

RECORDED:	
ABSENT:	Baldwin Park, Irwindale, La Puente, SGV Water Districts

ACTION ITEM

- 31. Safe, Clean Water Program Transfer Agreements and Contracts**
 SGVCOG Senior Management Analyst, Katie Ward, provided a presentation on this item. **There was a motion to authorize the Executive Director to execute and negotiate the transfer agreements with the Los Angeles County Flood Control District to undertake two scientific studies on behalf of the Upper Los Angeles River Watershed Management Group and contracts with Craftwater Engineering for work associated with the preSIP scientific study and the Load Reduction Strategy Adaptation scientific study. (M/S: D. Mahmud/T. Hepburn)**

[Motion Passed]

AYES:	Alhambra, Arcadia, Azusa, Bradbury, Claremont, Covina, Duarte, Glendora, Industry, La Cañada Flintridge, La Verne, Monrovia, Montebello, Monterey Park, Pomona, Rosemead, San Dimas, San Gabriel, San Marino, Sierra Madre, South El Monte, South Pasadena, Walnut, West Covina, L.A. County District #1, L.A. County District #4
NOES:	
ABSTAIN:	
NO VOTE	Diamond Bar, El Monte, Temple City, L.A. County District #5
RECORDED:	
ABSENT:	Baldwin Park, Irwindale, La Puente, SGV Water Districts

PRESENTATION

- 32. Recognition of SGVCOG Director of Capital Projects/Chief Engineer Mark Christoffels**
 Members of the Governing Board expressed their gratitude to SGVCOG Director of Capital Projects/Chief Engineer, Mark Christoffels, for his contributions to the SGVCOG and San Gabriel Valley communities.

ADJOURN

M. Clark adjourned the Governing Board meeting at 6:00pm.

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Maria Carter
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FOR PUBLIC COMMENT

Eli Lipmen

Thu, Nov 19, 2020 at 11:49 AM

This is for the COG Board meeting on the Modernizing Metro Highways Motion coming from the Transportation Committee:

Move LA was intimately involved in developing the funding formulas for Measure R and Measure M, working with our broad coalition and COGs to ensure these measures included clear and discernable funding categories so that Angelenos can enjoy the benefits of public transit and our transportation system for decades to come. The language that voters approved for both measures included mechanisms for future revisions to meet the changing needs of our region as our communities, technologies, and funding change. This flexibility is consistent with voters' expectations that their tax dollars ensure a transportation system that remains resilient, reliable, and adaptable.

The Modernizing Metro Highways Motion, which was supported by and developed with the input of Metro Director John Fasana, is consistent with what voters' approved by allowing priorities like Metro's Complete Streets Policy, Active Transportation Strategic Plan, and First/Last Mile Strategic Plan to work more synchronously with planned highway and local streets projects in each sub-region. The passage of this motion will result in better infrastructure and more flexibility for San Gabriel Valley cities that gets people out of their cars into alternative modes of transportation. For these reasons, we ask that you support this Motion and encourage the Metro Board to pass it.

Eli Lipmen**Preferred Pronouns: *he/him/his*****Director of Programming and Development****MoveLA.org | [@MoveLATransit](https://twitter.com/MoveLATransit) |**



FOR PUBLIC COMMENT

Michael Siegel <

Thu, Nov 19, 2020 at 1:22 PM

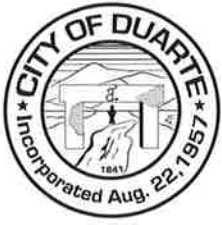
Public Comment for today's meetings:

Dear Board Members,

I support the effort to modernize the Highway Program. It is clear that we need a better multimodal network to help us stave off congestion as well as environmental and health issues. Allowing cities the flexibility they need to use the funds in the best interests of their neighborhoods will bring about better transportation options for the Greater Los Angeles area as a whole.

Please support the motion and help LA get into the 21st Century. Thank you!

Michael Siegel



City of Duarte

Public Comment #3

1600 Huntington Drive | Duarte, CA 91010 | Bus. 626.357.7931 | Fax 626.358.0018 | www.accessduarte.com

November 18, 2020

VIA E-Mail Transmission

Honorable Members of the
San Gabriel Valley Council of Governments
Governing Board
1000 South Fremont Ave. Suite 10210
Alhambra, CA 91803

Mayor
Samuel Kang

Mayor Pro Tem
Bryan Urias

Councilmembers
John Fasana
Margaret Finlay
Toney Lewis
Tzeitel Paras-Caracci
Liz Reilly

City Manager
Daniel Jordan

Re: San Gabriel Valley Council of Government Comment Letter on New Regional MS4 Permit

Dear Honorable Members of the Governing Board:

This letter is sent to you by the entire City Council of the City of Duarte. The City Council is unanimous in its support for the San Gabriel Valley Council of Government ("SGVCOG") actively engaging with the Los Angeles Regional Water Quality Control Board ("Regional Board") in its consideration of the Tentative MS4 Permit ("Tentative Permit") for both Los Angeles and Ventura Counties. We understand this engagement includes submission of a comment letter (the "Letter"), expressing the combined concern of all SGVCOG members to assure the Tentative Permit sets standards that are legal, achievable, and fair. Duarte has reviewed the draft proposed Letter, and overall, it is persuasive, and includes salient points that Duarte hopes the Regional Board will address.

Unfortunately, the Letter fails to address key legal deficiencies within the Tentative Permit itself. Most notably, the Letter fails to recognize the legal rulings Duarte secured in its challenge to the 2012 MS4 Permit, over an eight-year battle that involved millions of dollars in litigation costs. The City of Gardena was also instrumental in this effort. The rulings both cities secured inure to the benefit of all municipalities regulated under the 2012 Permit, and the issues in the new Tentative Permit are identical.

The existing favorable rulings affirm longstanding authority regarding restrictions on the Regional Board's authority, that resonate equally for the Tentative MS-4 permit, and we believe must be raised to the Regional Board in the Tentative MS-4 Permit's processing. In particular, Duarte urges the Letter should include the following key legal points:

1. The Tentative Permit's Inclusion of the Numeric Effluent Limitations is Not Required by Federal Law;
2. The NELs Cannot Be Adopted in Accordance with State Law; and
3. The Joint and Several Liability Provisions of the Permit are Unlawful.

Duarte urges the SGVCOG to revise the Letter, to include the legal points that served Duarte and its sister cities so well in the case already won on the 2012 Permit. The most burdensome and infeasible portions of the current MS4 Permit, and the Tentative Permit, flow from incorporation of the NELs. The legal basis for imposing these are absent, per the ruling on the 2012 Permit, and the consequence of any re-imposition of them is billions of dollars of costs. A copy of the letter Duarte urges the SGVCOG to send is attached.

The Letter is a legal document, intended to be a part of the administrative record leading to action on the Tentative Permit. Duarte therefore believes it is imperative these legal points be included. Duarte urges the SGVCOG to act now to preserve an adequate legal record to challenge these terms. By establishing an adequate record now, the Regional Board hopefully will recognize the risk of adopting a new permit that does not conform to the law, as already applied by the court.

Prior versions of these legal points for the Letter had been submitted to the COG staff and the Water Quality Subcommittee. We understand some members were concerned the comments were adversarial. So too, it would seem, is the Regional Board ignoring existing court rulings in processing the Tentative Permit. Still, in response, Duarte has revised its proposed language to ensure that the key arguments are made, while not otherwise undermining the tone of the rest of the Letter. Duarte's proposed language is highlighted in the attached PDF.

Duarte hopes other cities agree that a legal comment letter must, of necessity, contain legal arguments, must serve legal purposes, and must provide an adequate administrative record to allow for later challenge, should the Regional Board refuse to change course. Duarte therefore respectfully asks you to join us in our request to have the SGVCOG include the legal comments that are necessary to protect our collective interests.

After Duarte and Gardena's successful eight-year legal battle with the Regional Board, the time for other agencies to leverage that victory to guarantee reasonable prospective permit terms is now. The law is clear and requires the Regional Board to adopt reasonable and feasible terms. Please join Duarte in asking that the Regional Board meet this obligation.

We thank you for your consideration.

Sincerely,

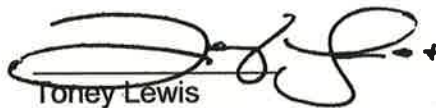


Samuel Kang
Mayor

Bryan Urias
Mayor Pro Tem

John Fasana
Councilmember

Margaret Finlay
Councilmember

Tzeitel Paras-Caracci
Councilmember

Toney Lewis
Councilmember

Liz Reilly
Councilmember



November XX, 2020

Renee Purdy, Executive Director
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

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Margaret Clark

1st Vice President
Becky Shevlin

2nd Vice President
Tim Hepburn

3rd Vice President
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- Temple City
- Walnut
- West Covina
- First District, LA County
Unincorporated Communities
- Fourth District, LA County
Unincorporated Communities
- Fifth District, LA County
Unincorporated Communities
- SGV Water Districts

RE: COMMENTS ON THE TENTATIVE ORDER OF THE REGIONAL PHASE 1 MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT (ORDER R4-2020-XXXX)

Dear Ms. Renee Purdy and Regional Board Staff:

On December 10, 2019, the Executive Officer of the Los Angeles Regional Water Quality Control Board (LARWQCB) released a staff working proposal for the draft Regional Phase 1 MS4 NPDES Permit (*Staff Working Proposal of the Regional Phase 1 MS4 NPDES Permit Order No. <R4-2020-XXXX>, NPDES Permit No. <CASXXXXXX>, Waste Discharge Requirements and National Pollution Discharge Elimination System (NPDES) Permit for Municipal Separate Storm Sewer System (MS4) Discharges Within the Coastal Watersheds of Los Angeles and Ventura Counties*) (Working Proposal). After receiving many comments across stakeholders on the Working Proposal, including from the San Gabriel Valley Council of Governments (SGVCOG), the LARWQCB updated and released the Tentative Order for the Regional Phase 1 MS4 NPDES Permit (*Tentative Regional Phase 1 MS4 Permit Order No. <R4-20XX-XXXX>, NPDES Permit No. <CAS004004>, Waste Discharge Requirements and National Pollution Discharge Elimination System (NPDES) Permit for Municipal Separate Storm Sewer System (MS4) Discharges Within the Coastal Watersheds of Los Angeles and Ventura Counties*) (Tentative Permit) on August 24, 2020.

When finalized and adopted, this Permit will supersede the current 2012 MS4 Permit (subsequently amended) and will dictate the activities and requirements of the Permittees, including SGVCOG member agencies, over the next permit cycle. The SGVCOG member agencies includes 30 incorporated cities, unincorporated communities in Los Angeles County Supervisorial Districts 1, 4, and 5, and three San Gabriel Valley Municipal Water Districts. The following summarizes the SGVCOG’s comments in response to the *Tentative Regional Phase 1 MS4 Permit Order*, dated August 24, 2020.

The SGVCOG appreciates the opportunity to provide these comments ~~and~~, [however, in its current form, the Tentative Permit cannot be lawfully adopted. Accordingly, the SGVCOG](#) looks forward to continue supporting the LARWQCB to develop a Final Permit that includes provisions that are technically and financially feasible, while achieving environmental benefits within our communities.

The following summarizes the SGVCOG’s key areas of concern ~~on~~ [within](#) the Tentative Permit. Detailed comments and recommendations regarding specific sections in the Tentative Permit are provided in [Appendix A](#).

Field Cod

Summary

The following discussion highlights the SGVCOG's key areas of concern and proposed recommendations, including comments that were previously submitted and were not addressed in the current Tentative Permit. The proposed recommendations are bolded within each area of concern. These comments support the overall goal to improve water quality conditions in the Los Angeles region following a cost-effective and efficient approach. This goal can be achieved through the development of regulations and permit requirements that are aligned with real-world circumstances faced by the Permittees.

Timing of Permit Adoption and State Board Order Implications:

Concurrent with the Permit reissuance effort, it is important to consider the related State Water Resources Control Board (State Water Board) Tentative Order (*State of California State Water Resources Control Board Tentative Order WQ 2020-XXXX In the Matter of Review of Approval of Watershed Management Programs and an Enhanced Watershed Management Program Submitted Pursuant to Los Angeles Regional Water Quality Control Board Order R4-2012-0175*) reviewing the LARWQCB's approval of various Watershed Management Programs (WMPs) and Enhanced WMPs (EWMPs) (State Water Board Order). The initial Order was released on December 6, 2019, and was revised based on comments received through early April and redistributed on September 4, 2020. This Order addresses specific requirements of the Permit that are important to consider as part of the Permit review. While some of the key issues identified by the State Water Board have already been integrated into the Tentative Permit, the State Water Board Order has not been finalized and further revisions of the Tentative Permit may be incorporated by the LARWQCB to comply with the State Water Board Order. The details of the State Water Board Order, which impact the Permit provisions and analyses Permittees will be required to complete, will not be finalized until its adoption.

Given the potential impacts of the State Water Board Order on the Permit and additional requirements for the Permittees implementing a WMP or EWMP, **it is assumed that the State Water Board Order will be finalized prior to the adoption of a new Permit.** This sequence is necessary to ensure the Permit would not have to be further revised to comply with the State Water Board Order, as well as to prevent a duplication of effort by the Permittees to address the new Permit and the State Water Board Order. For the same reason, **the new Permit should also delay adoption as needed to ensure the proposed Basin Plan Amendment(s) that will modify TMDL final deadlines can be included as the revised dates in the new Permit. In addition, sufficient time (recommend at least 6 months) will be needed once the new Permit is formally adopted to allow the Permittees to incorporate the required updates through the Reasonable Assurance Analysis (RAA) revisions. Depending on the timing of the State Water Board Order adoption and subsequent Permit adoption this may require extending the current deadline of June 30, 2021 for completion of the revised RAAs.** This extension is necessary to prevent an unnecessary and costly duplication of effort to ensure the appropriate analyses are included in the revised RAAs to satisfy regulatory requirements. The SGVCOG encourages the LARWQCB to support the sequence of events and the recommended time extension, as any other order or insufficient time between these regulatory adoptions and the required RAA revisions may result in inefficiencies and the need to go back and redo one of these efforts. The timing outlined above is to ensure the most appropriate policy is set in place and thorough, informative analyses, that fully satisfy the current tentative regulatory orders, are completed through the upcoming RAA revisions. The Permittees are already planning for the RAA revisions which are significant investments, ranging around \$75k – 350k each. If the State Water Board Order and resulting additions to the Permit require additional analyses as part of the RAA revisions, this will potentially double the cost and further emphasizes the importance of having sufficient time from Permit adoption to conduct the technical updates and additions.

Furthermore, the Regional and State Boards' appeal of the decision in favor of the City of Duarte in the matter of *City of Duarte v. State Water Resources Control Board, et al.* (Case No. 30-2016-00833722) is still pending, with oral arguments having been conducted before the Court of Appeal on November 19, 2020. The ~~findings and analysis associated with that~~ final decision will further impact the Tentative Permit, as it will require the Regional Board to ensure that the Tentative Permit complies with State law, which the current Tentative Permit fails to do. Likewise, assuming the Duarte Case's decision is affirmed by the Court of Appeal, the decision, and ultimate invalidation of the numeric effluent limitations will essentially moot out the State Water Board's Order. Accordingly, the Regional Board should wait until the Duarte Case is fully resolved prior to acting on the Tentative Permit.

Fiscal Resources:

In general, the economic considerations included in the Tentative Permit are lacking in detail. This is an extremely important aspect to consider when assessing the Permittees ability to satisfy regulatory requirements. The Permittees will have the most success improving water quality conditions if we are able to focus the available resources on regulations with achievable goals, which requires a realistic discussion regarding the cost of compliance versus available funding.

Attachment F, the Fact Sheet in the Tentative Permit, includes economic considerations that estimate the 20-year cost of compliance at \$21.3 - \$31.4 Billion. The first method used to calculate this cost was based on TMDL Staff Reports that are now outdated and did not include the cost of implementing minimum control measures, monitoring costs, costs to address TMDLs if the Staff Report did not have a cost estimate, and only included the cost of addressing trash if there was a specific TMDL, not the overarching requirements of the statewide trash amendment. While the second method used the more recent cost estimates to fully implement the WMPs and EWMPs in the region, both methods still rely on the cost of stormwater management programs based on annual expenditures and budget data self-reported, which has not been consistent across the Permittees. Further, many of the cost estimates in the WMPs and EWMPs did not include additional costs such as acquiring property necessary for some structural BMPs, the full cost associated with operation and maintenance of BMPs, or the costs associated with implementation of the adaptive management program. Other cost estimates of compliance estimated in the past have been significantly higher. For example, the County of Los Angeles has recognized that the cost of complying could be as high as \$120 Billion. Likewise, a recent study on Stormwater Funding Options recognizes that the cost of complying could be as high as in the tens of Billions over the next 20 years. Further, the University of Southern California's Study of "An Economic Impact Evaluation of Proposed Storm Water Treatment for Los Angeles County" have estimated costs as high as \$283.9 Billion over 20 years.

The Fact Sheet also potentially overstates the available funding sources, with reference to Measures H, A, and M, that are not dedicated stormwater funds and Permittees have minimal or no access to use to address the requirements of the MS4 Permit. Other available funding sources are generally referenced, as well as a brief discussion on the potential impacts from COVID-19; however, a sufficient analysis to demonstrate that the cost of compliance is feasible based on available funding has not been completed. Even prior to completing a sufficient financial analysis, it is clear the cost estimates to fully implement the Permit are greater than the funding available. **The SGVCOG recommends that the Permit include a provision that allows Permittees to conduct a financial capability assessment that would be used to help determine an effective and feasible implementation schedule and associated compliance deadlines.**

In addition, it should be noted that the primary dedicated source of funding that most cities currently have for Permit compliance is through their upcoming Local Return through the Safe, Clean Water (SCW) Program. The SGVCOG member agencies do not anticipate any available funding beyond the SCW Program funds. In addition, the regional allocations to each watershed will be awarded competitively. The SGVCOG is concerned that the regional allocations coupled with the Local Return will not provide enough funding to complete all the projects required to comply with the Permit requirements, especially within the current designated timeframes. **Given that Measure W is the only dedicated stormwater funding source,**

we recommend that the Permit have more explicit integration with the SCW Program, as discussed further in the comments below.

Integration of the Safe, Clean Water Program:

The SCW Program and passage of Measure W was a major success for the Los Angeles Region and should be further leveraged knowing the available funds that can be used towards meaningful implementation and compliance. The SCW Program is the primary source of dedicated funding for the LA County Permittees. The municipal and regional programs are expected to significantly support implementation of Permittees' WMPs and implementation of these infrastructure projects will be the primary factor in achieving TMDL compliance. The SCW Program establishes multiple goals, including in addition to water quality benefits also water supply, cost efficiency, nature-based solutions, and community investment benefits. Therefore, the funds will not be exclusively spent on compliance, though this will be a significant portion, and additional time is required to ensure optimization across these benefits. To improve the certainty that actions taken will ultimately result in attainment of beneficial uses, the Permit should provide flexibility such as alternative compliance pathways and extended time to implement appropriate actions utilizing scientific advancements and best available information/data. Given the success securing this funding measure, which helps enable the commitment towards implementation of approved WMPs, **we recommend that the Permit integrate the fundamental aspects of the program to help align regulatory compliance with realistic and achievable implementation.** Initial recommendations to integrate the program include the following:

- **Allow WMPs to incorporate schedule adjustments to projects based on the Local Return and regional program support identified in the Stormwater Investment Plans (SIPs) through the adaptive management process.**
- **Coordinate with the Los Angeles County Flood Control District and the Watershed Area Steering Committee to evaluate anticipated SCW Program funding in relation to planned and proposed infrastructure projects and TMDL deadlines.**
- **Provide credit to cities and agencies contributing funds through the regional program to projects outside their jurisdiction through extensions on their milestones. This recognizes the competitive aspect of the regional program, which should prioritize projects with the greatest watershed benefit but could result in certain jurisdictional projects being pushed to later fiscal years. This would not necessarily impact the number of projects to be implemented but provided flexibility to the schedule.**
- **Allow for extensions to compliance deadlines based on the available funding, with sufficient justification that the updated deadline can be met with the known funding.**
- **Tie permit compliance requirements to the availability of funding, and the Permittee's agreement that such requirements are appropriate.**
- **Align SCW Program reporting requirements in terms of format and schedule to satisfy the Permit required reporting.**

If these recommendations are incorporated in the Permit, this will also help facilitate the selection of projects under the SCW Program that are best aligned with Permit compliance.

Better Define Compliance Attainment:

The compliance pathway through approved WMPs should clarify receiving credit for local pollutant load reductions with pre- and post-implementation monitoring versus an observed response in receiving waters. This is related to final compliance attainment. **If an approved WMP is properly implemented and all project milestones are met, but final WQBELs or RWLs are still exceeded, we recommend that the Permit provide coverage for the Permittees through deemed compliance to address through the adaptive management process, rather than being at risk of an immediate violation.** The whole concept

of the adaptive management process is to continue improving the program towards attainment of environmental objectives and this coverage will further encourage Permittees to fully embrace adaptive management. **In addition, we recommend establishing a clear policy and guidelines for Permittees to demonstrate that all work associated with prior and current milestones was completed.** This will help assure all stakeholders that established milestones are being met and further justifies coverage under final compliance with the use of adaptive management as needed.

Regarding the alternative compliance pathway to address the 85th percentile, 24-hour event, it is important to recognize that volume capture may not provide a viable compliance strategy for certain pollutants (e.g., bacteria) and other types of water quality impairments (e.g., habitat-related impacts). **The Permit should allow flexibility in determining an alternative compliance pathway that can be used to demonstrate final compliance.** This flexibility will allow for greater compliance certainty and aligns with recent scientific studies and the development of innovative approaches and tools that can be used to enhance water quality improvement.

Reporting:

The Tentative Permit reporting requirements are expanded from the existing 2012 MS4 Permit (which the SGVCOG is concerned ignores the Court's findings with regards to the Cities of Duarte's and Gardena's lawsuits) and will take significant time and resources to complete. The following recommendations aim to streamline these efforts so the information gathered provides meaningful feedback and available funding can be better spent on implementation efforts. **Additional reporting requirements include the annual report forms that require significant additional financial reporting, but do not provide adequate guidance. Additional clarity is needed regarding the LARWQCB's expectations.** The additional requirement for Permittees participating in a Coordinated Integrated Monitoring Program (CIMP) to submit a Monitoring Report twice a year doubles the annual reporting effort. This additional reporting would result in additional reporting costs for Permittees, which could more effectively be used to support implementation.

We recommend updating the reporting periods to better align with the schedules in program plans, to increase the utility of the data collected to help guide implementation. The Permit should provide flexibility for the LARWQCB to coordinate with the Permittees on a more appropriate reporting schedule. In addition, individual Permittee reporting requirements should be limited to avoid redundant efforts where the watershed reports provide the overall progress of the program. Overall, the extensive cost to comply with the reporting requirements is not proportionate with the usefulness of these reports. Prior to much of the program's implementation (during planning and design phases), the reporting could be further spaced apart, then once implementation occurs an annual frequency may be more reasonable and useful.

Moreover, including the reporting forms in the Permit does not allow flexibility to modify the forms as may be necessary or desired in the future. To allow for the opportunity to adjust reporting to better meet the needs of all stakeholders, **the SGVCOG recommends that the reporting forms be removed from the Permit.** Instead, the Permit should allow for the LARWQCB to amend and adopt the annual report forms on a regular basis to make improvements to these forms and the annual reporting process.

Furthermore, the Permittees will be required to provide financial reporting to Los Angeles County regarding their use of SCW Program funds. **We encourage LARWQCB staff to closely coordinate with Los Angeles County in the development of financial forms to avoid redundant reporting.**

Overall, the SGVCOG and its member cities have significant concerns with the current and increased reporting responsibilities and the financial burden associated with the more stringent requirements that could be better prioritized.

Monitoring:

As stated above on the reporting requirements, the SGVCOGs recommendations aim to streamline the monitoring efforts so the data gathered still provides meaningful feedback and available funding can be better spent on implementation efforts. **The monitoring requirements could be better correlated with implementation status (e.g., monitor less frequently in the early stages of the program and then more frequently after watershed control measures have been more widely implemented).** Costs to Permittees to complete this monitoring in preliminary years where much of the program is still in the planning and design phases, could be better spent on implementation. **Monitoring could also be more strategically employed through a tiered approach that focuses first on downstream conditions, and only moves upstream if needed.** Overall, given the extensive costs to comply and the disproportionate value in the data at this time, we are requesting a more critical look at these requirements.

The additional aquatic toxicity monitoring requirements will require time to fully review. While the costs of monitoring these four freshwater species will be extremely high, without additional analysis, permittees will not be able to estimate the actual compliance costs. Since Permittees cannot evaluate the cost of compliance, the LARWQCB cannot evaluate the financial impacts of this new requirement. **We recommend that the Permit acknowledge this gap and provide a pathway for potential adaptations to the aquatic toxicity monitoring requirements once sufficient cost analyses are complete.**

In addition, we recommend that the Permit provides flexibility to streamline monitoring efforts where appropriate. The current monitoring requirements select a limited number of events to sample over the year for all identified pollutants, which is expensive for each sampling event. However, these are only a handful of events and only tell us so much about the overall conditions in the watershed. **A more streamlined and informative approach would be to sample more events but measure inexpensive proxies (supported by statistically significant data), such as sediment, in place of more expensive pollutant sampling and analysis.** This could be set up to be equivalent or less expensive than the current monitoring efforts and provide much more information to the Permittees and stakeholders on the state of the watershed. **Permittees should be able to justify reducing monitoring requirements for select constituents if they can demonstrate associated trends and progress in reducing pollutants.** The Permittee would measure these surrogate parameters, as appropriate, on a consistent basis, then include validation at selected times that would explicitly sample the specific pollutants of concern to further support the approach.

Compliance Schedules:

The Tentative Permit specifies that Permittees must comply with water-quality based effluent limitations immediately. Previously in the 2012 MS4 Permit, Permittees had 90 days to meet compliance deadlines. The SGVCOG has concerns that the requirement for immediate compliance ignores the Court's findings with regards to the Cities of Duarte's and Gardena's lawsuits. Regardless, as the LARWQCB develops the Permit, **a WMP being developed and implemented in good faith by the Permittees that is determined to be "inadequate" by the LARWQCB should be allowed a grace period to correct inadequacies.** This would still allow for the LARWQCB to address gross non-compliance while providing a path for WMPs with very minor and easily correctable flaws to continue addressing water quality goals.

Many of the original TMDLs have optimistic compliance schedules, which have previously been recognized as such by Board staff. There is flexibility in the Tentative Permit for Permittees to request extensions, in addition to the knowledge that the Board staff are currently working on a TMDL extension Basin Plan Amendment. **As an initial alternative, we recommend that the Board withhold adopting the new Permit until after the TMDL extension Basin Plan Amendment(s) have been approved and can be incorporated into the Permit.** Alternatively, we recommend that the current schedules, at a minimum, recognize the anticipated TMDL deadline extensions from the Basin Plan Amendment(s) and ultimately the revised schedules will automatically be incorporated in the Final Permit. The amendment is currently focused on specific TMDLs identified with near term deadlines. **We recommend the TMDL extension Basin Plan Amendment effort be extended to include other TMDLs where**

appropriate, particularly those with final deadlines prior to 2030. Even with these extensions, there are remaining recommendations for better integration of the SCW Program regarding alignment of compliance schedules, which is further detailed in the comments above.

The process of planning, designing, constructing, testing and operating projects to implement best management practices takes longer than five years. In addition, the SCW Program funding schedule could exceed this timeframe. Instead, **if compliance within five years is not feasible for a Permittee, then the Permittee should be able to demonstrate a plan towards compliance that it will implement as funding becomes available.**

In addition, regarding the Bacteria TMDLs, the current timeframe for compliance is particularly unreasonable given recent scientific studies that indicate the need to reduce sources of human waste in order to meet recreational beneficial uses. Implementation is shifting to provide greater focus on source control efforts rather than structural project implementation and volume control which can be ineffective in reducing pathogens and recreational health risks. A longer schedule is needed to adapt current implementation programs, as is currently underway in the Upper Los Angeles River watershed with the Load Reduction Strategy Adaptation Plan.

Overall, this area of concern emphasizes that it is more important to implement the right programs and strategies to achieve the environmental and water quality goals driving the Permit than meeting a set milestone to complete a specified action. We do not want to rush forward in order to meet a set deadline that is unreasonable and potentially sacrifice a more thoughtful and effective approach. Some of the critical water quality objectives in older TMDLs are no longer aligned with the best available science. Examples of this include the Bacteria objectives that should be adjusted to focus more directly on allowable risk and move away from the use of Fecal Indicator Bacteria, as well as shifting towards the use of site-specific methods for metals (e.g., Biotic Ligand Model, Water Effect Ratio studies) to identify potential impacts to aquatic life. Necessary updates to water quality objectives can be used to clearly identify where beneficial uses (e.g. recreational use in relation to bacteria and aquatic life in relation to metals) are impaired and require action. **The main recommendation is for flexibility in the Permit to incorporate new information and advancements and, when necessary, provide the appropriate additional time to successfully do so.**

Consistency Across Permits:

We recommend eliminating redundancy or contradictions across permits and ensure requirements for Phase I, Phase II, Industrial General Permit, Agricultural Order, etc., encourage collaboration across responsible parties. Water quality impairments are due to a number of influences which is why a watershed-wide approach is valuable to coordinate on the most cost-effective solutions. However, **the MS4 Permit should only contain requirements within the Permittees control and while collaboration is encouraged, compliance should not be reliant on it.** Permittees need only comply with permit conditions relating to discharges from the MS4 for which they are owners or operators. As currently drafted, the Tentative Permit purports to make the Phase I MS4 Permittees liable for the actions of other discharges, which is unlawful. **In addition, RAAs should be given flexibility to quantify Phase I MS4 responsibilities (e.g., load reductions) in order to encourage compliance as well as promote shared responsibility with other Permittees.**

Define Performance Metrics for Non-Structural Strategies and Concise, Useful Tracking:

The appropriate metrics for non-structural/non-modeled strategies still require further development to assess the effectiveness of these strategies and how to link to monitoring data. The assessments should be done in a clear and concise manner that provide meaningful feedback on progress and effectiveness to best support management decisions. **We recommend general guidelines be developed by a technical team, which will require time, to ensure consistency across Permittees.**

The current tracking requirements across Permittees programs for non-structural strategies are often time consuming and the data is not in a useful format to assess progress. **We recommend one consolidated tracking system that houses the information relevant to the Permit and helps succinctly assess effectiveness and streamlines Annual Reporting, providing more valuable information to the LARWQCB, as well as the Permittee to better manage its programs.**

Industrial General Permit (IGP) Training and Inspections:

The Tentative Permit clarified from the Working Proposal that training requirements can continue utilizing existing resources. However, **additional clarity is still requested on which employees are required to take the training, as the current language of “pertinent staff” is vague and would benefit from more specificity.** It is not clear whether Permittees would be exempt from this training if the inspection work is outsourced to contractors, a point which requires clarification. **The SGVCOG believes that the IGP training should only be required for those individuals who actually perform the inspections.**

Permit Contradictions:

The Board should clarify with a statement (in the appropriate section of the Permit) as to why Permittees in Reach 2 and Reach 3 of the Rio Hondo river are included for the Los Angeles River Metals TMDL. Permittees are listed within the approved TMDL and current MS4 permit; however, Reaches 2 and 3 are not included in the 303(d) lists. **The SGVCOG is requesting an explanation and justification for this apparent contradiction.**

Clear Language:

Tentative Permit language in places allows for multiple interpretations, in some cases out of line with the original intent. Specific comments are provided in Table A-1 where this has been identified. Overall, **recommend including additional clarity while maintaining flexibility to allow for scientific advancements and better information/data regarding protection of beneficial uses and MS4 responsibilities in the future.**

Legal Issues and Flaws:

In addition to the foregoing issues, the Tentative Permit suffers from legal deficiencies, both within the Tentative Permit and its Fact Sheet. The legal deficiencies are as follows:

(1) The Tentative Permit’s NEL-Related Provisions Are Not Required by Federal Law.

As with the 2012 LA MS4 Permit, the Tentative Permit imposes a variety of provisions designed to require the Permittees to strictly comply with numeric effluent limits, either through the incorporation of waste load allocations from total maximum daily loads (“TMDLs”), or through numeric receiving water limits, or through the adoption of a zero non-stormwater discharge limitation. (Tentative Permit, Parts IV.A, IV.B, V, III.B, Attachments K-S [all of these are collectively referred to as “NELs”].) The Tentative Permit also imposes a variety of different monitoring and compliance metrics that are intended to assess compliance with those NELs. (See, e.g., IX.A.4, X [compliance being defined as meeting WQBELs and numeric receiving water limitations found in Attachments K-S] [collectively the NELs and these provisions, are referred to as the “NEL-Related Provisions”].)

The Tentative Permit’s Fact Sheet incorrectly claims that these NEL-Related Provisions are required by federal law, thus justifying the Regional Board’s failure to comply with State law in adopting those terms. However, both federal and state law make clear that the imposition of the NEL-Related Provisions is not required by federal law, but is instead imposed pursuant to the State’s discretion. (Defenders of Wildlife v. Browner (9th Cir. 1999) 191 F.3d 1159, 1166; see also Divers’ Environmental Conservation Organization v. State Water Board (2006) 145 Cal.App.4th 246; Building Industry Assn. of San Diego County v. State Water Resources Control Bd. (2004) 124 Cal.App.4th 866, 874; Department of Finance v. Commission on State Mandates (2016) 1 Cal.5th 749, 767-68; DOF v. Commission on State Mandates, County of San Diego et al. (2017) 18 Cal.App.5th 661.) Indeed, this exact issue was reaffirmed in Duarte’s

lawsuit challenging the Regional Board's and State Board's decision to include NELs in the 2012 MS4 Permit without first complying with the mandates of California Water Code ("CWC") §§ 13241 and 13263. The trial court ruled in favor of Duarte, finding that (1) *the NELs were not required by federal law*, and (2) that this Regional Board and the State Board therefore failed to comply with State law by adopting the NELs without first complying with the rigors of CWC § 13241, namely considering the permittees' costs of complying with the 2012 MS4 Permit's NEL-related terms. (See also *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 628.)

The Tentative Permit and Fact Sheet seem, incomprehensibly, to ignore this critical court ruling. Accordingly, the Tentative Permit must be revised to recognize that the Regional Board is imposing the NEL-Related Provisions in its discretion, not as a federal requirement.

(2) The NEL-Related Provisions (including the Monitoring Requirements) Cannot Be Adopted In Accordance with the Requirements of California Water Code §§ 13000, 13263 and 13241.

Since the imposition of the NEL-Related Provisions is pursuant to the Regional Board's discretion, the Regional Board must comply with State law prior to adopting those terms, a burden the Regional Board cannot meet here. Prior to imposing any discretionary permit terms, pursuant to its authority under both federal and state law, the Regional Board must consider the factors outlined in CWC section 13241, including the dischargers' cost of compliance, and whether the permit terms are "reasonably achievable." Likewise, in the case of monitoring requirements, the Regional Board must also comply with CWC sections 13267 and 13225. Further, in considering these factors the Regional Board must also find that the permit's terms are appropriate in light of those analyses.

Additionally, since the Regional Board's consideration and ultimate adoption of an MS4 permit is subject to judicial review under Code of Civil Procedure section 1094.5, an administrative decision to approve the Tentative Permit would constitute an abuse of discretion, unless the following conditions are met: (1) the Regional Board must make findings demonstrating compliance with State law, including the California Water Code (and sections 13000, 13263, 13241, 13267 and 13225); (2) those findings must contain an analysis demonstrating that the permit terms are supported by an analysis of those factors, and (3) those findings themselves (and the analysis therein) must be supported by the weight of the evidence in the record. (See CWC § 13330 [requiring judicial review under CCP § 1094.5, and making the Regional Board's judgment subject to the less deferential standard of review – i.e. the independent judgment standard]; *Topanga Assn. For A Scenic Community v. L.A. County* (1974) 11 Cal.3d 506, 515, 516-517.)

Based on a review of the Tentative Permit, it is clear that the present proposal to include the NEL-Related Provisions would constitute an abuse of discretion under CCP section 1094.5.

First, the necessary findings are missing. For instance, there does not appear to be any findings that show that the policy considerations set forth under CWC section 13000 have been met, that the "reasonableness" considerations under section 13263 have been considered, nor that the analysis set forth under section 13241 have been properly conducted, specifically in connection to the NEL-Related Provisions. In short, there has been no cognizable consideration of whether such Tentative Permit terms "could reasonably be achieved," in light of the "environmental characteristics" of the various water bodies in issue, their "economic" impacts on the dischargers, the impacts on "housing within the region," or the "past, present, and probable future uses of the water". Likewise, there are no findings showing that the monitoring requirements are appropriate in light of the factors listed in CWC sections 13267 and 13225. Accordingly, the findings themselves are deficient, and must be revised. Otherwise, the NEL-Related Provisions cannot be adopted by the Regional Board.

Second, the Tentative Permit's findings lack the requisite analyses, and are therefore deficient. Under State law, the findings must "bridge the analytic gap" between the raw evidence and the agency's decision to adopt a particular requirement. (*Topanga Assn. For A Scenic Community v. L.A. County* (1974) 11 Cal.3d 506, 515, 516-517; *emph. added.*) The findings in this instance fail on all accounts, as they just

give a cursory nod to the requirements of CWC section 13241, without explaining how the permit terms are actually appropriate in light of those requirements. Further, there are no findings that show that the Regional Board has considered the requirements under CWC sections 13225 and 13267 to justify the imposition of the NEL-related monitoring requirements.

Instead of providing a list of conclusory statements devoid of any real analysis and/or explanation, the Regional Board must do the work prior to adoption of this Permit. If the Regional Board believes that the NEL-Related Provisions are appropriate in light of the factors it must consider under State law, then the Regional Board needs to explain how those terms are appropriate and reasonable in its findings. Currently, the Tentative Permit entirely omits such an analysis, and instead simply acknowledges the numerous problems associated with the Tentative Permit's terms (cost, impossible to comply with, etc.), and then simply states that it is still imposing those terms. This is not the analysis that is required by Code of Civil Procedure section 1094.5.

Lastly, the facts that are currently in the record do not support adoption of the Tentative Permit. For example, regardless of the cost estimate used (and the Fact Sheet's current cost estimate is likely very low), the simple truth is that the permittees cannot even afford the \$21-31 Billion included in the Tentative Permit's Fact Sheet. Indeed, the Fact Sheet itself acknowledges that the permittees lack sufficient funding, even when it assumes that Measures H, A and M funds are available, when they are not dedicated sources of money. In short, the costs to fully implement and comply with the Permit are greater than the funding available — both the Fact Sheet and the SGVCOG acknowledge this fact.

Aside from the lack of sufficient funding in light of the exorbitant costs, the Tentative Permit is also technically impossible to comply with. No matter what the permittees do, they cannot stop the rain, and they cannot (and should not) exercise complete control over all aspects of their citizens' lives that might somehow affect discharges. As such, there is simply no way the SGVCOG member agencies can guarantee strict compliance with all of the NEL-Related Provisions of the Tentative Permit.

Accordingly, the facts simply do not support the Regional Board's inclusion of the NEL-Related Provisions.

(3) The Joint Responsibility Provisions of the Tentative Permit Violate Due Process.

Due process dictates that an enforcement agency must prove the alleged violation, and does not allow for an agency to force the alleged violator to prove its innocence. Despite this clear Constitutional requirement—under both federal and state law—and the Permit's acknowledgment that “federal regulations state that co-permittees need only comply with permit conditions relating to discharges from the MS4 for which they are owners or operators” (Fact Sheet, F-219 [citing 40 CFR § 122.26(a)(3)(vi)]), the Permit goes on to provide: “Where Permittees have commingled MS4 discharges to the receiving water, compliance at the outfall discharging to the receiving water or compliance in the receiving water shall be determined for the group of Permittees as a whole unless an individual Permittee demonstrates that its discharge did not cause or contribute to the exceedance.”. (Permit, p. 97, Section X(D)(2); see also Section X(D), generally.)

This requirement inappropriately flips the burden on to the permittees to prove their innocence, and should be removed. (See *Sackett v. EPA* (9th Cir. 2010) 622 F.3d 1139, 1145-47, *emph. added, reversed on other grounds* 132 S.Ct. 1367]; *Rapanos v. U.S.* (2006) 547 U.S. 715, 745 [“agency must prove that the contaminant-laden waters ultimately reach covered waters.”]; Evidence Code section 500; *State v. City and County of S.F.* (1979) 94 Cal.App.3d 522, 530; 40 C.F.R. § 122.26(a)(3)(vi).)

Sincerely,

Margaret Clark

President

San Gabriel Valley Council of Governments

Appendix A: Detailed Comments and Recommendations

In addition to the key areas of concern summarized in the comment letter, Table A-1 provides detailed comments on the Tentative Permit. Previous comments submitted by the SGVCOG on the Working Proposal that are still applicable in the updated Tentative Permit are included in Table A-1.

Table A-1. Comments on the Tentative Permit

Tentative Permit Section; Page	Comment
Table 4; Page 7	Consider setting the effective date as July 1, 2021 (rather than 50 days from adoption date) to align with the Reporting Period.
III. Discharge Prohibitions	
III.A; Page 12	Specify this prohibition should not apply to any invasive animal or plant life.
III.B.3.a; Page 13	Recommend adding discharges from recycled water systems as a conditionally exempt discharge. Definition of recycled water discharge could be: "Discharges from recycled water systems includes sources of flows from recycled water storage, supply and distribution systems (including flows from system failures), pressure releases, system maintenance, distribution line testing, and flushing and dewatering of pipes, reservoirs, and vaults, and pump stations."
III.B.5.a.i; Page 14	The requirement for all conditionally exempt non-stormwater discharges to notify the Permittee in advance is excessive given the range of exempt discharges (includes landscape irrigation, car washing, etc.). Recommend distinguish this requirement for specific discharge categories relative to the potential impacts.
III.B.5.b; Page 15	For discharges greater than 100,000 gallons, recommend continue to coordinate with County/Water Purveyors releases of this size for safety reasons downstream.
III.B.8; Page 16	Clarify if notifying the Board within 30 days is from the time when the discharge occurred or when the Permittee determines the discharge contributed to an exceedance.
III.B.9; Page 16	Recommend modifying the end of this sentence to include: "...source of pollutants to receiving waters "
III.C.2.d.ii; Page 24	Consider not including limit of time schedules throughout. Any proposed timeframe can be denied by the Regional Board but there may be some exceptions that warrant an extended period.
III.D; Page 25	Please clarify why this prohibition for insecticides, fungicide and rodenticides are not applicable to products used for lawn and agricultural purposes.
IV. Effluent Limitations and Discharge Specifications	
IV.B.2.c.iv; Page 28	Recommend adding language that Permittees will have the opportunity to revise a Watershed Management Program if it is initially found to be inadequate. A grace period should be provided to correct any inadequacies.
IV.B.3; Page 28	Refer to area of concern regarding the zero trash effluent limitation for the Trash TMDLs.

Tentative Permit Section; Page	Comment
VI. Standard Provisions	
VI.C; Page 38	Please clarify how the Regional Board will ensure that information collected in the Annual Reports will be utilized to complete fiscal analysis as required by the State Auditors. Will specific instructions be provided in the Annual Report to prevent any discrepancies between Permittees when financial data is provided. Please consider re-wording or expanding on this requirement. It can be interpreted that permittees must enumerate and describe all funds necessary to meet all requirements for implementation for the future year. There will undoubtedly be occasions when all funding sources anticipated for the upcoming year simply to do not meet what is estimated for full implementation.
VI.G.4.b; Page 40	Requiring more frequent monitoring or reporting may not be considered a minor modification if it has significant implications to a Permittees cost of compliance and therefore likely impact a Permittees ability to comply with other requirements of the Permit.
VIII. Storm Water Management Program Minimum Control Measures	
VIII.A.3.b; Page 41	If any of the requirements of this section (VIII.A.3.b) are redundant with training held by the Department of Pesticide Regulation or other agencies, it would be good to have such training referenced in this section as qualifying for satisfying the training requirement.
VIII.B.1.d-e; Page 42-43	<p>Regarding facilities/sites that require an NOI or NEC: Recommend allowing a Permittee to skip the process of one inspection and one written notice prior to referral. Once identified by the Permittee, it would seem efficacious to notify the Board. Versus waiting for a Permittee's attempts to compel IGP/CGP enrollment. So that Board staff can begin the process of compelling IGP/CGP coverage from the operator. In addition, for certain light industrial operations, IGP coverage can be a matter of interpretation of the SIC Manual. In these instance it would be best for the Regional Board to make the determination from the start.</p> <p>In addition, recommend setting up a recommended frequency for notification of potential IGP non-filers. Context: After the issuance of the 2012 LA/2014 LB MS4 Permits, the 2015 IGP added a large swath of light industries to its coverage. Many of these businesses are small in both size and operations and as such 1) are much more common than heavy industries, and 2) start and cease operations much more frequently than heavy industries. This means that Permittees may come across new potential non-filers on a regular basis, primarily through business license and MS4 NPDES inspections. Taking this into consideration, a regular frequency of notification may streamline the process for both Permittees and Regional Board staff. (For example, under the North Orange County MS4 NPDES Permit, there is a quarterly notification process in place.)</p>
VIII.D.4.a; Page 45	Recommend providing additional guidance on the metrics for measuring effectiveness of public education efforts, which otherwise could take many forms and vary significantly across Permittees.
VIII.E.2.a.ii.(c); Page 46	Recommend providing a footnote that provides a hyperlink to the online database of such industrial facilities.
VIII.E.2.a.iii; Page 46	Recommend listing the corresponding SIC codes for these facilities, and/or referring to the Attachment A definitions. Also for consistency with the industrial element of the Industrial/commercial Facilities Program, recommend defining these facilities in Attachment A using the SIC Code manual definition.

Tentative Permit Section; Page	Comment
VIII.E.3; Page 47-48	This Tentative Permit updated the Working Proposal section on Requirements for Industrial Sources (VIII.E.4) to include in the Business Assistance Program that Permittees could refer businesses to the LA Regional Water Quality Control Board or State Board for further technical assistance and also updated the inspection frequency for sites that do not have exposure to stormwater to every 5 years. Recommend the same updates be made to the Requirements for Commercial Sources (VIII.E.3).
VIII.E.5; Page 49 VIII.G.5.a; Page 67 VIII.G.6.b.ii.(c); Page 69 VIII.H.3.a; Page 71	Recommend referencing a resource for Permittees to consider for applicable source control BMPs. (Such as the CASQA Handbooks.)
VIII.F.2.b; Page 54	In addition to the specific projects listed, exemptions to hydromodification controls should include an option for Permittees to prove no adverse hydromodification effects occur to beneficial uses in the Natural Drainage System.
VIII.F.4-5; Page 58-66	May consider integrating aspects of the Priority Development Project Structural BMP Performance Requirements for Ventura County Permittees (VIII.F.4) to integrate options for Los Angeles County Permittees (VIII.F.5) and vice-versa.
VIII.G.4.b.ix; Page 67	Recommend removing the post-construction BMP description as it is already logged through the tracking requirements of VIII.F.3.c.i. Also, consider moving the "comparison of pre-storm water runoff volume to post-construction runoff volume" tracking to VIII.F.3.c.i.
VIII.G.5.b; Page 68	Currently construction sites are inspected once a month during rainy season, unless a follow-up inspection is required due to a deficiency. Please clarify what "inspect as needed" means.
VIII.H.5.a; Page 74	If any of the requirements of VI.D.8.e.ii and VI.D.8.e.iii are equivalent to requirements of CCR Chapter 4, Subchapters 3, 4, and 5, recommend identifying them as such. So that it is clear which requirements are specific to the MS4 Permit.
VIII.H.5.b-c; Page 74-85	If any of the requirements of VIII.H.5.b and VIII.H.5.c are equivalent to requirements of CCR Chapter 4, Subchapters 3, 4, and 5, recommend identifying them as such. So that it is clear which requirements are specific to the MS4 Permit.
VIII.I.8.b; Page 80	Recommend exemption of tracking for discharges of negligible impact that do not enter a storm drain inlet. For example, the standard could be, "Tracking is not required for discharges of less than X gallons that do not reach a storm drain inlet." The reason for this requested exemption is that the administrative cost of this tracking outweighs the value of the data recorded. (The time could be better spent addressing other MS4 Permit requirements.)
VIII; Page 40-80	For all minimum control measures note development of recommendations/guidance for appropriate metrics for measuring effectiveness will be needed.

IX. Watershed Management Programs

Tentative Permit Section; Page	Comment
IX.A; Page 81	Please consider if Safe, Clean Water Program Stormwater Investment Plans (SIPs) are to be included into the Permit as mentioned by the County at the first workshop, how will those projects that remain unfunded be able to achieve compliance through alternative funding?
IX.A.4.d; Page 81	Recommend updating to reflect that modifications to the strategies, control measures, and BMPs may also be based on information gathered outside of the MRP.
IX.A.4.e; Page 81	Recommend providing more detailed description on the “appropriate opportunity for meaningful stakeholder and community input”. This could potentially take many forms and would be helpful to understand what the Board deems as appropriate.
IX.A.4.k; Page 82	Strategies, control measures, and BMPs should be designed to achieve applicable WQBELs and RWLs, which can be demonstrated through an RAA. Reference to retaining the volume of the 85th percentile, 24-hour storm event should be reserved for later discussion that this option provides deemed-compliance for the associated drainage area without requiring an RAA. In many cases, building such control measures is infeasible in most areas and exceeds necessary controls to attain the water quality objectives, where costs could have been better spent in other areas to address the variable and spatial extent of WQBELs and RWLs. Increasing project size to capture the 85th percentile, 24-hour storm event may result in the misapplication of limited funding resources. Watershed Management is complex and requires optimum target investments and appropriate water quality standards.
IX.B.4.a; Page 83	Recommend also considering the severity of impaired beneficial uses and the relative level of exceedance of WQBELs and Receiving Water Limitations when sequencing the water quality priorities for TMDLs, rather than solely based on the compliance schedules.
IX.B.5.b; Page 84	Recommend adding back in the retrofitting of existing developed areas to the list of potential control measures.
IX.B.5.b.i.(a); Page 84	Recommended removing “Vegetated” before nature-based solutions. There are nature-based solutions that aim to restore/promote natural processes that do not necessarily rely on vegetation.
IX.B.5.b.ii.(b); Page 84	Please clarify if Permittees are required to adopt plastic bag, straw and styrofoam bans as proposed as non-structural controls regarding human source management.
IX.B.7.a; Page 85	Requiring legal authority to implement the identified control measures could potentially limit beneficial collaboration across parties that are not direct Permittees.
IX.B.7.g; Page 86	The RAA will be dependent upon the availability of data. Recommend some language that acknowledges this limitation.
IX.B.7.g.ii; Page 86	Recommend noting that the calibration of models should also be consistent with the applicable critical conditions for the pollutants of concern.
IX.B.7.g.iii; Page 86	Given the extent of available data, recommend noting that validation should be performed, if relevant independent data not required for calibration are available.

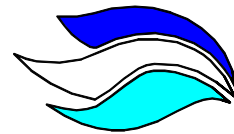
Tentative Permit Section; Page	Comment
IX.B.7.g.iv; Page 86	Recommend providing additional guidance/recommendations on the quantitative reasoning required to demonstrate a WBPC being addressed by the limiting pollutant approach.
IX.B.7.g.v; Page 86	Please clarify if the use of a modified WMMS model calibrated for a particular watershed still satisfies the QA/QC requirements.
IX.B.7.g.vi; Page 86	Recommend noting that the assessment of control measure performance will be an iterative process as more of this type of data is gathered in the WMA as control measures are implemented.
IX.C.3; Page 87	Permittees should be able to request an extension of final compliance deadlines with TMDLs.
IX.E.1.c; Page 88	Consideration of the achievement of requirements for storm water volume addressed in adaptive management should include an “as applicable”, given not all WMPs have set targets based on the volume addressed.
IX.E.1.e; Page 88	Recommend reassessment of sources of pollutants not be limited to MS4 discharges, as modifications may also be warranted if significant sources outside of the MS4 are identified to be impacting receiving waters.
IX.E.1; Page 87-88	Recommend including re-evaluation of identified control measures in the program and costs of implementation.
IX.E.4.f; Page 88	Recommend adding a note that comparison of control measures completed to date with control measures projected to be completed to date pursuant to the WMP should include additional control measures implemented outside of the existing WMP
IX.E.5; Page 89	Please consider the impacts of additional costs incurred when implementing measures as part of adaptive management are considered and the time to secure such funding.
X. Compliance Determination for QBELs and Receiving Water Limitations	
X.B.1.b; Page 94	Necessary deviations from an approved WMP may justify adjustments to the final deadlines for project completion or program implementation, under approval of the Executive Officer and appropriately incorporated in the WMP through the adaptive management process. Recommend removing this circumstance from allowing minor deviations in an approved WMP.
XI. Enforcement	
XI.B.1; Page 99	Recommend where reference the zero trash effluent limitation to include a qualifying statement with the acceptable compliance pathways that result in attainment of this object.
Attachment A - Definitions	
Att.A - Illicit Discharge; Page A-9	Recommend clarifying definition to answer the question: Does an illicit discharge include a discharge of pollutants in storm water that has not been reduced to the maximum extent practicable?
Att.A - Non-Storm Water Discharge; Page A-13	Recommend clarifying definition to answer the question: Do non-storm water discharges include discharges of pollutants in storm water that have not been reduced to the maximum extent practicable?

Tentative Permit Section; Page	Comment
Att.A – Restaurant; Page A-16	For consistency with the industrial element of the Industrial/commercial Facilities Program, recommend defining restaurants by the SIC Code manual: "Establishments primarily engaged in the retail sale of prepared food and drinks for on-premise or immediate consumption. Caterers and industrial and institutional food service establishments are also included in this industry."
Att.A - Retail Gasoline Outlet; Page A-16	For consistency with the industrial element of the Industrial/commercial Facilities Program, recommend referring to Retail Gasoline Outlets as Gasoline Service Stations and defining by the SIC Code manual: "Establishments primarily engaged in selling gasoline and lubricating oils. These establishments frequently sell other merchandise, such as tires, batteries, and other automobile parts, or perform minor repair work. Gasoline stations combined with other activities, such as grocery stores, convenience stores, or carwashes, are classified according to the primary activity."
Att.A – Vehicle Maintenance/Material Storage Facilities/Corporation Yards; Page A-20	Note Corporate Yards are referred to as a Public Works Yard in Section VI.D.8.b Table 11. Recommend using one term.
Attachment E – Monitoring and Reporting Program	
Att.E.II.H.8; Page E-5	Requiring to incorporate new MDLs in the monitoring program should also consider the financial burden of implementing (in addition to analytical methods improving and becoming more environmentally relevant)
Att.E.V.A.2.a.ii; Page E-17	The new provision for subsequent wet weather events could be interpreted to modify the current provision to target wet weather events greater than 0.25 inches of rain to greater than 0.1 inches of rain. If this is the case, the new minimum wet weather target would increase the risk of a false start, decrease the amount of runoff represented in the sample, and cause other event pacing issues. Recommend that the minimum wet weather target remain the same.
Att.E.V.A.3; Page E-18	The new requirement to conduct receiving water wet weather monitoring within 6 hours of stormwater outfall-based monitoring may be infeasible for marine receiving water sites. Please provide guidance language for wet-weather monitoring at marine receiving water sites.
Att.E.VI.A.5.b.i.(a); Page E-25	The new requirement for flow-weighted composite samples to have a minimum of 3 samples per hour that are separate by at least 15 minutes is infeasible due to rainfall variability. Generally, as flow increases, the sampling frequency increases. The beginning and ending of an event can sample at a rate less than three times per hour, and middle of an event can sample at a rate less than once every 15 minutes. Recommend that the minimum samples and rate serve more as guidelines and targets rates rather than requirements.
Att.E.IX.H.1-3; Page E-30 – E-31	The requirement to test four freshwater species will add substantial labor, cost and volume requirements for the first year of monitoring. Increased volume requirements will make it more difficult to collect sufficient volume of water through flow compositing. This will also likely result in adjacent watersheds evaluating different sensitive species and result in a lack of consistency with aquatic toxicity monitoring. Unclear how results of the test would be assessed if not consistent across test species. Please also consider the proposed Urban Pesticide Amendments' Statewide Coordinated Monitoring Program. Recommend including some language in the Permit to advise Permittees on the

Tentative Permit Section; Page	Comment
	Board’s stance on joining the Urban Pesticide Amendment and what the process would be for opting into this program. Please provide reasoning for the requirement to test four freshwater species.
Att.E.XIV.B; Page E-37	The new requirement for semi-annual monitoring reports doubles the annual reporting effort, which could potentially be better spent on implementation efforts.
Attachment F – Fact Sheet	
Att.F.III.K; Page F-93	If Permittees were to consider climate change offsets in modeling or with BMPs, this would require changes to the WMPs through Adaptive Management. When would this be required by if included in the Permit? This would require Permittees to incur additional costs for analysis and modeling. Has the LARWQCB/SWB conducted a cost-benefit analysis to determine feasibility of considering climate change offsets?
Att.F.XIII; Page F-283	What is considered "appropriate"?
Attachment H - Annual Report Forms	
Att.H	Please clarify what is requested for cost for the Public Agency activities. This is where everyone reports differently with no clear format.
Att.H	Recommend that the Annual Report form not be included as an attachment. We anticipate continued improvements in the Annual Reporting process in the coming years, with a focus on reporting on key performance indicators and providing meaningful information. With an Annual Report form written into the Permit, this would prevent reporting improvements for a minimum of 5 years. (It seems unlikely that the Permit would be reopened for moderate improvements to the Annual Report forms.)
Att.H	Recommend considering any and all methods of avoiding redundancies. For example, consider maintaining WMP level reporting, enhanced by individual City-specific details.

Elimination of the Metals TMDL for San Gabriel Valley Cities

Presented by Ray Tahir
TECS Environmental
November 19, 2020



Comments In Re: SGVGOG Comments to Regional Board

- Comment 1:
 - The tentative MS4 Permit removes the ability of cities to continue to participate in individual watershed management programs. Instead, they (e.g., Irwindale, El Monte, and Walnut) must join either an enhanced watershed management program or a watershed management program) – these programs are more costly because require more stringent requirements
 - Could COG staff slightly amend its comments to ask the Regional Board to eliminate this proposed requirement? Its like the Roach Hotel, you can check in but you can't check-out.
 - I think the COG can adopt its proposed comments with this revision. Comments to the Regional Board are not due until December 7th.

Comments In Re: SGVGOG Comments to Regional Board

- Comment 2:
 - The staff's SGVCOG comment letter references the need to eliminate compliance from the metals TMDL for Reach 2 of the Rio (includes Alhambra, Arcadia, Bradbury, Duarte, El Monte, Monrovia, Rosemead, San Marino, San Gabriel, South El Monte, Monterey Park, Montebello, Temple City, and Sierra Madre. Eliminating the invalid Metals TMDLs reduces compliance costs for TMDLs by 85-90%. Currently none of these can comply with these TMDLs even with Measure W funds.
 - The letter does not include the same for Reach 3 of the San Gabriel River and tributaries, which includes Baldwin Park, Covina, Glendora, Irwindale, La Puente, San Dimas, West Covina, and Walnut. Elimination of the invalid Metals TMDL will also reduce TMDL compliance costs by 85-90%. For Glendora this translates into \$1.6 to \$1.7 million per year, down from \$112 million per year.

Comments In Re: SGVGOG Comments to Regional Board

- Comment 2:
 - The letter does not include the same for Reaches 1 and 2 of San Jose Creek. Costs for Claremont and Pomona will also be reduced by 85-90%.
 - The letter also does not include Arroyo Sec Reaches 1, 2, and 3. The City of South Pasadena is located in this reach. A reduction of the Metals TMDL will result in a reduction from \$1.8 million per year to \$180k-\$264k year. Its Measure W allotment should cover this cost.
 - Assm. Blanca Rubio's October 30th letter to regional board asks to explain why the metals TMDLs have been applied to these reaches despite them not being on the State's 303(d) compliance list. It should noted that her own City, Baldwin Park is subject to invalid to Metals TMDL costs.
 - Could you add these concerns to the SGVCOG letter?