

# Regional Water Board Workshop Tentative Order R8-2024-0001

## REGIONWIDE NPDES PERMIT FOR COUNTIES OF ORANGE, RIVERSIDE, AND SAN BERNARDINO

SEPTEMBER 13, 2024



# Overview

- Efforts to Date
- The Regulatory Challenge
- Key Issues:
  - What is the issue & why it is a problem;
  - Provide rationale for the recommended revisions & a pathway for resolution
- Request For Board Direction

Issues raised today are fully described in the Tri County Group/Permittee comment letter package provided on July 3, 2024



# Why are these Issues Important and Resolution Necessary?

- Regional permit affects 60 cities, counties and flood districts.
- Covers a diverse coastal and inland region.
- Broad range of economic conditions across the three jurisdictions.

## The Santa Ana Regionwide Permit must be:

### Effective

- Lead to meaningful improvements

### Workable

- Provides viable compliance pathways

### Equitable


- Recognize the different needs and abilities of municipalities

### Sustainable

- Recognize interrelated water needs – One Water concept



# Outstanding Issues (July 2024)



**July 3, 2024**

Santa Ana Regional Water Quality Control Board  
Attention: Adam Fischer  
1737 Main Street, Suite 500  
Riverside, CA 92501

Submitted via email [stormwater.comments@ocpublicworks.com](mailto:stormwater.comments@ocpublicworks.com)

Subject: Santa Ana Region-wide Phase I Municipal Stormwater Permit (Tentative Order or TO) that was distributed on 07/03/2024

Dear Mr. Fischer:

The County of Orange, the Riverside County Flood Control District, the San Bernardino County Flood Control District, and the Tri County Group (TCG), are pleased to provide National Pollutant Discharge Elimination System Requirements (WDRs) for Discharges of Pollutants (MS4s) in the Counties of Orange, San Bernardino, and Riverside. The TO (Tentative Order or TO) that was distributed on 07/03/2024 was distributed to all MS4s in the Tri County Group.

We appreciate the modifications that were made to the current Tentative Order, some of which will ultimately result in a municipal stormwater permit that is feasible to implement given the discussions with the Santa Ana Regional Water Quality Control Board. The focus of the Tri County Group is to ensure that the TO is feasible to implement given the discussions with the Santa Ana Regional Water Quality Control Board.

Our comments on the Tentative Order are organized as follows:

- Cover Letter – This document.
- Appendix A – Proposed Redlines to TO and C)
- Appendix B – Legal and Technical Comments
- Appendix C – Matrix of Additional Edits

There are several overarching themes that are addressed in Appendix B, which include the following:

Orange County Public Works  
Riverside County Flood Control & Water Conservation District  
San Bernardino County Flood Control District

## Tri County Group Cover Letter

Order R8-2024-0001 (NPDES No. CAS618000)  
Santa Ana Regional MS4 Permit

Page 17 of 99

provisions of the Clean Water Act, as amended, and regulations and guidelines adopted thereunder, must comply with the following:

**III. PERMITTEE RESPONSIBILITIES**

**A. General**

The Permittees (inclusive of the Principal Permittees) shall be responsible for the management of storm drain systems within their jurisdiction. To carry out the requirements of this Order, the Permittees must:

- Document the control measures or BMPs that are employed within each of their respective jurisdictions.
- Develop and apply performance metrics to achieve continual improvement and demonstrate the effectiveness of their projects and programs. Permittees must use and document performance effectiveness of the stormwater program. ~~State-of-the-art systems of control measures and project improvements to attain receiving effluent limitations (section VII), effluent discharges (section IV), and reduce pollution.~~
- Evaluate the validity of performance metrics used to measure achievement of performance objectives.
- Collaborate with one another as appropriate programs, plans, procedures, strategies, and interests.
- Coordinate the relevant plans, policies, and internal agencies, departments, and divisions.
- Develop and execute necessary interagency agreements.
- Maintain records, perform monitoring and are required by adequate-to-determine-so this Order.
- Prepare and submit information related to projects to the Principal Permittee that is Progress Report for submittal to the Executive Officer.
- Establish account(s) in the State Water Board known as Storm Water Multiple Applicant (SMARTS). Each Permittee is responsible to designate at least one Legally Responsible account holder per 40 CFR section 122.2.

Santa Ana Regional MS4 Permit

## Appendix A – Proposed Redlines for Tentative Order

~134 comments (App B & C) + numerous other comments and edits

Santa Ana Region-wide Phase I Municipal Stormwater Permit Tentative Order (Order No. R8-2024-0001) July 3, 2024

This document, Appendix B, contains the detailed technical and legal comments (Comments) of the Tri County Group on the Tentative Order including the attachments and appendices, dated March 5, 2024. Although the comments are generally presented in the order in which they appear in the Tentative Order, they are divided into several sections:

- General Comments – Applicable to multiple permit sections
- Specific Comments – Body of Tentative Order
- General Comments – TMDL Appendices 1-13
- Specific Comments – TMDL Appendices 1-13
- Specific Comments – Attachments A - C
- Specific Comments – Attachment D Fact Sheet

At times, the issues and concerns raised within one section may apply to other sections as well, this is noted where applicable.

**I. GENERAL COMMENTS (Applicable to Multiple Permit Sections)**

**Comment #1:** Tentative Order – Multiple Sections. Language that is vague, subjective, and undefinable as a permit requirement should be deleted from the Tentative Order and Fact Sheet.

Throughout the Tentative Order and Fact Sheet there are subjective terms and language to describe either the requirements or end points that need to be achieved as a result of implementation of the stormwater program. Examples of these terms include, but are not limited to:

- Section III.A – “apply performance metrics to achieve continual improvement”
- Section III.A.a – must implement “an effective program”
- Section VIII.C.20 – must implement “an effective mechanism”
- Section VIII.C.7 – must employ “an effective system”
- Section VIII.L – must have “an effective program”
- Section IX.A.2.b – “the database should be designed to guide the Permittee’s of resources towards satisfying the requirements of this section”
- Section IX.B.2 – shall have “effective policies and procedures”
- Section IX.B.7 – to allow for the “quick identification of potential sources”
- Appendices 2 – 13 – must call out “an effective” portfolio
- Attachment C.III.A – should have “an effective strategy”

While seeking an “effective” or “quick” program may be an appropriate goal, these terms do not provide sufficient regulatory guidance to the Tri County Group. Example of these terms included limited to:

- Section VIII.A – “update of their General Plan which may directly, indirectly, or indirectly”
- Section XV.C.4 – “if the performance metrics are valid”

Recommendations [all modifications are provided in the proposed redlines to the Tentative Order (Appendix A)].

B-2

## Appendix B – Legal and Technical Comments

~ 80 pages / 68 comments

Appendix C  
Summary Matrix of Other Issues Not Addressed in Appendix B

Item #	Tentative Order Section	Issues/Concern	Recommendation (see Appendix C)
3	III.A.7 Permittee Responsibilities	The requirement to maintain records, monitor, analyze and submit reports are set forth herein. The requirement that they be “adequate” to determine compliance with the Order’s requirements is a vague and ambiguous standard which is subjective. The adequacy of the documentation must be determined by objective, not subjective standards.	Revise the requirement.
2	III.B Additional Responsibilities of the Principal Permittees	The introduction suggests that the principal permittees are responsible for coordinating other permittee programs. Principal permittees COLLABORATE with other permittee programs, but should not be responsible for coordinating them.	Revise the language.
3	III.D.5 Legal Authority	“Challenges” is an inherently vague term; would a letter from an individual discharger to the MS4 operator, complaining of permit requirements, constitute a “challenge?” However, if a challenge to the permit is brought in a court of law, such challenge will be tracked by the Permittee as a natural course of its representation by the city attorney or county counsel.	Revise the language.
4	III.E.1 Notification Requirements	Modification is required because otherwise, any release or threatened release, anywhere in the watershed, would require reporting. Such reporting would be beyond the scope of the Order, which relates to discharges to and from the MS4s.	Revise the language.
5	III.E.1.a Notification Requirements	Notifications to Cal OES State Warning Center (800-852-7550), which is a 24/7/365 communication system amongst state and local emergency response agencies, are directly relayed to response personnel from the Santa Ana Water Board as received, so this should be another means of satisfying this initial notification requirement. Permittees often direct responsible parties to make these notifications as well. Reporting practices for the current OC MS4 permit are to the Regional Board staff level and not to the Executive Officer, so language changes have been modified accordingly to maintain the same requirement.	Revise the language.
6	III.E.2.b Notification Requirements	Section, as currently written is a problem since local agencies do not administer or enforce (either directly or indirectly) NPDES Permits.	Revise the language.
7	III.E.2 Notification Requirements	The reference to the Water Quality Management Plans is not necessary since the global terms of “local ordinances, rules, and regulations” already covers all other items.	Remove the specific reference to “Water Quality Management Plans”.
8	V.A.1 Trash Control Program	The link to the Statewide Trash Amendment list of approved trash full capture devices leads to an older version of the list of certified systems (from 2022).	Provide the link to the updated list of approved trash full capture devices.

Appendix C – Matrix of Additional Edits  
~ 10 pages / 66 comments



Courtesy NCDENR

# Why is Municipal Stormwater Runoff so Challenging to Regulate?

- Municipalities vary widely
  - Population/jurisdiction size;
  - Geographic Features (Coastal vs. Plains vs. Foothills/Mountains; Creeks vs. Rivers vs. Bays vs. Beaches)
  - Socio-economic Factors
  - Intensity and Age of Development (Urban vs. Suburban vs. Rural; Historic vs. Recent; Master Planned vs. Episodic)
- Multiple Demands on Water as a Resource
- MS4s are a non-point source issue in point-source regulatory framework



# Stormwater Regulations First Focused on Critical Point Sources

## Permits Issued to Individual Facilities

Control over Processes / Outputs

Smaller Footprint (Parcel Scale)

Some Outdoor Areas Discharge To Outfalls

Majority Discharge to Sewer



Few Outfalls



# Stormwater Regulations Then Focused on Municipalities - as Point Sources (not NPS)

Permits Issued to Entire City or County

Large Footprint  
100's Sq Mi

No Ability to  
Control  
1,000s  
Inputs

All Outdoor  
Areas  
Discharge  
To Outfalls



100's if not 1,000s of Outfalls



# What does the CWA Require for MS4s? Maximum Extent Practicable (MEP)

MS4 permits "shall require controls to reduce the discharge of pollutants to the *maximum extent practicable*, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." 42 USC 1342(p)(3)(b).

- Strict compliance with water quality standards and/or imposition of numeric effluent limits NOT required.
  - MS4s NOT like industrial dischargers.
    - *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1165 (9th Cir. 1999).
- Performance-based permit requirements PERMISSIBLE.

Requirements beyond MEP *may* be imposed, but must be appropriate.

- Effective? Workable? Equitable? Sustainable?





# Wet Weather Presents Major Challenges



- Episodic storms events can drastically impact an open watershed system
- Treatment technology for high flow conditions is not necessarily available
- Municipalities must balance priorities: water quality, flood control, habitat preservation, etc.
- Despite challenges, progress continues to be made under the existing programs

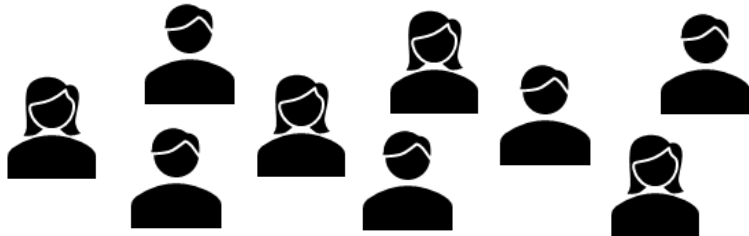


# What has been Accomplished Over the Past 20 Years?

## Examples of Resulting Success Within the Region



Each Jurisdiction has Developed and refined their Stormwater Program to remain in compliance and improve Water Quality



Permittee Staff have become stormwater subject matter experts

### Improved Water Quality

- Canyon Lake
- Lake Elsinore
- Big Bear Lake
- Newport Bay Watershed
- Storm Drain Diversions to Sewer
- 1,000's Development BMPs

### Improved Urban Landscape

- Mature and successful Programs (Land Development, Inspection,)
- 1,000's BMPs Implemented
- Active Community Engagement

### Proactive and Continual Adaptive Management of the Stormwater Program

[Seek to address the challenges]

### Regional Collaboration & Partnerships

Numerous Task Forces, Coalitions & Committees

The Region-wide Permit should build on the mature stormwater programs and only require substantial modifications if a program/activity is not achieving the desired results.

# Key Issues to Discuss Today

- a) Significant revisions to Minimum Control Measures without rationale.
- b) Trash Requirements are inconsistent with the Statewide Trash Amendments.
- c) Key TMDL provisions in TO are in conflict with Basin Plan, current agreements/approvals by the Board, and/or statewide policies.
- d) BMP-based TMDL Limits should be allowed for all TMDLs, regardless of attainment date.
- e) Watershed Management Plans (WMPs) are unworkable as currently written.

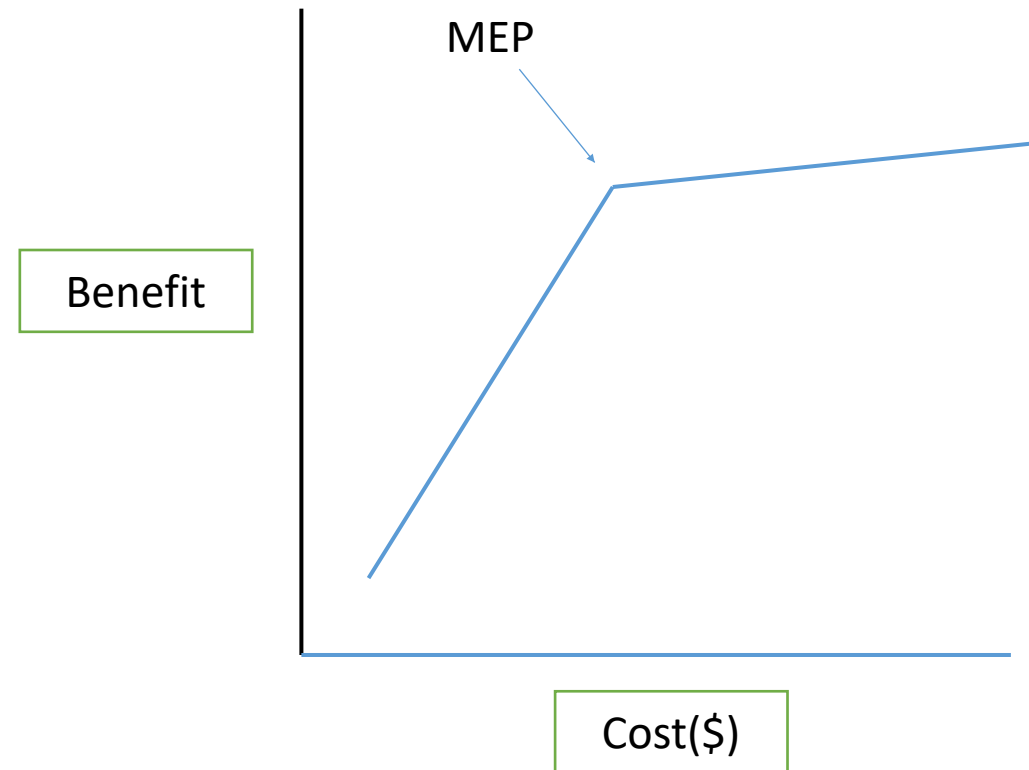
- a. Revisions to **Minimum Control Measures** without Rationale and Outside **Maximum Extent Practicable**
- Land Development
  - Inspections



# Maximum Extent Practicable (MEP)

The MCM provisions:

1. Do not conform to the MEP standard;
2. Will block delivery of vital infrastructure, including “leveling up” projects in DAC; and
3. Disregard previously agreed upon approaches to MCM implementation for avoiding (1) and (2).



# New Development (VII): Grading & Gravel Are Not “Impervious Surfaces”



Fire Breaks, Hiking Trails, Horse Trails, Linear Utility Access Roads, private roads and other low impact activity

Detail provided in Permittee Comments #54



# New Development (VII): Grading & Gravel Are Not “Impervious Surfaces”



Detail provided in Permittee Comments #54



# New Development (VII): Restore Transportation Project Guidance



Impacted Projects  
Paving Roadways in  
Disadvantaged  
Communities

Detail provided in Permittee Comments #20





# New Development (VII) Hydromodification



Eroding Channel - Susceptible

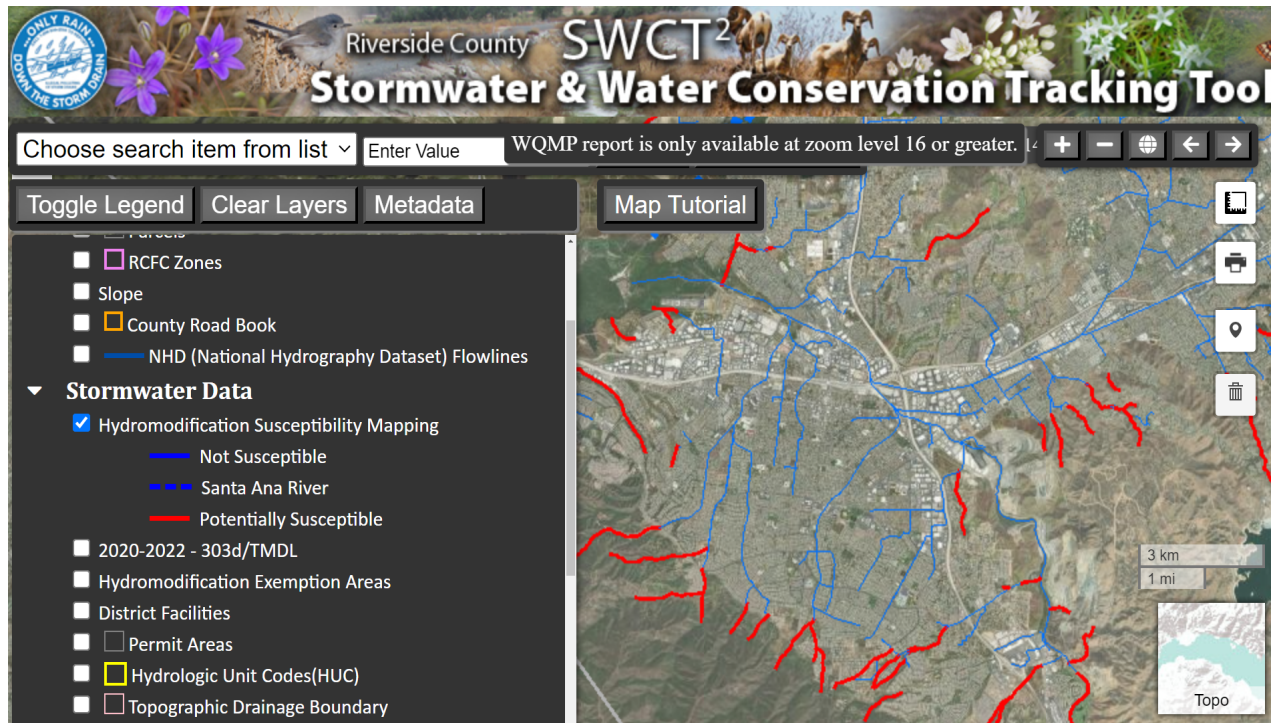


Engineered Channel - Not Susceptible

Detail provided in Permittee Comments #24-28



# New Development (VII) Restore Current Hydromodification Programs



Recognize current susceptibility mapping

Restore 1 acre threshold

Detail provided in Permittee Comments #24-28



# New Development (VII) Provide Flood District Exception



**The Permit should clearly exempt public drainage improvement projects from the development provisions. A similar exemption is found in Section VIII.F of the recent Los Angeles-Ventura County MS4 Permit.**

Detail provided in Permittee Comments #17 & 19



# Restore current Inspection Programs

## Issues

- Permit requires that all three counties have the same inspection programs
- No explanation why the current programs cannot continue to be implemented

## Implications

- Many Permittees will have to significantly increase their inspection programs
- Resources will be expended with no increased benefit
- Risk-based approach is eliminated

b. Trash Requirements not Incorporated Consistent with the Statewide Trash Amendments



# Current Approach in Tentative Order [2 Examples]

	Statewide Trash Amendments	Tentative Order
Monitoring	<b>Track 1 – no monitoring</b> [An explicit incentive for Track 1]	<b>Monitoring required</b> for <b>Track 1</b>
Reporting	Permittees required to <b>qualitatively</b> report on trash	Permittees required to <b>quantitatively</b> report on trash

Detail and other inconsistencies provided in Permittee Comment #9



c. Certain TMDL provisions in conflict with the Basin Plan, Current Regional Board Approvals, and/or Statewide Policies



# TMDL **Inconsistencies** with Basin Plan, RB Approvals, State Plans & Policies

TMDL	Water Body	Basin Plan (BP)	Regional Board Approvals	Statewide Policies, Plans
Nutrients	Newport Bay	1) Missing Foundational Information		
Fecal Coliform				
Sediment <b>[Remove]</b>			R8 put into State NPS Plan	Sediment managed as Non-Point Source
OC Compounds	Newport Bay/San Diego Creek	2) Missing Allocation Tables with Relevant Footnotes		
Diaz. /Chlorpyrifos			X	Reflect Delistings
Toxics			X	Reflect Delistings
Metals	Coyote Creek			
Selenium	Newport Bay	3) Many WQBELs are inconsistent		
Copper <b>[Remove]</b>			TMDL not yet approved by SB/OAL/EPA	
Bacteria MSAR	Middle Santa Ana River	4) Missing specific permit language specified in the BP	Implement CBRP	
Nutrients	Lake Elsinore, Cyn Lake		TMDL being updated	

Detail provided in Permittee Comment #42 & Section IV





d. Under available regulatory discretion, BMP-based TMDL Limits for all TMDLs should be allowed, regardless of attainment date



# Current Approach in Tentative Order

TMDL  
Final Attainment Date  
Not Yet Passed  
(3 TMDLs)

## Limits

- Numeric Limits **do not apply**

## Compliance Pathways

- Watershed/BMPs based compliance pathway **available**

TMDL  
Final Attainment Date  
Passed  
(9 TMDLs)

## Limits

- Numeric Limits **apply**

## Compliance Pathways

- Watershed/BMPs based compliance pathway **not available**



# BMP-based Limits, using WMPs if desired, should be an option for all TMDLs

## Issues

- TMDL Limits in the TO are all numeric, even if other approaches are specified or allowed in the TMDL
- Permit only allows TMDLs that have an attainment date in the future to be included in the WMP
- Numeric TMDL Limits would likely change if TMDLs were updated with new science

## Implications

- Creates inconsistencies with the TMDLs
- Disincentivizes WMP development-9 of 12 TMDLs are not eligible for inclusion in WMP
- Subjects agencies to mandatory penalties for TMDL limits based on outdated information



# Issues with TMDL attainment dates

- All of the TMDL pre-2024 compliance dates are outdated and lack validity
- Most of the TMDLs incorporated a Basin Plan Amendment process to adjust the TMDL as needed based on additional, necessary information [this step was not completed].
- There is flexibility for the use of BMP-based WQBELs, even when final attainment date has passed.



This results in municipalities spending significant resources trying to meet numeric limits that may not be appropriate or achievable based on current scientific information

Detail provided in Permittee Comment #16 and #30



Using WMPs as BMP-based Limits for all TMDLs, regardless of attainment date, has numerous benefits

## Benefits

- Provides visibility into planned actions with concrete timelines and milestones
- Encourages investment in collaborative multi-benefit projects
- Allows for compliance through best technically feasible projects
- Easy to assess compliance-were actions completed?



e. WMPs not incorporated in a manner consistent with other Phase I Permits



# WMP provisions should include flexibility allowed in other MS4 Permits

## Issues

- Permittees cannot modify baseline programs
- WMP = baseline program + additional programs
- Reasonable Assurance Analysis limits the types of models that can be used for the analysis

## Implications

- Baseline programs aren't adjusted to target water quality priorities
- WMP strategies become add-ons to baseline program rather than a coordinated program
- WMP modeling is costly and may be more extensive than needed

Detail provided in Permittee Comments #31, #36, and #37



# Proposal for Resolving these Issues

A. Board Members direct Staff to:

- 1) **Provide meaningful two-way discussion and engagement** to resolve the broad range of comments submitted (July 3, 2024)
  - Hold additional two-way meetings/workshops with all stakeholders as needed
  - Board staff provide technical basis and rationale for proposed changes/ evidence changes will result in meaningful improvement
  - Allow time necessary for resolution
- 2) **Ensure that the permit requirements are consistent** with the Basin Plan and other Statewide Policies and Plans

B. Request that Board Members **exercise available discretion** to assist in resolving the critical issues





# Why are these Issues Important and Resolution Necessary?

- Regional permit affects 60 cities, counties and flood districts
- Cover diverse coastal and inland regions
- Broad range of economic conditions across the region
- Concerned TO has significant unintended consequences

## The Santa Ana Regionwide Permit must be:

### Effective

- Lead to meaningful improvements

### Workable

- Provides viable compliance pathways

### Equitable

- Recognize the different needs and abilities of municipalities

### Sustainable

- Recognize interrelated water needs – One Water concept

