture and retention of the design storm. Regional BMPs may be used provided that the BMPs capture and retain the volume of runoff produced from the 24-hour 85th percentile storm event as defined in section F.1.d.(6)(a)(i) and that such controls are located upstream of receiving waters. Any volume that is not retained by the LID BMPs, up to the design capture volume, must be treated using LID biofiltration. Any volume up to and including the design capture volume, not retained by LID BMPs, nor treated by LID biofiltration, must be treated using conventional treatment control BMPs in accordance with Section F.1.d.(6) below and participation in the LID substitution program in Section F.1.d.(8).

d. STANDARD STORM WATER MITIGATION PLANS (SSMPS) – APPROVAL PROCESS CRITERIA AND REQUIREMENTS FOR PRIORITY DEVELOPMENT PROJECTS

Within 12 months of adoption of this Order, the Copermittees must submit an updated model SSMP, to the Regional Board's Executive Officer for a 30 day public review and comment period. The Regional Board's Executive Officer has the discretion to determine the necessity of a public hearing. Within 180 days of determination that the Model SSMP is in compliance with this Permit's provisions, each Copermittee must update their own local SSMP, and amended ordinances consistent with the model SSMP, and shall submit both (local SSMP and amended ordinances) to the Regional Board. The model SSMP must meet the requirements of section F.1.d of this Order and (1) reduce Priority Development Project discharges of storm water pollutants from the MS4 to the MEP, (2) prevent Priority Development Project runoff discharges from the MS4 from causing or contributing to a violation of water quality standards, (3) manage increases in runoff discharge rates and durations from Priority Development Projects that are likely to cause increased erosion of stream beds and banks, silt pollutant generation, or other impacts to beneficial uses and stream habitat due

to increased erosive force and (4) implement the hydromodification requirements in section F.1.h.[13]

(1) Definition of Priority Development Project (PDP):

Priority Development Projects are:

(a) All new Development Projects that fall under the project categories or locations listed in section F.1.d.(2), and

(b) Those redevelopment projects that create, add, or replace at least 5,000 square feet of impervious surfaces on an already developed site and the existing development and/or the redevelopment project falls under the project categories or locations listed in section F.1.d.(2). Where redevelopment results in an increase of less than fifty percent of the impervious surfaces of a previously existing development, and the existing development was not subject to SSMP requirements, the numeric sizing criteria discussed in section F.1.d.(6) applies only to the addition or replacement, and not to the entire development. Where redevelopment results in an increase of more than fifty percent of the impervious surfaces of a previously existing development, the numeric sizing criteria applies to the entire development.

(c) One acre threshold: In addition to the Priority Development Project Categories identified in section F.1.d.(2), Priority Development Projects must also include all other pollutant-generating Development Projects that result in the disturbance of one acre or more of land within three years of adoption of this Order.[14] As an alternative to this one-acre threshold, the Copermittees may collectively identify a different threshold, provided the Copermittees' threshold is at least as inclusive of Development Projects as the one-acre threshold.

[13] Updated SSMP and hydromodification requirements must apply to all priority projects or phases of priority projects which have not yet begun grading or construction activities at the time any updated SSMP or hydromodification requirement commences. If lawful prior approval of a project exists, whereby application of an updated SSMP or hydromodification requirement to the project is illegal, the updated SSMP or hydromodification requirement need not apply to the project. Updated Development Planning requirements set forth in Sections F.1. (a) through (h) of this Order must apply to all projects or phases of projects, unless, at the time any updated Development Planning requirement commences, the projects or project phases meet any one of the following conditions: (i) the project or phase has begun grading or construction activities; or (ii) a Copermittee determines that lawful prior approval rights for a project or project phase exist, whereby application of the Updated Development Planning requirement to the project is legally infeasible. Where feasible, the Permittees must utilize the SSMP and hydromodification update periods to ensure that projects undergoing approval processes include application of the updated SSMP and hydromodification requirements in their plans.

[14] Pollutant generating Development Projects are those projects that generate pollutants at levels greater than natural background levels.

(2) Priority Development Project Categories

Where a new Development Project feature, such as a parking lot, falls into a Priority Development Project Category, the entire project footprint is subject to SSMP requirements.

(a) New development projects that create 10,000 square feet or more of impervious surfaces (collectively over the entire project site) including commercial, industrial, residential, mixed-use, and public projects. This category includes development projects on public or private land which fall under the planning and building authority of the Copermittees.

(b) Automotive repair shops. This category is defined as a facility that is categorized in any one of the following Standard Industrial Classification (SIC) codes: 5013, 5014, 5541, 7532-7534, or 7536-7539.

(c) Restaurants. This category is defined as a facility that sells prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption (SIC code 5812), where the land area for development is greater than 5,000 square feet. Restaurants where land development is less than 5,000 square feet must meet all SSMP requirements except for structural treatment BMP and numeric sizing criteria requirement F.1.d.(6) and hydromodification requirement F.1.h.

(d) All hillside development greater than 5,000 square feet. This category is defined as any development which creates 5,000 square feet of impervious surface which is located in an area with known erosive soil conditions, where the development will grade on any natural slope that is twenty-five percent or greater.

(e) Environmentally Sensitive Areas (ESAs). All development located within or directly adjacent to or discharging directly to an ESA (where discharges from the development or redevelopment will enter receiving waters within the ESA), which either creates 2,500 square feet of impervious surface on a proposed project site or increases the area of imperviousness of a proposed project site to 10 percent or more of its naturally occurring condition. "Directly adjacent" means situated within 200 feet of the ESA. "Discharging directly to" means outflow from a drainage conveyance system that is composed entirely of flows from the subject development or redevelopment site, and not commingled with flows from adjacent lands.

(f) Parking lots 5,000 square feet or more or with 15 or more parking spaces and potentially exposed to runoff. Parking lot is defined as a land area or facility for the temporary parking or storage of motor vehicles used personally, for business, or for commerce.