Response to Comments on May 11, 2015, Tentative Order
General Comments

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
ACCWP Legal	6	General	Unfunded State Mandates	Many provisions of the Tentative Order are more stringent than required by federal law and constitute unfunded state mandates in that they impose new programs or higher levels of service on the co-Permittees, and therefore will violate Article XIIIB, Section 6, of the California Constitution. The Tentative Order does not contain sufficient findings, nor does the evidence in the record support the Regional Board's conclusion in the Fact Sheet that the permit does not require actions beyond the MEP. Given the disparity of resources and heterogeneous nature of the co-Permittees, blanket evidence and findings as discussed in the Fact Sheet purporting to apply to all Permittees (or from Southern California) cannot suffice. If the Regional Board claims the right to make this determination, it at least has the obligation to provide an adequate record and findings to support its determination. The California Supreme Court is currently considering the case of Department of Finance, et al. v. Commission on State Mandates/County of Los Angeles, et al., Case No. S214855, which will clarify many issues on this subject including that jurisdiction to determine what aspects of the Tentative Order constitute unfunded state mandates properly rests with the Commission on State Mandates and not with the State's Water Boards.	We disagree with the commenter's blanket statement that the permit's provisions are more stringent than required federal law and constitute unfunded mandates, as explained in the Fact Sheet, Section V.C. We also disagree with the commenter's statements related to findings. The findings for the permit's provisions are set forth in the body of the permit and in the Fact Sheet and they are supported by substantial evidence in the record. The permit's requirements flow from the Clean Water Act's mandate to effectively prohibit non-stormwater discharges, require controls to reduce the discharge of pollutants to the maximum extent practicable (MEP) and such other provisions as the Board determines appropriate for the control of such pollutants. (33. U.S.C. § 1342(p)(3(B)(ii)-(iii).) The technology controls required in the draft permit reflect MEP standard, which is a flexible standard that evolves over time with advances in technology and experience gained in storm water management. (55 Fed. Reg. 47990, 48052 (Nov. 16, 1990).) Requirements to effectively prohibit non-stormwater discharges are not subject to the MEP standard. (State Water Board Order No.WQ 2015-0075). Requirements to implement TMDLs are based on federal law requiring that permits contain effluent limitations consistent with the assumptions of any applicable wasteload allocation. They are also based on the Clean Water Act section 402 subsection (p)'s direction that an MS4	None

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					permit shall require "such other controls" as the permitting authority determines "appropriate for the control of such pollutants." The permit's requirements and the bases for them apply to all of the named Permittees such that separate findings for each permittee are unnecessary. Where requirements and findings associated with them are not common to all Permittees due to unique circumstances, the permit and findings make that clear. For example, the bacteria requirements are specific only to Pacifica and the County of San Mateo Permittees.	
ACCWP Legal	7	General	Can't Fund Actions Required	As Permittee testimony at the workshop hearings have indicated, MS4s are faced with significantly increased costs to local government associated with more stringent requirements anticipated by the provisions of the Tentative Order. Many other commentors have noted and described these consequences in their written responses as well to the Water Board. Consequently, to avoid contentious advocacy proceedings that may consume large amounts of resources on detailed administrative appeals and litigation that could instead be spent on water quality improvement, the Tentative Order should be revised in a manner reflecting consensus with Bay Area local governments on priorities and realistic implementation timetables (which in some cases may have to be phased into future permit terms) and/or the relevant requirements must be conditioned on the receipt of State funding guaranteed to help the municipalities staff and finance their implementation. In addition, Permittees are significantly restricted in their ability to increase fees for stormwater improvements and control by the provisions of Proposition 218. In November 1996, California voters adopted Proposition 218, the Right to Vote on Taxes Act, which added articles XIII C &D to the California Constitution.	We have worked extensively with the Permittees to get their inputs. Where possible, we have accommodated their requests; however, please note that we are a regulatory agency that must implement the Clean Water Act—not impose requirements based on consensus. While some aspects of the MRP may require the Permittees to develop new resources and funding, this is within the practical realm for the Permittees. We have carefully considered the necessity of each and every new requirement included in the revised tentative order. We understand that it can be difficult for the Permittees to obtain new resources or funds for this or any set of requirements. The requirements included in the revised tentative order are the least that we can require to accomplish the Clean Water Act goals.	None

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				These constitutional provisions specify significant restrictions and requirements for assessments, fees, and charges that local governments impose on real property or on persons as an incident of property ownership. As a general rule, it is not possible to create a new or increase an existing stormwater- specific fee without complying with Proposition 218 which, with the exception of wastewater, refuse, and water service, in some cases requires voter approval. The possibility of receiving grant funding is problematic because it entails expense, and then, is not guaranteed. Limited grant funding is available and applying for grants can be very time consuming - many costs are not eligible for reimbursement, local funding is often required; the applicant must advance funds; and there is no guarantee of receiving a grant. At the same time rate payer and political sensitivity has increase with regard to fees. With so little funding available from grants and general revenues constrained by competing service demands, it is increasingly difficult to fund new or increased stormwater programs. Legislative efforts that would lead to modification of Proposition218 to exempt fees for stormwater control have not been successful.		
Orinda	6b	General	No Funds to Meet New Requirements	The City of Orinda is operating in a budget deficit in meeting the current MRP requirements. These major new mandates will require a significant, sustained effort to implement, absent any new or additional funding source.	We acknowledge the permit requirements will cost more than current efforts. We have considered specific data and cost calculations and the value of the outcomes that outweigh the costs. It is not infeasible to pay for additional efforts, and the costs may be offset by grant funds or collaborating with other Permittees. The cost of meeting MEP in the manner proposed by the TO is less than other alternatives (e.g. treatment on every outfall).	None

Response to Comments on May 11, 2015, Tentative Order
General Comments

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Brentwood Oakley Contra Costa Co. Clayton Concord Danville Hercules Moraga Pleasant Hill Orinda San Ramon San Pablo	1 2 1 2 8 7 7 2 2 7 10 10	General	New mandates are expensive. Eliminate less beneficial tasks	The permit requires major new and expanded mandates (trash, green infrastructure, LID, PCBs control) will require a major expense, sustained effort to implement, and no additional capital or ongoing maintenance funding has been identified for this purpose. These new mandates should be offset by eliminating other less beneficial tasks.	The MRP is not a zero sum endeavor. Each of the components in the Permit is there because it is necessary to effectively prohibit non-stormwater discharges, reduce the discharge of pollutants to the MEP, and to ultimately meet water quality standards related to pesticides, trash, mercury, PCBs and bacteria.	None
Oakley CCWP Clayton Concord Danville El Cerrito Hercules Lafayette Martinez Orinda Pleasant Hill Walnut Creek San Ramon San Pablo	1 4 1 1 1 1 1 1 1 1 1 1 1 1	General	Incorporate Permittee Ideas	For the past two years, representatives from Contra Costa municipalities, along with a consortium of Bay Area agencies and BASMAA, have been engaged in an ongoing dialogue with your staff regarding: experience gained and lessons learned from the current MRP; how to apply that experience toward maximizing the effectiveness of MRP 2.0; and, ensuring that the requirements contained in MRP 2.0 provide a clear path to compliance. This process generated many new ideas and approaches that build upon experience gained and identify how to expand upon and enhance our stormwater pollution prevention efforts. It also advocated consolidating or eliminating "less beneficial tasks" in the permit extending implementation dates, reducing reporting, and adjusting ongoing tasks to reduce effort while maintaining effectiveness in protecting water quality. Despite the extensive effort, few of these ideas were carried forward into MRP 2.0.	Many of the Permittees' ideas and suggestions were incorporated into the administrative draft MRP, the tentative order for the MRP, and many of the Permittees' comments influenced revisions of the tentative order for the MRP.	Many revisions have occurred due to the Permittees' comments

Response to Comments on May 11, 2015, Tentative Order
General Comments

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
League of CA Cities	1	General	Cities differ in availability of funding	We urge you to take into careful consideration the concerns that you are receiving from cities regarding MRP 2.0. Any Water Board policy changes should recognize the inherent differences between cities and regions in California and should also take into consideration the funding, or lack thereof, for the implementation of such practices.	See discussion of economic issues in Fact Sheet section IV. We have carefully considered all comments, including considerations of costs as they relate to controls to reduce the discharge of pollutants to the MEP. We acknowledge the permit requirements will cost more than current efforts. We have considered specific data and cost calculations and the value of the outcomes that outweigh the costs. It is not infeasible to pay for additional efforts, and the costs may be offset by grant funds or collaborating with other Permittees. The cost of meeting MEP in the manner proposed by the TO is less than other alternatives (e.g. treatment on every outfall).	Many revisions of the tentative order were in this general vein
Burlingame	3	General	Timelines and Funding	Burlingame fully supports the Water Board's efforts to protect Bay, but is concerned about the burden on its staff and financial resources brought about by the compliance schedule and requirements in this permit. While each permit provision outlines necessary work to improve our region's stormwater quality, the time necessary to meet the requirements of all provisions may affect a City's ability to carry out its goal of serving its residents and business owners. In addition, in order to carry out some provision requirements, additional funding will be required. This could involve requesting funds in fiscal year budgets or obtaining funds through outside sources, which takes time (several months to years) that the City does not feel is considered within the various timelines presented in the Permit. The City respectfully asks that the Water Board carefully consider the requests made in this letter as well as those of other Permittees.	Comment noted. We understand that the requirements of the entire MRP taken together will require considerable effort on the part of Permittees, and may require the Permittees to secure additional resources and funding to implement.	None
Daly City	1	General	Comments	Daly City's comments reflect the importance of developing	Comment noted	None

Response to Comments on May 11, 2015, Tentative Order
General Comments

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
San Bruno San Carlos San Mateo	1 1 1		Overview	requirements that are flexible, practical and cost effective in meeting the challenges of water quality protection in our creeks and Bay. Our intent in these comments is to contribute toward a continued constructive dialog that will result in additional permit revisions that provide a clear and feasible pathway for Daly City and all other Permittees to attain compliance. Our letter focuses on our highest priority areas of local concerns, Provision C.3 New Development and Redevelopment; C.lO Trash Load Reduction and C.ll/12 Mercury and PCB Controls.		
Heying	1	General	Alameda Lagoons subject to T.O.	I would like to present from my laptop computer showing photographic evidence of environmental damage to San Francisco Bay apparently caused by discharges from the "finger" lagoons on Alameda Island. … My findings point to a potentially catastrophic ecological threat to the waterfowl and marine habitat in San Leandro Bay stemming from apparent chemical-laden discharges from Alameda's finger lagoons. … I consider Alameda's finger lagoons to be integral to the City's storm sewer system, either as a "catch basin" or as a "man-made channel" as defined in the MS4 regulation. These lagoons are therefore subject to the pending regulation the same as a storm drain or any other element of our stormwater system.	The finger lagoons are receiving waters of the State, and are also components of the Alameda storm drainage system. Any materials added to the lagoons to control algae or aquatic vegetation must comply with State regulation.	None
ACCWP	32	General	Compliance Dates	We suggest that any time schedules and submittal dates in the drafts or Tentative Order should be established with a specific and stated projected adoption date in mind, and then if the adoption slips beyond that date or happens at an earlier date, all time schedules and submittal dates would be adjusted accordingly. Another alternative would be to do as the Water Board often does in Site Cleanup Orders by setting deadlines and submittal dates within a certain number of months after permit adoption, rather than specifying actual calendar dates. Then the reasonableness of the deadline can be effectively assessed.	We have endeavored to do this in the revised tentative order.	Dates have been revised to reflect expected adoption date

Response to Comments on May 11, 2015, Tentative Order
General Comments

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
ACCWP	33	General	Some requirements not applicable to flood control districts	There are a number of requirements for "Permittees" that are not applicable to flood control districts. Change to "population-based Permittees" where applicable.	The permit does state requirements that are not applicable non-population based Permittees. We will clarify.	None
CCWP	84	General	Suggested redline-strikeout comments	While we found these meetings to be productive in working through many issues and generating new ideas to build upon lessons learned and knowledge gained during MRP 1.0, we were disappointed that too few of the many ideas put forward with sound rationale for the changes we've advocated for, were not incorporated into the draft Tentative Order. These ideas would have helped reduce the administrative burdens on Permittees and prioritize and focus our limited resources on those actions that will maximize improvements to water quality. We urge you to seriously reconsider incorporating the Permittees ideas about reducing cost burdens into the revised MRP 2.0. Our comments are structured to provide general high level comments within this letter and specific detailed comments in Attachment 1. Additional attachments provide supporting details to the comments in Attachment 1. In addition we have provided and reference herein a separate submittal of a red-line of editorial comments directly to your staff to assist them in completing a final edit and polish of the Tentative Order.	We have considered and responded to all formal comments of the Contra Costa Clean Water Program	None
CCWP	1	General	Address Funding Limitations	It is important to recognize that these new and expanded initiatives will take significantly more resources. Permittees do not currently have these resources and developing new funding sources and mechanisms is extremely challenging. CCCWP invites the Regional Water Board to be a partner to help change the state constitution and law that would allow stormwater to be treated the same as water and wastewater utilities relative to raising stormwater fees.	We agree that stormwater should be treated the same as other utilities for the purposes of obtaining fee based funding under state law. Our agency supports this approach to the extent that we are able.	None

Response to Comments on May 11, 2015, Tentative Order
General Comments

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
CCWP	2	General	Grant Funding	In the absence of dedicated funding for the stormwater program, stormwater programs have relied upon grants from state and federal agencies. CCCWP appreciates the Regional Water Board's support in securing these past grants and welcomes the continued collaboration to secure grants for on-going and MRP 2.0 initiatives. In particular, support and advocacy for green infrastructure projects – specifically to include these costs into transportation project funding – will be critical to getting the state and regional transportation agencies to include these features as allowable cost and budget items.	Comment noted. We will continue to support worthy green infrastructure projects.	None
CCWP	3	General	Funding Uncertainty	Without new funding sources or maintaining a cost neutral program, Permittees will be asked to draw compliance resources from general funds or other program funds. For instance, green infrastructure planning and implementation costs are likely to come from local agency transportation budgets. Projects will cost more and as a result fewer projects will be built and maintenance will be deferred longer. This is an unintended consequence that the Permittees want to avoid. The Regional Water Board must acknowledge its role in this effort to adequately fund stormwater compliance programs and work collaboratively with Permittees to secure dedicated funding via changes in legislation and opportunistic grants. The Regional Water Board must also acknowledge the inherent uncertainty in these efforts, and the fact that four previous attempts to amend the constitution to allow for stormwater to be funded the same way water and wastewater utilities are funded have failed.	We acknowledge Permittees have funding challenges. See response to ACCWP Legal #7.	None
CCWP	14	General	Extend Deadlines	The draft Order contains many requirements for implementation and/or reporting within the first 12 months after the proposed permit effective date of December 1, 2015. It must be understood and acknowledged in MRP 2.0 that December 1, 2015 falls in the middle of Fiscal Year 2015/16. Municipal budgets, which were adopted in spring 2015, are already established. The financial resources needed to implement many	Most of the significant deadlines in the MRP are for 2017 or later. In addition, many implementation deadlines have been adjusted to conform with fiscal year deadlines, rather than beginning in the middle of a fiscal year. Because Permit requirements are typically similar to those in the Previous Permit, and	Various, as described in the response. See the responses to comments on

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				of the new requirements will not be available. All effective dates for new provisions with substantial financial and staffing resources must be delayed to provide time to be included in FY 2016/17 budgets, which will be adopted in spring 2016, and to provide the time necessary for countywide and/or regional planning and coordination for each requirement. Action desired: Delay identified deadlines at least one year from the July 1, 2016 deadline to allow for budgeting in spring 2016, and additional time necessary for countywide and/or regional collaboration and coordination.	existing structures (e.g., reporting databases, inspection forms, etc.) are already in place to address those requirements, we have not proposed to delay every effective date by a year. However, see the responses to comments on individual provisions for more-detailed information regarding specific requested implementation deadline changes.	individual provisions for specific deadline changes.
CCWP	15	General	Use of the term "certify"	The use of the term "certify" for various provisions throughout the draft MRP 2.0, particularly for various provisions requiring annual reporting, is redundant (e.g., C.3.h.v.(4), C.6.e.iii.(1), C.10.f.iii) . The entire Annual Report must be certified, and requiring certification of each specific provisions within the permit will create additional unnecessary work and confusion. Action desired: Find and delete these unnecessary and redundant requirements to "certify" compliance with specific provisions.	We do not consider these requirements redundant, and include them for extra emphasis where needed.	None
SMCWPPP	0	General	Highest priorities	Please note that SMCWPPP's highest priority areas of concern are Provisions C.3 (New Development and Redevelopment, especially the Green Infrastructure provision), C.10 (Trash Load Reduction), and C.11/12 (Mercury and PCBs Controls).	Comment noted	None
SMCWPPP SCVURPPP San Jose	79 12 16	General	Permit effective date and reporting	The proposed effective date in the Tentative Order is December 1, 2015. This creates a situation in which the 2016 Annual Report (for FY 2015/16) will cover the end of the current permit and the beginning of the new permit. Regional Water Board staff has indicated that it will work with the Permittees on an Annual Report format that addresses this transition. However, changes to data collection and tracking methods in certain provisions will be difficult to implement in the middle of the fiscal year. Change the effective date for these and other new provisions related to data collection and tracking to July 1, 2016, so that Permittees	We have adjusted some provision reporting requirements so that they become effective July 1, 2016. See the responses to comments on individual provisions for more-detailed information regarding specific changes.	We have adjusted some provision reporting requirements so that they are not required until after July 1, 2016.

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				have time to adjust data collection, tracking and reporting methods, and so that the data collected within a given fiscal year will be consistent.		
SCVURPPP	2	General	Issues remain/resolve unintended consequences	Based on many discussions held between Program, Co-permittee, and Water Board staff between summer of 2013 and the release of the MRP 2.0 Administrative Draft in spring 2015, we understood that in MRP 2.0 Water Board staff hoped to address the unintended consequences realized during the implementation of the current MRP, provide a necessary balance between flexibility and enforceability, and acknowledge the uncertainties and limited control that Co-Permittees have with regard to the effectiveness and the pace at which pollutant reductions are realized. However, because we believed that significant issues remained in the language included in the Administrative Draft, we provided substantial technical comments to the Water Board in March 2015 in collaboration with other Phase I stormwater programs.	Comment noted	None
SCVURPPP	3	General	Some comments from administrative draft not addressed	Our review of the Tentative Order indicates that Water Board staff has made some modifications and improvements relative to the Administrative Draft in terms of the above-stated priorities. We particularly appreciate that staff has made significant changes to the trash section to incorporate clearer processes by which compliance with load reduction goals will be evaluated. However, our previous concerns regarding other Permit provisions (especially those addressing mercury and PCB-specific programs) have not yet been adequately addressed.	Comment noted.	None
SCVURPPP	11	General	Overview of requested revisions	The Tentative Order still includes many requirements that need further refinement prior to adoption. The requested revisions included in our comments are pragmatic improvements that will create a more feasible permit that focuses limited available municipal stormwater permitting resources on tasks that are most cost- effective in terms of increased water quality benefits. In addition, the recommended revisions provide Co- Permittees	We have considered the comments and, where appropriate, made revisions. The permit, as revised, provides challenging, but achievable requirements. For example, the PCBs load reductions in the permit are based on what Permittees achieved in the last permit. Moreover, the Fact Sheet gives	Many revisions of the MRP have been made due to the Permittees' comments.

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				with a clearer path towards compliance that while protecting and improving water quality avoid the risk of inappropriate subjective compliance evaluations and have the potential to minimize unnecessary third-party law suits that do nothing to improve stormwater quality.	examples of the many source controls, treatment controls and pollution prevention measures that Permittees may employ to achieve compliance.	
BASMAA	1	General	Prioritize	Grant funding is uncertain and will likely be lower during MRP 2.0 than the current term. Prop 218 limits Permittees' ability to create and run efficient and sustainable programs. Thus, MRP 2.0 should prioritize those issues of most importance for water quality by reducing requirements for medium and low priority items.	We acknowledge funding challenges and considered them to the extent allowed by federal rlaw and regulations in setting priorities and permit requirements.	None
BASMAA	3	General	Remove provisions and streamline	Recommended Revisions: •As agreed at the Steering Committee, the Draft MRP should be reviewed to identify for potential removal provisions that likely have little effect on stormwater quality. •Streamline requirements for lower priority pollutants of concern and expand associated implementation schedules to allow Permittees to focus on trash, the highest priority water quality concern at this time.	The permit requirements must address all impacting pollutants. We have streamlined all requirements and have already removed provisions that would have little effect on stormwater quality.	None
BASMAA	15	General	Administrative draft comments incorporated by reference	In addition to the comments above, we attach and incorporate by reference the comments we provided on the Administrative Draft MRP on March 9, 2015; March 16, 2015; and March 27, 2015.	Previously submitted comments were considered in the development of the draft Tentative Order.	None
Mountain View	28	General	Requirements are burdensome, need more time	Implementation of stormwater pollution programs and actions, and construction of stormwater pollution controls (GI and trash controls, in particular) will have a significant burden on City resources. Revisions to the Municipal Regional Permit that allow necessary time for strategic planning over this permit term and looking ahead to future permits are critical to successful implementation.	The permit builds upon the last permit and does set forth realistic timeframes.	None
Palo Alto	2	General	Compliance Challenges	The City of Palo Alto believes that the Green Infrastructure, mercury and PCB requirements proposed in the Tentative Order	We disagree as there is reasonable certainty that a Permittee will be found in compliance by	None

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				present significant compliance challenges for the City and create a high degree of uncertainty in determining whether we will be deemed in compliance with the permit. (specific comments followed)	undertaking various straightforward actions identified in the provisions. See response to SCVURPPP comment 11 above.	
East Palo Alto	2	General	Prioritize	The City of East Palo Alto is currently understaffed to ensure full NPDES compliance and the existing funding structure is inadequate to address the required actions. More clear direction should be provided to lead Permittees toward successful implementation of targeted objectives. As Matt Fabry of the Bay Area Stormwater Agencies Association (BASMAA) indicated in oral testimony at the Water Board hearing on July 8, 2015, all permit provisions should be ordered by prioritization, to ensure all Permittees shall focus efforts on those most critical areas that represent the highest likelihood of providing the most substantial water quality improvement. Other provisions, while important, require more time to develop mature plans that can be used to target these pollutants for successful outcomes, efficiently, not trial-and-error approaches.	We understand that Permittees will in many cases need to develop new resources to implement aspects of the permit requirements. The permit contains flexibility within which the Permittees can exercise prioritized approaches to obtaining water quality improvement.	None
East Palo Alto	3	General	Trash should be highest priority	Trash Load Reduction should be the Water Board's highest priority. Addressing the reduction of trash has been studied and the City better understands the capital improvement needs for fully capturing these constituents; East Palo Alto is likely to meet these stringent reduction goals.	We agree.	None
East Palo Alto	5	General	Cannot achieve full compliance	East Palo Alto is unlikely to achieve full compliance to key provisions. Following SMCWPPP's notice as a template, the areas where the City of East Palo Alto is most likely to fall short of being able to meet provisions are included below.	We hope the Permittee is incorrect in this estimation. The compliance determination is years away for many of the Permit aspects, and much work lies ahead.	None
Berkeley Hayward	30 2	General	Reporting is confusing	Reporting on 2 permits in one Annual Report is difficult and confusing. Many permit requirements are based on implementing requirements on a July 1 through June 30 implementation schedule. If a new permit with revised annual requirements becomes effective after July 1, it's not clear what portion of, if any, of those annual requirements needed to be	See response to SMCWPPP #79. We have adjusted some provision reporting requirements so that they become effective July 1, 2016. See the responses to comments on individual provisions for more-detailed	We have adjusted some provision reporting requirements so that they

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				implemented during the less than one year period of the old and new permit. To avoid this problem, make the effective date of the new permit July 1, 2016. The schedule for completion dates could take into account the Permit adoption date as Permit adoption provides certainty.	information regarding specific changes.	become effective July 1, 2016.
Contra Costa Co.	26	General	Meet with Water Board staff	The County encourages Water Board staff to continue meet with Permittees to refine MRP 2.0 to meet our mutual goals to improve water quality within a time and financial framework that is feasible. We look forward to meeting with your staff to resolve of the remaining issues and to implementing MRP 2.0.	Comment noted.	None
Clayton	4	General	Reporting	Various reports/ studies submittals should be filed with the Annual Report submittal, not at separate times.	We have asked for those submittals separately for timing purposes, in some cases at the Permittees' request. In general, submittals are requested with the Annual Reports.	None
Clayton	5	General	Reporting through web	A Water Board hosted web based (cloud) annual report format and upload would allow for efficiencies in submittal and review, entering the digital age similar to other state agency departments that require annual report submittals by cities.	We agree that a web based reporting system would be preferable. We currently request that Permittees submit their reports digitally to our web based storage site, which is substantially similar.	None
Clayton	6	General	Reporting	We appreciate that the special project reports are done annually as part of the Annual Report submittal and not separate. This streamlined approach should be used for the other various report submittals that are currently identified in the MRP 2.0 proposed language to occur at different times.	We have asked for a few separate submittals, in cases where there is benefit or need for submitting them separate from the Annual Report	None
Concord	4	General	Reporting	As issuance of MRP 2.0 is anticipated mid-year, where Permittees are under MRP 1.0 until the effective date of MRP 2.0, we are requesting clarity on the annual reporting requirements for the year ending June 30, 2016. We are requesting that one reporting framework be prepared and approved by the Board prior to issuance of MRP 2.0 so the Permittees can focus their efforts on appropriate actions.	We have adjusted some provision reporting requirements so that they become effective July 1, 2016. See the responses to comments on individual provisions for more-detailed information regarding specific changes.	Adjusted some reporting requirements so that they become effective July 1, 2016.

Response to Comments on May 11, 2015, Tentative Order
General Comments

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Danville	10	General	Too much reporting	Additionally, reporting requirements should be significantly reduced. Currently too many staff resources are utilized to generate large amounts of detailed data that do not appear to be utilized by the RWQCB each year. Perhaps a working group can sit down with Board staff to provide a more productive reporting method.	The reporting that is requested is all information used by staff to make compliance assessments.	None
Danville	21	General	Reporting	Annual Reporting is extremely time consuming now and would be even more onerous if we were required to report on two separate permits. Regardless of when the MRP 2.0 is adopted, the City requests that the annual reporting requirement not be split between two different permits.	We have adjusted some provision reporting requirements so that they become effective July 1, 2016. See the responses to comments on individual provisions for more-detailed information regarding specific changes.	Adjust some reporting requirements to become effective July 1, 2016.
Emeryville	2	General	Too much reporting	The completion of the Annual Report is a very time-consuming activity; we in Emeryville estimate that up to 30% of the staff time we have for stormwater pollution prevention is spent on reporting rather than implementation, even before the proposed requirement for visual assessments is taken into account. We ask that reporting requirements be extensively streamlined to include the key information needed for program review. Data that are not reviewed by Water Board staff and data that are duplicative from one section of the report to another should be removed from the reporting requirement, thus allowing significantly more time for Permittees to work on actually reducing the pollutant load into receiving waters.	The reporting that is requested is all information used by staff to make compliance assessments.	None
Emeryville	3	General	Reporting is burdensome	The current reporting requirement, for a single permit in a reporting period, is already extremely burdensome. If Permittees need to also report on the new permit, with new requirements, metrics, and reporting responsibilities in the same reporting period, the time required to prepare the reports may realistically take more than half of staff's annual time available for the implementation of the program. Permittees should not be required to report on two permits in one reporting period. We recommend that the new permit have an implementation date of	We have adjusted some provision reporting requirements so that they become effective July 1, 2016. See the responses to comments on individual provisions for more-detailed information regarding specific changes.	We have adjusted some provision reporting requirements so that they become effective July 1, 2016.

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				July 1, 2016 to avoid this problem. Alternatively, Permittees could be asked to report only on the permit that is in effect for the majority of the reporting period.		
Livermore	1	General	Unfunded Mandates	The City believes many of these requirements, C.3 .j. "Green Infrastructure Planning and Implementation and the C.10 Trash Load Reduction", in particular, may be challenged as unfunded mandates.	These requirements stem from federal Clean Water Act regulatory drivers, and are not unfunded state mandate. See responses to SCVURPPP legal comments on unfunded mandates.	None
Oakland	20	General	Reporting	We recommend that the RWQCB staff initiate a workgroup with Permittees to identify opportunities to eliminate unnecessary reporting.	We agree.	None
SCVURPPP Legal	1	General	Incorporation of Fact Sheet into Permit Inappropriate	Notwithstanding the feedback presented above concerning the Draft Permit, the Santa Clara Program and its members take issue with several aspects of the Fact Sheet. Among other things, they specifically object to having the reissued MRP incorporate the Fact Sheet by reference rather than to merely refer to the Fact Sheet's availability and existence. Incorporation of the Fact Sheet is, in fact, legally inappropriate – under the NPDES regulations, a fact sheet is only supposed to "accompany" a draft permit and set forth facts and describe questions considered in preparing it; it is not supposed to piecemeal the permit and contain what amounts to additional findings or requirements themselves. See 40 C.F.R. §§ 124.6, 124.8.	The Fact Sheet, pursuant to the regulations (40 C.F.R. § 124.8), contains the basis for the draft permit's conditions, or findings. The Board is within its legal rights to not only attach the Fact Sheet into the permit, but also to incorporate it into the permit in order to make the findings required by law to support its action. (See *Topanga Assn for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506). Just because the federal regulations state that the Fact Sheet must accompany the permit (the case here) does not prohibit the Board from also incorporating it to avoid repeating the Fact Sheet's contents in the permit, which would make the already lengthy permit unnecessarily repetitive and unwieldy. For the foregoing reasons, most NPDES permits statewide incorporate the Fact Sheet.	None
SCVURPPP Legal	2	General	Unfunded Mandate	The legal basis for the City's unfunded mandate objection, including an analysis of why many of the provisions included in the City's technical comments go beyond the requirements	Permittees have mounted numerous claims that the draft MRP (and the previous permit) includes requirements that are unfunded	None

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				of the federal CWA. The Fact Sheet's lengthy discussion of State Mandates, which appears to merely repeat the State Water Board's conclusory litigation advocacy position on these issues, goes well beyond the scope of 40 C.F.R. §§ 124.6, 124.8 and should be deleted. This is particularly the case in light of the California Supreme Court's impending decision in *Department of Finance, et al. v. Commission on State Mandates/County of Los Angeles, et al*., Case No. S214855, which will clarify, among other things, that jurisdiction to determine what aspects of the Draft Permit constitute unfunded state mandates properly rests with the Commission on State Mandates and not with the State's Water Boards. In addition (and even if the California Supreme Court's decision is otherwise), in its recent final rule defining the "Waters of the United States," U.S. EPA has expressly *excluded* from the reach of the jurisdictional boundaries of the Clean Water Act (and, hence, the NPDES permitting program) numerous areas that are subject to requirements in the T.O., including, among others, pools and erosion and other control features constructed on land in order to convey, treat, or store stormwater. 80 Fed. Reg. 37054, 37096-37101 (June 29, 2015). Therefore, to the extent the reissued MRP imposes requirements that reach to such now- clearly excluded non-jurisdictional areas and features, such requirements arise from state rather than federal law and are subject to subvention under the State's unfunded mandates initiative, as well as to the need for analysis under Water Code Section 13241/13243 and the California Environmental Quality Act (CEQA).	state mandates requiring a subvention of funds to local governments for the cost of these requirements. The Board strongly disagrees, as set forth in the Fact Sheet. It is a significant factual and legal issue that is required by the federal regulations to be in the Fact Sheet (40 C.F.R.§ 122.48(a)) and is as brief as the subject matter allows. In addition, the Board is within its full discretion to make those findings it deems appropriate to support its action. The pendency of the California Supreme Court case in which the Los Angeles Regional Water Board's storm water permit has been challenged as an unfunded mandate does not change this. It is unclear what the "numerous areas" are that the commenter is asserting are non-jurisdictional waters of the U.S. Storm water treatment systems have always been excluded from the definition of waters of the U.S. and the new but stayed EPA rule does not alter this. The Board has never and does not now regard them as waters of the U.S. The basis for regulating the Permittees' municipal storm water sewer systems is because they discharge pollutants into waters of the U.S. The draft MRP's requirements flow from federal law, not state law, and as such, require no subvention of funds, analysis under Water Code section 13241/13243 or CEQA. (*City of Rancho Cucamonga v Regional Water Quality Control Board, Santa Ana Region* (2006) 135 Cal.App. 1377; *County of Los Angeles v.*	

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					California State Water Resources Control Board (2006) 143 Cal.App.4th 985).	
San Jose Legal	1	General	Insufficient Evidence in the Record Demonstrating That Provisions Are Practicable or Necessary to Protect Water Quality	We do not believe that the record demonstrates that many of the provisions identified in the City's technical comments meet either the "nexus" requirement that is required under the Porter-Cologne Act (Cal. Water Code §§13241 and 13263) or the maximum extent practicable ("MEP") standard, which is the applicable statutory standard governing the substance of permits regulating municipal storrnwater discharges under the Clean Water Act ("CWA"). Many of the provisions referenced in the City's technical comments are deficient under these standards. Of special concern are provisions that are costly or will increase workload or with no demonstrable water quality benefit, such as Provisions C.2 and C.3.	There is no "nexus" requirement in the cited sections of the Porter-Cologne Act. Section 13263 of the Act states WDRs "shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241." (Cal. Wat. Code § 13263(a).) The draft permit does in fact implement the Basin Plan, takes into consideration the beneficial uses to be protected and the water quality objectives necessary to protect such uses. Section 13241 of the Act is relevant when establishing water quality objectives or when the Board issues CWA permits that are more stringent than federal law, which is not the case here. The MEP standard does require considerations of practicability, but it is unclear which specific requirements the commenter is asserting are neither practicable nor necessary to protect water quality. With respect to Provisions C.2 and C.3, they are both practicable and necessary to protect water quality. The Provision C.2 requirements reflect controls and management practices that are currently implemented by Permittees and are carried over from the previous permit with minor revisions that account for implementation	None

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					practicability with no cost consequences. The Provision C.3 requirements also reflect controls and management practices that are currently implemented by Permittees and are carried over from the previous permit. The new C.3 requirements to develop and implement green infrastructure plans allow Permittees to self-determine controls with water quality benefit that are practicable.	
San Jose Legal	2& 3	General	Provisions Are Too Specific in the Manner of Performance; Unfunded mandate	The Porter-Cologne Act specifically prohibits the Board from specifying the "design, location, type of construction, or particular manner in which compliance may be had ...." Cal. Water Code §13360. Most of the provisions in the Tentative Order violate this prohibition by prescribing, sometimes in minute detail, how the City should conduct municipal operations or operate local programs, or even what ordinances must be adopted by the City Council. The overly prescriptive nature of the provisions related to exempted and conditionally exempted and provisions which do not sufficiently allow for Adaptive Management discharges [Provisions C.3, C.5, C.6, C.9 and C.15]. The basis for City's unfunded mandate objection is in Mr. Falk's comments.	This argument, like many the City makes, has been rejected in court. As the Court of Appeal found, the CWA provides the storm water permitting agency with discretion to decide what practices, techniques, methods and other provisions are appropriate and necessary to control the discharges of pollutants and federal law preempts Water Code § 13360. (*City of Rancho Cucamonga v. Regional Water Quality Control Board, Santa Ana Region* (2006) 135 Cal.App.4th 1377.) On the unfunded mandate comment, please see responses to SCVURPPP Legal #2.	None
San Jose Legal	4	General	Water Board Failed to Sufficiently Consider Economic Impacts	For the provisions in the Tentative Order that go beyond requirements of the federal CWA, the Water Board is required to conduct an analysis of economic impacts and burdens pursuant to sections 13241 and 13263 of the Porter-Cologne Act. See *City of Burbank v. State Water Resources Control Board,* 35 Cal. 4th 613 (2005). Although the Fact Sheet (Attachment A to the Tentative Order) purports to contain an economic analysis, the studies cited are over 10 years old and do not address the requirements	We have revised the Fact Sheet to clarify the Board's obligation with respect to considering economics. In short, since the draft permit is not more stringent than federal law, economic considerations under Water Code § 13241 do not apply. Notwithstanding this, and because cost is a consideration under the MEP standard applicable to storm water controls (although no cost-benefit analysis is	None

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				of this Tentative Order. Moreover, the Fact Sheet contains no analysis of the extent to which the programs included in those studies, which are primarily Southern California based, are comparable to the requirements in this Tentative Order. As indicated in more detail in the City's technical comments, specific provisions that are of particular economic concern to San Jose include: Provisions C.3, C.10, C.11 and C.12.	required) and antidegradation policies, the Fact Sheet sets forth information the Board has and the information presented to it related to costs.	
San Jose Legal	5	General	Tentative Order Subject to CEQA	The California Environmental Quality Act (CEQA) applies to permits issued by the Water Board to the extent the permit contains provisions that are not required under the federal CWA. *City of Arcadia v. State Board,* 135 Cal. App. 4th 1392 (2006). The Tentative Order requirements exceed the CWA Mandates as Mr. Falk aptly stated. The need for a CEQA analysis is particularly relevant for provisions which specify the manner in which the Permittees can and cannot construct public improvements and those which require the Permittees to implement specific public improvement projects.	This comment that CEQA compliance is required is predicated on the argument that proposed permit is more stringent than the federal CWA. Since it is not, as explained elsewhere in the response to comments and in the Fact Sheet, CEQA compliance is not required. Moreover, CEQA does not apply to NPDES permits, except for new sources. (Wat. Code § 13389; *County of Los Angeles v. State Water Resources Control Board* (2006) 143 Cal.App.4th 985, 1004-1007.)	None
San Jose Legal	6	General	Some Provisions Exceed Water Board's Statutory Authority and Impinge on Local Land Use Authority	As a state agency, the Water Board only has the regulatory authority delegated to it by statute. The scope of this delegated authority does not include jurisdiction over local land uses decisions under state or federal law. Provision C.3 of the Tentative Order contains numerous instances where the Water Board is exceeding its statutory authority, with Provision C.3.b.i being of specific concern as indicated in the City's technical comments.	The federal regulations require that municipal storm water permits include controls to reduce pollutant discharges in areas of new development and significant redevelopment.(40 CFR § 122.26(d)(iv)(A).) Provision C.3 implements this mandate and requires municipalities to limit storm water pollutant discharges from new and redevelopment projects they approve. Where the regional water boards carry out this mandate in its permits, no separation of powers issue is present. (*City of Rancho Cucamonga, supra*, 143 Cal.App.4th at p. 1003.) With respect to the C.3.b.i, we understand that vested rights may preclude	None

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					cities from revisiting previously entitled projects. As such, the provision has been changed, as noted in the response to ACCWP comment 37, to include exemptions to this requirement for previously-approved development projects with a vested right to proceed and a Permittee has no legal authority to require changes to previously granted approvals.	
San Jose Legal	7	General	Some Provisions Are Outside the Scope of the Board's Permitting Authority for the City's Storm Sewer	The Water Board is also limited in this proceeding to dealing with municipal storm water discharges. There are several provisions in the Tentative Order that attempt to regulate activities simply on the basis of impact on water quality, even though there is no demonstrated connection between these activities and the Permittees' storm sewer systems, including Provisions C. 5, C. 6, C. 9 and C.12. Moreover, the Tentative Order exceeds its permitting authority by mandating in C.9. that the Permittees lobby EPA with respect to its authority under the Federal Insecticide, Fungicide, and Rodenticide Act.	We disagree, and the commenter provides no evidence or information to bear to support the assertion that there are requirements to control activities with no demonstrated connection to storm sewer systems. All requirements in the Tentative Order are associated with sources or activities that discharge pollutants to storm sewer systems. Regarding C.9, Tentative Order Provision C.9.a – Track and Participate in Relevant Regulatory Processes, which is a requirement carried over from the previous permit, requires Permittees to track U.S. EPA's regulatory actions that permit use of pesticides. Provision C.9. calls on Permittees to track U.S. EPA pesticide evaluation and registration activities as they relate to surface water quality, and, when necessary, encourage U.S. EPA to coordinate implementation of the Federal Insecticide, Fungicide, and Rodenticide Act and the Clean Water Act and to accommodate water quality concerns within	None

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					its pesticide registration process. The primary mechanism called for by the provision is for Permittees to submit, as appropriate, comment letters on U.S. EPA regulatory actions relating to pesticides of concern for water quality. Submittal of these letters has been a long-standing best management practice that the Permittees have been using to control pesticides of concern for water quality in discharges from their storm sewer system. These discharges of pesticides from storm sewer systems cause or contribute to violations of water quality standards in receiving waters. The Water Board recognized, when adopting the TMDL for Diazinon and Pesticide-Related Toxicity for Urban Creeks in the Region and wasteload allocations for discharges from storm sewer systems, that while Permittees can control their own use of pesticides, Permittees' authority to regulate use of pesticides by others is constrained by federal and state law. Accordingly, in lieu of implementing the wasteload allocations as numeric limits in municipal separate storm sewer permits, the TMDL implementation plan adopted by the Water Board calls for Permittees to implement best management practices for addressing the wasteload allocations, which include best management practices to affect uses of pesticides of water quality concern by businesses and the public that result in discharge of such pesticides from the Permittees' storm sewer systems.	

Response to Comments on May 11, 2015, Tentative Order
General Comments

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					Provision C.9.a implements the TMDL wasteload allocations via best management practices in lieu of numeric limits on storm sewer systems discharges in accordance with the TMDL implementation plan.	
Speakers at June 10, 2015, and July 8, 2015, hearings	n/a	Various	Various	Various	We have reviewed the transcripts for these hearings and most all of the significant oral comments made were repeated in the written comment letters submitted by the speakers or by the entities with which the speakers are affiliated. The Response to Comments responds to the speakers' significant comments. Significant oral comments made on trash and C.3 are responded to in those section of the Responses to Comments.	As set forth in other responses