

**CALIFORNIA DEPARTMENT OF TRANSPORTATION,
MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT**

COMMENT RESPONSE REPORT

This report contains the State Water Board's responses to the public comments submitted on the Draft Tentative Order dated January 7, 2011 and the Revised Draft Tentative Order dated August 18, 2011 for the renewal of the Department of Transportation's MS4 permit. Responses to each set of comments have been combined into a single document which is being released concurrently with the Second Revised Draft Tentative Order on April 27, 2012.

Responses are presented in alphabetical order of the organization that submitted them. Approximately 330 comments from 16 commenters were received on the Draft Tentative Order as shown below.

Commenters on Draft Tentative Order

Commenter		
ID	Representative	Organization
A	Linda Sheehan	California Coastkeeper Alliance & Heal the Bay
B	Vicki Kramer	California Department of Public Health
C	G. Scott McGowen	California Department of Transportation (Caltrans)
D	Scott Taylor	California Stormwater Quality Association
E	Bilma Rhinehart	California Transportation Commission
F	Kenneth Farfsing	Coalition for Practical Regulation
G	Joyce Dillard	General Public
H	Sam Unger	Los Angeles Regional Water Quality Control Board
I	Noah Garrison	NRDC
J	Robin Calder	Attorney @ Law
K	David Gibson	San Diego Regional Water Quality Control Board
L	Jason Flanders	San Francisco Baykeeper
M	Mathew Fabry	San Mateo Countywide Water Pollution Prevention Program
N	Adam Olivieri	Santa Clara Valley Urban Runoff Pollution Prevention Program
O	Mitch Mitchell	San Diego Gas & Electric, Sempra Utilities
P	David Smith	United States Environmental Protection Agency

Approximately 220 comments from 33 commenters were received on the Revised Draft Tentative Order as shown below. This includes 9 comment letters that were submitted late (Commenter IDs ZX through ZZ).

Commenters on Revised Draft Tentative Order

Commenter		
ID	Representative	Organization
Q	Thomas Holsman	AGC of California
R	Jimmy McBeth	Air Tight Heating and Sheetmetal
S	Ken Hambrick	Alliance of Contra Costa Taxpayers
T	Todd Ament	Anaheim Chamber of Commerce
U	Bradford Barnum	Associated General Contractors of America
V	James Scanlin	BASMAA
W	Linda Clifford	CC Myers, Inc
X	Albert Segalla	Calaveras County Taxpayers
Y	Jim Earp	California Alliance for Jobs
Z	Richard Lyon	California Building Industry Association
ZA	William Hauck	California Business Roundtable
ZB	Valerie Nera	California Chamber of Commerce
ZC	Robert Lucas	California Council for Environmental and Economic Balance
ZD	Scott McGowen	California Department of Transportation (Caltrans)
ZE	DeAnn Baker	California State Association of Counties
ZF	Ricky Horst	City of Rocklin
ZG	Emily Cohen	Engineering and Utility Contractors Association
ZH	Marc Wright	Fortuna Iron Fabrications and Welding
ZI	Joyce Dillard	General Public
ZJ	Brian Haber	General Public
ZK	Ricky Serrano	General Public
ZL	Debra Moreno	Greater Bakersfield Chamber of Commerce
ZM	Kirsten James	Heal the Bay & California Coastkeeper Alliance & NRDC
ZN	Associated Members	Humboldt Builder's Exchange
ZO	Ronald Pasquinelli	Monterey Peninsula Taxpayers Association
ZP	Rob McBeth	O&M Industries
ZQ	Kate Klimow	Orange County Business Council
ZR	Diann Rogers	Rancho Cordova Chamber of Commerce
ZS	Paul Webster	San Diego Regional Chamber of Commerce
ZT	Abigail Blodgett	San Francisco Baykeeper
ZU	Keith Dunn	Self Help County Coalition
ZV	Mitch Mitchell	San Diego Gas & Electric, Sempra
ZW	David Smith	United States Environmental Protection Agency
ZX	Daymond Rice	Valley Industry and Commerce Association
ZY	Will Kempton	Orange County Transit Authority
ZZ	Kyra E Ross	League of California Cities
ZZA	Rick Grove	Public
ZZB	Shannon Connelly	Public
ZZC	Michael W Lewis	Construction Industry Coalition on Water Quality
ZZD	Jeff Wingfield	Port of Stockton
ZZE	Frank Beigelow	Board of Supervisors, County of Madera
ZZF	Juan C Perez	County of Riverside Transportation and Land Management Agency

The Comment Response Report contains a summary of each comment. The Commenter IDs (A through ZZF) are hyperlinked to the location of the comment letter in .pdf format. All information regarding this permit can be accessed at http://www.waterboards.ca.gov/water_issues/programs/stormwater/caltrans_permits.shtml

Department of Transportation's MS4 Permit Comment Response Report (by Commenter) for Draft Tentative Order (1/6/11) and Revised

Representative Linda Sheehan of CA Coastkeeper Alliance

Comment A1 Comment Letter Page # 4

Summary: Non-stormwater needs to be "effectively prohibited", including agricultural runoff.

Response: Provision B.3 states that conditionally exempt non-storm water discharges that are found to be significant sources of pollution are to be effectively prohibited. Revisions have been made to the Proposed Order to clarify that, in the case of landscape irrigation and lawn watering, only minor, incidental discharges are conditionally exempt.

With regard to agricultural discharges, the Proposed Order has been amended to clarify that agricultural irrigation return flows are not a non-storm water discharge that must be either prohibited or conditionally exempted in an MS4 permit. The regulations conditionally exempt MS4s from the requirement to effectively prohibit "irrigation water" discharges to the MS4. The regulations also completely exempt MS4s from addressing non-storm water discharges (also called "illicit discharges") if they are regulated by an NPDES permit (40 C.F.R. §§ 122.26, subd. (b)(2); 122.26, subd. (d)(2)(iv)(B)). The term "irrigation water" is not defined and the regulations do not clarify whether that term is intended to encompass agricultural irrigation return flows that may run on to the Department's rights of way.

Because agricultural return flows cannot be regulated by an NPDES permit, it is unlikely that they were intended to be treated as "illicit discharges" under the federal MS4 regulations. In discussing illicit non-storm water discharges and the requirement to effectively prohibit such discharges, the preamble of the Phase I final regulations states: "The CWA prohibits the point source discharge of non-storm water not subject to an NPDES permit through municipal separate storm sewers to waters of the United States. Thus, classifying such discharges as illicit properly identifies such discharges as being illegal" (55 FR § 47996). Implicit in this statement is that illicit discharges do not include non-point source discharges, including agricultural return flows, which are statutorily excluded from the definition of a point-source discharge (CWA § 502(14).) Elsewhere in the preamble, EPA refers to the conditionally exempted non-storm water discharges as "seemingly innocent flows that are characteristic of human existence in urban environments and which discharge to municipal separate storm sewers" (55 F.R.48037). This language further suggests that the term "irrigation water" was not intended to encompass agricultural irrigation return flows characteristic of a rural area.

Clean Water Act Section 402(l)(1) states that an NPDES permitting agency "shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture." Accordingly, agricultural return flows co-mingling with an illicit discharge would be treated as a point source discharge. This fact, however, does not lead the State Water Board to find that agricultural return flows should be subject to the conditional prohibition on non-storm water discharges.

First, the illicit discharge prohibition acts to prevent non-storm water discharges "into the storm sewers" (CWA § 402, subd. (p)(3)(B)(ii)). 40 C.F.R. §122.26, subdivision (d)(2)(iv)(B)(1) similarly states that the MS4 is to "prevent illicit discharges to the municipal separate storm sewer system." Based on a plain reading of the statutory and regulatory language, a determination of what constitutes an illicit discharge should be made with reference to the nature of the discharge as it enters the MS4. Unless the agricultural return flow has co-mingled with a point source discharge prior to entering the MS4, it is not subject to the discharge prohibition. Further, since certain point source discharges are conditionally exempted from the requirement for effective prohibition under 40 C.F.R. § 122.26, subd. (d)(2)(iv)(B)(1), the fact that the agricultural return flow may have co-mingled with such an exempted dry weather point source discharge prior to entering the MS4 does not render it an illicit discharge subject to the effective prohibition. See *Fishermen Against the Destruction of the Environment, Inc. v. Closter Farms, Inc.* (11th Cir. 2002) 300 F.3d 1294.

Second, even assuming that the agricultural return flow mingling with a point source discharge after entering the MS4 would trigger the requirements related to non-storm water discharges, agricultural return flows are not expected to require an effective prohibition. Irrigation of agricultural fields typically occurs in dry weather, not wet weather, and therefore the State Water Board anticipates that agricultural irrigation return flows into the Department's MS4 would generally not co-mingle with discharges other than exempt non-storm water discharges.

Third, agricultural return flows entering an MS4, while not regulated by an NPDES permit, are through much of the State regulated under WDRs, waivers, and Basin Plan prohibitions. The regulations exempt MS4s from addressing non-storm water discharges that are regulated by an NPDES permit. Flows to the Department's MS4 regulated through state-law based permits are subject to regulatory oversight analogous to being subject to an NPDES permit. The appropriate regulatory mechanism for these discharges is the non-point source regulatory programs and not a municipal storm water permit.

Finally, it should also be noted that the Department has limited control options over agricultural return flows since up gradient flows must in many cases be allowed to flow under or alongside the roadway so as not to threaten roadway integrity.

Comment A2 Comment Letter Page # 9

Summary: The provision of the District 7 Stipulation "20% reduction" provision should be implemented statewide

Response: Staff recognizes that Caltrans District 7 is bound by the 2008 Stipulation and Order entered in the U.S. District Court, Central District, including the mandate that stormwater discharges are to be treated or otherwise reduced to a level at least twenty percent below 1994 levels. However, staff disagrees that this standard should be applied statewide. Staff concludes that the implementation of BMPs using the proposed design standards, along with the design criteria for hydromodification control and maintenance requirements are sufficient to satisfy the MEP standard.

The Proposed Order will not be amended in response to this comment.

Comment A3 Comment Letter Page # 9

Summary: Definition of MEP is inadequate. Need to revise definition.

Response: Discussion:

To achieve the MEP standard the discharger must seriously pursue compliance through technical feasibility and ensure that practical solutions are not lightly rejected. Reducing pollutants to the MEP means choosing effective BMPs, and rejecting applicable BMPs only where other effective BMPs will serve the same purpose, or the BMPs would not be technically feasible, or the cost would be prohibitive. In selecting BMPs to achieve the MEP standard, the following factors may be useful to consider.

- a. Effectiveness: Will the BMPs address a pollutant (or pollutant source) of concern?
- b. Regulatory Compliance: Is the BMP in compliance with storm water regulations as well as other environmental regulations?
- c. Public Acceptance: Does the BMP have public support?
- d. Cost: Will the cost of implementing the BMP have a reasonable relationship to the pollution control benefits to be achieved?
- e. Technical Feasibility: Is the BMP technically feasible considering soils, geography, water resources, etc?

The final determination regarding whether the Department has reduced pollutants to the maximum extent practicable can only be made by the Regional or State Water Boards. If the Department reviews a lengthy menu of BMPs and chooses to select only a few of the least expensive, it is likely that MEP has not been met. On the other hand, if the Department employs all applicable BMPs except those where it can show that they are not technically feasible in the locality, or whose cost would exceed any benefit derived, it would have met the standard. Where a choice may be made between two BMPs that should provide generally comparable effectiveness, the Department may choose the least expensive alternative and exclude the more expensive BMP. However, it would not be acceptable either to reject all BMPs that would address a pollutant source, or to pick a BMP based solely on cost, which would be clearly less effective. In any case, the burden would be on the Department to show compliance in the effective implementation of properly selected BMPs.

The definition of MEP in Attachment VIII has been revised as follows:

"Maximum Extent Practicable (MEP). The minimum required performance standard for implementation of municipal storm water management programs to reduce pollutants in storm water. Clean Water Act § 402(p)(3)(B)(iii) requires that municipal permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." MEP is the cumulative effect of implementing, evaluating, and making corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate controls are implemented in the most effective manner. To achieve the MEP standard, municipalities must employ whatever BMPs are technically feasible and are not cost-prohibitive. Reducing pollutants to the MEP means choosing effective BMPs, and rejecting applicable BMPs only where other effective BMPs will serve the same purpose, or the BMPs would not be technically feasible, or the costs would be prohibitive. A final determination of whether a municipality has reduced pollutants to the MEP can only be made by the State or Regional Water Boards."

Comment A4 Comment Letter Page # 11

Summary: NELs are feasible and required. South Lake Tahoe is used as an example.

Response: Under 40 Code of Federal Regulations section 122.44(k)(2)&(3), the State Water Board may impose BMPs for control of storm water discharges in lieu of numeric effluent limitations.

In 2005, the State Water Board assembled a blue ribbon panel to address the feasibility of including numeric effluent limits as part of NPDES municipal, industrial, and construction storm water permits. The panel issued a report dated June 19, 2006, which included recommendations as to the feasibility of including numeric limitations in storm water permits, how such limitations should be established, and what data should be required (SWRCB, 2006).

The report concluded that "It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges. However, it is possible to select and design them much more rigorously with respect to the physical, chemical and/or biological processes that take place within them, providing more confidence that the estimated mean concentrations of constituents in the effluents will be close to the design target."

Consistent with the findings of the Blue Ribbon Panel and precedential State Water Board orders (State Water Board Orders Nos. WQ 91-03 and WQ 91-04), this Order allows the Department to implement BMPs to comply with the requirements of the Order.

As commentors state, in November 12, 2010, USEPA issued a revision to a November 22, 2002 memorandum in which it had "affirm[ed] the appropriateness of an iterative, adaptive management best management practices (BMP) approach" for improving storm water management over time. In the revisions, USEPA recommended that, in the case the permitting authority determines that MS4 discharges have the reasonable potential to cause or contribute to a water quality excursion, the permitting authority, where feasible, include numeric effluent limitations as necessary to meet water quality standards. However, the revisions recognized that the permitting authority's decision as to how to express water quality based effluent limitations (WQBELs), i.e. as numeric effluent limitations or BMPs, would be based on an analysis of the specific facts and circumstances surrounding the permit. Moreover, USEPA has since invited comment on the revisions to the memorandum and will be making a determination as to whether to "either retain the memorandum without change, to reissue it with revisions, or to withdraw it." http://www.epa.gov/npdes/pubs/sw_tmdlwla_comments_pdf

Comment A5 Comment Letter Page # 12

Summary: The permit must include specific provisions to eliminate waste discharges into ASBSs

Response: The permit provisions addressing ASBS discharges have been substantially revised. The permit prohibits all discharges to ASBS except where the discharge is in compliance with the terms of the General Exception (State Board Resolution No. 2012-0012) as specified in the order.

Comment A6 Comment Letter Page # 12 & 13

Summary: The permit must include additional ASBS locations and possibly more as follows:

- 1) Del Mar Landing watershed - include Hwy1 - less 1/2 mile from the coast
- 2) Jug handle Cove Watershed - 10 meters upstream the ASBS.
- 3) Gerstle Cove Watershed - includes Hwy1 - less than 1/2 mile from the coast.

Response: The 2003 SCCRPP Study identified all ASBS dischargers and discharge points. Caltrans was responsible for ten ASBS as specified in Finding #21 of the Tentative Order. Caltrans is not specified as a responsible discharger for the ASBS at Del Mar Landing Watershed, Jughandle Cove Watershed (former Pygmy Forest Ecological Staircase), and Gerstle Cove Watershed.

Priority discharge locations for each ASBS have been identified in Attachment III.

Comment A7 Comment Letter Page # 13

Summary: Specific monitoring should be included for ASBS-specific activities to track progress of waste discharge reductions. Specific implementation provisions must be described in the Storm Water Management Plan (SWMP) that begin immediately to achieve the prohibition for discharges into an ASBS, as well as to achieve natural water quality standards for discharges away from the ASBS that may impact the ASBS.

Response: State Board Resolution No. 2012-0012, Attachment B, the authorization to grant exceptions to the Ocean Plan prohibition for affected ASBS, outlines the provisions for permitted point source storm water discharges. These comprehensive requirements of Resolution No. 2012-0012 fully evaluate compliance with the prohibitions and conditions in the Special Protections that include: conditions allowed for existing storm water discharges into an ASBS, SWMP revisions, reporting an alteration of natural water quality in the ASBS, and implementation schedules for mandatory sampling and monitoring. In addition, dischargers that receive approval for an exception to the Ocean Plan Prohibition are allowed to select an individual monitoring program or join a regional monitoring program. Both the individual and regional monitoring programs have been included in and are enforceable through the final Order.

Comment A8 Comment Letter Page # 13

Summary: Monitoring should be enhanced. Specifically, the requirements for site location and retention should be adjusted.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment A9 Comment Letter Page # 14

Summary: Acute and Chronic monitoring for toxicity should be conducted at every site.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment A10 Comment Letter Page # 14

Summary: Receiving Water monitoring is not clear and the threshold is too high (not stringent enough) for continued monitoring. Additional programmatic questions presented for monitoring purposes. Impaired waterbodies should be priority for monitoring.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision. Monitoring in impaired watersheds has been made a priority.

Comment A11 Comment Letter Page # 14

Summary: Trash monitoring should include a trash characterization study

Response: For a traditional municipality, a trash characterization study would highlight specific targets for the types of trash collected (e.g. if more food wrappers are found in a particular area, then targeted education aimed at restaurants and more strategic trash receptacle placement can be planned). Considering the nature of the activities the Department primarily conducts, this proposed requirement is not appropriate.

Comment A12 Comment Letter Page # 15

Summary: LID is a superior and practicable method of addressing stormwater.

Response: Staff does not disagree with the comment. The draft Order emphasizes landscape-based treatment, with a focus on enhancing soil quality to comply with the statewide Water Efficient Landscape Ordinance. Staff does disagree that treat and release BMPs are not included in LID. Flow based designs are generally limited to bioswales and biostrips. The decision to allow these LID options does not diminish the ability or desirability of implementing LID practices. In the Consent Decree referenced in comment A2, it is recognized that some feasible BMPs are designed based on flow rather than volume.

Comment A13 Comment Letter Page # 16

Summary: LID should have specific measurable performance standards (numeric)

Response: Attainment of Water Quality Objectives (WQOs) is the appropriate performance measure. A blanket requirement to have a certain percentage of LID measures is not linked to attainment of WQOs. Also see comment response to A14.

Comment A14 Comment Letter Page # 17

Summary: The LID standard should be an on-site retention standard

Response: Complete source control (full onsite retention) would keep all pollutants from a site from entering our waterways, below a certain flow threshold at least. But as a performance standard, it is problematic in several ways. It does not address antecedent dry periods, allowable draw down times, the impact of reduced flows to our waterways, and whether infiltration is practicable on-site. The draft Order will implement sizing and hydromodification control design standards and prioritize retention, although it will allow for flow-through BMPs where needed.

Comment A15 Comment Letter Page # 19

Summary: The permit should not have any waivers from sizing criteria

Response: A waiver based on an expectation of minimal impacts on water quality cannot be said to violate the MEP standard. A number of considerations inform what constitutes MEP for addressing a discharge, including whether the control measure will actually address a pollutant of concern and whether the costs of the control measure will have a reasonable relationship to the pollution control benefits to be achieved.
Alternative compliance language has been added to the permit to address those instances where on-site mitigation is not possible.

Comment A16 Comment Letter Page # 19

Summary: The exemptions from Hydromodification should not be allowed

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment A17 Comment Letter Page # 20

Summary: Reference materials used to assess bridge hydromodification issues is not best choice

Response: Staff disagrees. The peer-reviewed FHWA guidance documents that include stream stability assessment procedures are appropriate for California's 11 geomorphic provinces. Caltrans and other state DOTs are familiar with FHWA guidance and will be able to easily adopt the methodologies into their design procedures.

Comment A18 Comment Letter Page # 20

Summary: Hydromodification should be for "Pre-development" rather than for "pre-project"

Response: It is not possible to develop a mutually agreed-upon standard for pre-development hydrology without a lengthy stakeholder process. One of the biggest complicating factors is that our hydrology has been significantly altered by the addition of dry weather flows, sometimes in volumes that are 3-5 times the volume of stormwater flows. Biocriteria need to be developed for the state and the ecological limits of flow alteration that can be tolerated and still have some favorable biological outcome need to be determined. This is still 5-10 years away. The pre-project standard is appropriate at this point.

Comment A19 Comment Letter Page # 21

Summary: BMP development and implementation should be strengthened. This should include performance standards for structural BMPs. Should have annual report on BMP effectiveness

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision. BMP effectiveness assessments are required as part of the Program Evaluation and elsewhere in the Order.

Comment A20 Comment Letter Page # 22

Summary: All BMPs should be sized for a 3/4" storm event (24 hr), which is the mandate in SUSMP.

Response: An across the board storm depth of 3/4" is not appropriate in areas like the North Coast or Inland Deserts.

The 3/4 " design standard is the default, fallback standard if the projects that fall under SUSMP do not want to meet any of the three other volume-based requirements (85th percentile storm event, 80% of annual volume, OR local record-based criteria that is equivalent) along with two flow-based criteria. Consistent with the SUSMP, the 85th percentile, 24-hour duration storm event is used. The 24 hour, 85th percentile storm events vary by geomorphic region in the state and range from 0.1 to 2.5 inches.

The SUSMP clearly states that these design standards are on an "or" basis.

Comment A21 Comment Letter Page # 22

Summary: Draft Permit's section on Vegetation Control is largely limited to pesticide, herbicide and fertilizer application, and fails to address soil stabilization through vegetation that is consistent across watersheds. District 7 and others would benefit significantly if the District 11 Consent Decree's vegetation-based erosion control requirements were included in the Draft Permit.

Response: Tentative Order Section E.2.h.3)b) Vegetation Control not only addresses chemical reduction or elimination of pesticides, herbicides, and fertilizers to the MEP, but also requires an integrated pest management (IPM) and integrated vegetation management program (IVM). The IPM and IVM programs also reduces the need for chemicals and encourages the use of native species. The management of vegetation on the right-of-way can be a challenge for the Department; however, alternative methods can be through the use of native species and the use of mechanical and biological methods.

In addition, when the Department applies chemicals it will be required to perform a site-specific and application-specific assessment to prevent discharge. The IPM and IVM practices address safety and environmental concerns such as water quality, wetland protection, native planting, erosion and noxious weed control.

Comment A22 Comment Letter Page # 23

Summary: TMDLs and WLAs must be included, and be enforceable

Response: The TMDL-related findings and provisions of the Proposed Order have been substantially revised in response to comments received.

The revised Proposed Order requires the Department to comply with all TMDLs listed in Attachment IV. Attachment IV identifies TMDLs adopted by the Regional Water Boards and approved by the State Water Board and USEPA that assign the Department a WLA or that specify the Department as a responsible party in the implementation plan. In addition, Attachment IV identifies TMDLs established by USEPA that specify the Department as a responsible party or that identify NPDES permitted storm water sources or point sources generally, or identify roads generally, as subject to the TMDL. The listed TMDLs are incorporated by reference into the Order and are enforceable through the Order.

However, the high variance in the level of detail and specificity in the TMDLs developed by the Regional Water Boards and USEPA necessitates the development of more specific permit requirements in many cases, including deliverables and required actions, derived from each TMDL's WLA and implementation requirements. These requirements will provide clarity to the Department regarding its responsibilities for compliance with applicable TMDLs. The development of TMDL-specific permit requirements is subject to notice and a public comment period. Given the number of TMDLs that apply to the Department, it is not possible to develop TMDL-specific permit requirements for every TMDL listed in Attachment IV without severely delaying the issuance of the Order. Because most of the TMDLs were developed by the Regional Water Boards, and because some of the WLAs are shared by multiple dischargers, the development of TMDL-specific permit requirements is best coordinated initially at the Regional Water Board level.

Accordingly, the Proposed Order sets out a process by which the Regional Water Boards, in consultation with the State Water Board and the Department, will develop TMDL-specific permit requirements where necessary within one year of the effective date of the Order. (The single exception is the Lake Tahoe sediment and nutrients TMDL, for which TMDL-specific permit requirements have already been incorporated into Attachment IV.) Regional Water Board staff will also prepare supporting analyses explaining how the proposed TMDL-specific permit requirements will implement the TMDL and are consistent with the assumptions and requirements of any applicable WLA and, where a BMP-based approach to permit limitations is selected, how the BMPs will be sufficient to implement applicable WLAs. Following a notice and comment period, Attachment IV of the Order and the Fact Sheet will be reopened for incorporation of these requirements and supporting analyses into the Order.

Comment A23 Comment Letter Page # 24

Summary: WLAs must include consideration of numeric effluent limitations

Response: See Response to Comment A.22.

Comment A24 Comment Letter Page # 24

Summary: The permit should include TMDL specific monitoring requirements.

Response: See Response to Comment A.22.

Comment A25 Comment Letter Page # 25

Summary: The permit should clarify TMDL compliance determinations.

Response: See Response to Comment A.22.

Comment A26 Comment Letter Page # 25

Summary: The permit should include ALL Adopted TMDLs. Several TMDLs are missing entirely from Region 4 alone, including Calleguas Creek Toxicity, Calleguas Creek Salts, Los Cerritos Metals (EPA), Machado Lake Toxics, Santa Ana River Reach 3 Chloride (EPA), San Gabriel River and Impaired Tributaries Metals and Selenium (EPA)

Response: This permit provision has been substantially revised to address the comment.

The Machado Lake Pesticides and PCBs TMDL has not received USEPA approval. The provision for Permit Re-opener does allow for modifications as necessary to reflect new TMDLs or the new or revised WQOs that attain approval.

Calleguas Creek Watershed Salts TMDL is not included because the Department was not specified as a responsible discharger nor a potential source of salts in the Calleguas Creek Watershed. All applicable TMDLs have been included.

Comment A27 Comment Letter Page # 26

Summary: The permit should include TMDL compliance dates.

Response: Compliance deadlines will be included in the TMDL-specific permit requirements developed by the Regional Water Boards. See Response to Comment A.22.

Comment A28 Comment Letter Page # 26

Summary: The permit Attachment V (region specific) should be expanded to include all appropriate mandates

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Summary: Mosquitoes opportunistically breed in BMPs which hold standing water for even a short period of time, thus creating a public health concern. The Board should consider adding specific and concise language addressing the potential for mosquito production in structural BMPs, requiring compliance with the California Health and Safety Code, coordinating with local mosquito and vector control agencies, and providing those agencies with an inventory of BMPs or other structures capable of holding water for more than 96 hours.

Response: The proposed language is more appropriate for inclusion in the Fact Sheet and Tentative Order than in the Permit Findings. Language has been added to page 17 of the Fact Sheet describing the vector control issues related to structural BMPs. Language has been added requiring the Department to comply with applicable provisions of the Health and Safety Code related to vector control; to coordinate and cooperate with local mosquito and vector control agencies; and to maintain an inventory of BMPs and other structures capable of holding water for more than 96 hours.

Comment C1 Comment Letter Page # 2

Summary: Resource impacts. There will be significant impacts on the resources available to the Department to carry out their operation. Total estimated personnel cost ranges from \$55 million to \$1.1 billion annually. Total estimated capital cost ranges from \$735 million to \$1.1 billion annually. The order should focus on cost-effective programs that ensure commensurate water quality benefits.

Response: The cost of compliance is discussed on pages 27-30 of the Fact Sheet. We acknowledge that the Department will incur additional costs in implementing the requirements of this Order. It is not possible for State Board staff to confirm or refute the Department's cost estimates; however, staff believes that the true cost of compliance cannot be known until the number of sites needing remediation are known through the results of the compliance monitoring program.

The Department has included the cost of complying with TMDLs and ASBS special protections, both of which are considerable. The Department will incur these costs whether or not the two programs are included in the permit. They are not unanticipated expenses and budgeting for them should have already taken place.

Changes made to the monitoring and reporting program, iterative process, and project planning and design section will improve the cost-effectiveness of the program and reduce the Department's projected estimates.

Comment C2 Comment Letter Page # 3

Summary: Impact to project delivery. Request that the Tentative Order include a provision to implement new development requirements limited to projects that have not initiated the public environmental review phase.

Response: This permit provision has been substantially revised to address the comment.

Comment C3 Comment Letter Page # 3

Summary: Inconsistent classification of exceedances of numeric water quality objectives. The Order changes the basis for identifying exceedances from pollutant concentrations in the receiving water to exceedances in the effluent. Proposes monitoring and corrective measures only if there is reasonable potential to impact receiving waters.

Response: This permit provision has been substantially revised to address the comment.

Comment C4 Comment Letter Page # 4

Summary: Basing the iterative process on effluent concentrations effectively causes effluent limits based directly on the numeric water quality objectives with no dilution factor or mixing zone. Requests that the Tentative Order reflect the policy stated in the Fact Sheet and current practice by basing compliance on the results of receiving water monitoring rather than effluent monitoring.

Response: This permit provision has been substantially revised to address the comment.

Comment C5 Comment Letter Page # 5

Summary: There will be unavoidable exceedances of narrative water quality standards. The current permit requires that the discharge cause a condition of nuisance or affect beneficial uses before it would be considered a violation. The draft Tentative Order requires only that pollutants be present to constitute a violation. Request that the receiving water limitations for implementing the narrative standards remain the same as in the current permit.

Response: This permit provision has been substantially revised to address the comment.

Comment C6 Comment Letter Page # 6

Summary: Requirement for statewide structural treatment retrofits for existing roadways. The Tentative Order appears to mandate a statewide program for retrofit of existing roadways with structural treatment controls. Requests that the Tentative Order state that exceedances trigger a re-examination of opportunities to reduce pollutant loading, and that a structural retrofit is limited to addressing water quality as identified in TMDLs.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision. It is important to note though that BMPs may include non-structural controls as well.

Comment C7 Comment Letter Page # 8

Summary: Liability for agricultural and other run on. Not all agricultural run on is covered by waivers and the Department would be responsible for it. The expectation that agricultural discharges are not a source of pollutants is unrealistic. The requirement to cooperate with organizations conducting monitoring is unclear.

Response: Provision B.3 states that conditionally exempt non-storm water discharges that are found to be significant sources of pollution are to be effectively prohibited. Revisions have been made to the Proposed Order to clarify that, in the case of landscape irrigation and lawn watering, only minor, incidental discharges are conditionally exempt.

With regard to agricultural discharges, the Proposed Order has been amended to clarify that agricultural irrigation return flows are not a non-storm water discharge that must be either prohibited or conditionally exempted in an MS4 permit. The regulations conditionally exempt MS4s from the requirement to effectively prohibit "irrigation water" discharges to the MS4. The regulations also completely exempt MS4s from addressing non-storm water discharges (also called "illicit discharges") if they are regulated by an NPDES permit (40 C.F.R. §§ 122.26, subd. (b)(2); 122.26, subd. (d)(2)(iv)(B)). The term "irrigation water" is not defined and the regulations do not clarify whether that term is intended to encompass agricultural irrigation return flows that may run on to the Department's rights of way.

Because agricultural return flows cannot be regulated by an NPDES permit, it is unlikely that they were intended to be treated as "illicit discharges" under the federal MS4 regulations. In discussing illicit non-storm water discharges and the requirement to effectively prohibit such discharges, the preamble of the Phase I final regulations states: "The CWA prohibits the point source discharge of non-storm water not subject to an NPDES permit through municipal separate storm sewers to waters of the United States. Thus, classifying such discharges as illicit properly identifies such discharges as being illegal" (55 FR § 47996). Implicit in this statement is that illicit discharges do not include non-point source discharges, including agricultural return flows, which are statutorily excluded from the definition of a point-source discharge (CWA § 502(14).) Elsewhere in the preamble, EPA refers to the conditionally exempted non-storm water discharges as "seemingly innocent flows that are characteristic of human existence in urban environments and which discharge to municipal separate storm sewers" (55 F.R.48037). This language further suggests that the term "irrigation water" was not intended to encompass agricultural irrigation return flows characteristic of a rural area.

Clean Water Act Section 402(1)(1) states that an NPDES permitting agency "shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture." Accordingly, agricultural return flows co-mingling with an illicit discharge would be treated as a point source discharge. This fact, however, does not lead the State Water Board to find that agricultural return flows should be subject to the conditional prohibition on non-storm water discharges.

First, the illicit discharge prohibition acts to prevent non-storm water discharges "into the storm sewers" (CWA § 402, subd. (p)(3)(B)(ii)). 40 C.F.R. §122.26, subdivision (d)(2)(iv)(B)(1) similarly states that the MS4 is to "prevent illicit discharges to the municipal separate storm sewer system." Based on a plain reading of the statutory and regulatory language, a determination of what constitutes an illicit discharge should be made with reference to the nature of the discharge as it enters the MS4. Unless the agricultural return flow has co-mingled with a point source discharge prior to entering the MS4, it is not subject to the discharge prohibition. Further, since certain point source discharges are conditionally exempted from the requirement for effective prohibition under 40 C.F.R. § 122.26, subd. (d)(2)(iv)(B)(1), the fact that the agricultural return flow may have co-mingled with such an exempted dry weather point source discharge prior to entering the MS4 does not render it an illicit discharge subject to the effective prohibition. See *Fishermen Against the Destruction of the Environment, Inc. v. Closter Farms, Inc.* (11th Cir. 2002) 300 F.3d 1294.

Second, even assuming that the agricultural return flow mingling with a point source discharge after entering the MS4 would trigger the requirements related to non-storm water discharges, agricultural return flows are not expected to require an effective prohibition. Irrigation of agricultural fields typically occurs in dry weather, not wet weather, and therefore the State Water Board anticipates that agricultural irrigation return flows into the Department's MS4 would generally not co-mingle with discharges other than exempt non-storm water discharges.

Third, agricultural return flows entering an MS4, while not regulated by an NPDES permit, are through much of the State regulated under WDRs, waivers, and Basin Plan prohibitions. The regulations exempt MS4s from addressing non-storm water discharges that are regulated by an NPDES permit. Flows to the Department's MS4 regulated through state-law based permits are subject to regulatory oversight analogous to being subject to an NPDES permit. The appropriate regulatory mechanism for these discharges is the non-point source regulatory programs and not a municipal storm water permit.

Finally, it should also be noted that the Department has limited control options over agricultural return flows since up gradient flows must in many cases be allowed to flow under or alongside the roadway so as not to threaten roadway integrity.

Comment C8 Comment Letter Page # 8

Summary: Prohibition on discharge to ASBS. A general exception to the discharge prohibition has not been approved by the State Water Board. The Department is at risk of third party lawsuits until the exception is approved. Request that the prohibition of discharge to ASBS be contingent on the approval of the general exception.

Response: Adoption hearing for the General Exception to the California Ocean Plan Waste Discharge Prohibition (WQ Order 2012-0012) was on March 20, 2012. The adoption hearing for the Caltrans Permit is tentatively scheduled for the September 2012.

ASBS language in the Tentative Order has been revised based on the General Exception to the California Ocean Plan Waste Discharge Prohibition.

Comment C9 Comment Letter Page # 9

Summary: Basin Plan Clarifications. Regional Board Basin Plans contain a number of prohibitions potentially affecting the Department. Request that a comprehensive review be conducted to identify the prohibitions of all of the basin plans and assess how they potentially will impact the Department and other MS4 dischargers.

Response: This is not a permit issue. The Department is subject to all applicable requirements of the Basin Plans. It is not appropriate for the State Water Board to interpret Regional Water Board requirements. If the Department is unclear on the applicability of any specific Basin Plan requirement or prohibition, it should contact the Regional Board.

Comment C10 Comment Letter Page # 9

Summary: Excessive Monitoring. The Department has made significant progress in characterizing runoff. The extensive proposed statewide sampling effort, while having huge cost, adds little to the knowledge base of runoff constituents and their concentrations, and is not supported by the Tentative Order and Fact Sheet. Believe that continued [characterization] monitoring is necessary on a periodic basis to assess whether these pollutant concentrations are increasing or decreasing and to refocus pollutant control efforts.

Response: This permit provision has been substantially revised to address the comment.

Comment C11 Comment Letter Page # 9

Summary: C.11.1 Excessive Monitoring. Some pollutants identified in Attachment II are of minor interest and others are unlikely to have environmental consequences.

C.11.2. Monitoring for both TDS and conductivity is redundant since they are significantly correlated.

C.11.3 Monitoring for Platinum could perhaps be accomplished as a special study, but it is not needed as part of a statewide program.

C.11.4. Enterococcus should be monitored for marine discharges and rather than total coliform as recommended by USEPA.

Response: This permit provision has been substantially revised to address the comment.

Comment C12 Comment Letter Page # 10

Summary: Excessive Monitoring. Recommend use of the Mitoscan test to indicate the presence of toxicity to reflect the short-term nature of stormwater discharges.

Response: Toxicity testing protocols have been simplified to allow the use of the EPA Test of Significant Toxicity (section E.2.c.6)d). The mitoscan test is not an USEPA approved method, and thus cannot be included.

Comment C13 Comment Letter Page # 10

Summary: Excessive monitoring. The 100 sites proposed for monitoring each year is excessive and not required of any other Phase I municipality in the state or DOT in the nation. Analytes should be selected in consultation with each regional Board instead of defaulting to Attachment II.

Response: The monitoring program has been significantly revised, but given the size and scale of the Department's MS4 (as referenced in the comment, 15,300 centerline miles of roadway), staff believes that 100 sites per year are not excessive.

Comment C14 Comment Letter Page # 10

Summary: Request that monitoring have an identified goal of addressing trends and filling information gaps and that the discharge monitoring program be reduced to a maximum of 25 locations throughout the state selected from a pool of candidate sites that the Department has previously documented.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision. See comment response to C.13

Comment C15 Comment Letter Page # 11

Summary: Fish Passage and Stream Stability Analysis Program. Request that the State Board delete the requirement to conduct a fish passage and stream stability analysis program from the Tentative Order. Alternatively, be limited to a stream stability analysis program as a pilot program, to determine the extent of the problem.

Response: This permit provision has been deleted.

Comment C16 Comment Letter Page # 11

Summary: Construction General Permit Compliance and fees. Request a fixed single annual payment be made to cover fees associated with project registration for all CGP-related costs for the Department construction projects and that the draft permit clarify that project coverage under the CGP after adoption.

Response: Fees are invoiced on a quarterly basis. The Department should be able to anticipate the construction projects that are upcoming in the following year and should be able to provide the legislature with a cost estimate of the permit fees. It is within reason to allow the Department to bundle the quarterly invoices into one payment, but the State Board is unable to process these on an annual basis.

Also, this comment is outside the scope of the permit, as the fee schedule and its implementation is subject to the provisions of the California Code of Regulations (CCR), Title 23, Division 3, Chapter 9. (Waste Discharge Reports and Requirements), Article 1. (Fees)

Comment C17 Comment Letter Page # 11

Summary: E.2.h.3)c) SW Drainage System Facilities Maintenance

Drain Inlet Cleaning. The requirement to inspect drainage inlets and catch basins, and to track the weight and volume of material removed is unnecessary and has no water quality benefit. The Tentative Order should be revised to require further study of this issue via a pilot program to ascertain more economical methods of removing a similar volume of material from the Department storm drain systems.

Response: Stormwater Drainage Inlets should be periodically inspected and cleaned when there is sediment buildup that reaches or exceeds the flow line elevation of the outlet pipe or when 50% or more of the inlet grate is blocked with debris.

Caltrans needs to review their DICE Study (June 2003 Final Report), a drain inlet cleaning program conducted in certain urban areas to determine: 1) if there have been water quality improvements, 2) effective allocation of resources, and 3) a more economical method for removal of waste.

The draft order has been revised to remove or clarify requirements in response to this comment.

Comment C18 Comment Letter Page # B-1

Summary: Operable SWMP. Clarify whether the 2007 SWMP replaces the 2003 SWMP when the permit is adopted.

Response: The Proposed 2007 SWMP was not approved by the State Board and it does not replace the 2003 SWMP when the new permit is adopted. The Department must resubmit a SWMP for approval by the State Board that is consistent with the requirements of the Tentative Order.

Comment C19 Comment Letter Page # B-1

Summary: Coverage of Administrative Buildings. Office buildings should be regulated under the local MS4 and not the Department's MS4. "Construction" should replace "design" in Finding 2.

"This Order also regulates discharges associated with design and maintenance of properties and facilities and discharges of storm water associated with ongoing highway operation."

COMMENT - This description should clearly exclude offices, etc., that are more appropriately regulated by the local MS4 Permit. In addition, the term "construction" should replace "design"

Response: All of the Department's properties are considered part of its MS4 and subject to the permit. Finding 9 has been revised to indicate that leased office spaces are not covered under the permit. Not all office spaces may be within the boundaries of a local MS4, and some are part of other facilities that are clearly subject to the permit, e.g. corporation yards and maintenance facilities. "Design" has been removed from Finding 2. The Order does not regulate discharges from construction activities.

The draft order has been revised to distinguish between Highway and non-highway (which includes administrative buildings) properties.

Comment C20 Comment Letter Page # B-1

Summary: Finding 4 - State Authority - The provisions in the Tentative Order that are not based on the Clean Water Act cannot be enforced under the Clean Water Act enforcement mechanisms and should be clearly identified.

Response: The relevant provisions have been revised to reference "waters of the United States." Also, see comment response to C.202

Comment C21 Comment Letter Page # B-1

Summary: Finding 6 - Non-storm water discharge - Conditionally exempt - Based on the definition of pollutants, virtually all conditionally exempt non-storm water discharges would be prohibited. This finding should clarify that the conditionally exempt discharges are only prohibited if they have pollutant concentrations identified as causing adverse impacts on beneficial uses (for example).

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C22 Comment Letter Page # B-1

- Summary:** Finding 6 - Non-Storm Water Discharge - Agricultural Discharges. Language in order indicates that agricultural run-on from areas without conditional waivers and other types of run-on are the responsibility of the Department to prohibit or otherwise regulate. The expectation regarding cooperation with other organizations should be clarified and limited to providing right-of-way (ROW) access to the regulated discharger.
- Response:** Provision B.3 states that conditionally exempt non-storm water discharges that are found to be significant sources of pollution are to be effectively prohibited. Revisions have been made to the Proposed Order to clarify that, in the case of landscape irrigation and lawn watering, only minor, incidental discharges are conditionally exempt.

With regard to agricultural discharges, the Proposed Order has been amended to clarify that agricultural irrigation return flows are not a non-storm water discharge that must be either prohibited or conditionally exempted in an MS4 permit. The regulations conditionally exempt MS4s from the requirement to effectively prohibit "irrigation water" discharges to the MS4. The regulations also completely exempt MS4s from addressing non-storm water discharges (also called "illicit discharges") if they are regulated by an NPDES permit (40 C.F.R. §§ 122.26, subd. (b)(2); 122.26, subd. (d)(2)(iv)(B)). The term "irrigation water" is not defined and the regulations do not clarify whether that term is intended to encompass agricultural irrigation return flows that may run on to the Department's rights of way.

Because agricultural return flows cannot be regulated by an NPDES permit, it is unlikely that they were intended to be treated as "illicit discharges" under the federal MS4 regulations. In discussing illicit non-storm water discharges and the requirement to effectively prohibit such discharges, the preamble of the Phase I final regulations states: "The CWA prohibits the point source discharge of non-storm water not subject to an NPDES permit through municipal separate storm sewers to waters of the United States. Thus, classifying such discharges as illicit properly identifies such discharges as being illegal" (55 FR § 47996). Implicit in this statement is that illicit discharges do not include non-point source discharges, including agricultural return flows, which are statutorily excluded from the definition of a point-source discharge (CWA § 502(14).) Elsewhere in the preamble, EPA refers to the conditionally exempted non-storm water discharges as "seemingly innocent flows that are characteristic of human existence in urban environments and which discharge to municipal separate storm sewers" (55 F.R.48037). This language further suggests that the term "irrigation water" was not intended to encompass agricultural irrigation return flows characteristic of a rural area.

Clean Water Act Section 402(l)(1) states that an NPDES permitting agency "shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture." Accordingly, agricultural return flows co-mingling with an illicit discharge would be treated as a point source discharge. This fact, however, does not lead the State Water Board to find that agricultural return flows should be subject to the conditional prohibition on non-storm water discharges.

First, the illicit discharge prohibition acts to prevent non-storm water discharges "into the storm sewers" (CWA § 402, subd. (p)(3)(B)(ii)). 40 C.F.R. §122.26, subdivision (d)(2)(iv)(B)(1) similarly states that the MS4 is to "prevent illicit discharges to the municipal separate storm sewer system." Based on a plain reading of the statutory and regulatory language, a determination of what constitutes an illicit discharge should be made with reference to the nature of the discharge as it enters the MS4. Unless the agricultural return flow has co-mingled with a point source discharge prior to entering the MS4, it is not subject to the discharge prohibition. Further, since certain point source discharges are conditionally exempted from the requirement for effective prohibition under 40 C.F.R. § 122.26, subd. (d)(2)(iv)(B)(1), the fact that the agricultural return flow may have co-mingled with such an exempted dry weather point source discharge prior to entering the MS4 does not render it an illicit discharge subject to the effective prohibition. See *Fishermen Against the Destruction of the Environment, Inc. v. Closter Farms, Inc.* (11th Cir. 2002) 300 F.3d 1294.

Second, even assuming that the agricultural return flow mingling with a point source discharge after entering the MS4 would trigger the requirements related to non-storm water discharges, agricultural return flows are not expected to require an effective prohibition. Irrigation of agricultural fields typically occurs in dry weather, not wet weather, and therefore the State Water Board anticipates that agricultural irrigation return flows into the Department's MS4 would generally not co-mingle with discharges other than exempt non-storm water discharges.

Third, agricultural return flows entering an MS4, while not regulated by an NPDES permit, are through much of the State regulated under WDRs, waivers, and Basin Plan prohibitions. The regulations exempt MS4s from addressing non-storm water discharges that are regulated by an NPDES permit. Flows to the Department's MS4 regulated through state-law based permits are subject to regulatory oversight analogous to being subject to an NPDES permit. The appropriate regulatory mechanism for these discharges is the non-point source regulatory programs and not a municipal storm water permit.

Finally, it should also be noted that the Department has limited control options over agricultural return flows since up gradient flows must in many cases be allowed to flow under or alongside the roadway so as not to threaten roadway integrity.

Comment C23 Comment Letter Page # B-2

- Summary:** Finding 8 - Performance Standard for Discharges from MS4s - MEP - The presence of pollutants below levels of concern does not trigger treatment. This statement should be clarified to indicate that pollutants above a certain threshold require treatment.
- Response:** The clarification is not correct in that treatment is not always required. The Finding correctly states the intent of MEP, that pollutant reduction and source control are emphasized first, and that treatment MAY be required. {emphasis added}

Comment C24 Comment Letter Page # B-2

- Summary:** As currently used in Water Board documents, any non-water concentration of a constituent is considered a pollutant. Thus, treatment could always be required based on this wording, which would lead to non-compliance. It should be pointed out that the iterative approach also applies to the attainment of water quality standards.
- Response:** Treatment is not always required. Treatment requirements are spelled out in the section on Project Planning and Design. The proposed change is not needed.

Comment C25 Comment Letter Page # B-2

Summary: Finding 9 - Discharges Regulated - Department Facilities Description should clearly exclude offices and similar facilities that may be more appropriately regulated by the local MS4 Permit.

Response: See response to comment C.19.

Comment C26 Comment Letter Page # B-2

Summary: Finding 9 - Discharges Regulated - Dewatering -- Currently, the Regional Boards have very divergent permit requirements that complicate training and the development of procedures. Compliance would be streamlined if the State Board identified a uniform and consistent approach for addressing dewatering as part of this permit.

Response: Comment noted. Staff does not plan to develop a uniform statewide dewatering standard. The Department must comply with Regional Board requirements.

Comment C27 Comment Letter Page # B-2

Summary: Finding 11 - Department's Discharges - Coverage of non-CWA waters - "These surface waters include creeks, rivers, reservoirs, wetlands, saline sinks, lagoons, estuaries, bays and the pacific ocean and tributaries thereto. These surface waters are waters of the United States as defined in 40 CFR 122.2" This statement is incorrect and does not conform to the definition at 122.2

Response: This permit provision has been substantially revised to address the comment.

Comment C28 Comment Letter Page # B-2

Summary: Finding 11 - Department's Discharges - Discharges covered by the Permit -- "As specified, this Order regulates the Department's municipal storm water and non-storm water discharges." This definition of the Permit scope would be clarified if the phrase "from the Departments MS4 system. [sic]" In addition, please clarify if this includes airspace leases.

Response: The intent of the comment is unclear. Airspace leases are included in the finding (11.d.).

Comment C29 Comment Letter Page # B-2

Summary: Finding 12 - Potential Pollutants - Since "construction site runoff" is regulated by the CGP it should not be included on this list (2nd paragraph)

Response: Construction site runoff is not regulated under this draft order; however, the finding is correct as written: construction site runoff is a source of pollutants to waters of the United States.

Comment C30 Comment Letter Page # B-2

Summary: Finding 14 - Characterization Studies - High Priority Constituents - While aluminum and iron frequently exceeded standards, they are not high priority constituents, because they are in runoff for the most part and are naturally present in soils.

Response: Priority discharges are those that poses a threat to water quality . The 2003 Characterization Study compared the relevant water quality objectives to determine which parameters should be considered highest priority for future BMP implementation or study. Auminum and iron were not only a high priority for BMP implementation or future study, but also determined a high priority for monitoring due to high levels in runoff.

Comment C31 Comment Letter Page # B-3

Summary: Finding 15 - Department Discharges that are Subject to MS4 Permit Regulations - Streets -- It is our understanding that a street, in the absence of a stormwater conveyance, is not an MS4. Please Clarify

Response: Finding 15 reflects the definition of a municipal separate storm sewer found at 40 CFR section 122.26(b)(8): "Municipal separate storm sewer means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned by a State, city, town or other public body, that is designed or used for collecting or conveying storm water, which is not a combined sewer, and which is not part of a publicly owned treatment works". No changes have been made in response to this comment.

Comment C32 Comment Letter Page # B-3

Summary: Finding 15 - Department Discharges that are subject to MS4 Permit Regulations - Jurisdiction -- Clarify if this means that state highways administered by local municipalities are not covered by this Tentative Order.

Response: State highways owned by the State but administered by a local municipality are covered by this Tentative Order (40 CFR, 122.26 (b) (8)).

Comment C33 Comment Letter Page # B-3

Summary: Finding 16 - Maintenance and Construction Activities not subject to the Construction General Permit (CGP). The last sentence should include the words "to MEP". The finding also references use of the California Stormwater Association (CASQA) BMP Handbooks. The Department develops its own guidance and manuals appropriate for highway applications.

Response: This permit provision has been substantially revised to address the comment.

Comment C34 Comment Letter Page # B-3

Summary: Finding 18 - Runoff from the Department's Facilities - "Past monitoring data show that storm water runoff from the Department's facilities contains pollutants that may adversely affect the beneficial uses of receiving waters. Facilities not subject to the Industrial General Permit (IGP) are required to implement BMPs to reduce the discharge of pollutants from these facilities to the MEP." Does this statement refer to discharges from facilities covered by this draft permit? Why is the Industrial General Permit (IGP) mentioned here? Please Clarify.

Response: The finding refers to Department facilities covered by the Tentative Order. Department facilities subject to the IGP are not covered by the Tentative Order as specified in Finding 9. The IGP is mentioned to highlight the distinction and to show that BMPs must be implemented at facilities not covered by the IGP.

Comment C35 Comment Letter Page # B-3

Summary: Finding 19 - Numeric effluent limits - Although this is the standard approach, the Tentative Order uses effluent concentrations greater than objectives to trigger the iterative approach and corrective measures that, in effect, establish effluent limits.

Response: The Finding is correct in its' description of the permit provisions and rationale for not using numeric effluent limitations in the permit. No change is required.

Comment C36 Comment Letter Page # B-3

Summary: Finding 27 - Self-monitoring program -- Chronic Toxicity Monitoring - Because stormwater discharges are relatively short-term, the test interval should correspond to the typical discharge duration. This finding should require only acute toxicity monitoring. Alternatively, the draft permit could require chronic monitoring for non-stormwater discharges and acute monitoring for storm water discharges.

Response: This permit provision has been substantially revised to address the revised monitoring program. Chronic toxicity is required as described in the revised monitoring program.

Comment C37 Comment Letter Page # B-3

Summary: Finding 28 - Stormwater Management Plan (SWMP) - It is not clear which SWMP is to be implemented when the Permit is approved. This section appears to reference the 2003 SWMP. However, in 2007, the State Board solicited comments on the revised SWMP, and Finding 1 references the 2007 SWMP. Please clarify.

Response: The Department must prepare and submit for approval to the State Water Board a revised SWMP consistent with the requirements of the Tentative Order. The findings and the provisions of the Proposed Order have been revised to clarify that the Department shall implement the 2003 SWMP, including any revisions made in response to USEPA's 2011 Findings of Violation and Order for Compliance, until a new SWMP is approved.

Comment C38 Comment Letter Page # B-4

Summary: Page 14 - Finding 34 - TMDLs/WLAs -- Recommend inserting, "prepared by the State and approved by USEPA" prior to the WLA (in the first sentence)

Response: The TMDL findings and provisions of the permit have been substantially revised to address comments. See comment response A-22.

Comment C39 Comment Letter Page # B-4

Summary: Finding 36 - TMDL compliance plans. -- For efficiency, this process could be streamlined by having a single consolidated plan submitted to each Regional Water Board, especially for TMDLs where the Department is the major source.

The high degree of specificity for the San Francisco Bay TMDLs reduces the Department's ability to respond to changes based on adaptive management. Request a general requirement to comply with TMDLs.

The Department's goal is to attain clear and unambiguous compliance with the permit. The Tentative Order should explain which discharges constitute reportable non-compliance.

Response: The TMDL permit provisions have been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C40 Comment Letter Page # B-4

Summary: Finding 39 - Basin Plan Prohibitions -- Request that this provision of the Tentative Order not be implemented until the Department has had the opportunity to review the Basin Plan prohibitions and related requirements and either request exceptions, where allowed, or implement plans for coming into compliance. In some cases, the Department may need to request modifications to the Basin Plans.

Response: The Department is subject to applicable Basin Plan requirements whether or not they are identified in the Tentative Order. It is not appropriate for the State Water Board to provide blanket exceptions to Regional Water Board requirements. The Department must work directly with those Regional Water Boards that have requirements or prohibitions which it deems unworkable or unrealistic.

Comment C41 Comment Letter Page # B-4

Summary: Finding 40 - Region Specific Requirements - As with Finding 39, some of the region-specific requirements cannot be complied with, and we request that they not be added to this Permit until the Department has been able to complete the assessment requested for Finding 39.

Response: This finding has not been revised, but the Department's concerns have been addressed in Attachment V.

Comment C42 Comment Letter Page # B-4

Summary: Prohibition A.2 - Prohibition on discharge to ASBS -- the exception is still in development, and the Department will be exposed to agency enforcement, third-party lawsuits, and the need to make non-compliance notifications for each ASBS location until the exception is granted. This prohibition should be contingent on the State Board issuing the General Exception.

Response: See response to Comment C8

Comment C43 Comment Letter Page # B-5

Summary: Prohibition A.3 - Requirement to discharge only stormwater or NPDES Permitted flows, or conditionally exempted flows per section B - Request that this prohibition be modified so that the Department is not placed in a position of unavoidable non-compliance.

Response: This permit provision has not been revised, but the concern has been addressed in revisions to Provision B.

Comment C44 Comment Letter Page # B-5

Summary: Prohibition A.4 - Prohibition for discharges that cause or contribute to exceedances of standards. Should be modified according to Section D. or this prohibition may not be needed, since this requirement is addressed more comprehensively in Section D.

Response: This prohibition does not create a condition of immediate non-compliance. The prohibition is consistent with State Water Board Orders WQ 98-01, 99-05, and 2001-15 which require storm water dischargers to comply with water quality standards. The Water Quality Orders and the Tentative Order permit the Department to achieve compliance through the progressive implementation of BMPs through the iterative process.

Comment C45 Comment Letter Page # B-5

Summary: Prohibition A.4 - This blanket inclusion of all Basin Plan prohibitions should be contingent on a compliance assessment and an opportunity for The Department to request exceptions or to come into compliance.

Response: See response to comment C40.

Comment C46 Comment Letter Page # B-5

Summary: Prohibition A.4 - request clarification on the meaning of compliance in the context of these requirements. The prohibition should clarify that the samples used for comparison with the objectives/criteria are taken from receiving water.

Response: See response to comment C44.

Comment C47 Comment Letter Page # B-5

Summary: Request that this prohibition (Prohibition A.4) be held in abeyance until a viable means of compliance can be identified.

Response: See response to comments C40 and C44.

Comment C48 Comment Letter Page # B-5

Summary: Prohibition A.5 - Prohibition on discharge causing exceedances (Ocean Plan, etc.) -- Request that this prohibition be held in abeyance until the compliance assessment procedures are specified and until a viable means of compliance can be identified.

Response: See response to comments C40 and C44.

Comment C49 Comment Letter Page # B-6

Summary: B.2 - Non-storm Water Discharge Prohibition - See comment under Stormwater Prohibitions

Response: See responses under storm water prohibitions.

Comment C50 Comment Letter Page # B-6

Summary: B.2 - Non-storm Water Discharge Prohibitions - Discharges from potable water. Drinking water generally contains trihalomethanes exceeding CTR criteria but lower than drinking water standards. How are these exceedances being addressed? These discharges cannot realistically be prohibited, if they are essential for the operation and maintenance of potable water supply.

Response: Non-storm water discharges containing pollutants exceeding CTR criteria must be effectively eliminated or prohibited where the State Water Board Executive Director identifies them as sources of pollutants.

Comment C51 Comment Letter Page # B-6

Summary: B.3 Non-storm Water Discharge Prohibitions - Additional exempt discharges - It would be helpful to include a procedure for proposing additional discharges for this list.

Response: Staff believes that the list in B.2. covers all possible discharge categories. The Department may propose additional discharge categories in the SWMP.

Comment C52 Comment Letter Page # B-6

Summary: B.3 Non-storm Water Discharge Prohibitions - Dewatering and/or "de minimis" NPDES -- Would it be possible for the State Board to identify a uniform and consistent approach for addressing dewatering as part of this Permit? This would facilitate compliance.

Response: A uniform statewide standard for dewatering or de minimis discharges would likely contain the most restrictive elements of the Regional Board permits and Basin Plan requirements. Staff believes that it's in the Department's best interest to comply with the regional requirements.

Comment C53 Comment Letter Page # B-6

Summary: B.5 - Comprehensive Non-storm Water Report - This requirement includes a comparison with basin Plan criteria but should also mention CTR and Ocean Plan criteria. The specific criteria within those standards should be defined. For example, the chronic criteria should be applied to permanent discharges, and the acute criteria should apply to short-term or intermittent discharges. Also unclear is the point of comparison.

Response: This requirement is now B.6. In the new draft. The Tentative Order has been revised to include comparisons with CTR and Ocean Plan criteria. Criteria are defined in the CTR and Ocean Plan. Comparisons should be made to applicable criteria.

Comment C54 Comment Letter Page # B-6

Summary: B.5 - Comprehensive Non-storm Water Report -- This section refers to pollutants by themselves being a problem. We presume the intent is to address the source of pollutants causing problems, but this should be clarified.

Response: This requirement is now B.6. in the new draft. The last paragraph in B.6 refers to the categories of non-storm water discharge identified in B.2. that could be sources of pollutants, not the pollutant themselves. No change is needed.

Comment C55 Comment Letter Page # B-6

Summary: B.5 - Comprehensive Non-storm Water Report -- Where exceedances are noted, BMPs are to be implemented, and monitoring is to be conducted, all following a time schedule. Is The Department expected to monitor for all categories of non-stormwater?

Response: This requirement is now B.6. in the new draft. Follow up monitoring and BMP implementation are required where the State Water Board Executive Officer have identified the category of non-storm water discharge as a source of pollutants. Follow up monitoring will be limited to the category of discharge that has been found to be a source of pollutants.

Comment C56 Comment Letter Page # B-6

Summary: B.5 - Comprehensive Non-storm Water Report -- The requirements in the first paragraph of B.5 are unclear. Effectively prohibiting the discharge would eliminate all impacts, not just minimize them. In addition, some discharges cannot be prohibited - they can be treated, or BMPs can be applied -- but full elimination is unattainable.

Response: This requirement is now B.6. in the new draft. Discharges can be effectively prohibited by eliminating the discharge or through implementation of appropriate BMPs. The State Water Board Executive Director will determine if any given discharge has been effectively prohibited through implementation of BMPs.

Comment C57 Comment Letter Page # B-6

Summary: B.5 - Comprehensive Non-storm Water Report - Request that non-stormwater monitoring be combined with discharge monitoring under E.2.c.2)a). Therefore, monitoring results of non-stormwater should be compared to receiving water criteria only in cases of direct discharge or potential impact.

Response: This requirement is now B.6. in the new draft. This section does not require any additional monitoring, except as may be required by the State Water Board Executive Director where a category of discharge has been found to be a source of pollutants. The intent of this Provision is to compare the non-storm water monitoring results obtained in section E.2.c.2) with applicable criteria, not to create a new monitoring requirement. Parameters for both storm water and non-storm water monitoring are described in section E.2.c.2).

Comment C58 Comment Letter Page # B-7

Summary: Lake Tahoe Effluent Limitations. Roadway runoff cannot comply with these effluent limitations, due to natural constituents in the runoff. See the discussion for Finding 19 [comment 35]. The Department has received a letter from the Lahontan Regional Water Board staff stating that it is no longer subject to the numeric effluent limits because of the TMDL and crediting program. Please remove this effluent limitation.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C59 Comment Letter Page # B-7

Summary: Receiving Water Limitations - The draft permit states that the receiving water quality objectives... are applicable to discharges from The Department's facilities and properties. Please clarify that the discharges from the facilities and properties should not cause or contribute to an exceedance - and not that the receiving water quality objective applies end-of-pipe.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C60 Comment Letter Page # B-7

Summary: Iterative cycle upgrades must be public noticed -- A public notice and possible Board hearing with each BMP review and upgrade is very cumbersome and simply not feasible. We would like to point out that the current SWMP is from 2003, and several years of effort went into developing the 2007 SWMP, but it was not approved. We request a more efficient procedure that is more viable and promotes revisions that are more doable.

Response: State and Federal law require the State Water Board to provide opportunity for public involvement in the development of NPDES permits. We've addressed this issue through revisions to E.1.a and E.1.f, which describes the process for adoption of the SWMP.

Comment C61 Comment Letter Page # B-7

Summary: Provision E.2 - Coordination with Municipalities - This provision appears to indicate that The Department will need to comply with local requirements. We request better clarification regarding Department exposure here, and that this Permit and Department SWMP take precedence.

Response: The Department's interpretation is correct; the Department must comply with local requirements. The Tentative Order does not supersede the lawful requirements of local agencies. See provision E.8.

Comment C62 Comment Letter Page # B-7

Summary: E.2 - Legal Authority - The term "ordinance" should be deleted. The Department' authority is derived from the State Legislature, and it does not enact ordinances

Response: This reference to "ordinances" has been deleted.

Comment C63 Comment Letter Page # B-7

Summary: E.2.b.3(a) - Fiscal Resources -- This is a concern, since the Department is fully dependent on appropriations by the legislature to the State Highway Account; this process should not be mandated by an outside agency.

Response: This provision is contained in the existing permit (DWQ 99-06). Staff has considered the cost of compliance with the Tentative Order and is not insensitive to the difficulty in managing multiple priorities with limited resources. Compliance with the permit is not subject to the availability of funding. Adequate funding must be maintained to meet all permit requirements.

Comment C64 Comment Letter Page # B-7

Summary: E.2.b.3(b) Fiscal Analysis and Budget Analysis - These two provisions are not well-defined. We recommend that the purpose of each analysis be clearly stated and the fundamental contents described. We have an overall concern regarding the appropriateness of these fiscal and budget analyses and of whether they are appropriately included in the permit.

Response: A Fiscal Analysis and Budget Analysis are necessary to enable the Water Boards to track the allocation of funding to different program elements and determine if adequate funding is being provided. These analyses are required under the terms of the existing permit (DWQ 99-06). The Fiscal Analysis for FY 2008-09 amounted to one page in the Annual Report. In FY 2009-10 it amounted to one paragraph. Staff believes that the requirement is not unreasonable.

Comment C65 Comment Letter Page # B-8

Summary: Provision E.2.b.6) - Incident reporting/permit violation - This section states: "Submission of an Incident Report Form is not an admission by the Department of a violation of this Order." However, the Standard Conditions state: "Any Permit noncompliance constitutes a violation of the CWA and the Porter-Cologne Water Quality Control Act." This appears to be a fundamental contradiction, in that submittal of the form is the same as providing notice of a Permit violation. Please clarify.

Response: There is no contradiction. Provision E.2.b.6) provides that the submission of the Incident Report Form is not an admission by the Department of a violation of the Order. It may or may not constitute a violation, which will be determined by the Regional Water Board. If, upon investigation of the incident, the Regional Water Board determines that there was a violation, an enforcement action may be initiated using information contained in the Incident Report Form. The Standard Conditions refer to the incident itself, not the submission of an Incident Report Form. It should be noted that failure to submit an Incident Report Form when required would be a violation of the permit.

Comment C66 Comment Letter Page # B-8

Summary: Incident Reporting - The first paragraph states that an incident report form should be submitted, the second paragraph states that an incident report form is not required. Please clarify these requirements and the apparent contradiction.

Response: This permit provision has been substantially revised to address the comment.

Comment C67 Comment Letter Page # B-8

Summary: Incident Reporting - Spill reporting is fulfilled with current Cal-EMA reporting procedures. This information is provided on the Cal-EMA website. This reporting requirement is duplicative. We request that this requirement be deleted from the Order.

Response: This permit provision has been substantially revised to address the comment.

Comment C68 Comment Letter Page # B-8

Summary: Provision E.2.c - Monitoring Requirements (general) - We request that the monitoring requirements be revised to clearly state the purpose of each monitoring effort and then provide the minimum requirements of the monitoring. The draft permit should include provisions for future revisions based on discussions between the Board staff and The Department.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C69 Comment Letter Page # B-8

Summary: Provision E.2.c - Monitoring Requirements (specific) - What is the justification for 100 locations? What new information is going to be gained? (page 26)

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C70 Comment Letter Page # B-8

Summary: Provision E.2.c - Monitoring Requirements (specific) - Monitoring specifies acute toxicity; which is the correct analysis? (page27)

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C71 Comment Letter Page # b-8

Summary: Provision E.2.c - Monitoring Requirements (specific) - To perform the water quality exceedance analysis correctly, one should have paired monitoring sites: an outfall monitoring site into a receiving water monitoring site. Otherwise, the analysis is flawed. (page 27)

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C72 Comment Letter Page # B-8

Summary: Provision E.2.c - Monitoring Requirements (specific) - Too much discretion is given to the Regional Board to add more sites and monitoring (page 28)

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C73 Comment Letter Page # B-8

Summary: Provision E.2.c - Monitoring Requirements (specific) - We are unclear about the relationship between the Long Term Monitoring Program and the specifics found on pages 25-27.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C74 Comment Letter Page # B-8

Summary: Provision E.2.c - Monitoring Requirements (specific) - Please clarify whether the discharge monitoring and non-stormwater monitoring sites required under B.5, page 19, could be at the same location, since each discharge monitoring site will sample two non-storm events and three storm events.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C75 Comment Letter Page # B-8

Summary: Provision E.2.c - Monitoring Requirements (specific) - Please clarify whether non-stormwater sampling at discharge monitoring sites may occur during winter dry periods.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C76 Comment Letter Page # B-8

Summary: Provision E.2.c - Monitoring Requirements (specific) - The Definition of Pollutants should be clarified to mean constituents that exceed a relevant standard. The Department requests the option to work with each Regional Board to narrow down the list of target constituents to monitor.

Response: The term "Pollutant" is not defined in section E.2.c., but it is defined in the Glossary, Attachment VIII. This term has been revised to be consistent with the federal definition in 40 CFR 122.2.(b)

Comment C77 Comment Letter Page # B-9

Summary: Provision E.2.c - Monitoring Requirements (specific) - As indicated by the State Board, the intent of discharge characterization is to repair discharge locations where problems were identified previously (e.g. illegal connections, illicit discharges). We request that problem locations be identified as those where the constituent concentration exceeds WQO of 303(d) listed water bodies.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C78 Comment Letter Page # B-9

Summary: Provision E.2.c - Monitoring Requirements (specific) - Slope Lateral Drains: We request that the Department will attempt to select sites where there is a likelihood of intercepting water from pollutant sources upstream of the Department ROW; primarily the down slope of the ROW would be monitored; and the constituent list be site-specific.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C79 Comment Letter Page # B-9

Summary: Provision E.2.c - Monitoring Requirements (specific) - We request that the wording be changed to: "The Characterization Study identified discharges from The Department facilities"

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C80 Comment Letter Page # B-9

Summary: We request that this language be changed to: "All samples shall be analyzed by a certified or accredited laboratory as required by Water Code section 13176. Clopyralid will be an exception to this condition, since California laboratories are not certified/accredited for this specified USGS method."

Response: Currently the Environmental Laboratory Accreditation Program holds only those constituents found in 4 CFR Part 136.3. The monitoring and reporting program has been substantially revised and, as a result, the comment is no longer applicable.

Comment C81 Comment Letter Page # B-9

Summary: Page 25, We request that constituents to be monitored be selected in consultation with a Regional Board for all sites.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C82 Comment Letter Page # B-9

Summary: Provision E.2.c - Monitoring Requirements (specific) - page 25 The Permit states that both chronic and acute toxicity will be performed using three species, one vertebrate, one invertebrate, and one plant. Acute toxicity is not performed on plant species. This is generally a two-species test. We request that this be revised/clarified.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C83 Comment Letter Page # B-9

Summary: Provision E.2.c - Monitoring Requirements (specific) - We request that toxicity testing be required only at sites that are expected to cause or contribute to receiving water. Toxicity of discharges is unlikely to be a good indicator of receiving water toxicity due to changes between edge-of-ROW, receiving water, and dilution. Toxicity testing is already required for receiving water monitoring.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C84 Comment Letter Page # B-9

Summary: Provision E.2.c - Monitoring Requirements (specific) - The Department does not have any authorized dry-weather flows. We request an exception for dry-weather flow monitoring.

Response: Staff has observed dry weather runoff from landscape irrigation and unknown sources in the Department's right-of-way on various occasions. Therefore, no change required.

Comment C85 Comment Letter Page # B-9

Summary: Provision E.2.c - Monitoring Requirements (specific) - We request the Board consider targeting a maximum of 25 sites that clearly cause or contribute to receiving water or that are discharging to 303(d) listed water bodies.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C86 Comment Letter Page # B-9

Summary: Provision E.2.c - Monitoring Requirements (specific) - We request that the initial SSR be submitted in Year 2 to allow for the initial siting process and the approval process by both the Department and Board to be completed.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C87 Comment Letter Page # B-10

Summary: Provision E.2.c - Monitoring Requirements (specific) - We request that, for every location where criteria are not met, monitoring shall be discontinued, and the Department shall not be required to include the site in next year's SSR.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C88 Comment Letter Page # B-10

Summary: Provision E.2.c - Monitoring Requirements (specific) - We request that monitoring be limited to one to two years, and that sites not meeting the criteria be put on a priority list for receiving BMPs, rather than receiving continued monitoring.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C89 Comment Letter Page # B-10

Summary: Provision E.2.c - Monitoring Requirements (specific) - We request that for two or more exceedances, the WQO must be exceeded by 50% for continued monitoring of a site. A similar limit could apply for 3 or more exceedances. Otherwise, item 1) could be triggered, even if sample results exceed the WQO slightly. The Quality Control criteria should allow +/- 20% tolerance for duplicate samples. 2) Continued monitoring should only be required for constituents that exceed the WQO.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C90 Comment Letter Page # B-10

Summary: Provision E.2.c - Monitoring Requirements (specific) - Long-term monitoring is already part of another Permit section, and long-term monitoring sites are to be selected as part of this effort. We request that this duplicative Permit provision be deleted.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C91 Comment Letter Page # B-10

Summary: Provision E.2.c - Monitoring Requirements (specific) - We request deleting this requirement that the Regional Board approve changes to sampling and that analytical lists be justified on prior results.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C92 Comment Letter Page # B-10

Summary: Provision E.2.c - Monitoring Requirements (specific) - "Analytical results show acute toxicity in three or more samples." This criterion, as written, appears to apply to three samples anytime during the permit cycle. We request that the criterion should apply to analytical results for a single season.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C93 Comment Letter Page # B-11

Summary: Provision E.2.c - Monitoring Requirements (specific) - We request that the Department should have an option to pay a yearly amount into the SWAMP in lieu of conducting receiving water monitoring for sites outside the Department's ROW.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C94 Comment Letter Page # B-11

Summary: Provision E.2.c - Monitoring Requirements (specific) - We request that The Department and regulators should have the option to pay into the SWAMP program to better understand receiving waters where impacts from stormwater are possible. Other alternatives could be identified, such as regional research institutions. The entities would then use best science to monitor the most important sections within receiving water - which still may coincide with The Department discharges.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C95 Comment Letter Page # B-11

Summary: Provision E.2.c - Monitoring Requirements (specific) - The Permit requires submittal of an MRR by October 1 each year. Please clarify if the period covered by the MRR will be May 1 through April 30 of the previous year.

Response: The draft order has been revised to specify a reporting period of July 1 of previous year through June 30 of the current year.

Comment C96 Comment Letter Page # B-11

Summary: Provision E.2.c - Monitoring Requirements (specific) - We request that Phrases such as "compliance monitoring" and "achieve compliance" should be removed throughout the Permit. Alternative language should be used to implement the intended function of MS4 monitoring programs: identifying important sources, prioritized BMP programs, and a quantification of progress. If the intent is "compliance" monitoring, then The Department should be considered in compliance with the Permit, so long as they actively seek and implement BMP solutions to bring discharges below standards.

Response: "Compliance," in its various forms is used as intended in the Tentative Order. Under specified conditions, water quality standards do constitute action levels, requiring the Department to make changes in its operations to achieve compliance. This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C97 Comment Letter Page # B-11

Summary: Provision E.2.c - Monitoring Requirements (specific) - The Permit requires the Department to report on trash and litter removal activities. There is no tangible benefit from this requirement, since Trash TMDLs already have a reporting procedure. We request that the Department document gross solids removal at select BMPs in areas where Trash TMDLs have been adopted. Gross solids are defined as litter plus vegetative material. The assessment of gross solids removal shall follow protocols established by the Department and may include quantitative measurements of the volume and/or weight of the gross solids removed.

Response: Staff disagrees that there is no tangible benefit to the trash and litter reporting requirements. Such measurements are essential to program effectiveness assessments. The monitoring program has been substantially revised to address procedural aspects of the comment.

Comment C98 Comment Letter Page # B-11

Summary: Provision E.2.e.5a) - Monitoring Requirements (specific) - This site selection approach is neither scientific nor cost effective. We request that the Department conduct Pilot LID Retrofit Projects using a two-phased approach. Phase I would assess the technical feasibility of biostrips and bioswales at 24 sites, with different land uses and soil types. This will focus efforts on LID that are likely to succeed. Phase II would test the feasibility of soil amendments at any Phase I sites that did not demonstrate substantial runoff volume reduction using existing soils.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C99 Comment Letter Page # B-12

Summary: Provision E.2.c - Monitoring Requirements (specific) - Barium and Platinum are not a Clean Water Act Priority Pollutants. We request that it be removed from water chemistry analytes list. Chronic toxicity: No TUc objective is specified. We request that barium and platinum be removed from the water chemistry list; and it be clarified whether TUc > 1 is the applicable objective.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C100 Comment Letter Page # B-12

Summary: One pesticide, Clopyralid, is required by a USGS method. Several laboratories were contacted, and only one laboratory tests for this constituent using an approved EPA method. We request that samples for Clopyralid be analyzed, either by the USGS method or by the EPA test method.

Response: The monitoring and reporting requirements of the Order have been substantially revised and, as a result, the comment is not applicable to the current draft provisions.

Comment C101 Comment Letter Page # B-12

Summary: Provision E.2.c - Monitoring Requirements (specific) - Reporting Limits for Diuron and Selenium will be difficult or even impossible to achieve. They may not be reported down to the state reporting limits, and the RL for Clopyralid is not given. We request that the RL for Se = 2 ug/L; and that the RL for Diuron = .5 Ug/L.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C102 Comment Letter Page # B-12

Summary: Provision E.2.c - Monitoring Requirements (specific) - Both acute and chronic toxicity have associated reporting limits. It is unclear how reporting limits apply to toxicity testing. In addition, the table states a RL for TUc as 0, which does not look accurate.

Response: This permit provision has been substantially revised to address the comment.

Comment C103 Comment Letter Page # B-12

Summary: Provision E.2.c - Monitoring Requirements (specific) - Please clarify the reporting limits for toxicity. We further request that (a) acute toxicity should be calculated using the formula specified in the analytical method instead of the California Ocean Plan; and (b) the reporting limit for chronic toxicity should be changed from 0 to 1 in Attachment II.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C104 Comment Letter Page # B-12

Summary: Provision E.2.c - Monitoring Requirements (specific) - Attachment III contains an incorrect citation to the Permit section. Permit section E.2.c.2 (g) states that MMR needs to be separate from the Annual Report, but Attachment III states that it will be part of the Annual Report. Please clarify.

Response: This permit provision has been substantially revised to address the comment. Attachment III has been renumbered to Attachment IX.

Comment C105 Comment Letter Page # B-12

Summary: For the San Francisco Bay Region, there is a requirement to plan and report on findings related to "technical uncertainties regarding copper effects in the Bay." This requirement is not restricted to the impact of The Department discharges, as are the other Region-specific requirements. While the requirement is not specifically to perform the studies unilaterally (without partners), the requirement to report these results seems to place sole responsibility on The Department. We request that the language should be revised to clarify the role of The Department within the larger roles of the MS4 Permittees and stakeholders. Specifically, an allowance for planning, executing, and reporting via an overarching watershed group should be allowed. The Department could financially participate in the study proportional to its estimated load or footprint in the watershed. Alternatively, the Department could provide water quality data to others who may have the expertise to perform this type of study.

Response: This permit provision has been deleted.

Comment C106 Comment Letter Page # B-13

Summary: Monitoring protocols for identifying and quantifying sediment are not specified. We request that the Department be able to use/develop its own protocols.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C107 Comment Letter Page # B-13

Summary: Regional Board Discretion - The Regional Boards can greatly expand the scope . This discretion should be removed to provide a consistent statewide approach for efficiency.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C108 Comment Letter Page # B-13

Summary: Provision E.2.c - Monitoring Requirements (specific) - The Department can eliminate discharges of its own but has no authority to stop others. The Department will address these by developing an IC/ID program through the SWMP.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C109 Comment Letter Page # B-13

Summary: Monitoring - The monitoring section remains excessive... We request that the draft permit provide the Department with the flexibility to target the monitoring to the specific receiving water.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C110 Comment Letter Page # B-13

Summary: Treatment control sites - The term "Treatment Control Sites," needs to be defined. If this means all structural stormwater treatment devices, the terms should be changed for consistency and clarity.

Response: This permit provision has been substantially revised to address the comment

Comment C111 Comment Letter Page # B-13

Summary: Effluent trigger for iterative procedure. Exceedances in the effluent will potentially occur very frequently for lead, copper, zinc, bacteria, and also for additional constituents where the Boards have used the drinking water standards for surface waters designated MUN. The trigger should apply in the receiving water.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C112 Comment Letter Page # B-13

Summary: Triggers for Receiving Water Monitoring - The receiving water monitoring program provision must be revised to be implemented only if the Department has a direct discharge to the receiving water. Otherwise, the results will not be interpretable and will lack benefits.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C113 Comment Letter Page # B-13

Summary: Monitoring Results Report - The draft permit requires that The Department submit results from the TMDL monitoring as a part of the Annual Report. We request that the reporting for the TMDLs be coordinated with the other stakeholders for the TMDL and the results submitted to the local Regional Board as a part of the TMDL Implementation Plan

Response: We agree with the comment. TDML compliance monitoring need not be reported in the Monitoring Results Report but to the Regional Water Boards as provided in the TMDL Compliance Plans. However, a summary of TMDL monitoring activities is required to be included in the TMDL Status Review Report to be submitted as required in section E.4.c.

Comment C114 Comment Letter Page # B-13

Summary: Receiving Water Limitations Compliance - Revise the Permit to require 30-day notification of the exceedances once they are determined and to report in the Annual Report the corrective actions being taken by The Department to address the exceedances. This is the approach taken with the Central Valley Regional Board and the RMP.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C115 Comment Letter Page # B-14

Summary: Maintenance Facility Compliance Monitoring - It is not appropriate for the Permit to specify who within The Department conducts inspections. The Permit can mandate that inspections be completed, but implementation details should be addressed in the SWMP or guidance and training documents. Eliminate the reference to the specific job classification of the person conducting the inspection of Maintenance Facilities.

Response: This permit provision has been substantially revised to address the comment.

Comment C116 Comment Letter Page # B-14

Summary: Reporting requirements for Trash and Litter - Quantification of mixed loads, such as storm drain maintenance and road sweeping, will be a very rough estimate at best, whether by weight or volume. The numbers will not be accurate enough for comparisons from year to year or for trend analysis. We request that it be limited to areas where it is required for TMDLs.

Response: The permit provisions has been substantially revised to address the comment

Comment C117 Comment Letter Page # B-14

Summary: Receiving Water Limitations Compliance - the draft permit states: "This provision does not apply where the pollutant causing the exceedance ... is in violation of that waste load allocation." Please delete the last portion of this sentence, "is in violation of that waste load allocation."

Response: This permit provision has been deleted.

Comment C118 Comment Letter Page # B-14

Summary: Projects subject to post construction treatment requirements - We request the criteria be changed to trigger treatment BMPs for projects that include 1 acre or more of new impervious area for highway facilities and 10,000 sf or more of new impervious area for non-highway facilities that are in an urban MS4.

Response: This permit provision has been substantially revised to address the comment.

Comment C119 Comment Letter Page # B-14

Summary: Projects Subject to Post Construction Treatment Requirements - These additional triggers should be deleted. Treatment BMPs will already be provided for all projects meeting the criteria noted on 1a), regardless of whether the project discharges to an ESA, TMDLs, or 303(d)-listed water body. The Department BMP type selection process already considers pollutants discharging to impaired water bodies.

Response: This permit provision has been substantially revised to address the comment.

Comment C120 Comment Letter Page # B-14

Summary: Treatment BMP types appropriate for highways - It is up to The Department to determine which BMP is appropriate to be in compliance. Please delete any reference to proprietary devices.

Response: This permit provision has been substantially revised to address the comment.

Comment C121 Comment Letter Page # B-14

Summary: Alternative Compliance with Treatment Sizing Criteria - This is unrealistic, as offsite mitigation programs will typically include multiple jurisdictions and will require significant time of CEQA compliance, funding and other development.

Response: This permit provision has been substantially revised to address the comment.

Comment C122 Comment Letter Page # B-15

Summary: Scope of design criteria applicability for redevelopment projects, Footnote 4, . As written, this would require all projects that cannot separate flows to try to treat the existing impervious and the added impervious. This will cause confusion when working with Regional Boards to prove compliance with the impacts of the added impervious of the actual project. This footnote should be deleted as it is not appropriate for highways and the language for treatment sizing and alternative compliance has already been described in the draft permit language.

Response: The footnote was changed to remove the "reconstructed" language from the footnote. Staff does not see any confusion with these requirements. There is impact from all impervious surfaces, not just new ones. If a project cannot hydraulically separate the flows from a redeveloped site, then the whole flow will have to be treated to mitigate said impact. Staff has moved footnote into main text and adding clarifying language.

Comment C123 Comment Letter Page # B-15

Summary: Alternative Compliance footnote 5, 6, and 7 should be deleted. These are not administratively feasible for the Department, especially in regions of the state where there is no regional alternative program available.

Response: This permit provision has been deleted.

Comment C124 Comment Letter Page # B-15

Summary: Hydromodification - Exemption -- We request that the Permit include alternatives, including the thresholds similar to State Transportation agencies in Oregon and Washington. In addition, it is unclear why stream stability is to be evaluated for a project if the pre- and post-water balance is achieved. It is unclear if the hydromodification requirements imply extensive watershed modeling. If that is not the intent, the draft permit needs to clarify the expectation of compliance. The Fact Sheet may have incorrectly noted the intent of requiring extensive watershed modeling.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C125 Comment Letter Page # B-15

Summary: Provision E.2.d.1)c) Stream Crossing Design Guidelines - The draft permit requires a Level 1 stream stability analysis every two years for a number of streams. We recommend that this be conducted on a pilot basis or be limited to regions where the beneficial uses of COLD, SPAWN, and MIGR exist and not be required for all stream crossings statewide.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft provision.

Comment C126 Comment Letter Page # B-16

Summary: The stream crossing requirements are excessive. The guidelines require that designs be developed to allow the "passage of woody material and other debris." Debris control upstream of some culverts is a safety issue that must take precedence. This requirement should be reworded to address safety.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C127 Comment Letter Page # B-16

Summary: What methods are required to conduct the stream assessment? We request that the Permit reference the specific method in the Permit language, so there is no confusion. It is unclear if this task is intended to be a brief rapid assessment or requires extensive modeling.

Response: Tentative Order has been revised to indicate that the Rapid Assessment was the intended method.

Comment C128 Comment Letter Page # B-16

Summary: What is the basis in the CWA or State Water Code for these requirements, which are not related to water quality? If there is no basis, they should be deleted. The Department is currently working with the Department of Fish Game - which is the appropriate agency - to address these issues.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C129 Comment Letter Page # B-16

Summary: low Impact Development - We request The Department develop and trial test a metric for assessing LID implementation within 18 months. For example, the metric could prioritize the design criteria for infiltrating 90% of the design storm over the treatment criteria.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C130 Comment Letter Page # B-16

Summary: Conduct Pilot LID Retrofit Projects - We request that the draft permit reduce the number of studies per District and for the Department as a whole. This requirement should clearly state the goal and objectives of these studies.

Response: This permit provision has been deleted.

Comment C131 Comment Letter Page # B-16

Summary: Biodegradable Materials - This provision includes a reference to waters of the state, rather than limiting the requirement to waters of the US.

Response: The provision has been revised to reference "waters of the United States."

Comment C132 Comment Letter Page # B-16

Summary: Facility Pollution Prevention Plan (FPPP) It is unclear as to what constitutes the "end of the first year." Please modify the language to require that FPPPs be prepared within 365 days of the effective date of the Permit.

Response: This permit provision has been substantially revised to address the comment.

Comment C133 Comment Letter Page # B-16

Summary: Maintenance Program Activities - All discharges contain pollutants at some concentration. This provision needs to define the threshold for determining whether the discharge presents a potential risk to water quality.

Response: The need to prepare an FPPP is based on a determination by Regional Water Board staff that a non-maintenance facility may discharge pollutants. The Department need not prepare an FPPP for such facilities unless so notified by the Regional Water Board.

Comment C134 Comment Letter Page # B-16

Summary: The definitions are not clear for waste storage or disposal facilities, which are applied to both of these categories. To eliminate confusion, it may be necessary, as part of the SWMP, to develop a list of all facilities and agree on the facilities that need FPPPs. This lack of clarity on which facilities need FPPPs has caused confusion in the past.

Response: This permit provision has been substantially revised to address the comment.

Comment C135 Comment Letter Page # B-17

Summary: Slope Inspection - What is the water quality benefit of this effort? Maintenance staff currently is looking for slides for all sloped locations. Does the Board have evidence that this effort will be beneficial or if it is performed elsewhere?

Response: The purpose and water quality benefit of this requirement is the prevention of the discharge of sediment and debris from erosion of unstable slopes. Maintenance staff should not be looking for slides (after the fact) but looking for and stabilizing vulnerable locations before there is a discharge. This effort will be beneficial if it is implemented with due diligence by the Department. This section does not apply to landslides and other forms of mass wasting which are covered under section E.2.h.3)d).

Comment C136 Comment Letter Page # B-17

Summary: Slope Inspections- The draft permit should clarify "vulnerable road segments." Slopes in locations that do not discharge to waters of the US should not be included.

Response: Vulnerable road segments are adequately defined in the language of the Tentative Order as those that are prone to erosion and sediment discharge. The requirements are applicable to all locations statewide. This section does not apply to landslides and other forms of mass wasting which are covered under section E.2.h.3)d).

Comment C137 Comment Letter Page # B-17

Summary: Vegetation Control - Rain event -- We are required to follow label instructions that would put the Department in violation of the draft permit. Please eliminate the reference to no spray if rain is forecast, and require that label instructions be followed.

Response: Staff agrees with the comment. Rain is needed to activate certain pre-emergent herbicides. Section E.2.h.3)b)iii) has been deleted. Herbicides must be applied according to label directions as provided in section E.2.h.3)b)i).

Comment C138 Comment Letter Page # B-17

Summary: Vegetation Control - The draft permit has extensive requirements for assessing site-specific conditions prior to applying chemicals. It is unclear whether this is required just once per site or for every application. Please clarify the language to require assessment on either an annual basis or one time for each type of chemical used and for generic sites.

Response: The assessment may be performed once for the site-specific variables that do not change over time, such as proximity to water bodies. Other variables must be assessed before every application, such as expected precipitation. All variables in section E.2.h.3)b)iii) (as revised) must be considered before every application.

Comment C139 Comment Letter Page # B-17

Summary: It is impractical to require the removal of debris from inlets when they are 25% full. This would greatly reduce the capacity of the transportation system due to more frequent traffic disruptions. The requirement of cleaning will vary with the facility and depends on flow volume, capacity, ease of access, etc. Many culverts normally operate with 25% bed load and do not need to be cleaned. Please clarify how capacity is defined.

Response: The requirements do not apply to culverts, only to drain inlets and catch basins which retain debris. Capacity is the available storage volume in the structure to retain debris before it is passed through. The cleaning threshold has been increased to 50% capacity.

The term "bed load" typically refers to solid materials transported in a moving fluid on or near the bed of the channel. It does not appear to be properly applied in this comment. If 25% of the flow in the Department's culverts consists of bed load, there is a serious sediment discharge problem.

Comment C140 Comment Letter Page # B-17

Summary: Reporting the total weight or volume of waste and debris removed from drainage inlets is unnecessarily burdensome and we do not see a basis for this requirement in the Clean water Act or its regulations..

Response: See response to comment C17

Comment C141 Comment Letter Page # B-18

Summary: Definitions: Please define catch basins and clarify whether "drainage inlets" means drop inlets or open culvert pipes.

Response: The definition of Catch Basin has been included in Attachment VIII (glossary), and does not include open culvert pipes.

Comment C142 Comment Letter Page # B-18

Summary: Provision E.2.h.4c Department Activities Outside of the ROW
The Department does not possess regulatory authority. The Waterboards and local governments possess enforcement authority. Unless the enterprise has an encroachment permit, or a contract directly with The Department, this section is not legally feasible.

Response: This permit provision has been substantially revised to address the comment.

Comment C143 Comment Letter Page # B-18

Summary: Provision E.2.1 - Public Education and Outreach. Please Clarify the intent of the research that differs from current research efforts. The Board should identify which portions of the previous research were not adequate, rather than repeating the same research.

Response: This provision requires Caltrans is to continue to seek opportunities to participate in public outreach and education activities with other MS4s. No proposed language exists that implies inadequacy of the previous study or program, it merely requires that the program be updated and revised based on the results of research.

Comment C144 Comment Letter Page # B-18

Summary: Water Efficient Landscape Ordinance - The ordinance addresses water conservation, and does not necessarily provide a water quality benefit. Water auditing and analysis requirements for existing landscapes would be extremely cost prohibitive. We request to delete this paragraph and remove this requirement.

Response: Staff disagrees that there may not be a water quality benefit to water conservation. Efficient irrigation systems and system management will reduce runoff and pollution. Not all elements of the model ordinance are applicable to the Departments operations, including the audit requirements. Section E.2.d.1)d)i) requires only that the design and operation of irrigation systems to comply with the model ordinance.

Comment C145 Comment Letter Page # B-18

Summary: Highway Maintenance Activities - Reference to "symbiotic foliage" is not clear or typical industry language. Suggest reference to application of chemicals and vegetation management be referred to as "integrated pest management" and "integrated vegetation management" respectively.

Response: This permit provision has been substantially revised to address the comment.

Comment C146 Comment Letter Page # B-18

Summary: TMDL Compliance Requirements - we request revising this section to limit it to summary information. The specifics should be left to the specific TMDL documents required as a part of the implementation plan.

Response: With the exception of the requirement to prepare an analysis of the effectiveness of existing BMPs and activities, the information specified for inclusion in the TMDL Status Review Report is largely summary information: summaries of monitoring activities, measures implemented, and measures to be implemented. The requirements to update the table of TMDLs and identify new TMDLs is a trivial exercise.

Comment C147 Comment Letter Page # B-18

Summary: Discharges to ASBS - The draft permit recognizes that The Department does not yet have an exception and should not prohibit in the absence of the exception. Since this is not yet adopted, it is suggested that qualifying language be incorporated into the Permit, so that The Department is not required to obtain a General Exception that is not yet available.

Response: An exception to the discharge prohibition is available to the Department. The exception was adopted by the State Water Board on March 20, 2012 (State Water Resources Control Board Resolution No. 2012-0012).

Comment C148 Comment Letter Page # B-19

Summary: Non-Storm Water - We are unsure what "reasonable monitoring support" is. Suggest striking the language or modifying to limit what the support would include.

Response: "Reasonable support" includes facilitating monitoring activities, providing necessary access to monitoring sites, and cooperating with monitoring efforts as needed. It does not include actively conducting monitoring or providing funding. This has been clarified in the draft Order.

Comment C149 Comment Letter Page # B-19

Summary: Exceedances - Now exceedances will be shown for the first 100 sites based on effluent monitoring. The Department will have to report on how these will be mitigated. The standard non-structural measures will not make much impact on copper and lead at 10x standards or fecal coliform at 3x standards. This will be particularly evident when the follow-up monitoring shows exceedances. Is the goal to require an ongoing retrofit program?

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C150 Comment Letter Page # B-19

Summary: SWMP Implementation Monitoring Program. - The monitoring program needs to be revised, since it will result in an unwieldy amount of locations to monitor within a few years and cost a significant amount. We request that a rotating monitoring program with specific management questions and triggers be proposed.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C151 Comment Letter Page # B-19

Summary: ATT1
Constituent or incident-based reporting - Is this reporting to be completed by constituent or per discharge? Is there a programmatic process? Please clarify.

Response: Reporting guidelines are specified in Attachment I and include both unauthorized discharges (incidents) and exceedances of water quality standards (constituents). Continuing incidents of non-compliance (e.g., exceedance of a water quality standard) need not be reported except as may be required by a Regional Water Board pursuant to provision E.2.b.6). Re-occurrence of an incident that has been corrected (e.g., an IC/ID) should be reported. No programmatic process has been specified. Incident reporting is required for both stormwater and non-stormwater discharges that cause or threaten to cause violations of WQOs. This reporting may be triggered by the discharge or the exceedance of a reporting limit for a single constituent.

Comment C152 Comment Letter Page # B-19

Summary: Non-compliance Reporting schedule - A response to the Regional Board is required verbally within 24 hours and in writing within five working days. The Department requests that written responses be provided within 10 working days.

Response: The permit provision has been substantially revised to address this comment.

Comment C153 Comment Letter Page # B-19

Summary: Emergency Incident - Structural bank - Please clarify whether a cut or fill is a structural bank and define the term either here or in the Glossary.

Response: This permit provision has been deleted.

Comment C154 Comment Letter Page # B-19

Summary: Emergency Incident - Spill -- Before including this requirement, the Board should review current reporting procedures and determine whether there is an appropriate basis for requiring another form with the same information.

Response: This permit provision has been deleted.

Comment C155 Comment Letter Page # B-19

Summary: C.155.1 Monitoring - The monitoring List is excessive and includes monitoring for many constituents for which routine monitoring does not provide additional helpful information for either The Department or the Water Boards;

C.155.2. The following could be monitored in special projects:

- * TDS or conductivity, not both
- * Organic carbon
- * Glycols
- * TPHs (3 types)
- * Iron (Fe) and Aluminum (Al natural sources)
- * Arsenic (As)
- * Barium (Ba)
- * Platinum (Pt)

C.155.3. Monitoring for some constituents can be reduced where Caltrans is not a significant contributor (nutrients). Nutrients may be an issue in some locations but not for ocean discharges.

C.155.4. Some constituents missing such as Enterococci for marine discharges

C.155.5. Ideal, the monitoring should be targeted

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C156 Comment Letter Page # B-20

Summary: Toxicity Monitoring - Some toxicity testing may not be appropriate for stormwater -- the 96-hour acute toxicity test, for example. EPA-approved methods include many shorter-term methods.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C157 Comment Letter Page # B-20

Summary: We presume that the shorter duration criteria for toxicity testing should be applied to stormwater (CMC, instantaneous maximum, etc); however, this should be clarified in the Permit.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C158 Comment Letter Page # B-20

Summary: Attachment III - Reporting Requirements: Reporting requirements are numerous and complex. The Department would like to discuss consolidation and simplification of the reporting requirements. We request that the draft permit include a provision allowing for discussions during the SWMP development to create a more efficient and useful reporting system, i.e., structure the draft permit so that The Department is not constrained to this system for the entirety of the next Permit cycle.

Response: Attachment III has been renumbered and is now Attachment IX
The extent of the reporting requirements reflects the complexity of the Tentative Order. Approximately 13 of the 18 reporting requirements in Attachment IX are already consolidated with the Annual Report. Others are only required as needed, or are one-time submittals, and do not lend themselves to inclusion with the Annual Report.
There has also been a reduction in the number of reports to be submitted.

Comment C159 Comment Letter Page # B-20

Summary: Please clarify the Department compliance requirements and purpose of listing the TMDLs in Attachment IV.

Response: The purpose of Attachment IV is to facilitate the identification of the wasteload allocations, principal deliverables, required actions, and due dates as contained in the Regional Board basin plan amendments or USEPA approved TMDLs to clarify actions, deliverables and due dates.

Comment C160 Comment Letter Page # B-20

Summary: It appears that the State Board has indicated which Annual Report requires that certain elements of the TMDL be completed. Need to verify this.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C161 Comment Letter Page # B-20

Summary: General Comment Re: modifications - We are concerned that these specifications reduce the flexibility inherent in the TMDLs. If the TMDLs are adjusted during implementation (adaptive management), The Department may not be able to make the corresponding adjustments, because the original requirements are fixed within this Tentative Order and cannot be changed without taking the Permit to the Board.

Response: Provision E.10.b and E.10c.allow for the reopening or modification to the Permit to reflect new TMDLs or new implementation requirements developed and adopted by the Regional Water Board.

Comment C162 Comment Letter Page # B-20

Summary: General Comment Re: Pending TMDLs. The Permit language includes several pending TMDLs. TMDLs that are not in effect should not be included in the Permit.

Response: This permit provision has been substantially revised to reflect this comment.

Comment C163 Comment Letter Page # B-20

Summary: General Comment Re: EPA-only TMDLs - These should not be included, since they have no implementation plan.

Response: USEPA established TMDLs in Attachment IV do not have implementation or compliance schedules. Nonetheless, the load reductions or applicable numeric WLAs and other deliverables contained in these TMDLs must be enforced by the Regional Water Boards to ensure that receiving waters will achieve their Water Quality Standards.

Also, see comment response to A.22

Comment C164 Comment Letter Page # B-20

Summary: San Francisco Bay PCBs and Mercury TMDL Requirements -- The requirements for the PCBs and Mercury TMDLs seem excessive and do not allow The Department the flexibility to choose their own pilot projects or to coordinate with other TMDL stakeholders to implement a pilot BMP program.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C165 Comment Letter Page # B-21

Summary: Ballona Creek & LA River Trash TMDL

Request a statement that compliance with the WLAs is determined as 3-yr rolling average.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C166 Comment Letter Page # B-21

Summary: Malibu Creek Watershed Trash

Deadline for the TMRP (and subsequent TMDL requirements) should be 4/30/10 according to E.O. letter signed on 10/30/09.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C167 Comment Letter Page # B-21

Summary: Harbor Beaches of Ventura County Bacteria TMDL?

The 30-day rolling geometric mean exceedances listed are for summer weather. There are additional exceedances allowed for winter weather conditions.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C168 Comment Letter Page # B-21

Summary: Coachella Valley SW Channel (CVSC) Bacterial Indicators TMDL

Monitoring for the TMDL should begin after approval of the monitoring plan, not on the deadline of the submission plan.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C169 Comment Letter Page # B-21

Summary: San Diego Creek OrganoChlorine TMDL

The WLAs for The Department are incorrect according to the WLAs listed in the Attachment to Resolution No. R8-2007-0024.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C170 Comment Letter Page # B-21

Summary: Project 1 - Revised 20 Beaches and Creeks in the San Diego Indicator Bacteria TMDL.

The WLA for fecal coliform during wet weather at the San Luis Rey H.U. is incorrect. Please revise to 1,537 billion MPN/year.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C171 Comment Letter Page # B-21

Summary: Calleguas Creek Metals and Selenium TMDL.

Please clarify the 5th & 6th requirements under the "other" category. These appear to be the same requirement with different deadlines.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C172 Comment Letter Page # B-21

Summary: Mad River Sediment & Trinity TMDL

The WLAs listed in the Permit are for management roads. Are these appropriated for the Department highway system?

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C173 Comment Letter Page # B-21

Summary: It is unclear how the region-specific requirements were derived - what were the criteria used? San Francisco appears to diverge significantly from the others. What was the rationale used?

Response: Some Regional Water Boards have identified specific areas within their Regions requiring special conditions. These special conditions are needed to account for the unique value of the resource(s) within the Region, special pollutant or pollution control issues within the Region, or storm water management and compliance issues applicable to the Region. Differences among the Regions reflect the unique value of the resource(s) within the Region, special pollutant or pollution control issues within the Region, or storm water management and compliance issues applicable to the Region. The Region Specific Requirements section of the Fact Sheet (page 28) has been revised to reflect this and other comments.

Comment C174 Comment Letter Page # B-20

Summary: Part 2 - San Francisco Bay Region - These requirements are wholly out of proportion to the location-specific requirements of the other Regions. What are the justification and unique circumstances of the San Francisco Bay Region that justify what is essentially a separate Permit? What are the incremental costs of these Region 2 requirements beyond those required by the rest of the Permit?

Response: Extensive language has been added to the Fact Sheet justifying the Region Specific Requirements for the San Francisco Bay Region. This section has been revised to reflect this and other comments.

Comment C175 Comment Letter Page # B-21

Summary: Provisions that we believe have no basis in the State Water Code or the Clean Water Act: (1) Mandate to participate with a private organization in the development of legislation [Region Specific Requirements for R2]

Response: This permit provision has been substantially revised to reflect this comment.

Comment C176 Comment Letter Page # B-21

Summary: Provisions that we believe have no basis in the State Water Code or the Clean Water Act: (2) Initiate detailed technical studies in subjects that are more appropriately addressed by regulatory agencies or scientific organizations for pollutants for which The Department is a very minor contributor. [Region Specific Requirements for R2]

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C177 Comment Letter Page # B-22

Summary: Provisions that we believe have no basis in the State Water Code or the Clean Water Act: (3) Implement on a fixed schedule the complete elimination of trash by 100% in the absence of a TMDL and in the absence of information regarding compliance costs and feasibility. We note that the premature installation of trash capture facilities may conflict with facilities needed to address later TMDLs implemented to address other pollutants (bacteria, dioxin, etc.) [Region Specific Requirements for R2]

Response: Trash is equivalent to garbage which is clearly included in the definition of "pollutant" in 40 CFR 122.2.

Comment C178 Comment Letter Page # B-22

Summary: Provisions that we believe have no basis in the State Water Code or the Clean Water Act: (4) Unique sediment control program is not sufficiently explained. [Region Specific Requirements for R2]

Response: This topic (Region Specific Requirements) was settled with several meetings between the Department, Regional Boards and the State Board Chief Deputy Director clarifying level of effort and intent of the Region specific requirements. Revisions to Attachment V have been made in response to the meetings held.

Comment C179 Comment Letter Page # B-22

Summary: Provisions that we believe have no basis in the State Water Code or the Clean Water Act: (5) A unique pump station program to address low Dissolved Oxygen (DO) and trash appears to be based on a single occurrence and there is no widespread evidence of a low DO problem due to The Department discharges. [Region Specific Requirements for R2]

Response: See comment response to Comment C.178

Comment C180 Comment Letter Page # B-22

Summary: Central Valley Region -- This requirement is too vague for the Department to interpret and understand how it should comply. Please clarify the basis for this requirement. We request these conditions be deleted.

Response: Region Specific Requirements for the Central Valley Regional Water Quality Control Board were deleted after meeting with the Department, Regional Boards, and the State Board to clarify intent and level of effort for these requirements.

Comment C181 Comment Letter Page # B-22

Summary: Methyl Mercury Program for Treatment Measures that Pond Water and Discharge to the Delta -- This requirement is too broadly defined. Many treatment units "pond" water for relatively short periods and are unlikely to generate methyl mercury. This appears to refer to all discharges entering the Delta, which would constitute a large and costly program. It is unclear what the goals and the basis for these requirements are. We request that these conditions be deleted.

Response: This permit provision has been deleted.

Comment C182 Comment Letter Page # B-22

Summary: San Diego Region -- The Department has resolved this legal action and should not be referenced in this permit. This is also noted in the Findings.

Response: The legal action has been resolved. This permit provision has been deleted.

Comment C183 Comment Letter Page # B-22

Summary: Reporting Requirements. B. Anticipated noncompliance -- We request the Standard Provisions requirement -- with its link to facility changes -- be used for incident reporting.

Response: The incident reporting required under the permit is broader than the standard provision requirement that asks for reporting of facility changes. No change is required.

Comment C184 Comment Letter Page # B-23

Summary: Acute Toxicity

In the context of the stormwater, a 96-hour test is excessive. Can the draft permit identify a shorter duration test appropriate for stormwater.

Response: The US EPA method calls for a 96 hour test. Acute toxicity is not explicitly required in the new draft.

Comment C185 Comment Letter Page # B-23

Summary: Administrative Noncompliance. The glossary should include examples of the other types of noncompliance.

Response: Examples of Administrative noncompliance are failure to comply with any of the 5 examples as noted in ATT1 and glossary.

Comment C186 Comment Letter Page # B-23

Summary: Catch Basin. Definition needed - add definition of catch basin and drain inlet as used in this Permit

Response: Refer to Comment C.141

Comment C187 Comment Letter Page # B-23

Summary: The Department - Permit, Fact Sheet, and Attachments should be consistent and reference "Caltrans" instead of the "the Department"

Response: Staff notes that the Department continues to use the term "Department" (9 instances) on it's web page for the Annual Report and District Workplans (Last Updated: Thursday, April 7, 2011 2:13 PM). Staff will continue to use the more formal term in the Tentative Order and related attachments.

The State Water Board will address any inconsistencies by replacing the term "The Department" with " Caltrans" to coincide with terminology found in the recent Annual Reports and comment C.204.

Comment C188 Comment Letter Page # B-23

Summary: C. 188. Discharge of a Pollutant.

C.188.1. It would be helpful if, in addition to the current definition, examples were given that are more specific to roadways. For Ex.; it should be clear that discharges to "natural" shoulder areas is not a discharge of a pollutant as defined under the CWA.

C.188.2. It would also be helpful to clarify that sheet runoff from a roadway is not a regulated discharge, unless it becomes confined to a discrete channel (conveyed) and enters a water of the U.S.

Response: The definition of 'pollutant' has been revised in Attachment VIII (glossary) to be consistent with federal definition. 40 CFR 122.2 defines "Pollutant" as dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

Staff believes that the current language and definitions are clear and consistent. The Revised Tentative Order has been revised to use the term consistently.

Comment C189 Comment Letter Page # B-23

Summary: C.189.1. Waste - definition in the Glossary is same as pollutant. This appears to ban any discharge that contains pollutants regardless of concentration or effect.

C.189.2. Page 17 - Prohibition A.7. Prohibition on discharge of wastes - "The dumping, deposition, or discharges of waste by the Department directly into waters of the State or adjacent to such waters in any manner may allow its being transported into the waters is prohibited unless authorized by the Regional Water Board." The definition needs to clarify this.

Response: The definition of 'Pollutant' has been revised to be consistent with the federal definition found in 40 CFR 122.2. No change required for the definition of 'Waste'.

Comment C190 Comment Letter Page # B-23

Summary: C.190. Department Facilities

c.190.1. "Waste or disposal facilities" are included in both maintenance and non-maintenance facilities and should be one or the other. Examples would be helpful, because these definitions have been a problem in the past and use the term facility in the definitions.

C.190.2. Specifically define "temporary working stock locations". Are they facilities?

Response: This permit provision has been substantially revised to reflect the comment. The term 'temporary working stock locations' is not used in the Order or glossary definition. The term 'waste' has been deleted from the definition of Non-maintenance Facility.

Comment C191 Comment Letter Page # B-23

Summary: Environmentally Sensitive Area (ESA).

Expand the definition to clarify what is meant by "include but not limited to" to avoid confusion.

Response: This permit provision has been deleted.

Comment C192 Comment Letter Page # B-23

Summary: Effluent - "Any discharge from the MS4"

This should note that the term applies to discharges other than from MS4s and that an effluent may or may not be a discharge of a pollutant, depending on how it is disposed of.

Response: The term 'effluent' in this Order only applies to the discharges derived from the Department's MS4, and not other MS4s. No change required.

Comment C193 Comment Letter Page # B-23

Summary: Emergency non-compliance - definition needed.

This term should be defined in conjunction with Standard Provision 1.
"any Permit noncompliance constitutes a violation of the CWA and the Porter-Cologne WQCA.

Response: This permit provision has been deleted.

Comment C194 Comment Letter Page # B-23

Summary: ESA. This definition needs clarification of what type of ESA area, not feasible for all types of ESAs. Many ESA designations may not be of concern to water quality, i.e., cultural, plant or animal resource ESAs.

Response: This permit provision has been deleted.

Comment C195 Comment Letter Page # B-23

Summary: Field non-compliance - definition needed, this is key part of the draft permit and should be defined.

Response: Field non-compliance as defined in footnote 2 of Attachment I (Incident Report Form).
Failure to meet any non-administrative requirement in the SWMP or Permit or to meet any applicable water quality standard. This includes failure to install required BMPs or conduct required monitoring or maintenance. It also includes discharges or prohibited non-storm water that do not meet the definition of emergency incidents.

Comment C196 Comment Letter Page # B-24

Summary: The definition of "illicit discharge" quoted verbatim from 40 CFR Section 122.26(b)(2) is different from the Glossary definition

Response: 40 CFR 122.26(b) (2). Illicit discharge means any discharge to a MS4 that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the MS4) and discharges resulting from fire fighting activities. The draft Order does use this verbatim, but the definition in Attachment 8, Glossary, is consistent with this definition.

Comment C197 Comment Letter Page # B-24

Summary: Illegal Dumping - Does this apply to The Department's activities or to the activities of others? If it is the latter, please confine it to dumping in the Department ROW or MS4. Otherwise, The Department could be held responsible for dumping by third parties in areas not within The Department' control.

Response: Illegal dumping is the discarding of trash and other wastes in exempted and conditionally exempted non-storm water discharges from properties, facilities, and right-of-ways owned by Caltrans.

The definition applies to activities by the Department and third parties. Clarifying language has been added to the definition to exclude illegal dumping outside of the Department's right-of-way, properties, and facilities.

Comment C198 Comment Letter Page # B-24

Summary: Maintenance and non-maintenance - Definition needed.

Response: Maintenance and non-maintenance activities are defined in Attachment VIII as a subset of the definition for 'Department Facility'.

Comment C199 Comment Letter Page # B-24

Summary: MEP - We assume this means that runoff containing pollutants that present a risk to the environment or that exceed WQS needs to be addressed. Expand the definition of MEP to include the memorandum dated February 11, 1993, by Betsy Jennings of the Office of Chief Counsel.

Response: See response to comment A.3

Comment C200 Comment Letter Page # B-24

Summary: Pollutant - "Waste." An alternative term should be used for "pollutant" qualified when used in the Tentative Order in order to prevent confusion. The term should be consistent with 40 CFR 122.2

Response: See response to comment C188 & C189

Comment C201 Comment Letter Page # B-24

Summary: Pollutants of Concern - The list includes "pathogens" While bacteria indicators may be present above objectives due to natural sources, they are not present at levels that constitute a significant threat to water quality. Compared with untreated POTW discharge or the sanitary sewer overflow, the bacteria in highway runoff are normally inconsequential.

Response: Untreated POTW discharge may contain higher levels of fecal bacteria from human and animal waste, nonetheless, storm water commonly contains high levels of fecal bacteria from human and animal waste. Livestock waste, manure fertilizer, pet waste and leaky septic systems all contribute to the bacterial contamination of storm water.

Comment C202 Comment Letter Page # B-24

Summary: Pollution - This contains an inappropriate reference to waters of the state; it should refer to waters of the U.S., because it is used in the context of an NPDES Permit.

Response: The Tentative Order refers to both waters of the U.S and State Waters. "Waters of the State" are included in the definition of "Waters of the United States" . All waters of the State are considered to be a waters of the United States regardless of circumstances or condition.

In addition, the term "Intrastate Waters" is part of the definition of 40 CFR 230.3(s) for Waters of the United States. Intrastate Waters include lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce.

The use of "Waters of the State" has been modified to use "Waters of the United States" for clarity

Comment C203 Comment Letter Page # B-24

Summary: Change definition of "Redevelopment"

Replace the following terms and threshold in the glossary definition such as:

- * " Reconstruction" -for- "Redevelopment"
- * "1 acre or more impervious surface" -for- "replacement of 5,000 sq ft or more impervious surface"
- * "built roadway/facility" -for- "developed site"
- * "resurfacing or replacement of impervious surface area" -for- "replacement of impervious surface area"

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C204 Comment Letter Page # B-25

Summary: Right-of-Way - "Real property that is either owned or controlled by "Caltrans" or subject to a property right of Caltrans. Right-of-way that is in current use is referred to as operating ROW."

Recommendation to replace the term "Department" with "Caltrans".

Response: Refer to Comment C.187.

Comment C205 Comment Letter Page # B-25

Summary: Sediment - The definition of sediment needs to be refined. Sediment only becomes sediment when it settles. It does not include materials that remain in the water column.

Response: No change required.

Finding #12 specifies Sediment as a pollutant category. Sediment whether it is suspended in the runoff or already at the bottom of a waterbody has the ability to cause or threaten the WQOs. Moreover, increased rainfall and alteration of the runoff/sediment balance can have a negative impact that ultimately affects the beneficial uses of the receiving waters.

Comment C206 Comment Letter Page # B-25

Summary: Slope Lateral Drainage - It also includes seepage that may be present in the absence of discrete drains.

Response: This permit provision has been substantially revised to address this comment.

Comment C207 Comment Letter Page # B-25

Summary: Soil Disturbing Activities - The areas of soil disturbing activities and the area of disturbed lands adds confusion. The terms used in the Permit must be changed to provide a consistent interpretation of CWA, CFR, CGP, and other EPA guidance.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C208 Comment Letter Page # B-25

Summary: Storm Water Runoff - What is interflow as used in the definition?

Response: Interflow is essentially rainwater which does not infiltrate into the soil and runs off the land.

Comment C209 Comment Letter Page # B-25

Summary: Structural bank - Definition needed - Structural bank is referred to in the Tentative Order but needs to be defined.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C210 Comment Letter Page # B-25

Summary: Threatened non-compliance - Definition needed - This term should be tied to facility changes.

Response: Threatened Non-Compliance definition has been added to Attachment VIII to read:
Any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

Comment C211 Comment Letter Page # B-25

Summary: TDS and TSS - These should be defined in relationship to each other and Total Solids.

Response: Revise definitions to:
Total Dissolved Solids (TDS). A quantitative measure of the residual minerals dissolved in water that remain after evaporation of a solution and used to evaluate the quality of freshwater systems.

Total suspended solids (TSS). Suspended particulate matter: Fine material or soil particles that remain suspended by the water column. They create turbidity and, when deposited, can smother fish eggs or alevins.

Comment C212 Comment Letter Page # B-25

Summary: Wastewater - definition needed - does it include stormwater?

Response: This permit provision has been deleted

Comment C213 Comment Letter Page # B-25

Summary: WQO/WQS - it should be clarified that the objectives are part of the WQS.

Response: The definitions of both water quality standards and water quality objectives in Attachment VIII have been revised to clarify standards (beneficial uses) and criteria (numeric or narrative) that is developed to protect the waterbody.

Comment C214 Comment Letter Page # B-25

Summary: Change reference from "new development/re-development" to "New Construction/Major Re-construction" as this is more appropriate for highway infrastructure projects.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment C215 Comment Letter Page # B-25

Summary: Clarify definition of "facilities". Definition should be: Facilities under The Department' ownership or control that contain such areas as fueling areas, waste storage or disposal facilities, wash racks, equipment or vehicle storage, and materials storage areas.

Response: The Attachment VIII definition of Facilities already contains the language above. In addition, the Attachment VIII further subdivides the Department Facilities into 4 more categories (Maintenance, Non-maintenance, Highway and Industrial).

Comment C216 Comment Letter Page # B-25

Summary: Definition of Low Impact Development - This definition is not consistent with EPA's language and intent and does not emphasize the natural base approach.

Response: No change required because the last sentence in definition describes natural strategies to environmentally preserve and protect through riparian buffers, wetland, steep slopes, mature trees, flood plains, woodland, and highly permeable soils.

Comment C217 Comment Letter Page # B-26

Summary: The references appear to be missing the 2007 draft SWMP, which is referenced in the draft permit and which was posted by the Board. To the extent feasible, links would be useful.

Response: This permit provision has been substantially revised to address the comment

Comment D1 Comment Letter Page # 1-3

Summary: Provision E.2.c. Monitoring & Discharge Characterization Requirements:
D.1.1 Monitoring program should have a clear objective and a series of management questions that the monitoring elements are seeking to answer.
D.1.2 Allow The Department to best determine how it will evaluate long-term trends, characterize discharges, and identify pollutant sources amongst the other monitoring objectives.

The approach to discharge and receiving water monitoring is flawed. Paired sampling is necessary to determine if a water quality exceedance has occurred.

Response: The monitoring approach proposed in the SCCWRP Technical Report No. 419, "Model Monitoring Program for Municipal Separate Storm Sewer Systems in Southern California" is designed for the concentrated urbanized environments in coastal Southern California. It does not lend itself to the distributed nature of the Department's MS4 which is linear and crosses many watersheds, both urbanized and rural. Neither does it address the diversity of the many ecoregions and climatic variables that the Department's MS4 is subject to.

This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment D2 Comment Letter Page # 3-4

Summary: Provision E2.b.6. Incident Reporting
Although the monitoring data may indicate an exceedance of a defined standard at the point of discharge, the exceedance itself does not constitute non-compliance. This is inconsistent with receiving water limitations language, and circumvents the iterative process and begins to establish WQOs as NELs.

Incident Report Form (ATT1) inappropriately identifies field of noncompliance, it may be misconstrued that an exceedance of a defined standard is automatically the result of a lack of BMP(s) or failure to implement BMPs in general. Not meeting the receiving WQ criteria/objectives at the point of discharge may imply non-compliance when in fact not the case. This appears to be circumventing the iterative process and begins to establish the WQOs as NELs.

D.2.2.e - It is CASQA's understanding that the NELs from the R6 basin plan will not be included because the WLA will be incorporated into the permit once the State Board adopts the TMDL (they do not indicate which TMDL in this comment)

Response: Staff disagrees with the assessment that there is an inappropriate identification. The items listed in Attachment I are issues where non-compliance has occurred. It would then be up to the Department to bring itself into compliance through the submittal of the Incident Report as well as corrective actions. No change is needed.

Comment D3 Comment Letter Page # 4-5

Summary: Provision E.2.c.2)g). Monitoring Report Results (MRR).

This provision is inconsistent with the Receiving Water Limitations and implies that the Department would be out of compliance with the permit for exceedances of water quality objectives.

Modify provision so that MRR is consistent with Rec Water Limitations and includes summary of sites requiring continued monitoring, including Identification of BMPs.

Response: This provision is not inconsistent with provision D (Receiving Water Limitations) and does not imply that the Department is out of compliance when a water quality standard is exceeded. The iterative process is clearly in view in provision E.2.c.6)c).

MRR requires a SUMMARY of sites needing corrective action pursuant to the wq monitoring program. It doesn't require corrective actions per se. If Caltrans has exceeded the water quality limitations it shall list every location where the criteria is not met in the following year's SSR report.

Comment D4 Comment Letter Page # 5-6

Summary: Provision E.2.d.1)b) Hydromodification (risk assessment flowchart)

D.4.1. Need to consider the proximity of the new impervious area to the water body. Provision should be limited to projects that add 1 or more acres of impervious area within a specified proximity of a waterbody.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment D5 Comment Letter Page # 6

Summary: Provision E.2.d.1)c) ii) Level 1 Stream Stability Analysis

Language should be modified to clearly identify when a stream course is already or naturally unstable because of a pre-existing condition, then no further analysis is required

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment D6 Comment Letter Page # 6

Summary: Provision E.2.d.1)c) Stream Crossing Design Guidelines:

D.6.1. Item c) (iv) Natural channel materials at road crossings should be maintained.

D.6.2. Revise language to indicate that natural channel materials will be maintained to the extent feasible, but that alternative materials may be warranted ins some cases.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment D7 Comment Letter Page # 6

Summary: Provision E.2.d.1)c) Stream Crossing Design Guidelines:

D.7.1. Item c) (vi) does not define which stream crossing needs a biennial Level 1 Stream stability assessment into perpetuity, this is onerous and cost prohibitive.

D.7.2. Allow for prioritization process that focuses on new stream crossings or be limited to all new stream crossings.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment D8 Comment Letter Page # 6-7

Summary: Provision E.4c. TMDL Compliance Plans

D.8.1. Modify provision to allow the development of pollutant specific compliance plans that are applied statewide and may be adjusted for a watershed specific requirement.

D.8.2. Allow for modifications to reflect specific TMDL requirements for different waterbodies.

D.8.3. Allow for the development of multiple pollutants compliance plan in cases where Caltrans want to pursue a more comprehensive and holistic approach to TMDL compliance.

Response: A pollutant-specific statewide compliance plan cannot account for the high degree of variability associated with each TMDL, including the individual performance and implementation requirements of the adopted TMDLs, physical characteristics of the watersheds and nature of the discharges, cooperative agreements with other dischargers who share the Waste Load Allocation, monitoring and reporting requirements, and implementation schedules. Compliance plans must be designed on a TMDL- and watershed specific basis to be effective.

Also, this permit provision has been substantially revised and, as a result, this comment is not applicable to the current draft permit provision.

Comment D9 Comment Letter Page # 7

Summary: Provision E.2.d. Project Planning and Design

D.9.1 Dept and Non-Dept projects that are new development or redevelopment shall comply with the std project planning and design requirements...that have NOT COMPLETED the DESIGN PHASE on the effective date of this Order.

D.9.2. Provision should include language to the effect that projects that can demonstrate that design was initiated prior to the implementation date of the revised order and has been completed, or regulatory reviews (e.g., NEPA, CEQA, 401 Certs) have been completed or local planning approvals have been received should be exempt from the need to redesign.

Response: This permit provision has been substantially revised to address the comment.

Comment E1 Comment Letter Page # 1

Summary: The Department and State Board should work together to identify the most critical storm water needs within existing financial constraints.

The Commission is concerned with the degree to which the Department can comply with the new requirements. The State Board should identify the specific benefits the requirements are expected to yield and the cost to the State for each incremental benefit.

Response: Neither the Clean Water Act nor the federal regulations give permitting authorities the flexibility or discretion to scale permit requirements to the resources available to the discharger. Dischargers must seek the funding necessary to implement the prescribed program.

The requirements in the Tentative Order will result in environmental benefits in terms of improved water quality. It is not possible to know, before the fact, which BMPs will be implemented and how effective they will be, making a meaningful cost/benefit analysis impossible. Although Section 13241 of the Porter-Cologne Act requires the State Board to consider economics when developing objectives, the requirement does not apply to NPDES permits. Staff have, however, considered economics when developing the requirements of the Tentative Order (see Fact Sheet pages 34-41) and have made changes to the monitoring and reporting requirements that will reduce the cost of this program element.

Comment E2 Comment Letter Page # 2

Summary: The Commission is concerned that the Regional Water Boards will impose additional permitting requirements on top of the statewide requirements and recommends that the State and Regional Water Boards will work together with the Department to avoid the imposition of redundant and/or additional regional regulatory requirements and costs.

Response: Additional permitting requirements are generally specified in Attachment V, Region Specific Requirements; however, certain sections of the Tentative Order give the Regional Boards authority to impose more restrictive requirements. Similarly, the Regional Boards may waive certain requirements. Staff have attempted to develop a balanced permit that is neither unnecessarily restrictive nor overly weak. Thus, where a requirement may not be suitable or necessary for statewide application, the Regional Boards have been given the discretion to require it, and where a requirement may not be necessary in a regional context, the Regional Boards may waive it.

Comment F1 Comment Letter Page # 3

Summary: Provision E.2.c. Monitoring & Discharge Characterization Reqs.

Focus Permit provisions on "true source control". Portions of the monitoring program requirements are excessive and probable waste of public resources.

Response: The Department involvement in a true source control projects or program may be limited because of restrictions from funding sources and their enforcement authority, which is essentially non-existent. Nonetheless, there are no restrictions on the Department to support and help fund "true source control" projects as it did in the Brake Pad Partnership Program which helped fund the studies that provided the justification for phasing out copper in brake pads.

Comment F2 Comment Letter Page # 3

Summary: Provision E.2.c. Monitoring & Discharge Characterization Reqs.

Include Findings to recognize the importance of atmospheric deposition as an important source of water pollutants beyond the direct control of The Department and the potential to use the authorities of CWC 13146 & 13247.

Response: Neither the Permit or Fact Sheet have any reference to Atmospheric deposition. EPA Atmospheric Deposition Handbook explains the increasingly important challenge of water quality impacts from atmospheric deposition that come from emissions of air pollutants from natural and anthropogenic sources (N, S, Hg, Cd, Cu, and Zn). Also, post-fire runoff has the potential to increase loadings of carbon, PAHs, and trace metals. This deposition has the potential of being picked up by storm water and impacting receiving waters. While atmospheric deposition may be a contributing source, it is the responsibility of the Department to manage storm water from it's MS4. Therefore, there is no need to change permit language.

Comment F3 Comment Letter Page # 4

Summary: Provision E.2.c. Monitoring & Discharge Characterization Reqs.

The complex and expensive monitoring requirements will provide little new information on pollutants discharged and will expose The Department to 3rd party lawsuits. This will result in diverting funds and staff time away from direct efforts to improve water quality.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment F4 Comment Letter Page # 4

Summary: TMDL Findings 32 & 35

WQ improvement programs should be based on an iterative approach and the assumptions & reqs of WLAs should be reflected as "non-numeric WQBELs".

Response: In general the iterative process is the strategy used in this permit to achieve compliance with stormwater quality requirements (Refer to C.3. Response).

A different approach must be followed for TMDLs and the associated WLAs. Compliance may include, but not limited to, achievement of numerical Waste Load Allocations or implementation of clearly defined BMPs and control measures contained in the TMDL implementation plans, where there has been adequate demonstration that such BMPs and control measures will attain the WLAs.

Comment F5 Comment Letter Page # 5

Summary: Provision E.4.c. TMDL Compliance Plan

TMDL Compliance Plan should be forgiven for a watershed or a portion of a watershed where the Department has supported development of a joint TMDL implementation plan.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment F6 Comment Letter Page # 5

Summary: How can implementation of SW requirements avoid becoming a watershed litigation and enforcement activity?

Response: The permit adoption process invites public participation; an opportunity to review the tentative order, and consideration of stakeholder and public comments. This open process helps identify new methods and strategies for achieving compliance and aims to reduce and minimize subsequent litigation and enforcement.

Comment F7 Comment Letter Page # 5

Summary: What is the best way for Californians to pay for water quality investments?

Response: The best way for Californians to pay for water quality investments is through a commitment to sustainability. Personal responsibility and actions targeted at conserving and preserving water quality. Stormwater runoff solutions must consider public health, the environment, and natural resources so that the needs of the future are not compromised. Environmental sustainability is the best return on investment for California communities because operating expenses and mitigation costs are reduced and resources are preserved for the future.

Comment F8 Comment Letter Page # 5

Summary: How can these needed water quality investments be balanced with community needs?

Response: The incorporation of water quality controls into the daily business of the Department will benefit the community by increasing protection of the local water resources from the impacts of local traffic.

Comment G1 Comment Letter Page # 1

Summary: Provision C. Monitoring and Discharge Characterization Requirements

G.1.1. Monitoring is a problem in the LA Basin and this draft permit does not address the issue properly.

G.1.2. Monitoring needs frequent reporting to distinguish sources.

G.1.3. Create a standardized reporting form--loose reporting does not suffice.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment G2 Comment Letter Page # 1

Summary: Attaching 9th Circuit Court Appellate Opinion 10-56017 (NRDC/Santa Monica BayKeeper v. Co of Los Angeles/Co of LA Flood Control District ETAL).

G.3.1. The problem persists --any permit holder needs to be made responsible for identifying the sources.

G.3.2. Frequent reporting and dry & wet weather condition identification is needed to trace the source and control the source of pollution.

Response: The source of pollution for much of the Department's discharges is known to be vehicles using the right of way.. Because vehicles are not operated by the Department, the Department must enact controls to reduce pollutants from the right-of-way through the means established in the Tentative Order.

The Department also has reduced pesticide usage along the highway system, mostly by replacing known problem chemical agents with other chemical agents or physical practices.

Comment H1 Comment Letter Page # 1

Summary: Caltrans is subject to 23 TMDLs adopted by the Los Angeles Regional Board and 4 TMDLs established by USEPA.

Response: The four USEPA Established TMDLs have been added to the list in Attachment IV. Pending TMDLs that do not have USEPA approval prior to the permit adoption hearing shall be removed from the list in Attachment IV. This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision. See comment response to comment C39

Comment H2 Comment Letter Page # 1

Summary: The WLAs assigned to the Department should be included in Attachment IV as permit requirements rather than simply referencing the Basin Plans in which they are found.

Response: This permit provision has been substantially revised to address the comment. Please see response to comment A.22.

Comment H3 Comment Letter Page # 2

Summary: Revise the cover sheet to Attachment IV, footnote 1 to read:

"Attachment IV contains new specific permit requirements derived from San Francisco Bay Regional Water Board TMDL...as well as from TMDLs applicable to the Department within the Los Angeles Region."

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision. Please see response to comment A.22.

Comment H4 Comment Letter Page # 2

Summary: Finding 36 should be clarified to state that implementation requirements for specified TMDLs under the jurisdiction of the Los Angeles Regional Water Board are given in Attachment IV.

Response: See response to comment A.22..

Comment H5 Comment Letter Page # 2

Summary: Revise Attachment IVa to include the WLAs assigned to the Department.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision. Please see response to comment A.22.

Comment H6 Comment Letter Page # 2

Summary: Los Angeles Regional Board has provided recommended revisions and additions to Attachment IV for TMDLs listed in the Los Angeles Region, including importantly the addition of the WLAs assigned to Caltrans.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision. Please see response to comment A.22.

Comment H7 Comment Letter Page # 2

Summary: WLAs that are held jointly among multiple dischargers should be included in the Tentative Order.

Finding 33 should be revised to address jointly held WLAs.

Revise Finding #33 as: WLAs for some TMDLs are shared jointly among several dischargers. In these cases, multiple dischargers are assigned a grouped or aggregate WLA and each discharger is responsible for complying with the aggregate WLA

Response: Jointly held WLAs are identified as such in Attachment IV. Since this permit does not regulate other parties subject to the TMDL, such WLAs cannot be enforced under the Tentative Order. Grouped WLAs may be acceptable under EPA regulations, but they are not enforceable through individual NPDES permits. This permit provision has been substantially revised. Please see response to comment A.22.

Comment H8 Comment Letter Page # 2 & 3

Summary: Finding #34 should be revised by deleting the now outdated qualifying statement: "Due to the nature of storm water discharges, and the typical lack of information on which to base numeric WQBELs," and instead state :

"Federal regulations give states the discretion to either express the TMDLs waste load allocations (WLAs) as numeric water quality based effluent limitations (WQBELs) or best management practices (BMPs) sufficient to achieve the WLA."

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision. Please see response to comment A.22.

Comment H9 Comment Letter Page # 3

Summary: Finding 35 should be revised to clarify that compliance may be achieved by demonstrating that the numeric WLA is achieved or that BMPs sufficient to achieve the WLA have been implemented on schedule and consistent with a Regional Board-approved TMDL implementation plan.

Response: The permit provision has been substantially revised to address the comment: Finding 35 has been revised consistent with the recommended language.

Comment H10 Comment Letter Page # 3

Summary: Revise Section 4.a. TMDL Compliance Requirements should be revised by replacing the last sentence of the 1st paragraph with a provision stating, instead, that compliance may be demonstrated by achieving the WQBEL (permit's expression of the TMDL WLA) or by implementing BMPs sufficient to achieve the WLA

Response: This permit provision has been substantially revised to address the comment: See response to comment A.22.

Comment H11 Comment Letter Page # 3

Summary: Finding 35 and provision 6.d should set forth the authority(ies) of the Regional Boards to require TMDL-specific monitoring by the Department to assess compliance with the individual and/or aggregate TMDL WLAs assigned to it. This authority should include that provided in CWC 13383.

Response: This permit provision has been substantially revised to address the comment:

Comment H12 Comment Letter Page # 3

Summary: Finding 37 regarding notification of non-compliance should be clarified to add that the Department must notify the applicable RB of non-compliance with TMDL WLAs.

Response: No clarification of the finding is necessary or desirable. The requirement applies to all requirements of the Tentative Order, including TMDLs and associated administrative requirements and anticipated non-compliance. Types of events requiring reporting are specified in Attachment I. These include: "... an exceedance of a defined standard. Defined standards include TMDL Waste Load Allocations, Regional Board numeric limits or objectives, and California Ocean Plan prohibitions."

Comment H13 Comment Letter Page # 3

Summary: Provision C.1 should be clarified to be consistent with Finding 36 to state that The Department shall reduce the discharge of pollutants from its MS4 to waters of the U.S. to the MEP, or as necessary to achieve TMDL WLAs established for discharges by the Department

Response: This permit provision has been substantially revised to address the comment.

Comment H14 Comment Letter Page # 3

Summary: Revise Attachment V to ensure consistency with previous amendments to the LA MS4 Permit and the currently proposed LA County MS4 Permit, and specifically, the permit provisions implementing the Summer Dry Weather TMDL WLAs for Santa Monica Bay Beaches and Marina del Rey Harbor, including Mother's Beach.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision. Please see response to comment A.22.

Comment I1 Comment Letter Page # 1

Summary: The Tentative Order does not comply with substantive legal standards and is inconsistent with State and federal law. The State Board has abused its discretion in including provisions that are not supported by the findings.

Response: Commenters' contentions with regard to specific provisions of the permit are addressed in the responses below.

Comment I2 Comment Letter Page # 2

Summary: The permit's definition of MEP is inadequate

Response: See response to Coast Keeper, comment A.3

Comment I3 Comment Letter Page # 3

Summary: LID BMPs should have a numeric performance standard applied.

Response: The Department must remove any stormwater from its roadways. This is not just an option, it is a health and safety requirement. The Tentative Order will allow for "pass-through" treatment..

The draft permit defines LID by the following statement: "The goal of LID is to reduce runoff and mimic a site's predevelopment hydrology by minimizing disturbed areas and impervious cover and then infiltrating, storing, detaining, evapotranspiring, and/or biotreating storm water runoff close to its source. LID employs principles such as preserving and recreating natural landscape features and minimizing imperviousness to create functional and appealing site drainage that treats storm water as a resource, rather than a waste product. LID treatment measures include harvesting and use, infiltration, evapotranspiration, or biotreatment"

In summary, the permit controls pollutants using LID requirements, controls flow through hydromodification control requirements, and requires comparison of the results to the WQOs and requires upscaled changes when indicated by the results of monitoring.

Comment I4 Comment Letter Page # 6

Summary: Provisions too vague for LID

Response: By requiring LID requirements to achieve a design standard, we are specifically addressing pollutant loads and hydromodification effects for low volume, more frequent events. The draft permit allows for some flexibility on how these systems will be deployed, but gives priority to vegetated and soil BMPs. The language in the draft permit allows for the Department to use site-specific conditions to evaluate and design appropriate controls.

Comment I5 Comment Letter Page # 7

Summary: The permit should require numeric on-site retention requirements (i.e. EIA)

Response: The idea of a performance standard for on-site infiltration is infeasible. The main reason for its infeasibility is that it does not contemplate antecedent dry periods or allowed draw down times into the "performance". A 96-hour draw down time conforms with the Department of Health Services' vector control requirements. Retention requirements should be stated in terms of hydrology (e.g., retain the volume of runoff from the 85th percentile, 24-hour duration storm), not some hydrologic proxy like EIA that is difficult to assess in the field and likely to be poorly correlated to receiving water impacts.

If numeric on-site retention were allowed there is a high probability that every Department discharge site would be in noncompliance when two or more storm events (up to the 85th percentile 24-hour event) occur within 1 to 2 days of each other due to the 96 hour draw down time design specification. In fact, since the design standard (and presumably the performance standard) is based on a 24 hour storm event, a storm that occurs for more than one day has a great potential to cause non-compliance at any site.

There is validity to having BMPs infiltrate the 85th percentile 24-hour storm event, because this will act as total source control for pollutants under low flow conditions. The hydrology will have reduced peak flows in the waterbody, along with a delayed time of concentration. However, in practice it is better to have these BMPs sized correctly for this effect. This enables the Regional Boards to properly assess compliance while not punishing those who are subjected to events out of their control (like two or more consecutive storm events).

The sizing requirements clearly apply to all LID projects. The language was changed to ensure that it is clear that sizing to the 85th percentile 24-hour storm event is required.

Comment I6 Comment Letter Page # 9

Summary: Waivers for design standards should not be allowed.

Response: A waiver based on an expectation of minimal impacts on water quality cannot be said to violate the MEP standard. A number of considerations inform what constitutes MEP for addressing a discharge, including whether the control measure will actually address a pollutant of concern and whether the costs of the control measure will have a reasonable relationship to the pollution control benefits to be achieved. Alternative compliance language has been added to the permit to address those instances where on-site mitigation is not possible.

Comment I7 Comment Letter Page # 9

Summary: Ag runoff should not be exempted

Response: See response to comment A-1.

Comment 18 Comment Letter Page # 10

Summary: Landscape irrigation (including irrigation water and lawn watering) should not be exempted either

Response: The permit provision has been substantially revised to address this comment. The following has been added, as a footnote, to the listing containing Minor, incidental discharges of landscape irrigation water. The footnote reads "In order to remain conditionally exempt, landscape irrigation systems must be designed, operated and maintained to control non-incidental runoff. See definition of incidental runoff in Attachment VIII."

Comment 19 Comment Letter Page # 12

Summary: NELs should be established for storm water

Response: See response to comment A.4.

Comment J1 Comment Letter Page # 2

Summary: Draft Permit does not promise any improvements over the current permit, as much as for what it ignores and fails to state for what it proposes will be enforced.

Response: Comment noted

Comment J2 Comment Letter Page # 2

Summary: Problems not adequately addressed in the tentative permit--the need for uncontaminated water to grow crops safe for human consumption.

Response: AGR is a beneficial use established in the various Basin Plans recognizing the need for healthy food crops throughout the State. And although AGR is listed, we (the Water Boards) will protect to the most sensitive beneficial use. So AGR would be protected by the application of standards for other, more sensitive, beneficial uses, including, but not limited to, MUNI, COLD, and RARE.

Comment J3 Comment Letter Page # 11

Summary: Special attention should be addressed to requiring the Department to protect valuable farmland and waters of the U.S in and around farmland from the discharge of polluted water.

Response: see Comment Response J.2.

Comment J4 Comment Letter Page # 11

Summary: Regional Boards not conducting adequate oversight. Remedies to the public and additional oversight by local boards should be an integral part of CalEPA's future plans to protect CA's waterways.

Response: Comment Noted. This comment is beyond the scope of this permit.

Comment K1 Comment Letter Page # 1

Summary: Provision B.2. NonStorm Water Discharge Prohibitions

K.1.1. Please amend the draft permit to ensure the Dept. will not discharge over-irrigation water into their MS4s within the San Diego Water Board's jurisdiction.

K.1.2. Recommend that over-irrigation exemption be removed entirely from the Tentative Order.

Response: This provision has been amended to make the conditional exemption consistent with the recycled water policy. Landscape irrigation runoff will remain as conditionally exempt if it is minor and incidental:

From the recycled water policy:

Incidental Runoff is defined as small amounts (volume) of runoff from landscape irrigation such as unintended, minimal over-spray from sprinklers that escapes the landscaped area. Irrigation water leaving the landscape area is not considered incidental if it is part of the facility design, if it is due to excessive application, if it is due to intentional overflow or application, or if it is due to negligence.

Exemption of irrigation water, with revisions, has been retained in the permit.

Comment K2 Comment Letter Page # 2

Summary: Provision E.2.d. Project Planning and Design Requirements

K.2.1. R9 objects to the changes made in the draft permit The previous draft required compliance with the lawful and applicable project planning & design requirements of that municipality, this has been removed.

K.2.2. HMP reflects local creek hydrology in the design requirements to mitigate the effects of development. We expect the Dept to implement the same HMP.

Response: The responsibility of the Department to comply with the requirements of local municipalities is discussed on page 2 of the Fact Sheet and in Finding 46. The Department is required to comply with the lawful requirements of local municipalities where such requirements have been adopted and approved by the governing body of the local jurisdiction. This would include project planning and design requirements. The Department is not subject to such requirements where they exist only in regional plans that have not been adopted into local ordinances, but is instead subject to the requirements of the Tentative Order. The intent of this approach is to provide a consistent statewide (as opposed to region-wide) approach to storm water regulation.

Comment K3 Comment Letter Page # 2

Summary: Local Requirements are important. We have made significant progress with the San Diego Region MS4 Copermittees to achieve consistent requirements. Copermittees have recently developed HMP for new development. Both So. Orange County & Riverside County MS4 Copermittees are developing similar local HMPs.

Response: Local requirements are important, as are the requirements to a State agency for statewide consistency. Even though the mentioned permittees are developing their own HMPs, the risk-based approach being proposed in the draft permit should compliment these efforts. The risk based approach in the draft permit incorporates the fact that most of the projects the Department will be involved with are of the "non-traditional" type. Being mostly linear, and perhaps crossing multiple watershed boundaries in one project, having a consistent and clear hydromodification standard for the Department would seem beneficial to everyone. In this way, the Department can plan more accurately the projects throughout the State and can consistently implement controls.

Also, See response to comment K.2.

Comment K4 Comment Letter Page # 2

Summary: Both the South Orange County & Riverside County MS4 Permits have more specific provisions for LID than the draft permit These 2 MS4s required LID BMPs be sized and designed to ensure onsite retention without runoff of the volume of runoff produced in a 24-hour 85th percentile storm event.

We expect the Department to implement the same HMP and LID requirements imposed on local dischargers for projects located within the San Diego Water Board's jurisdiction.

Response: Permit changed to emphasize retention of runoff volume from the referenced design storm but we provide alternatives for projects that cannot retain the full volume. This is appropriate given the inherent space constraints often encountered on the Department projects. Most Phase I MS4 water quality treatment standards are geared toward typical "perimeter" projects (i.e., residential and commercial) and not linear. The draft permit requires ALL BMPs to be sized according to the design standard, including LID.

Also, see response to comment K.2.

Comment K5 Comment Letter Page # 2 & 3

Summary: A requirement should be added to the Monitoring and Reporting Program for assessing hydromodification impacts. The San Diego HMP calls for performing geomorphic assessments on an annual basis and collecting flow and sediment measurements.

Response: A requirement to perform the comprehensive monitoring as provided in the San Diego County HMP is not realistic for the Department's MS4 because, unlike the municipal co-permittees, it generally constitutes a small fraction of any given watershed.

The monitoring and reporting program have been substantially revised.

Comment K6 Comment Letter Page # 4

Summary: Receiving water monitoring data should be uploaded to the California Environmental Data Exchange Network (CEDEN).

Response: Provision E.2.c.4), Field and Laboratory Data Requirements, has been revised to require submission of receiving water monitoring data to CEDEN.

Comment K7 Comment Letter Page # 3

Summary: K.7 Proposed additions to Attachment V, Part 6, Region Specific Requirements for the San Diego Region (attachment to the comment letter):

K.7.1. Proposed implementation requirements for Low Impact Development BMPs and hydromodification management BMPs including sizing and design criteria.

K.7.2. Proposed prohibition of the discharge of over-irrigation into the Department's MS4.

Response: See responses to comments K.1 and K.2.

Comment L1 Comment Letter Page # 1

Summary: The draft permit does not contain adequate provisions to reduce discharge of pesticides to the MEP

Response: This comment is in reference to comment L2. Please refer to responses provided for comment L2, which follow.

The assertion that the draft permit's provisions do not meet MEP because they are weaker than a permit that implements a higher standard (BAT/BCT) is not the appropriate standard for this MS4 permit. The regulatory standard that must be satisfied for this permit is the MEP standard as discussed in the response for A.3.

Comment L2 Comment Letter Page # 1

Summary: The permit should be at least as protective as the General Pesticide Spray Applications permit.

Response: The draft permit has requirements for the use of pesticides by the Department. The draft permit requires that the Department minimize the use of pesticides, evaluate site-specific conditions prior to application, require training and licensing, and other provisions listed under the Vegetation Control section (E.2.h.3.b).

Comment L3 Comment Letter Page # 1

Summary: Caltrans should plan and monitor on a site basis and not on a generalized statewide basis. (this is in reference to Pesticides)

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current permit provision. See comment response to L.2.

Comment M1 Comment Letter Page # 2

Summary: M.1 ATT4 implementation requirements for Urban Creeks TMDL has been reduced to merely submitting a Pesticide-related Toxicity Control Program Plan with a Year 2 Annual Report.

M.1.1. Recommend additional clarifying language for pesticides toxicity control be added to ATT5 Part2 San Francisco Bay Region or to ATT4.

M.1.2. Addition of these requirements should make the Department obligations for its facilities and R-O-W identical to those of the municipalities where the Department facilities are located and would clarify the Department responsibilities for pesticides toxicity control.

Response: The San Francisco Bay Region and the State Water Board have determined that additional pesticide-related language for ATT-V (Region Specific) is not needed because the substantive parts of the San Francisco Municipal Regional Stormwater NPDES Permit are sufficiently covered in the Tentative Order. See also response to comment A.22.

Comment M2 Comment Letter Page # 3

Summary: M.2. Pesticides Toxicity Control - The Department shall participate in relevant pesticide regulatory processes (may be done jointly with others such as CASQA, BASMAA, and/or the Urban Pesticide Pollution Prevention Project).

M.2.1. Track USEPA pesticide evaluation and registration activities as they relate to surface water quality, and when necessary encourage USEPA to coordinate implementation of FIFRA and CWA and to accommodate WQ concerns within the pesticide registration process.

M.2.2. Track DPR pesticide evaluation activities as they relate to surface WQ, and when necessary, encourage DPAR to coordinate implementation of CDFA with the CWC to accommodate WQ concerns within its pesticide evaluation process.

M.2.3. Assemble and submit information (such as monitoring data) as needed to assist DPR and the Co AG Commissioners in ensuring that pesticide applications comply with WQSs.

M.2.4. Submit comment letters on USEPA and DPR re-registration, re-evaluation, and other actions relating to pesticides of concerns for WQ.

M.2.5. In each Annual Report list specific participation efforts, information submitted and how regulatory actions were submitted. If the Dept choose to participate in a regional effort it may reference a regional report that summarizes the regional participation efforts, information submitted, and how regulatory actions were affected.

Response: See Comment M.1.

Comment M3 Comment Letter Page # 4

Summary: M.3. Mercury & PCBs Control

M.3.1. "None Specified" in the Compliance Date/Due Date column should be replaced with the words "see below".

M.3.2. None Specified for WLA section should be replaced with "To Be Determined".

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment N1 Comment Letter Page # 2

Summary: Supports the San Francisco Bay Region Attachment V requirements for Trash Load Reduction contained in the Tentative Order

Response: Thank you for the support.

Comment N2 Comment Letter Page # 2

Summary: N.2. Pesticides Toxicity Reduction

N.2.1. Include additional requirements for reducing pesticide-related toxicity in Bay Area Urban Creeks these are needed to provide consistency with MRP and Basin Plan

N.2.2. ATT4 requirements are limited and merely require submittal of a Pesticide-Related Toxicity Control Program Plan with the Year 2 Annual Report and to implement plan with no specified compliance dates.

N.2.3. draft permit should specify required components of the Pesticide-Related Toxicity Control Program (MRP - Provision C.9.)

N.2.4. Similar language (MRP - Provision C.9.) should be added for pesticide toxicity controls in ATT5 .

Response: Attachment IV implementation language has not been developed during this phase of the permit adoption process. Caltrans shall work with the Regional Board to develop implementation language and include this in a permit re-opener.

Comment O1 Comment Letter Page # 1

Summary: The permit would impose requirements on Utilities that cross the Caltrans right-of-way. The permit should not impose post-construction requirements on linear projects

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment O2 Comment Letter Page # 1

Summary: The Draft Permit would impose requirements on the Utilities activities that occur within the Department's ROW. Utilities urges the SB to revise the Draft Permit to provide consistency between the NPDES programs and NPDES regulations.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment O3 Comment Letter Page # 1

Summary: Draft Permit should not subject Linear Underground /Overhead Projects (LUPs) to post-construction requirements. The CGP states in Finding 76 that "LUP projects are not subject to post-construction requirements due to the nature of their construction to return project sites to preconstruction conditions.

O.4.1. Section E.2.d. Would apply to all non-Department development and redevelopment projects. This is in conflict with CGP Finding 76.

O.4.2. Same rationale used in CGP to not require post-construction requirements for LUPs should apply in the draft permit for projects less than one acre of soil disturbance.

O.4.3. Same rationale used in CGP should apply to other projects and activities not defined as a construction activity or otherwise not subject to CGP.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment O4 Comment Letter Page # 2

Summary: O.51. Conditionally exempt non-stormwater discharges should be allowed if not identified as significant sources of pollutants.

O.5.2. Revise the Draft Permit in Provision B.2.-5 and other sections to allow the discharge of non-stormwater discharges that have not been identified as significant sources of pollutants. If identified as a significant source of pollutants they must implement BMPs to effectively reduce the pollutants so they are not longer a significant source of pollutants.

Response: No changes needed as the permit language currently in the draft permit is adequate for controlling these types of discharges.

Comment P1 Comment Letter Page # 1

Summary: P.1.1 Draft Permit continues to lack clear measurable LID requirements which are routinely being adopted by RBs.
P.1.2. Suggest consideration of LID Requirements of the No. Orange County MS4 Permit.
P.1.3. Draft Permit only requires that general LID principles be incorporated into the design of new projects.
P.1.4. Special Feasibility requirements should be added to reflect the type of MS4 that The Department operates and challenges it faces in incorporating LID into its projects.
P.1.5. Include qualitative LID requirements like the No. Orange County Permit.

Response: The only "clear and measurable" requirement in the No. Orange permit is the sizing requirement we apply to post-construction design criteria (i.e. capture/treat the 85th percentile event). The other language in the North Orange County MS4 permit is similar to what is in the draft permit

The North Orange County MS4 permit qualitative requirements use similar language to what's in the draft permit

Otherwise, this permit provision has been substantially revised, and as a result, some of this comment is not applicable to the current draft permit provision.

Comment P2 Comment Letter Page # 1

Summary: P.2.1. Draft Permit should be consistent with USEPAs objective of improving clarity and enforceability of MS4 permits.
P.2.2. ATT-IV continues to indicate only a partial list of applicable WLAs and other deliverables is included in column2 . Recommend that full list of TMDL WLAs be included.

Response: P.2.1 - It is the intent of this permit to achieve these results as well.

P.2.2 - This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment P3 Comment Letter Page # 2

Summary: Follow proposed EPA language for revising Finding 34:

"In accordance with 40 CFR 122.44(d) (1) (vii)(B), NPDES water quality -based effluent limitations (WQBELs) shall be consistent with the assumptions and requirements of TMDL WLAs...Where WQBELs in MS4 permits are expressed as BMPs, the permit's administrative record must demonstrate that the BMPs will be sufficient to comply with the WLAs , and the objective and measurable elements should be included in permits."

Response: This permit provision has been substantially revised to address the comment as follows:
Finding #34 has included the following language:
"In accordance with 40 CFR 122.44(d) (1) (vii)(B), NPDES water quality -based effluent limitations (WQBELs) shall be consistent with the assumptions and requirements of TMDL WLAs...Where WQBELs in MS4 permits are expressed as BMPs, the permit's administrative record must demonstrate that the BMPs will be sufficient to comply with the WLAs , and the objective and measurable elements should be included in permits."

Comment P4 Comment Letter Page # 3

Summary: Revise Section E.4.a.

"Compliance may include, but not limited to, achievement of numeric Waste Load Allocations or implementation of clearly defined BMPs and control measures contained in the TMDL implementation plans, where there has been adequate demonstration that such BMPs and control measures will attain the WLAs."

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment P5 Comment Letter Page # 2

Summary: Revise Finding #35:

"Compliance may include, but not limited to, achievement of numeric Waste Load Allocations or implementation of clearly defined BMPs and control measures contained in TMDL implementation plans, where there has been adequate demonstration that such BMPs and control measures will attain the WLAs/"

Response: This permit provision has been substantially revised to address the comment. The revision states, in part "This Order requires.... Compliance may include, but is not limited to, implementation of BMPs and control measures contained in TMDL implementation plans sufficient to achieve the WLA, or a demonstration that the numeric WLA has been achieved. Due to the nature of storm water discharges, and the typical lack of information on which to base numeric WQBELs, federal regulations (40 C.F.R., § 122.44, subd. (k)(2)) allow for the implementation of BMPs to control or abate the discharge of pollutants from storm water."

Comment P6 Comment Letter Page # 3

Summary: P.6. Lower Eel River Sediment TMDL

P.6.1. Recommend incorporation of the Lower Eel River Sediment TMDL Numeric total allocation as established in the TMDL.

P.6.2. The Department should determine that fraction of the road network in that area covered by the TMDL which The Department operates, then comply with WLAs based on that fraction of the total road allocations set by the TMDL.

P.6.3. TMDL also recommends a 15-year rolling average in determining compliance with the WLAs and certain specific monitoring activities which we recommend be included in the permit.

P.6.4. Is the Lower Eel River Sediment established in 2007 the same as the Eel River Lower HA Lower Eel River Sediment TMDL established in 2007 is not covered by the RB Resolution No. 2004-0087.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment P7 Comment Letter Page # 3

Summary: Attachment- IVb appears to be misinterpreting several EPA established sediment TMDLs for the North Coast Region. Albion River TMDL (and several others) indicates point sources is set to "zero net increase". Actually the WLA was set at zero.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment P8 Comment Letter Page # 3

Summary: P.1 Several USEPA established sediment TMDLs in the North Coast appear to be misinterpreted.

The Department's permit should require compliance with numeric WLAs based on the fraction of the total road network in the area covered by the TMDL which the Department operates and the total LA assigned to roads in the EPA-established TMDLs.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment P9 Comment Letter Page # 3

Summary: Ballona Creek Metals TMDL - compliance deadlines should be included in the permit (interim and final compliance deadlines).

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment P10 Comment Letter Page # 3

Summary: Ballona Creek Estuary Toxic Pollutants TMDL

Final compliance deadline for the WLAs, "none specified" should be deleted in the column labeled Compliance Due Date.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment P11 Comment Letter Page # 3

Summary: Los Angeles River Trash TMDL -

P.11.1. Permit omits the provisions in the TMDL for determining compliance, I.e., the use of a rolling average in determining compliance

P.11.2. Need implementation report described in Attachment A to the Resolution R4-2007-012 that is due 6 months of the effective date of TMDL.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment P12 Comment Letter Page # 4

Summary: Chollas Creek Metals TMDL

P.12..1 Numeric WLAs were omitted

P.12.2. Special Studies which are mandated by the TMDL were omitted.

P.12.3. Include studies to investigate excessive levels of metals in Chollas Creek

P.12.4. Include feasible management strategies to reduce metals loadings

P.12.5. Additional monitoring to provide more accurate information on mass loadings.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment P13 Comment Letter Page # 4

Summary: US v. California Department of Transportation (No. 97-0037-EIG)

P.13.1 Include finding or fact sheet language for the permit to describe how the permit would ensure consistency with the understanding EPA reached with The Department concluding the litigation or alternatively, that the permit include appropriate provisions to ensure consistency.

P.13.2. Finding 42 claims the permit is consistent, no information is provided to support this claim.

Response: Consent Decree was terminated on March 10, 2011, and a reference to the Consent Decree will accordingly not be incorporated into the permit.

Comment P14 Comment Letter Page # 5

Summary: Provision E.2.f.2)

Suggested Language: The Department is required to implement BMPs to reduce the discharge of pollutants in stormwater to the MEP, for all roadway and parking lot repaving and resurfacing activities not subject to the CGP."

Response: This permit provision has been substantially revised to address this comment. See Finding 16 and E.2.f.2)

Comment P15 Comment Letter Page # 5

Summary: Provision E.2.h.

Requirements for inspection/stabilization of a specific percent of such roads were not included.

Response: The permit already includes language requiring the Department to inventory road segments that are vulnerable to erosion. The permit requires the Department to stabilize all slopes that are vulnerable. So this comment to only require a specific percentage to be stabilized seems less stringent. E.2.h.3).a).iii) requires the Department to inventory all vulnerable road segments in district work plans.

Comment Q1 Comment Letter Page # 1

Summary: The permit would impose extensive new regulations that far surpass those required under the federal Clean Water Act.

Response: Permit requirements are consistent with the Clean Water Act and with other MS4 permits adopted by the Regional Water Boards. However, permit requirements have been substantially revised as described in the Fact Sheet to the Second Revised Draft Tentative Order, and as a result this comment is no longer applicable.

Comment Q2 Comment Letter Page # 1

Summary: The permit would take an estimated \$600 million annually from road construction projects resulting in the loss of thousands of construction jobs.

Response: Staff's analysis of the cost of compliance does not support this level of expenditure to comply with the proposed requirements. The Department's estimates of compliance costs under the 2011 drafts of the Tentative Order were based on the most restrictive interpretations of permit requirements. Even if an estimated expenditure of \$600 million under the 2011 drafts was reasonable, permit requirements have now been substantially revised as described in the Fact Sheet to the Second Revised Draft Tentative Order. As a result, the estimated cost of compliance is expected to be substantially less. See also response to comment R2.

Staff additionally notes that:

- Many permit requirements (e.g., slope stabilization or maintenance activities such as trash and litter removal) would be performed by the Department even in the absence of a permit. Further, requirements for TMDLs and ASBS do not originate with the MS4 permit but are obligations created under State and Regional Water Board planning and policy actions.
- Storm water compliance costs are budgeted separately from the Department's highway construction activities. See response to comment Q3.
- Permit compliance activities themselves are also expected to create jobs. For example, water quality monitoring and capital expenditures for ASBS, TMDLs, and BMP retrofits will require contract expenditures with the private sector.

Comment Q3 Comment Letter Page # 1

Summary: The permit would shift Caltrans' focus from improving roadways to retrofitting existing infrastructure to meet permit requirements. This would worsen road conditions and create unsafe driving environments.

Response: The funding available for highway maintenance and construction, and storm water permit compliance is not fixed. Any increased expenditures for permit compliance would not necessarily come from highway construction projects. The Department must request appropriate budget authority to meet permit requirements.

Comment R1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See Comment Response to Q1, Q2, and Q3

Comment R2 Comment Letter Page # 1

Summary: There has been no economic analysis of the costs or benefits of the proposed permit.

Response: The State Water Board shares commenters' concern that the proposed permit protect water quality in a reasonable and cost effective manner. In fact, one of the primary reasons for extending work on the permit was to consider cost-related comments carefully. State Water Board staff held bi-weekly meetings with the Department in October through December 2011 to discuss their concerns.

The State Water Resources Control Board, in adopting this permit, is obligated under the federal Clean Water Act's "maximum extent practicable" standard to consider the costs of the programs and practices required by the permit. Given that the permit is a general permit that will be implemented in numerous watersheds with varying degrees of water quality sensitivity and with significant flexibility on the part of the Department in implementing many of the permit requirements, staff cannot prepare a cost/benefit analysis that precisely quantifies the water quality benefits and costs of specific permit provisions. Nor is staff required under federal law to do so. However, staff has considered the economic burden on the Department carefully in the development and revisions of permit requirements, and a cost analysis has been included in the Fact Sheet to the Second Revised Draft Tentative Order. In light of cost considerations, staff has made numerous revisions to the permit to provide greater clarity and certainty to the Department on the scope of permit obligations and to eliminate compliance costs that were not expected to yield significant water quality benefits.

These revisions allow the permit to continue to address critical water quality problems while reducing expected compliance costs. In particular, the following revisions are expected to significantly reduce the Department's costs:

1. Water quality monitoring program
 - a. Replaced random compliance-driven monitoring approach with a tiered approach focusing on ASBS and TMDL watersheds, and deferring to the monitoring requirements specified in the ASBS Special Protections and TMDLs
 - b. Deleted sampling pool, water quality action levels, and response process flow chart
 - c. Removed 29 constituents from the monitoring constituent list
 - d. Limited the monitoring for new constituents to TMDL watersheds
 - e. For sites with existing monitoring data, limited BMP retrofits to 15 percent of the highest priority sites
 - f. Deleted the long-term monitoring program
 - g. Deleted maintenance facility compliance monitoring
2. Project Planning and Design
 - a. Raised the treatment threshold for highway projects from 5,000 square feet of new impervious surface to one acre
 - b. Deleted the requirement for pilot Low Impact Development retrofits and effectiveness evaluations
3. Hydromodification
 - a. Removed requirement for programmatic stream stability assessments and a retrofit implementation schedule
 - b. Raised the risk assessment threshold for non-highway facility projects from 10,000 square feet of new impervious surface to one acre
4. Region Specific Requirements -- removed, modified or scaled back requirements for the San Francisco Bay, Los Angeles, Central Valley, Lahontan, and San Diego Regional Water Boards with the goal of maximizing statewide consistency of requirements for the Department.
5. Construction Program -- replaced requirement to inspect contractor operations outside the right-of-way with a requirement to include compliance language in its construction contracts
6. TMDLs -- Revised Attachment IV to more precisely identify the TMDLs applicable to the Department and shifted responsibility to prepare TMDL implementation plans from the Department to the Regional Water Boards.
7. ASBS -- Added Attachment III to identify priority Department ASBS outfalls for installation of controls
8. Maintenance Program
 - a. Deleted the requirement to report the amount of waste and debris removed from drainage inlets
 - b. Replaced the site-by-site characterization of waste management sites with a programmatic characterization
 - c. Deleted the requirement to prepare and implement a storm drain system survey plan
 - d. Replaced quantitative measurements of trash and litter removal with estimated annual volumes
9. Non-Storm Water
 - a. Deleted surveillance monitoring of agricultural return flows
 - b. Deleted characterization monitoring of slope lateral drains

Although no firm conclusions or precise estimates can be drawn from a cost analysis, it is expected that the revisions to the Revised Draft Tentative Order will strike an appropriate balance between achieving water quality improvements and recognizing the economic constraints faced by the Department.

Comment S1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cause thousands of people their jobs increasing the 12% unemployment rate. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Comment T1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Comment U1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Summary: Provision E.2.c.3c) contains Receiving Water Limitation Compliance Requirements. Section i. of this section provides that upon a determination that a discharge is causing or contributing to an exceedance of an applicable WQS, notification must be provided to the RWQCB, however the Aug 18th draft deletes the language indicating that the notification and reporting requirements do not apply to exceedances caused by pollutants subject to a waste load allocation. This deletion is confusing and may create a conflict with the TMDL compliance requirement contained in Provision E.4 and Attachment IV of the draft. This could be clarified by either leaving the deleted language in place or by stating in i. that the provision does not apply to exceedances caused by pollutants subject to waste load allocations, and that such discharges are instead subject to the requirement contained in Provision E.4 and Attachment IV of the draft. This clarification would make regulation of such discharges more consistent with many of the current MS4 permits.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment W1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Comment X1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Comment Y1 Comment Letter Page # 1

Summary: This Permit would deplete the State's highway funding coffers and cost thousands of people their jobs through the following: forced efforts from improving roadways to retrofit existing infrastructure; create unsafe road conditions; cause Caltrans to be vulnerable to large daily penalties if not performing every permit condition in detail and violating receiving water limitations, ASBS or other prohibitions.

There is no evidence to suggest that this permit will improve water quality enough to justify the cost. Failing to provide economic analysis is unacceptable and contributes to failure of achievable water quality improvements.

Other state transportation agency's permits are not as costly, stringent, or complex. This permit has a very low probability of accomplishing the mandated goals for a balanced and effective water quality control program.

Response: See comment responses to A7, Q1, Q2, Q3, and R2. Except for TMDLs and ASBS, the standard for compliance with this Order is MEP. For more discussion on the MEP standard see comment response A3.

Comment Y2 Comment Letter Page # 2

Summary: Permit would require Caltrans to establish candidate pool of 500 monitoring sites by the 3rd yr. Caltrans would then have to sample several times a yr. at a minimum of 100 sites, testing for 45 or more constituents. Caltrans would have to work with each 9 RWQCB to agree on these lists which will make timelines unworkable. Other states' permits require monitoring at a handful of sites, or provide flexibility to monitor as would best support the goals of the permit.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment Y3 Comment Letter Page # 2

Summary: Caltrans has expended millions of dollars monitoring and evaluating stormwater discharges at 180 sites, and has published leading studies on treatment and structural controls. Yet the updated permit does not evaluate, discuss or make any use of the available information. Instead it promotes new complex and costly monitoring requirements, and fails to focus resources on known priority areas and resources.

Response: This permit provision has been substantially revised to address this comment.

Comment Y4 Comment Letter Page # 2

Summary: Permit's monitoring and retrofit program is far more costly than other state permits. Permit compares sampling data to an extremely long list of stringent water quality standard used as action levels, triggering mandatory investments in new structural control measures. The type of toxicity testing requirements in the revised permit are not found in other state permits and are premature given the SWRCB own pending Toxicity Policy.

Response: The toxicity requirement is a newer analytical evaluation for toxicity testing. This is consistent with EPA methods, and does not rely on the State Water Board having a toxicity policy in place.

The monitoring section has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment Y5 Comment Letter Page # 2

Summary: While other states address prevention of erosion, none have broad stream crossing study and maintenance program newly extended to all existing crossings with specific beneficial uses by the August revision to the Draft Permit. Caltrans would be required to perform studies of thousands of crossings, culverts as well as bridges, which would then have to be considered for accelerated retrofit.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment Y6 Comment Letter Page # 2

Summary: No other states force transportation agencies to take such extensive responsibility to scrutinize and manage agricultural irrigation water. Ag irrigation water often drains into Caltrans MS4 and is actually exempt from NPDES permitting under the Clean Water Act. Although the State itself has not yet adopted a statewide permitting program for irrigated agriculture, the Draft requires that Caltrans determine whether irrigation runoff is covered by a state permit or waiver, and, if not, then stop the drainage or find some way to redirect the water, whether or not it is polluted.

Response: See comment response to A1.

Comment Z1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving.

Response: See comment responses to Q1, Q2, Q3 and R2.

Comment ZA1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving and productivity will decrease due to longer trips on unmaintained roads. No evidence to suggest permit will improve water quality enough to justify the cost

Response: See comment responses to Q1, Q2, Q3 and R2.

Comment ZC1 Comment Letter Page # 1

Summary: Revise Draft Permit to exempt utility linear activities from post-construction requirements consistent with Finding 76 that "LUP projects are not subject to post-construction requirements due to the nature of their construction to return project sites to preconstruction conditions" as specified in CGP.

Response: Construction activities, including LUP projects, are covered under the Construction General Permit (CGP) and are not addressed in this permit. Therefore, any linear projects will be required to comply with the CGP as well. If an LUP project within the Department's right-of-way is required to install post-construction treatment controls, then the applicable provisions of this permit (the Department's MS4 permit) would apply.

Comment ZC2 Comment Letter Page # 1

Summary: Revise Draft Permit requirement to only prohibit Conditionally exempt non-storm water discharges when they are determined to be "significant sources of pollutants", rather than "sources of pollutants", consistent with Code of Federal Regulations, Title 40, Section 122.34(b)(iv). Neither of these changes was made. Gas and Electric utilities construct, operate and maintain transmission and distribution facilities within the Department's rights of way. These revisions are still pertinent and significant and need to be made. No explanation was provided with the Draft to explain why these changes were not made. It is unclear whether the requested changes were rejected or it they were overlooked.

Response: The correct reference for the stormwater program is 40 CFR 122.26 d)2)iv)B)1). This reference does not use the word "significant" except for reference to fire-fighting flows. Therefore no change is required.

Comment ZC3 Comment Letter Page # 2

Summary: Section A.6 of Draft would prohibit the discharge of biological and residual pesticides and their breakdown byproducts to waters of the US that are impaired by pesticides used, or to drainage tributary to those waters. Drainages that are tributary to impaired water could be many miles away or upstream of the actual impaired waterbody making it an insignificant risk to impaired water. This section should be revised so that a discharger of biological and residual pesticides and their breakdown byproducts are prohibited only when 1) it is prohibited by USEPA approval TMDL or 2) the discharged is made directly to the impaired water of the US or to a drainage located upgradient to the impaired water and within the same hydrological unit at the site level.

Response: The language in the permit has been changed to reflect the conditions listed in this comment. The breakdown byproduct components requirement has also been removed. The draft permit has been revised to include specific pesticides that the Department is prohibited from using on its properties, facilities and rights-of-way.

Comment ZC4 Comment Letter Page # 2

Summary: Section E.2.c.2.a.iv.2 of the Draft states that the test endpoint data from chronic toxicity tests are to be analyzed using a t-test as described in EPA's test method manual or using "EPA's NPDES Test of Significant Toxicity Implementation Document". SWRCB has not approved its proposed Toxicity Policy which may authorize the use of EPA's NPDES Test of Significant Toxicity Implementation Document, it is inappropriate to include a this time. This section should be deleted from the Permit.

Response: USEPA has approved this method and it's subsequent end points. We reference the federal regulations and USEPA documents, not State documents or codes. This is a Federal permit, therefore, it is appropriate to use federal documents and regulations in the permit itself.

Comment ZC5 Comment Letter Page # 2

Summary: No evidence to suggest permit will improve water quality enough to justify the cost. Provide analysis on the impacts to sectors of California's economy, the taxpayer, and the environment.

Response: No such analysis is required. The State Water Board cannot refuse to adopt legally sufficient permit requirements when it is necessary to achieve compliance with water quality standards. In the case of TMDLs/ASBSs/post-construction treatment controls/monitoring permit requirements, these are imposed to protect water quality from the discharge of pollutants from Department facilities.

Comment ZD1 Comment Letter Page # 1

Summary: Iterative Process and Prohibitions-
The discharge prohibition language and the receiving water limitations language in this permit needs to be redesigned in light of the 9th Circuit opinion to not place many or most discharges in immediate non-compliance. *Natural Res. Def. Council, Inc. v. County of Los Angeles*, 636 F.3d 1235 (9th Cir. July 3, 2011).

Response: Under federal law, an MS4 permit must include "controls to reduce the discharge of pollutants to the maximum extent practicable . . . and such other provisions as . . . the State determines appropriate for the control of such pollutants." (Clean Water Act §402(p)(3)(B)(iii).) The State Water Board has previously determined that limitations necessary to meet water quality standards are appropriate for the control of pollutants discharged by MS4s and must be included in MS4 permits. (State Water Board Orders WQ 91-03, 98-01, 99-05, 2001-15; see also *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F3d 1159.). The Proposed Order accordingly prohibits discharges that cause or contribute to violations of water quality standards. (Provisions A.4, D.2, and D.3.)

The Proposed Order further sets out that, upon determination that the Department is causing or contributing to an exceedance of applicable water quality standards, the Department must engage in an iterative process of proposing and implementing additional control measures to prevent or reduce the pollutants causing or contributing to the exceedance . (Provisions D.4, D.5, and E.2.c.3c).) This iterative process is modeled on receiving water limitations set out in State Water Board precedential Order WQ 99-05 and required by that Order to be included in all municipal storm water permits.

The Ninth Circuit held in *Natural Resources Defense Council, Inc. v. County of Los Angeles* ((2011) __ F.3d __, 2011 WL 2712963) that engagement in the iterative process does not provide a safe harbor from liability for violations of permit terms prohibiting exceedances of water quality standards. The Ninth Circuit holding is consistent with the position of the State Water Board and Regional Water Boards that exceedances of water quality standards in an MS4 permit constitute violations of permit terms subject to enforcement by the Boards or through a citizen suit. While the Boards have generally directed dischargers to achieve compliance by improving control measures through the iterative process, the Board retains the discretion to take other appropriate enforcement and the iterative process does not shield dischargers from citizen suits. No changes will be made to the relevant provisions of the Order in response to this comment.

Comment ZD2 Comment Letter Page # 2

Summary: Finding 37
This new wording does not appear to follow the public review process and should be deleted. The finding should state that Caltrans is only subject to WLAs that have been adopted in Basin Plan amendments and approved by USEPA.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD3 Comment Letter Page # 2

Summary: Finding 37
Caltrans should only be required to develop implementation plans for EPA-issued TMDLs. In addition, for state-issued TMDLs, the required actions should be limited to those specified in the TMDL as adopted into the Basin Plan and should not include any additional requests from the Regional Water Board without the Regional Water Board formally adopting these requirements. We do not see a basis in the Clean Water Act for these supplemental requirements that are outside the normal TMDL process.

Response: This permit provision has been substantially revised, and as a result, is not applicable to the current draft permit provision

Comment ZD4 Comment Letter Page # 3

Summary: Prohibition A.2
The exceptions should be adopted prior to the Caltrans permit or this prohibition should be made contingent on adoption of the exceptions. Caltrans needs adequate time to evaluate the compliance approach, feasibility to comply, and impacts to the Department. (See expanded discussion in Major Comment #7 from Caltrans March 14, 2011, letter.)

Response: This permit provision has been substantially revised to reflect this comment. The Department will be given adequate time to review the permit during the public comment period.

Comment ZD5 Comment Letter Page # 3

Summary: Prohibition A.3
Prohibition A.3 should specifically include "exempt" discharges.

Response: This permit provision has been substantially revised to address the comment.

Comment ZD6 Comment Letter Page # 4

Summary: Prohibition A.4-
This prohibition should be deleted. In the Recommendations section of these comments we include a separate approach for MS4 compliance based on the Blue Ribbon Panel recommendations, TMDL implementation, and a prioritized approach to addressing identified water quality problems. We also provide possible alternative wording, which may be adequate if this prohibition is retained.

Response: This prohibition correctly reflects current law. No change is required.

Comment ZD7 Comment Letter Page # 4

Summary: Prohibition A.5
This prohibition should be deleted. In the Recommendations section, we include possible alternative wording if this prohibition is retained.

Response: This prohibition correctly reflects current law. No change is required.

Comment ZD8 Comment Letter Page # 4-7

Summary: Prohibition A.6 should be deleted because the permit already contains requirements to implement waste load allocations for TMDLs addressing pesticides.
Part 1: Pesticide drift is a significant problem and impracticable to control. Many discharges will potentially be in non-compliance and make maintenance cost-effectiveness infeasible, high proportion of state waters would be subject to the discharge ban, any detectable amount of a pesticide (or residue) to a listed waterbody means a violation, agricultural flows may routinely be in violation until Caltrans is able to separate or prohibit these flows, and high-level treatment may be needed to reduce pesticide concentrations to non-detect levels. Although detectable levels may be below toxicity thresholds, the discharge to listed waterbodies would constitute a violation.
Part 2: For watersheds with listings of 'unknown toxicity' or listings of a general class of pesticides, means Caltrans could not use any pesticides.
Part 3: Prohibition extends to 'breakdown byproducts' and some of these are even more toxic than the parent compound. It's not appropriate to extend prohibition to all byproducts, unless it exhibits significant toxicity.
Part 4: This is a strict prohibition and does not allow for a pesticide discharge that is in compliance with WLAs or meets WQSs.
Part 5: This Prohibition appears to affect most waterways of the State.
Part 6: The term biological should be deleted because it is inconsistent with the context of this provision.

Caltrans request additional time to assess the scope and potential impacts of this prohibition.

Response: This Prohibition has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment ZD9 Comment Letter Page # 8

Summary: Non-Stormwater Discharge Prohibition B.2 - Exempt Non-Storm Water Discharges.
It is inappropriate that Caltrans not be required to address other parties runoff from stormwater and other wastewater flows. Caltrans will be in noncompliance during the interval required to prohibit or otherwise terminate this runoff. The expenditures requiring Caltrans to build new runoff conveyance lines will not result in an environmental benefit.

Caltrans proposes a better and more cost-effective approach for addressing the problem with upgradient flows. Upgradient dischargers to be responsible for their own flows and Caltrans responsible for their flows before they are commingled with other flows passing through the right-of-way.

Response: This permit provision has been deleted.

Comment ZD10 Comment Letter Page # 9

Summary: Non-Stormwater Discharge Prohibition B.3 - Conditionally Exempt Non-Storm Water Discharges -
This prohibition should be changed to refer to "sources of harmful pollutants" or "sources of pollutants for which the receiving water is listed as impaired" or "sources of pollutants with concentrations above receiving water objectives" or some similar wording to ensure that the prohibition correctly focuses on detrimental pollutants rather than all constituents of these conditionally exempt discharges.

Response: Current language reflects current federal law. The wording of this provision has been taken from 40 CFR 122.26.

Comment ZD11 Comment Letter Page # 9

Summary: Non-Storm Water Discharge Prohibition B.3 - Conditionally Exempt Non-storm Water Discharges k. Water line Flushing- Footnote #4-
Exempt 4-inch or smaller water lines that are used for irrigation purposes from the requirements of being dechlorinated prior to flushing the lines.

Response: The requirement clearly states that the dechlorination must occur prior to discharge. It does not indicate that this activity must occur prior to flushing. No change is required.

Comment ZD12 Comment Letter Page # 10

Summary: Non-Storm Water Discharge Prohibition B.6 - Regarding the Comprehensive Non-Storm Water Report -
Same as for Prohibition B.3, the term pollutants should always include a qualifier to indicate that pollutants presenting a risk to water quality are the ones that should be addressed.

Response: See comment response to ZD 10

Comment ZD13 Comment Letter Page # 10-11

Summary: Receiving Water Limitations D.2 -
See recommendation for Prohibition A.4. WQS exceedances, rather than resulting in permit violations per se, should trigger more in-depth assessments based on a scientifically based approach (see permit Attachment E, page 10).

Response: This requirement adequately reflects the law. No change is required.

Comment ZD14 Comment Letter Page # 11

Summary: Receiving Water Limitations D.4 -
Part 1: The iterative approach establish in this provision does not shield a discharger from enforcement action contrary to the Board's intent.
Part 2: This provision should include an attainable SWMP requirement such as designing the SWMP to reduce the discharge pollutants presenting a risk to water quality and to specifically address pollutants causing an identified impact on beneficial uses on a prioritized basis.

Response: This requirement is in essence the language presented in the precedential State Board Order 99-05. This language is presented in all MS4 permits and is the basis for the "Iterative Approach". No change is required.

Comment ZD15 Comment Letter Page # 11-12

Summary: Receiving Water Limitations D.5.
Part 1: This statement regarding not needing to repeat the same procedure appears to conflict with Provision E.2.c.2)(a)ix) (p.30) which in fact, requires repeated implementation of monitoring and BMP construction until effluent or receiving water exceedances are no longer detected (as shown in Fig. 1 WQ Monitoring Chart, p. 32).
Part 2: This process does not necessarily mean the discharge is in compliance since a single exceedance of WQS clearly violates Prohibition A.4.
Part 3: The construction of the permit is awkward and difficult to understand because the 'traditional' iterative process is buried in Section E.2.c. and the new Table 1 and Figure 1 Chart appear to create a parallel iterative process that potentially is an endless loop.

Response: The new draft permit has addressed most of the sub-comments presented by the Department. And while it may be the Department's desire for a new compliance vehicle, staff continues to implement the Iterative Approach through this Order. See also comment response to ZD 14.

The iterative approach as described in E.2.c.6) is the appropriate process to follow where the Department's discharge is found to cause or contribute to an exceedance of an applicable WQS. This approach allows the Department flexibility to implement BMPs and make progress toward achievement and measure the success of the BMPs, except where it is subject to a waste load allocation listed in Attachment IV. Also refer to comment ZD 14.

Comment ZD16 Comment Letter Page # 12-13

Summary: E.2.c.1 - Characterization of Discharges c.1) - Mandated assessment of compliance for previous characterization sites - As proposed previously regarding Prohibition A.4, rather than basing BMP retrofits on exceedances, a prioritized program of addressing discharges impacting beneficial uses should be used.

Response: Water Quality Objectives are set to protect the beneficial uses of the waterbody. If a WQO of a waterbody is exceeded, then the beneficial use of that waterbody is not being protected. The current revised draft permit requires the Department to prioritize sites for which past monitoring data is available, and to retrofit the top 15 percent of those sites.
This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment ZD17 Comment Letter Page # 13

Summary: E.2.c.2) - Water Quality Monitoring - This list should be significantly shortened to include only key parameters, traditionally monitored for stormwater, and should focus -- as discussed in the Fact Sheet -- on periodically assessing long-term trends based on the previous monitoring and the constituents assessed in the previous monitoring. Additionally, this monitoring program should not rely on the discretion of the individual Regional Water Boards to sanction modifications to the list, which does not promote statewide consistency. A constituent list synchronized with other MS4s would promote watershed collaboration.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment ZD18 Comment Letter Page # 13-14

Summary: E.2.c.2) a) ix) - Action Levels and Water Quality Monitoring Process.
Part 1: This Provision appears to be in conflict with the Prohibitions and Receiving Water Limitations.
Part 2: Placing action levels and associated procedure in the Monitoring and Discharge Characterization Requirements section is awkward and confusing.
Part 3: The requirement to complete a watershed analysis when an exceedance of standards is identified in the effluent to determine if other watershed discharges are similar and likely to contribute to an exceedance is unclear. Does a watershed constitute an entire drainage or hydrologic area, or just sub-area". The definition could have a major impact on the number of outfalls that will need to be retrofitted or brought into compliance.
Part 4: Do citizen exceedances need to be addressed if Caltrans has already implemented the procedures in E.2.c.3)c) that specifies Caltrans is not required to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the Regional Water Board Executive Officers.
Part 5: How do these requirements apply to discharges co-mingled with other MS4s and can they be either direct or indirect?
Part 6: It may be preferable to retitle the table "Water Quality Exceedance Frequencies' to avoid confusion with other action levels.

Recommendation: The conflict with the absolute prohibitions in Sections A and B need to be resolved and the key compliance questions listed above need to be explained and made consistent with the rest of the Permit.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD19 Comment Letter Page # 15

Summary: E.2.d.1) a) ii) (7) - Available BMPs - This requirement should be deleted. There is no basis in the Clean Water Act for requiring implementation of unproven BMPs.

Response: The requirement of the CWA is to implement BMPs to reduce pollutants to the MEP. Implementation of BMPs does allow for the Department's approved BMPs, but does not summarily exclude BMPs not approved by the Department. In other words, the Department's approval of BMPs does not equate to compliance with the CWA. No change is required.

Comment ZD20 Comment Letter Page # 15

Summary: E.2.d.1) b) iv) c) Stream Crossing Design Guidelines to Maintain Natural Stream Processes - What is the basis within the Clean Water Act for including these design guidelines? They appear to have no relationship to the NPDES discharge permit program? This provision should be deleted.

Response: This permit provision has been substantially revised to address the comment.

Comment ZD21 Comment Letter Page # 15

Summary: Provision E.2.e.1 a) - Vector Control - This requirement should be deleted. Alternatively, provide justification for the provision in the Fact Sheet and at a minimum, include an option for exceptions depending on weather characteristics.

Response: Vectors are controllable potential side effects of implementing the requirements of this Order (specifically, BMPs). As such, this provision will continue to be required and enforced. No change is required.

Comment ZD22 Comment Letter Page # 15-16

Summary: E.2.e.4) - Biodegradable Materials - The last sentence in this section should be deleted or clarified so it meets the intention of the goal of environmentally friendly but does not eliminate all the available tools for a given area.

Response: This permit provision has been substantially revised to address this comment.

Comment ZD23 Comment Letter Page # 16

Summary: E.2.h.4) d) - Agricultural Irrigation Return Flows - Remove this new provision.

Response: This permit provision has been deleted.

Comment ZD24 Comment Letter Page # 16

Summary: Attachment IV - Remove this provision regarding compliance dates that have already passed as being enforceable as of the effective date of this Order (or relatively soon thereafter). This is another example of structural non-compliance that simply exposes Caltrans to litigation and penalties with no reasonable means of readily achieving compliance.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision:

Comment ZD25 Comment Letter Page # 17

Summary: Attachment VIII - Glossary - Rewrite the definition of LID to be more consistent with EPA and apply it consistently throughout the permit. Include this language in the definition of LID "is an approach to land development (or re-development) that works with nature to manage stormwater" and "promotes the natural movement of water" in the beginning of this definition.

Response: The current definition as it is applied throughout the permit will not be amended in response to this comment. The language presented would only limit the application of LID techniques.

Comment ZD26 Comment Letter Page # 17

Summary: General Comment - Clarification needed - 9th Circuit Court decision regarding Los Angeles County discharge - has the Board assessed the impacts of this decision on MS4 compliance. Is a legal review available?

Response: See Response to Comment ZD.1.

Comment ZD27 Comment Letter Page # 17

Summary: General Comment - Clarification needed - When do Minimum Mandatory Penalties (MMPs) apply regarding the limitations in this permit. We understand that MMPs apply to violations of effluent limitations. [CWC § 13385(h) and (i)]. Are the prohibitions effluent limitations for purposes of MMPs since they constitute an effective effluent limitation of zero? Are waste load allocations (WLA) numeric effluent limitations, for purposes of MMPs? How would they apply to MS4 stormwater discharges?

Response: Water Code section 13385.1, subdivision c, clarifies that, for purposes of mandatory minimum penalties, "effluent limitations" means:

a numeric restriction or a numerically expressed narrative restriction, on the quantity, discharge rate, concentration or toxicity units of a pollutant or pollutants that may be discharged from an authorized location. An effluent limitation may be final or interim, and may be expressed as a prohibition. An effluent limitation, for those purposes, does not include a receiving water limitation, a compliance schedule, or a best management practice.

While the definition clarifies that some prohibitions may act as effluent limitations, the prohibitions in the Proposed Order are generally restrictions on the source of a discharge or restrictions on discharges that would cause violations in the receiving waters. As such, these prohibitions are not restrictions on the quantity, rate, or concentration of a pollutant and not effluent limitations under the section 13385.1 definition. TMDL waste load allocations applicable to the Department may be expressed as effluent limitations, where appropriate, after incorporation of the TMDL requirements into Attachment IV through the reopener. There may additionally be specific instances where the TMDL itself already expresses the allocation as an effluent limitation, requiring compliance with that effluent limitation upon the effective date of the Order.

Comment ZD28 Comment Letter Page # 17

Summary: Finding 19 - Deletion of numeric effluent limits for Lake Tahoe - Clarify if this means the Tahoe effluent limits no longer apply? Alternatively, do they apply through the Lake Tahoe CGP, and just to construction rather than highway runoff?

Response: In 1980, the State Water Resources Control Board adopted concentration-based numeric effluent limitations for total nitrogen, total phosphate, total iron, turbidity, and grease and oil for storm water discharges in the Lake Tahoe Basin. The Lahontan Regional Water Quality Control Board included revised versions of those limitations in Table 5.6-1 of the Water Quality Control Plan for the Lahontan Region (Basin Plan). The numeric effluent limitations in Table 5.6-1 were included in previous iterations of the Department's MS4 permit. This Order does not include these referenced numeric effluent limitations. The TMDL for sediment and nutrients in Lake Tahoe, approved by USEPA on August 16, 2011, removed statements from the Basin Plan requiring the effluent limitations in Table 5.6-1 to apply to municipal jurisdictions and the Department. The Order requires compliance with pollutant load reduction requirements established by the Lake Tahoe TMDL for total nitrogen, total phosphorus, and fine sediment particles. For construction stormwater discharges in the Lake Tahoe hydrologic unit, the Department is required to comply with the Lake Tahoe Construction General Permit and may consult with the Lahontan Regional Water Quality Control Board staff.

Comment ZD29 Comment Letter Page # 17-18

Summary: Finding 34 - Reference to USEPA memorandum of November 12, 2010, that revised USEPA's November 22, 2002, memorandum regarding the use of numeric water quality-based effluent limits (WQBEL) to implement TMDL waste load allocations. - The Board has used this memo to justify the use of numeric limitations as opposed to the standard practice of requiring BMPs. Due to considerable controversy regarding this policy memo, USEPA opened it up for comments and requested these comments be submitted by May 16, 2011. EPA will decide whether to retain, rescind, or modify the memo. As of 9/2/11, USEPA staff has indicated they plan to make a decision "later this fall." Consequently, the permit finding should clarify that this memo cannot be used for regulatory support until USEPA makes its decision. Contacts for further information: Kevin Weiss, NPDES Stormwater Program (weiss.kevin@epa.gov) or Jamie Fowler, TMDL Program (fowler.jamie@epa.gov).

Response: The Board recognizes that USEPA has opened its November 12, 2010, memorandum for comment and that USEPA may modify or rescind the memorandum. The memorandum is no longer referenced in the findings of the Order and the Fact Sheet discussion clarifies that the memorandum is under further consideration by USEPA.

Comment ZD30 Comment Letter Page # 18

Summary: Finding 35 - Changes to Finding regarding implementation of Load Allocations and Waste Load Allocations. - This Finding should state explicitly that joint implementation does not make Caltrans responsible for Load Allocations or WLA assigned to others when these other parties do not meet their obligations. As currently worded, the Finding appears to make Caltrans responsible for overall implementation. Caltrans requests the Water Board delete references to Load Allocations (LA) in the Findings and in the Order.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD31 Comment Letter Page # 18

Summary: Finding 41 - Same topic as Finding 19 - Deletion of numeric effluent limits for Lake Tahoe - Clarify if the red strikeout of 'Tahoe numeric limits apply to this order' means the Tahoe effluent limits no longer apply? Or do they apply through the Lake Tahoe CGP?

Response: See comment response to ZD 28.

Comment ZD32 Comment Letter Page # 19

Summary: Page 15 - Footnote 2 - Clarify if this means that it is necessary to wait for Regional Water Board action prior to engaging in a TMDL strategy? Also, as noted in other comments, provisions related to TMDLs but not part of the formal TMDL adoption process, should not be applied as permit provisions.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD33 Comment Letter Page # 19

Summary: E.2.b.2) - Legal Authority - This section should specify that Caltrans legal responsibility for potential problem on-flows is limited to reporting them to the Regional Water Board. Clarify.

Response: The referenced provision relates to the Department's legal authority to implement this permit. The Department is not held legally responsible for addressing non-point source run-on onto its right of way as clarified elsewhere in the permit.

Comment ZD34 Comment Letter Page # 19-20

Summary: E.2.b.6) - Incident Reporting - Non-Compliance and Potential/Threatened Non-Compliance (second paragraph) - Based on the reporting form, previous exceedances of standards must be reported as part of this requirement. With the possible exception of discharges receiving a high level of instantaneous dilution, virtually all discharges contain at least several stormwater constituents that typically exceed standards, at least in the effluent. (See Table 3-18, p. 60, Discharge Characterization Study Report, CTSW-RT-03-065.51.42). Based on this requirement, it would appear necessary to report potential or threatened non-compliance prior to or after occurrences (or both) for essentially every discharge. Clarify what the intent is here.

Response: This permit provision has been substantially revised to address the comment:

Comment ZD35 Comment Letter Page # 20

Summary: E.2.b.6) - Incident Reporting - Non-Compliance and Potential/Threatened Non-Compliance (second paragraph) - Anticipated non-compliance may be for field or administrative incidents only.- Clarify what other kinds of incidents exist. Are not all incidents either field or administrative?

Response: This permit provision has been substantially revised to address the comment.

Comment ZD36 Comment Letter Page # 20

Summary: E.2.b.6) - Incident Reporting - Non-Compliance and Potential/Threatened Non-Compliance (second paragraph) - The Department shall report all potential or threatened noncompliance ... in accordance with the "Anticipated noncompliance" provisions... The meaning of "anticipated non-compliance" in the Standard Provisions appears different from "potential or threatened." Clarify, perhaps with an addition in the Glossary. One or more examples in the Glossary would also be very helpful.

Response: This provision seems quite clear. Anticipated non-compliance is based upon changes to a site location, and with this fore-knowledge, any potential or threatened non-compliance should be reported. No change is required.

Comment ZD37 Comment Letter Page # 20

Summary: E.2.c.1) - Characterization of Discharges - Problems with reuse of previous data. - The following alternatives should be evaluated regarding the use of the previous characterization work:
-The Characterization sites should be counted against the number of monitoring sites required by this permit. In other words, the Characterization sites would be considered in lieu of some of the new sites, thus reducing monitoring costs.
-Data from sites where substantial water quality changes are expected between the EOP and edge of ROW should be disqualified as being representative of current discharges to the receiving water. These sites could be potential candidates for monitoring under E.2.c.2.a.ix.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment ZD38 Comment Letter Page # 21

Summary: E.2.c.1) - Characterization of Discharges - Slope Lateral Drains - We request this item be clarified to require monitoring only when maintenance staff, Board staff, or others suspect these slope drains may be a significant source of pollutants. Singling out what is probably the smallest source of non-storm water flow is not appropriate for an extended monitoring program.

Response: This permit provision has been deleted.

Comment ZD39 Comment Letter Page # 21

Summary: E.2.c.1) - Characterization of Discharges - It is very difficult to readily identify the Provisions due to the number/outline system used in this draft. A clearer organizational structure would facilitate compliance as well as keeping key related provisions together.

Response: This is a basic outline format. No change is required.

Comment ZD40 Comment Letter Page # 21

Summary: E.2.c.2) a) v) - First flush requirement- Change the language "first flush" to "seasonal first flush" for clarity.

Response: This permit provision has been substantially revised to address the comment

Comment ZD41 Comment Letter Page # 21

Summary: E.2.c.2) a) v) - Toxicity - This screening test should be sufficient to satisfy this requirement. If screening results are positive, then full toxicity testing will be performed.

Response: Only EPA approved methods can be used. The toxicity laboratory method will stay unchanged, and the required end-points will be changed to the t-test statistical method.

Comment ZD42 Comment Letter Page # 22

Summary: E.2.c.2) a) v) - Water Quality Monitoring - Toxicity - The permit should simply require implementation of the Policy for Toxicity Assessment and Control when it is adopted, specifically the provisions of Section B. Storm Water Dischargers Regulated Pursuant to NPDES Permits. Interim requirements based on the draft Policy can be used before adoption of the Policy, but after adoption, the Policy should be basis for the monitoring.

Response: The methods referenced in the draft permit are USEPA approved, therefore are appropriate to include in an NPDES permit.

Comment ZD43 Comment Letter Page # 22

Summary: E.2.c.2) a) vii - Constituent List - Clarify - For ASBS, should Caltrans use the constituent list in the Permit, Table B in the Ocean Plan, or some other list (e.g., special protections requirements)?

Response: Caltrans will be required to comply with monitoring requirements (Table B) in the California Ocean Plan for ASBS.

Comment ZD44 Comment Letter Page # 22

Summary: Provision E.2.c.2 a) viii - Water Quality Monitoring - Clarify - based on this paragraph, if each sampling location is a combined dry and wet weather location, a total of 50 sampling locations would be required per year, rather than 100. Is this interpretation correct?

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD45 Comment Letter Page # 22

Summary: E.2.c.2) a) viii - Water Quality Monitoring - Clarify if the candidate pool includes the Characterization Study sites (E.2.c.2). We request that the total sites needed per year (200 in Year 1, 400 in Year 2, etc.) should include any of the Characterization Study sites selected for further monitoring.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD46 Comment Letter Page # 23

Summary: E.2.c.2) a) viii - Monitoring Site Selection Report - Clarify if TMDL compliance sites (i.e., TMDL-required monitoring) can be used to meet this watershed requirement. The requirement for monitoring where Caltrans does not have a Caltrans-specific WLA should be deleted.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD47 Comment Letter Page # 23

Summary: E.2.c.2) a) ix - Water Quality Monitoring - Table 1 - 10% difference - Clarify why Indirect Discharges are assessed with only 10% difference in the exceedance criteria compared to Direct Discharges. This level of difference is within sampling error for environmental monitoring. The risk and impact of Indirect Discharges is expected to be generally much less than for Direct Discharges. If the permit continues to use this threshold approach, it may be better for Indirect Discharge exceedance be changed to ">= 3 exceedances of a WQO by 50 % or more" and ">= 2 exceedances of a WQO by 100 % or more." (In the Recommendations, we propose alternative compliance approaches.)

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD48 Comment Letter Page # 23

Summary: E.2.c.2) a) ix - Water Quality Monitoring - definition of exceedance - Clarify the basis to be used by the Regional Water Board to determine if the discharge is a threat to receiving water. A clearly defined and objective criterion is essential for consistent determinations by the Regional Water Boards and to allow Caltrans to assess when BMPs have brought a discharge into compliance. In other words, a clear compliance goal is needed.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD49 Comment Letter Page # 23

Summary: E.2.c.2) a) ix - Water Quality Monitoring - Need for startup time - The monitoring should only resume after one year/two years of soil stabilization and vegetation establishment for sites where structural BMPs are implemented.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD50 Comment Letter Page # 24

Summary: Page 33 - Footnote 9 - Indirect discharge defined as 300 feet away - Clarify if this definition also applies to ASBS.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD51 Comment Letter Page # 24

Summary: E.2.c.2) a) x - Water Quality Monitoring - Clarify that the total number of sites in candidate pool and sites monitored still be limited to those specified in E.2.c.2.a.vii. As noted previously, the Regional Water Boards may use this provision to request unlimited monitoring. Limits on total number of sites should be included.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD52 Comment Letter Page # 24

Summary: E.2.c.2) b) - Receiving Water Monitoring - The word "include," suggests that there may be more constituents. -- Request language change from "include" to "be limited to."

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD53 Comment Letter Page # 24

Summary: E.2.c.2) b) - Receiving Water Monitoring - We request that chronic toxicity testing should only be considered by the Regional Water Board if toxicity is present in the effluent.

Response: The permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD54 Comment Letter Page # 24

Summary: E.2.c.2) b) - Receiving Water Monitoring - We request adding 'where applicable' to this requirement.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD55 Comment Letter Page # 24

Summary: E.2.c.2) b) - Lab QC requirements -
This section requires that Caltrans must "prepare, maintain, and implement" a Quality Assurance Project Plan. We request that Caltrans be required to review the SWAMP QAPP, and use it if it is suitable, rather than creating and updating a new one.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD56 Comment Letter Page # 25

Summary: E.2.c.2) b) Discontinuing monitoring -
This should be changed to clarify that receiving water monitoring and effluent monitoring may be discontinued when the receiving water monitoring shows no exceedances, even if effluent monitoring continues to trigger the criteria (Action Levels). For example, pH objectives will probably always be triggered but pH changes or other non-compliance in the receiving water may not be present. Clarify.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD57 Comment Letter Page # 25

Summary: E.2.c.2) d) - Analytical Constituents -
As noted in earlier comments, these requirements should not be open-ended. This could potentially expose Caltrans to considerable and unpredictable costs.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD58 Comment Letter Page # 25

Summary: E.2.c.2) e) - Data reporting -
We suggest changing the language "... the Department shall submit copies of laboratory analysis reports in electronic (PDF) format... "

Response: This is acceptable, but may not limit the file format to PDF. Electronic filing into SMARTS will be the requirement. The format will be limited to SMARTS capabilities.

Comment ZD59 Comment Letter Page # 25

Summary: E.2.c.3)c - Receiving Water Limitations Compliance -
This key description of compliance procedures is located on page 37, but referenced on page 21. In addition this section appears somewhat duplicative of provision E.2.c.2)a)ix. Clarify, or possibly bring the compliance activities into one permit location for better understanding.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD60 Comment Letter Page # 26

Summary: E.2.c.3) d) - Toxicity - Requires that the Department perform Toxicity Identification Evaluations (TIEs) on a site-specific basis -
This requirement should have some limitation when the TIE cannot resolve the toxicity source.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD61 Comment Letter Page # 26

Summary: E.2.c.4) - Trash and Litter - reporting
Clarify the basis of this requirement and the extent of new reporting being requested. This requirement should be deleted if it cannot be based on the CWA.

Response: This permit provision has been substantially revised to address the comment.

Comment ZD62 Comment Letter Page # 26

Summary: E.2.d.1 - New Development and Redevelopment -
Add a separate definition for routine maintenance. Routine maintenance includes those activities to maintain the original line and grade, hydraulic capacity, or the original purpose of a facility. This includes pavement overlays, pavement replacement, etc.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD63 Comment Letter Page # 27

Summary: E.2.d.1) a) i) - Projects Subject to Post Construction Treatment Requirements -
Revise the trigger to be for those projects within Caltrans ROW to be any project that creates 1 acre or more of new impervious.

Response: This permit provision will be substantially revised to address the comment

Comment ZD64 Comment Letter Page # 27

Summary: E.2.d.1)a) - The 5,000 SF trigger of the "creation, addition, or replacement" of a new impervious surface was intended for local municipalities to apply to non-highway facilities. (Page 9, Attachment 8 Glossary definition of Redevelopment.) -
The trigger for highway facilities should be based on addition of 1 acre of new impervious area. In addition, the term "replacement" should be removed.

Response: This permit provision has been substantially revised to address the comment.

Comment ZD65 Comment Letter Page # 27

Summary: E.2.d.1) a) ii) (7) - Numeric Sizing Criteria - Excess Volume - Clarify that the total water quality volume from the 85th percentile event must be treated, if that is in fact the requirement.

Response: This permit provision will be substantially revised to address the comment

Comment ZD66 Comment Letter Page # 28

Summary: E.2.d.1)a)iv) - Footnote 11 should be deleted in its entirety.

Response: The new language will be put into the main body of the permit to address the commenter's concerns. Language has been added to clarify intent

Comment ZD67 Comment Letter Page # 28

Summary: E.2.d.1) a) iii) - Source Control Design Principles - Delete language.

Response: This language has been moved into a better location for better understanding of the Board's intent. These concepts will now be expected in the Project Planning and Design Guide (PPDG), as referenced in the SWMP.

Comment ZD68 Comment Letter Page # 28

Summary: E.2.d.1.a.v) - Alternative Compliance with Treatment Control Criteria - Revise the footnotes to be in-line with Department's ability to contribute equivalent funding. - "Alternative Compliance is not applicable to projects subject to treatment requirements based on a waste load application assigned to the Department."

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD69 Comment Letter Page # 28

Summary: E.2.d.1.a.v) - Alternative Compliance with Treatment Control Criteria - This language will limit the ability for a project to be in compliance while also trying to meet the requirements of the waste load allocation. - Delete this language.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD70 Comment Letter Page # 28

Summary: E.2.d.1.a.vi) - Projects Discharging to CWA 303(d) listed waters - This section seems to be redundant to the treatment trigger listed under E.2.d.1.a.i.1.d. It is unknown how this language would apply to the planning and design requirements. - Delete this language.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD71 Comment Letter Page # 29

Summary: E.2.d.1)b)i)(1) - The trigger for hydromodification evaluation should be limited to projects that add 1 acre of new impervious area.

Response: This permit provision has been substantially revised to address this comment

Comment ZD72 Comment Letter Page # 29

Summary: E.2.d.1)b) - Clarify that Caltrans is not responsible for mitigation of naturally unstable channels. This should also be addressed in the flow chart.

Response: This permit provision has been substantially revised to address the comment.

Comment ZD73 Comment Letter Page # 29

Summary: E.2.d.1) c) - Stream Crossing Design Guidelines to Maintain Natural Stream Processes - Clarify that pipe conduits and riprap may be used where roadways cross streams. They appear to be prohibited. There are many locations that use concrete, imported rock slope protection (RSP), plastic pipe (e.g., PVC), etc. as part of the crossings.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD74 Comment Letter Page # 29

Summary: E.2.e.1) - 1) Vector Control - The following change should be made to allow wet ponds to be used: "All storm water BMPs that retain storm water shall be designed, operated and maintained to minimize mosquito production, and to drain within 96 hours of the end of a rain event, unless designed to control vectors."

Response: This permit provision has been substantially revised to reflect this comment

Comment ZD75 Comment Letter Page # 30

Summary: E.2.e.2) b) - Storm Water Treatment BMPs - Modify this language to allow Caltrans to implement a directed adaptive maintenance inspection program.

Response: Inspections and maintenance are an important part of ensuring that BMPs function as designed. No change is required.

Comment ZD76 Comment Letter Page # 30

Summary: E.2.e.2) c) - Storm Water Treatment BMPs - Retained sediments -
This sentence should be deleted, or reasonable decision-making discretion should be allowed by the supervisor based on location, past analysis, and visual characteristics. Possible text: "Retained sediments should be evaluated to determine the potential for re-use or disposal."

Response: Retained sediments that are re-used are considered to be properly disposed of. This language fits the needs of the State Water Board to ensure that BMPs work properly and that retained sediments and pollutants are handled properly. No change is required.

Comment ZD77 Comment Letter Page # 30

Summary: E.2.e.5) c) ii) - Conduct Pilot LID Retrofit Projects, Reporting -
Reduce and redirect this monitoring to projects/designs that would help Caltrans with developing LID strategies.

Response: This permit provision has been deleted.

Comment ZD78 Comment Letter Page # 30

Summary: E.2.e.5) c) ii) - Conduct Pilot LID Retrofit Projects -
Clarify if water quality monitoring required as part of Pilot LID Retrofits study.

Response: This permit provision has been deleted.

Comment ZD79 Comment Letter Page # 31

Summary: E.4.c. - Supplemental TMDL Implementation Plan and TMDL Status Review Report -
This should be deleted, because the TMDL regulations do not provide authorization for these tasks.

Response: The Supplemental TMDL Implementation Plan has been deleted. The TMDL Status Review Report has been retained as a summary report.

Comment ZD80 Comment Letter Page # 31

Summary: E.2.h.3) b) ii) - Vegetation Control -
The Department policy states plants should be tolerant of local environmental conditions such as sunlight, aspect, water availability, temperature, soil, water quality, air quality, and wind, as well as proven to be durable adjacent to highways and in transportation facilities. California native plants should be incorporated into the design, taking into account local plant communities and species availability, to the maximum extent feasible. For example Oleander plantings in median strips are planted as it is very hardy and requires limited care. However, Oleander is not native; this addition has no basis in the Clean Water Act. The text should be reworded to reflect planting of the most appropriate plant for the need and the environment.
"of exotic species" should be deleted from the sentence to make the language broader in relationship to vegetation control.

Response: Selection of the proper and native plants does, in fact, have impacts on water quality. Use of native plant species means that less irrigation, if any, is needed, and therefore, less non-stormwater enters the MS4 and thus the local receiving waters. Irrigation water has been shown to be sources of nutrients and sediment. Therefore, this requirement does, in fact, have basis in the CWA.

This permit provision has been substantially revised to clarify intent

Comment ZD81 Comment Letter Page # 31

Summary: E.2.h.3) d) - Landslide Management Plan -
There is no basis for this plan in the Clean Water Act.
Mass wasting is a long-standing geologic term that describes certain erosional and depositional processes that occur in nature. Mass wasting is not a "waste discharge;" therefore, it should not be regulated as such. In many locations, water quality is not at risk and these locations should not be included in this plan. In addition, it is not clear how this proposed requirement differs from the Slope Inspection inventory/ program?

Should be deleted.

Response: It has been shown in the past that the Department needs to develop guidelines not only for the cleanup of landslides, which can cause water quality problems if not handled in the proper way, as well as prevention and maintenance. This requirement is here to address the past actions of the Department.

Comment ZD82 Comment Letter Page # 31

Summary: E.2.h.4) s) - Spill Response: Spills not covered or reported to EMA/OES -
Is this provision needed in the permit since all spills threatening the environment would be reported pursuant to 4) a) i)? Clarify or give examples. Also, has EMA modified its procedures so that it notifies impacted MS4s of spills reported under provision 4) a) i)? This would seem to be a key factor to ensuring MS4s are informed. One remaining "OES" needs to be changed to EMA.

Response: This permit provision has been substantially revised to address the comment

Comment ZD83 Comment Letter Page # 32-33

Summary: General compliance approach applicable to Caltrans and potentially to other MS4s:
We suggest the Board consider two possible compliance options:
Alternative 1)
This approach would have Caltrans develop a POC-specific plan that would be applied to outfalls that exceed MEP type action levels (as developed by the Water Board's 2006 Blue Ribbon Storm Water Panel - posted here). The POC-specific plan could establish a priority process so that Caltrans can focus on outfall discharges causing the greatest environmental harm (using multiple lines of evidence). It would allow for a proactive approach and lead to water quality improvement. Furthermore, the work could be integrated into the TMDL implementation plan and thereby serve two purposes. The current draft permit does not allow for such prioritization and effective use of resources. The POC-specific action plans for such discharges would be based on historical monitoring data.

Alternative 2)
MEP pollutant control, the technology-based minimum requirements in the Clean Water Act, could be addressed using the approach proposed by the Blue Ribbon Panel (here). Water quality standards would be addressed using a triad approach similar to that being developed by the Water Board to implement sediment quality objectives.

- Elevated pollutant concentrations in the effluent - Exceedances in the effluent, if frequent and elevated, would identify sites needing further assessment, but by themselves would not necessarily require corrective measures. The Blue Ribbon Panel action levels could also be used to identify these potential problem discharge locations.
- Effluent toxicity and other indicators of potential impacts - For pollutants regulated to protect the biota, evidence of effluent toxicity would indicate a higher level of priority. A discharge with elevated bacteria to an AB 411 beach would also be an indicator of elevated priority. Identified and significant impacts on beneficial uses - These would be the highest priority for response:
 - o Evidence of decreased or disturbed biota (aquatic toxicity or excessive nutrients)
 - o Beach postings (REC1 impacts)
 - o Bioaccumulation of pollutants by receiving water species

This approach should be scientifically based. (See permit Attachment E, page 10).
Retrofit controls - Prioritized sites would be addressed based on highest priority locations and available funding.
Note that MS4 compliance with MEP is required by the CWA; strict compliance with WQS; however, is discretionary with the State (see *Defenders of Wildlife v. Browner*). Therefore, the state has considerable discretion in how to approach compliance with WQS.

Response: The permit has been substantially revised and, as a result, the comment is not applicable to the current draft permit.

Comment ZD84 Comment Letter Page # 33

Summary: Caltrans requests that requirements exempt safety projects -
The Safety Improvement program (SHOPP 201.010) projects are among the Department's top priority for funding and construction and are intended to reduce the number and/or severity of collisions. Projects are selected after a thorough analysis of the collision history. An extensive evaluation of potential countermeasures is conducted to address the safety need.
Only improvements that have a safety benefit greater than the capital cost of the project over its service life are selected in the Safety Improvement program. The Department uses the Traffic Safety Index (TSI) as the tool for evaluating the safety benefits of these highway improvement projects. Using previous collision history, the TSI is determined by estimating the number and cost of collisions that may occur on the existing facility if no further improvements are made, and subtracting from it the fewer number and cost of collisions that are expected to occur with the improvement. This collision cost savings, when divided by the capital cost of the improvement and converted to percent, is the TSI. A TSI of 200 is a benefit cost ratio of one when discounted for future benefits at 6% over the project life of twenty years.

Response: The monitoring and reporting program has been substantially revised to address this concern. However, the project planning and design section has not included such an exemption. Creation of impervious surface conditions is a concern for the quality of the Waters of the United States regardless of the intent of the project.

Comment ZD85 Comment Letter Page # 33

Summary: Equivalent alternative water quality technology -
The SWRCB and the RWQCB will actively support the implementation by Caltrans of effective equivalent alternative water quality technology and BMPs, provided the treatment efficiency is supported by applied field studies.

Response: comment noted.

Comment ZD86 Comment Letter Page # 34

Summary: Finding 6 - Deletion of paragraph specifying that irrigation runoff "regulated by WDRs or conditional waivers of WDRs ... are not expected to be a source of pollutants and need not be prohibited by the Department."
As we noted in our comments of March 14, 2011, this provision implied that Caltrans must prohibit all agricultural runoff covered by WDRs/waivers if this agricultural runoff conveys pollutants, which is potentially most or all agricultural runoff. It also implied that Caltrans must also prohibit all other agricultural runoff (i.e., not covered by WDRs/waiver) and other non-permitted runoff passing through the Caltrans right-of-way (ROW). This would have placed Caltrans in an untenable position of being required to terminate potentially many thousands of upgradient flows that pass under the ROW. We therefore strongly support removing this paragraph. As discussed in later comments, the proposed new approach in this revised draft of requiring Caltrans to physically separate its runoff from these other flows also has significant potential problems.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD87 Comment Letter Page # 34

Summary: Page 15 - previous Finding 41 [now deleted] -
As discussed in reference to Finding 19, this is an appropriate deletion (reference to Lake Tahoe HU numeric limitations).

Response: Comment noted

Comment ZD88 Comment Letter Page # 34

Summary: Fact Sheet -

The Factsheet needs to be updated to be consistent with the Order. In several cases, new permit requirements have been added without any discussion of the background or justification in the Factsheet. Factsheets, although not enforceable, can lead to confusion in permit interpretation by the Regional Water Boards and third parties.

Response: The Fact Sheet has been substantially revised to address the comment

Comment ZD89 Comment Letter Page # 35

Summary: Attachment I: Incident Report Form - Non-Compliance and Potential /Threatened Non-Compliance OES - The form has a line item: "Has OES been notified?" -

The new term is California Emergency Management Agency, rather than OES.

Response: This permit provision has been substantially revised to address the comment.

Comment ZD90 Comment Letter Page # 35

Summary: Attachment I: Incident Report Form -
Emergency Incident: These include Embankment Failure, Traffic Accident, and Spill. -

In many circumstances, these incidents present no risk to water quality. This item should be clarified to indicate that a risk to water quality must be present before reporting is necessary. Otherwise thousands of reports will have to be filed that are not relevant to the Water Boards.

Response: This permit provision has been deleted. CalEMA notification is all that is required.

Comment ZD91 Comment Letter Page # 35

Summary: Attachment I: Incident Report Form -
"Defined standard" -- One of the line reporting items for Field Non-Compliance is:
"Monitoring data indicates an exceedance of a defined standard. Defined standards include TMDL Waste Load Allocations, Regional Water Board numeric limits or objectives, and California Ocean Plan prohibitions."

The Glossary contains no definition of "defined standard" or "standard." Generally, standard in the context of NPDES permits refers to State adopted "water quality standards" (WQS) approved by USEPA and established pursuant to requirements in the Clean Water Act. "Defined standard" as described above appear to be a subset of WQS, but additionally include waste load allocations (WLA), which may be included in Basin Plans but may not be WQS because they are neither criteria (objectives in California) nor beneficial uses. Clarify.

Response: The phrase "Defined standards include..." indicates that what follows is what is being used to determine the prior phrase. No change is required.

Comment ZD92 Comment Letter Page # 35

Summary: Attachment I: Incident Report Form -
Discharge of prohibited non-storm water. Another line-reporting item for Field Non-Compliance is "Discharge of prohibited non-storm water."

Non-storm water, when it is a source of pollutants, is prohibited. "Pollutants" is defined very broadly in the Clean Water Act. Since virtually all non-stormwater carries some measurable constituents (i.e., pollutants), apparently all such flows will need to be reported except for discharges where Caltrans runoff is not co-mingled with other flows. Clarify the circumstances when the Board expects these reports to be filed. Examples would also be helpful.

Response: Prohibited non-stormwater discharges are those that are not conditionally exempted. This permit provision has been substantially revised to address the comment.

Comment ZD93 Comment Letter Page # 36

Summary: Attachment II: Monitoring Constituent List -

Reporting Limits - A few required Reporting Limits may be difficult or even impossible to achieve. In particular, Platinum, Selenium, and Diuron may not be reported down to the stated reporting limits, and Clopyralid is an unknown.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD94 Comment Letter Page # 36

Summary: Attachment II: Monitoring Constituent List -

Toxicity - Both acute and chronic toxicity have associated reporting limits. It is unclear how reporting limits apply to toxicity testing. In addition, the table states an RL for TUc as 0, which may be incorrect. Check and clarify.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD95 Comment Letter Page # 36

Summary: Attachment II: Monitoring Constituent List

Units for pH are listed as "6.5-8.0." This is incorrect. We suggest leaving this cell blank; pH does not really have a Reporting Limit.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD96 Comment Letter Page # 36

Summary: Attachment II: Monitoring Constituent List -

Constituent - The analytical method listed for Iron is 200.8. Although it is possible to analyze for Iron by this method, it is not common, and most labs do not use this method for Iron. - We suggest changing this method to 200.7.

Response: This method is specified for all metals, and is an approved USEPA method that achieves the desired detection limit.

Comment ZD97 Comment Letter Page # 36

Summary: Attachment III: Reporting Requirements -

Items marked with a submittal date of "Within 6 months of Permit Adoption for SWRCB Approval"

These items should be changed to "Within 12 months of the permit effective date." Otherwise, the effective date has limited meaning.

Response: Attachment III has been renumbered to Attachment IX in the draft permit. This permit provision has been substantially revised to achieve consistency throughout the draft permit. Effective date has replaced permit adoption throughout the permit.

Comment ZD98 Comment Letter Page # 36-37

Summary: Attachment IV: TMDL Implementation Requirements -

General Comment: State Water Board should verify the TMDLs listed. Many appear to be listed inappropriately in the Caltrans Permit. It should be noted that Caltrans has the largest list of TMDLs in the nation and it is important to prioritize TMDLs with limited resources available.

[the comment then goes on to list many TMDLs that the Department believes they are not named in]

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD99 Comment Letter Page # 37

Summary: Include a statement in the introduction, or with the TMDL WLAs that clarify that many of the TMDLs are being implemented through an adaptive process and that WLAs may be adjusted as new information is made available.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD100 Comment Letter Page # 38

Summary: This permit should only include the WLAs that are relevant to this permit term. The permit should include language that acknowledges that additional sources of trash exist that the dischargers named in the TMDL have no control over. The permit should also include language that recommends that WLAs be reviewed as the more restrictive deadlines approach. Before the final WLAs are integrated into this permit, the State Water Resources Control Board and Los Angeles Regional Water Board should work with the named responsible parties to develop realistic requirements and deadlines for trash TMDLs.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD101 Comment Letter Page # 38

Summary: The introduction states that "the Department is obligated to consult each TMDL to comply with all applicable allocations and other provisions, whether included in the table or not." Caltrans is a unique discharger and faces a unique set of opportunities and limitations. This permit should clarify TMDL requirements and ensure that these requirements are appropriate and consistent for Caltrans. Including language that states that all TMDL language is applicable whether integrated into this permit or not, neglects the unique nature of Caltrans, does not help achieve consistency between the TMDLs, and does not account for the differences between Caltrans and other traditional MS4 dischargers. Request to remove the statement cited above from Attachment IV.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD102 Comment Letter Page # 38-39

Summary: Page 4 - San Francisco Bay PCBs and Mercury TMDLs Pilot Projects -

Remove the requirements for these pilot projects or revise to make appropriate for Caltrans.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD103 Comment Letter Page # 39

Summary: Page 13- Marina Del Rey, Harbor Back Basins, Mother's Beach -

Revise the WLA requirements under this TMDL to reflect Caltrans minor area in watersheds and state that Caltrans may not contribute any significant load within the drainage areas to any of these subwatersheds. Also include language to state that Caltrans is not responsible for exceedances in subwatersheds where Caltrans does not have facilities, or Caltrans has not contributed to exceedances.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZD104 Comment Letter Page # 39

Summary: Page 18 - Calleguas Creek and its Tributaries and Mugu Lagoon Metals and Selenium TMDL Special Studies -

Remove the requirements for these special studies or revise to make appropriate for Caltrans.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

CommentZD105 Comment Letter Page # 105

Summary: Page 21 - Calleguas Creek and its Tributaries and Mugu Lagoon Organochlorine Pesticides (OC), Polychlorinated Biphenyls (PCBs), and Siltation TMDL Special Studies -

Remove the requirements for these special studies or revise to make appropriate for Caltrans.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

CommentZD106 Comment Letter Page # 40

Summary: Page 24 - Calleguas Creek and its Tributaries and Mugu Lagoon Toxicity, Chlorpyrifos, Diazinon TMDL - Several of the requirements under this TMDL are not appropriate for Caltrans - The permit requires that Caltrans investigate the pesticides that will replace Diazinon and Chlorpyrifos in the urban environment, their impact on receiving waters, and potential control measures. There are no known significant sources of pesticides within Caltrans right-of-way, and any discharge of these from Caltrans right-of-way is likely to be from diffuse sources from aerial deposition. As a result, this requirement is not appropriate for Caltrans.

Special Study 2 requires Caltrans to consider the results of monitoring of sediment concentrations by source/ land use type. Caltrans has one predominant land use type within its right-of-way and, as a result, this study is not appropriate for Caltrans.

Remove these requirements or revise to make appropriate for Caltrans.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

CommentZD107 Comment Letter Page # 40

Summary: Page 33 - Project 1- Revised Twenty Beaches and Creeks in the San Diego Region (including Tecolote Creek) Indicator Bacteria TMDL - Include language that states that the WLAs are based on existing loads from Caltrans facilities, and that no reductions from baseline are required.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

CommentZD108 Comment Letter Page # 41

Summary: Pages 13 and 14 - Finding 33- Addition of sentence regarding TMDLs: "In some of these cases, multiple dischargers are assigned a grouped or aggregate waste load allocation, and each discharger is jointly responsible for complying with the aggregate waste load allocation." Caltrans strongly recommends that individual WLAs be developed for each discharger for each TMDL and that each discharger be held responsible for its own portion of any aggregate waste load allocation.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

CommentZD109 Comment Letter Page # 41

Summary: Attachment V: Regional Water Board Specific Requirements - Caltrans' participation in location-specific requirements should be limited to commitments associated with TMDLs where Caltrans has a Waste Load Allocation based on an approved Basin Plan Amendment. Other location specific requirements listed in Attachment V should be deleted to promote statewide consistency.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

CommentZD110 Comment Letter Page # 41

Summary: Region Specific Requirements - 2.1.c.ii - Part 2: San Francisco Bay Region - Language states: "Technical uncertainties regarding copper effects in the Bay are described in the Basin Plan's implementation program for copper site-specific objectives. These uncertainties include toxicity to Bay benthic organisms possibly caused by high copper concentrations as well as possible impacts to the olfactory system of salmonids. The Department shall submit in the Year 1 Annual Report the specific manner in which these information needs will be accomplished and describe the studies to be performed with a schedule."

The Clean Water Act and NPDES permit regulations do not provide a basis for requiring research projects in NPDES permits and should be deleted.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

CommentZD111 Comment Letter Page # 42

Summary: Attachment VI - Standard Provisions - Item #2 "2. Modification, Revocation and Reissuance, or Termination. This Order may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Department for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not uphold any General Permit condition.

Rather than "uphold" is the intent to say "negate" or something similar?

Response: 40 CFR 122.41 uses the term "stay" instead of "uphold". This permit provision has been amended to reflect this.

CommentZD112 Comment Letter Page # 42

Summary: Attachment VIII- Glossary - Page 3 - Revised definition of Maintenance Facility.

Material storage areas need to be defined. Any area that materials are temporarily stored for a local operation would be required to have an FPPP regardless of duration of storage. For example, a temporary storage area for a one-day repair job would apparently require an FPPP. Clarify.

Response: Staff does not believe that this is an issue. Temporary stockpiles are not considered material storage. See definition of FPPP. No change is required.

CommentZD113 Comment Letter Page # 42

Summary: Attachment VIII- Glossary - Page 3 - Glossary Permit Coverage - Industrial facility definition -

The addition of the term "industrial facility" into the draft order now potentially makes Caltrans' equipment shops subject to the Industrial General Permit. The equipment shops would no longer be covered under Caltrans' NPDES permit as they have been in the past. Each location could be required to obtain an Industrial permit. Clarify the Board's intent.

Response: The scope of the Industrial permit is determined by SIC code. Any Department facilities covered under this permit are subject to these permit conditions and not those of the Industrial General Permit (IGP).

CommentZD114 Comment Letter Page # 42

Summary: Attachment VIII- Glossary - Page 5 - Pages 54 and 55 of Provision E.2.h.2) FPPPs and Maintenance Facilities -

require FPPPs for all Maintenance Facilities. The revised definition of FPPPs provides examples of Facilities subject to FPPPs and is different from the definition of Maintenance Facilities.

Response: This permit provision has been substantially revised to address the comment.

CommentZD115 Comment Letter Page # 42

Summary: Attachment VIII- Glossary - Page 5 - Facility Pollution Prevention Plan (FPPP) - New text has been added to this draft:

Facilities subject to FPPPs include: maintenance yards/stations; material storage facilities (if not totally enclosed); equipment storage and repair facilities, roadside rest areas, agricultural and highway patrol weigh stations, decant storage or disposal locations, and permanent and temporary solid and liquid waste management sites

Some of these facilities are very small (e.g., agricultural and highway patrol weigh stations) and should not require FPPPs. FPPPs should have a size (1 acre or greater) or risk-based threshold.

Response: The facility types listed represent those that are of concern to USEPA and the State Water Board. No change is required.

CommentZD116 Comment Letter Page # 42-43

Summary: Attachment VIII- Glossary -Page 5 - Facility -

The term "facility" and the different types as defined in this Attachment VIII are not used consistently throughout the draft order. Here in Attachment VIII, "Department facility" is subdivided into 4 sub-categories: Maintenance facility, Non-maintenance facility, Highway facility, and Industrial facility.

Response: This permit provision has been substantially revised to address this comment.

CommentZD117 Comment Letter Page # 43

Summary: Attachment VIII- Glossary -Page 7 - Definition of Maximum Extent Practicable (MEP) - The following sentence has been added:

"To achieve the MEP standard, municipalities must employ whatever BMPs are technically feasible and are not cost-prohibitive. Reducing pollutants to the MEP means choosing effective BMPs, and rejecting applicable BMPs only where other effective BMPs will serve the same purpose, or the BMPs would not be technically feasible, or the costs would be prohibitive. A final determination of whether a municipality has reduced pollutants to the MEP can only be made by the State or Regional Water Boards."

Change in financial criteria - This proposed new threshold for BMPs appears to represent a shift toward requiring an MS4 to implement all BMPs that are not be cost prohibitive, and omitting the previous criteria which included cost-effectiveness (i.e., the change would mean potentially implementing BMPs where the cost would exceed any benefit). This implies that if funding is somehow available, then the BMP should be built regardless of whether it is cost-effective. This is contrary to previous Board descriptions of MEP. We believe it is also contrary to USEPA guidance.

The new text should be deleted, unless it can be justified by reference to the NDPES regulations or the CWA.

Response: See response to comment A.3.

CommentZD118 Comment Letter Page # 43

Summary: Attachment VIII- Glossary -Page 7 - Definition of Maximum Extent Practicable (MEP) - The following sentence has been added:
"To achieve the MEP standard, municipalities must employ whatever BMPs are technically feasible and are not cost-prohibitive. Reducing pollutants to the MEP means choosing effective BMPs, and rejecting applicable BMPs only where other effective BMPs will serve the same purpose, or the BMPs would not be technically feasible, or the costs would be prohibitive. A final determination of whether a municipality has reduced pollutants to the MEP can only be made by the State or Regional Water Boards."

Determination of MEP - The new wording states, "A final determination of whether a municipality has reduced pollutants to the MEP can only be made by the State or Regional Water Boards." This appears contrary to EPA guidance indicating that MS4s make this decision: "EPA envisions that permittees will determine what the MEP is on a location-by-location basis and consider such factors as conditions of receiving waters, specific local concerns, and other aspects of a comprehensive watershed plan. [from Requirements for Regulated Small MS4s]

The new text should be deleted, unless it can be justified by reference to the NPDES regulations or the CWA.

Response: See comment response to A.3.

CommentZD119 Comment Letter Page # 43-44

Summary: Attachment VIII- Glossary - Page 11 - Waters of the State - New text has been added to this draft:
"This Order contains requirements to protect the beneficial uses of waters of the state. Furthermore, municipal storm water discharges are discharges that contain waste that could affect the quality of the waters of the State."

This is an NPDES permit authorized under the Clean Water Act for control of discharges into waters of the U.S. as defined in the Act. Provisions that address only waters of the state, if contained in this permit, must be clearly separated so that NPDES requirements and California Water Code requirements are not conflated. For example, NPDES reporting and enforcement mechanisms cannot be applied to discharges to waters of the state that are not waters of the U.S. This required separation should be clarified in this definition and in the permit itself.

We request that any Water Code-only based requirements be specifically identified in the permit.

Response: See Response to comment C.202.

CommentZD120 Comment Letter Page # 44

Summary: Attachment VIII- Glossary - It would be useful to add California Emergency Management Agency and OES to the Glossary.

Response: OES has been removed from the permit as a reference.
CalEMA will not be added to the Glossary, as it is clear that the Department knows what this agency is.

Comment ZE1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving and productivity will decrease due to longer trips on unmaintained roads. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Comment ZF1 Comment Letter Page #

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofiting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Comment ZG1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofiting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Comment ZH1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Comment ZI1 Comment Letter Page # 1

Summary: The SWMP should be approved by a Governing Body. There should also be proof that the SWMP is adopted into a Master Plan. The Draft states the SWMP contain 16 elements, source points should be identified. It is more the source than the BMP that counts to actual reduction of pollutants. Any other State or CEQA required reports should be submitted with this report.

Response: The Tentative Order calls for the Department to submit their SWMP for approval by the State Water Board. The State Water Board is the Governing Body in the context of these comments.

The identified plans do not apply to the Department.

While source control is an important tool in decreasing pollution, it is not the only one. The source of pollutants from the Department's right of way is primarily the public's vehicles. There are a few efforts underway to help reduce this source of pollution, including an effort to reduce the quantity of copper in brake pads.

It is not clear what other State reports would be necessary to include in the Department's SWMP. And as far as CEQA, these documents would not be needed for the permit itself, because the permit process itself is not subject to CEQA, since it implements a federal program. Any CEQA documents that the Department completes for their projects are only applicable to that project, and thus would not be fitting in a statewide management document.

Comment ZI2 Comment Letter Page # 1

Summary: Annual Reporting and Public Health Standards should be accompanied and addressed by a Governing Body.

Response: Annual reports are not approved because they are a reflection of past activity. They are submitted to our agency for compliance determinations.

Comment ZI3 Comment Letter Page # 1

Summary: Budgetary issues need to be addressed, so any Governing Body budgets should be submitted.

Response: The budget of the State Water Board is not at issue here for this permit. Budget information from the Department is included in their Annual Reports.

Comment ZI4 Comment Letter Page # 1

Summary: Governing Bodies should, with their approvals of any submission, include identifiable funding sources for execution and compliance.

Response: The Department submits their expenditure data with the Annual Report

Comment ZI5 Comment Letter Page # 1

Summary: Inspections need to be with qualified personnel, subject under Public Health and Safety Codes. There should be a license or certification. Again, the Governing Body should approve the submittal, as they are the responsible Public Health and Safety Official.

Response: The inspectors who would determine the Department's compliance with the permit would be either local officials overseeing construction activities or by Regional Water Board staff. The Regional Water Board staff are qualified to determine compliance with this Order. The Public Health & Safety Code is not under the Water Boards purview or area of responsibility.

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Comment ZK1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofiting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Comment ZL1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Comment ZM1 Comment Letter Page # 2

Summary: Infeasibility of onsite retention should be demonstrated

Response: It is unclear how such a demonstration will be conducted. This permit provision has been substantially revised. LID and other landscape based treatment are the preferred choice and are the priority of the design criteria. Alternative options are provided for those cases where meeting the standard is infeasible.

Comment ZM2 Comment Letter Page # 2

Summary: The flow-through option of onsite retention should be eliminated.

Response: See comment response to A.14 and I.5

Comment ZM3 Comment Letter Page # 2

Summary: Both acute and chronic toxicity monitoring should be conducted at every site.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment ZM4 Comment Letter Page # 2

Summary: Any monitoring sites that exceed water quality objectives during a sampling event should remain on the monitoring list.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment ZM5 Comment Letter Page # 2

Summary: Discharge and receiving water quality monitoring should occur concurrently to better understand if a discharge is causing and contributing to a water quality standard exceedance.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment ZM6 Comment Letter Page # 2

Summary: Remove the provision that Caltrans need not analyze constituents in Attachment II where the RWQCB finds there is little chance the constituent is present in the discharge.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment ZM7 Comment Letter Page # 2

Summary: Work with RWQCB to ensure Appendix IV is complete.

Response: See comment response to A.22

Comment ZM8 Comment Letter Page # 2

Summary: Draft needs to clarify that agricultural runoff is not an exempted pollutant from the prohibition against non-stormwater discharges.

Response: See comment response to A.1.

Comment ZM9 Comment Letter Page # 2

Summary: Draft needs to be improved to ensure that non-storm water runoff - including landscape and agriculture irrigation is "effectively prohibited".

Response: See comment responses to A.1 and I.8.

Comment ZM10 Comment Letter Page # 2

Summary: The Draft requires that "Treatment control BMPs constructed for Department and Non-Department projects shall be designed to infiltrate harvest and re-use, or evapotranspire the storm water runoff volume from an 85th percentile 24-hour storm event." We support this revised provision. This requirement is consistent with MS4 permits.

Response: Comment Noted

Comment ZM11 Comment Letter Page # 2

Summary: Post construction requirements state "The Department shall use LID principles with the goal of mimicking pre-project hydrology." These requirements are not adequately protective of water quality, and will ensure that impervious surfaces that generate polluted runoff or high volumes of runoff persistent in the built environment effectively indefinitely. The draft should use the term "pre-development" instead of "pre-project". The Draft should state "pre-development" refers to the condition of a site in its undeveloped state.

Response: See comment response to A.18

Comment ZM12 Comment Letter Page # 3

Summary: Permit allows for alternative compliance of onsite retention if infeasibility is demonstrated. The Draft is not clear on how infeasibility is demonstrated. The Draft flow-through option is an unacceptable alternative. To utilize alternative compliance measures, Caltrans must demonstrate that compliance with applicable post-construction requirements would be technically infeasible by submitting a site-specific hydrologic and /or design analysis conducted and endorsed by a registered professional engineer, geologist, architect and/or landscape architect. This will ensure that stormwater will be kept onsite to the max extent.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZM13 Comment Letter Page # 3

Summary: We do not support flow-through treatment systems as an alternative to traditional LID practices. These requirements fail to meet the Clean Water Act requirements that the Permit "shall require controls to reduce the discharge of pollutants to the maximum extent practicable." Flow-through systems do not provide the same water quality benefits of LID. Instead the "off-ramp" should include only nearby offsite LID projects with a 1.5 volume multiplier to spark creativity to retain the water onsite. We urge SWRCB to modify the "Alternative Compliance with Treatment Sizing Criteria" provision as follows:

- 1) Upon approval by the applicable RWQCB installing infiltration, reuse and/or evapotranspiration projects that retain 1.5 times the volume of the 85th percentile 24-hr storm generated onsite, at an offsite location in the same watershed or
- 2) Upon approval by the applicable RWQCB contributing payment in lieu to fund a Regional Board -approved Regional Project that retain, through infiltration, reuse and/or evapotranspiration, 1.5 times the amount of stormwater generated onsite.

Response: Flow through devices, especially those joined in the LID grouping, are capable and reliable, and do indeed meet MEP.

The alternative compliance language in the draft permit has been substantially revised to emphasize the use of infiltration, harvesting and re-use, and/or evapotranspiration.

Comment ZM14 Comment Letter Page # 4

Summary: It is critical that 'retrofit' becomes part of the dialogue when managing stormwater pollution. However, the Permit should include critical retrofit project details, such as: performance criteria, sizing criteria and the size of the area to be treated.

Response: Ideally all infrastructure in the State would be implementing storm water controls to maintain water quality. But after weighing the scope of such an enterprise, staff has suggested that performing upgrades to infrastructure during the construction cycle would achieve the results desired, albeit over a longer term. The draft permit's monitoring program is closely tied to "corrective actions", which includes retrofitting.

Comment ZM15 Comment Letter Page # 4

Summary: Both acute and chronic toxicity monitoring should be conducted at every site. Toxicity testing is also no longer required by the Draft if the first samples do not indicate toxicity. Variability from storm-to-storm and year-to-year, it is critical to continue toxicity monitoring and understand the impacts year round.

Response: See response to comment for ZM.3

Comment ZM16 Comment Letter Page # 4

Summary: Table 1 Water Quality Action Levels:

1. The Draft allows Caltrans to discontinue monitoring at a site when no exceedances of the 'action level' are found. Only zero exceedances should be discontinued and changed to new sites. Without an adequate sample size the state will be unable to adequately track progress and implement controls as needed. We suggest selecting at least 25 fixed sites to be monitored consistently each year.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZM17 Comment Letter Page # 5

Summary: Draft calls for receiving water monitoring to begin and discharge monitoring to end when a discharge exceedance is found. Instead, discharge and receiving water monitoring should occur concurrently to better understand if a discharge is causing and contributing to a water quality standard exceedance.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZM18 Comment Letter Page # 5

Summary: What is the time period for the Action Level Exceedances? The assumption is that this evaluation takes place every year, but the section is unclear.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZM19 Comment Letter Page # 5

Summary: We urge the SWRCB to remove the provision that states "on a site specific basis, the Department need not analyze for constituents in Attachment II where the RWQCB finds that there is little chance that they are present in the discharge." Due to variability in stormwater and variety of pesticides, herbicides and fertilizers Caltrans applies, it is inappropriate to deem a pollutant as having 'little chance' of being present. At a minimum Caltrans should monitor for all constituents in Attachment II for the first 2 yrs. To ensure these pollutants are not present.

Response: This permit provision has been substantially revised and, as a result, the comment is not applicable to the current draft permit provision.

Comment ZM20 Comment Letter Page # 5

Summary: Several TMDLs are missing from Appendix IV: Colorado Lagoon Toxics, Los Cerritos Metals, Santa Clara Chloride and San Gabriel River Metals and Selenium. The Permit must include all WLAs, milestones and requirements from the applicable TMDLs in order to demonstrate the Permits provisions will ensure that Caltrans achieves the TMDL goals. We urge the SWRB to work with RWQCB to ensure that Appendix IV is complete.

Response: The TMDLs for the Los Cerritos Channel Metals, Santa Clara River Reach 3 Chloride, and San Gabriel River Metals have been incorporated into Attachment IV. The Colorado Lagoon Toxics TMDL was not included in Attachment IV, because the Department was not named as a responsible party. If any approved TMDLs or newly adopted TMDLs are considered for inclusion at a later time, then the State Water Board may reopen this Order according to Provision 11.b.

See comment response to A.22

Comment ZM21 Comment Letter Page # 6

Summary: It is unclear why the Santa Monica Bay and Marine Del Rey Harbor Bacteria TMDLs are the only requirements for Region 4 listed in Section V. Clarify the differences between Attachment V and Attachment IV.

Response: Attachment V has been significantly revised and, as a result, this comment is not applicable to the current draft.

Comment ZM22 Comment Letter Page # 6

Summary: The Draft enumerates non stormwater discharges that "are conditionally exempt from prohibition" against non stormwater discharges into the MS4 system. However, federal regulations under the Clean Water Act are clear that sources of pollution cannot be exempted from the prohibition against non-stormwater discharges. Accordingly, agricultural runoff cannot be exempted from the prohibition against non-stormwater discharges. While the Board has deleted the phrase "including agricultural irrigation water" from the list of exempted discharges and the accompanying footnote stating that agricultural irrigation water remains conditionally exempt only if "regulated by WDRs or waivers of WDRs". The Permit still includes the broader term "irrigation water" on the list of exempted discharges, which could be read to include agricultural irrigation water. SWRCB should be clear and state agriculture runoff is not a type of exempted irrigation water.

Response: The State Water Board does not agree that agricultural return flows are subject to the prohibition or conditional exemptions for non-stormwater discharges. See comment response to A.1

Comment ZM23 Comment Letter Page # 7

Summary: Permit fails to meet legal standards of prohibiting non-stormwater discharges. Instead of effectively prohibiting agricultural runoff, the SWRCB takes the requirements of a conditionally exempt pollutant and turns it into a BMP. Does not meet Clean Water Act Section 402(p)(3)(B)(ii). Since a BMP requiring the same obligation as a condition for an exempt pollutant accomplishes nothing and does not meet the legal standard of effectively prohibiting agricultural runoff, we ask the SWRCB to re-visit the BMPs for "Non-storm water Activities/Discharges."

Response: See comment answer to A.1

Comment ZM24 Comment Letter Page # 7

Summary: The Permit should include monitoring and reporting requirements by which Caltrans demonstrates progress toward "detecting and removing" agricultural discharges..

Response: See comment answer to A.1

Comment ZN1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Summary: In our opinion it is ridiculous to impose a solution to a problem that we have lived with for decades that could take as much as \$600 million a year away from fixing our highway infrastructure. With the economy in the shape it is now new taxes are not a likely solution which would leave us all with a continuously deteriorating highway system. We urge you to find a different way to solve a problem which has existed for decades rather than taking funds from a program that is trying to fix our highways.

Response: See comment responses to Q1, Q2, Q3 and R2.

Comment ZP1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Comment ZQ1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Comment ZR1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Comment ZS1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofiting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Summary: The Permit does not contain adequate provisions to reduce pesticide discharges to the maximum extent practicable (MEP) because they are weaker than the NPDES permit for Residual Pesticide Discharges to Waters of the United States for Spray Applications. The SWRCB should draw from the pesticide planning and minimization processes required by the Residual Pesticide permit. The Permit should require Caltrans to:

1. implement buffer zones that prevent the drifting of targeted pesticide applications into nearby waterways.
2. perform evaluations of whether pesticide use is appropriate.
3. prepare and maintain a Pesticide Application Log to verify that applications comply with the appropriate management plans.

The SWRCB should require Caltrans to implement site-specific plans for their pesticide planning & monitoring.

Response: The draft permit has requirements for the use of pesticide by the Department. The draft permit requires that the Department minimize the use of pesticides, evaluate site-specific conditions prior to application, require training and licensing, and other provisions listed under the Vegetation Control section (E.2.h.3.b).

The assertion that the draft permit's provisions do not meet MEP because they are weaker than a permit that implements a higher standard (BAT/BCT) is not the appropriate standard for this MS4 permit. The regulatory standard that must be satisfied for this permit is the MEP standard as discussed in the response for A.3.

Summary: Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen and new projects will be delayed. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Comment ZV1 Comment Letter Page # 1

Summary: The Draft should exempt utility linear activities from post-construction requirements consistent with Finding 76 that "LUP projects are not subject to post-construction requirements due to the nature of their construction" as stated in the CGP.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment ZV2 Comment Letter Page # 1

Summary: Revise the Draft requirement to only prohibit conditionally exempt non-stormwater discharges when they are determined to be 'significant sources of pollutants' consistent with NPDES regulations Title 40,Section 122.34(b)(iv).

Response: See Comment Response to ZC.1.

To be more clear. 40 CFR 122.26 (d)(2)(iv)(B)(1) is the appropriate section here, and it states that the program shall address all types of illicit discharges, and to address the given list where those listed flows are shown to be sources of pollutants. The use of the word "significant" in this section only applies to fire fighting flows.

Comment ZV3 Comment Letter Page # 1

Summary: Section A.6 of the Draft prohibits the discharge of biological and residual pesticides and their breakdown byproducts to waters of the US that are impaired by the pesticides used, or to drainages tributary to those waters. Some drainages that are tributary are miles away or upstream of the actual impaired waterbody making it an insignificant risk to the impaired water. This section should be revised so that a discharge of biological and residual pesticides and their breakdown byproducts are prohibited only when 1) it is prohibited by USEPA approved TMDL or 2) the discharge is made directly to the impaired water of the US or to a drainage located upgradient to the impaired water and within the same hydrological unit at the site level.

Response: The permit provision has been substantially revised to address the comment.

See comment response to ZC.3.

Comment ZV4 Comment Letter Page # 2

Summary: Section E.2.c.2.a.iv.2 of the Draft states test endpoint data from chronic toxicity tests are to be analyzed using a t-test as described in EPA's test method manuals or using "EPA's NPDES Test of Significant Toxicity Implementation Document." Since the SWRCB has not approved the Toxicity Policy which may authorize the use of EPA's NPDES Test of Significant Toxicity, it is inappropriate to include at this time. References to the Test of Significant Toxicity should be deleted from the Permit.

Response: See comment response to ZC.4

Comment ZW1 Comment Letter Page # 1

Summary: Measurable post-construction requirements for the Permit should be comparable to LID requirements included in recent MS4 permits adopted by RWQCB. We suggest consideration of LID requirements of permit No. CAS618030 adopted by the Santa Ana Regional Board. The Permit only requires that general LID principles be incorporated into the design of new projects, Region 9 audits have showed the need for clearer measurable requirements to ensure and effective permit.

Response: The LID requirements in the draft permit are comparable to other requirements throughout the state.

We have looked at the Orange County (R8) MS4 permit and find that the Draft permit is comparable to those requirements.

This permit provision has been substantially revised to address this comment

Comment ZW2 Comment Letter Page # 1

Summary: The terminology used in the Draft Permit creates uncertainty over how requirements apply. Section 2.d.1.a establishes "Post-Construction Stormwater Treatment Controls". We recommend revising the use of the term "treatment controls" in this section. Several Regional Boards have adopted MS4 permits which distinguish between post-construction LID BMPs and post-construction treatment control BMPs. These permits refer to controls relying on infiltration, harvest/use, and evapotranspiration as "LID BMPs" while physical treatment technologies such as oil/water separators and proprietary filter systems are referred to as "treatment control BMPs". The Permit states "flow-through treatment systems" when the entire runoff volume from an 85th percentile 24-hour storm cannot be addressed. We suggest that the permit language be revised to distinguish between post-construction LID BMPs and Post-construction flow-through treatment control BMPs. These revisions should be made throughout section 2.d.1.a.

Response: This permit provision has been substantially revised to address the comment.

Comment ZW3 Comment Letter Page # 2

Summary: Section 2.d.1.a.i.3 establishes a procedure for a waiver of post-construction controls. This provision should be deleted unless clear criteria are added to define what a "minimal impact on water quality" is, and to enable Executive Officers to make definitive conclusions that a project will have such a minimal impact.

Response: This permit provision has been deleted.

Comment ZW4 Comment Letter Page # 2

Summary: Section 2.d.1.a.ii states that excess volume not addressed by LID "may be" treated by flow-through treatment systems. This should be revised to "shall be"

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment ZW5 Comment Letter Page # 2

Summary: Section 2.d.1.a.v notes that Alternative Compliance is not applicable if a project is subject to waste load allocations. It is unclear what options are available if it's not technically feasible to implement LID at such a project. We recommend that when it is technically infeasible to implement LID at a project site, treatment control BMPs should be required to address any excess flows, and offsite LID project should also be required within the same subwatershed whether or not a project is subject to WLAs.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment ZW6 Comment Letter Page # 2

Summary: The Hydromodification flow chart on page 44 refers to "NPDES Water Quality Requirements" and a "Permanent BMP Flow Chart." It is unclear what these refer to. In terms of "NPDES Water Quality Requirements" it should be made clear that even when there is not a hydromodification threat, post-construction LID BMPs must be implemented.

Response: This permit provision has been substantially revised to address the comment

Comment ZW7 Comment Letter Page # 2

Summary: Due to workload concerns for the RQWCB, we suggest that rather than having LID infeasibility determinations submitted to the RQWCB for review and approval, the permit could provide expectations for considerations that should be made in order to demonstrate infeasibility and that any such determinations be based on a rigorous feasibility analysis which would be endorsed by a professional engineer, certified engineering geologist or other appropriate state-certified professional.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment ZW8 Comment Letter Page # 2

Summary: The Draft has indicated only a partial list of TMDLs and states that Caltrans is expected to locate any missing TMDLs and correctly interpret all requirements that may be applicable to the TMDLs. This is not consistent with our objective of improving the clarity and enforceability of MS4 permits. This may have changed in the Aug 18th Draft Permit.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment ZW9 Comment Letter Page # 3

Summary: The changes made to WLAs in the permit for Findings 34 and 35 make the appropriate points even if the language we provided in March were not used.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment ZW10 Comment Letter Page # 3

Summary: The last sentence of the first paragraph of Section E.4.a has been changed since January. We believe our recommended sentence for this section would be appropriate to include in the introduction to the TMDL portion of the permit. For specific sentence please view or January 7,th 2011 comment.

Response: This permit provision has been substantially revised to address the comment

Comment ZW11 Comment Letter Page # 3

Summary: Lower Eel River Sediment TMDL:
We suggest the permit specify a 15 yr rolling average in determining compliance with the WLAs consistent with the TMDL itself. For the Albion River TMDL the draft permit indicated that the WLA for point sources was set to "zero net increase". However, the WLA was set to 0 since there were no significant point sources identified in the TMDL analysis; only nonpoint sources were identified which were assigned load allocations. This issue has been appropriately addressed with the revision of the Aug 18 2011 Draft Permit

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment ZW12 Comment Letter Page # 4

Summary: Ballona Creek Metals TMDL: Our issue with the omission of this TMDL has been resolved in the Aug 18th 2011 Draft.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment ZW13 Comment Letter Page # 4

Summary: Ballona Creek Estuary Toxic Pollutants TMDL: The appropriate deadlines have been included in the Aug 18th 2011 Draft Permit. Our issue has been resolved.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment ZW14 Comment Letter Page # 4

Summary: Los Angeles River Trash TMDL:
Draft has omitted the provision in the TMDL for determining compliance i.e. the use of a rolling average. This provision is missing from the Aug 18th 2011 Draft Permit.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment ZW15 Comment Letter Page # 4

Summary: Chollas Creek Metals TMDL:
We recommend you include various special studies mandated by the TMDL. We did not find these study requirements in the Draft Permit. For specifics please see our March 24th comment letter.

Response: This permit provision has been substantially revised, and as a result, this comment is not applicable to the current draft permit provision.

Comment ZW16 Comment Letter Page # 5

Summary: We request that the fact sheet or the Findings for the Permit describe how the permit would ensure consistency with the understandings we reached with Caltrans in the litigation US v Caltrans (No. 97-0037-EIG). Finding 42 of the January 7th 2011 Permit has been deleted. We recommend the fact sheet or Findings for the final permit describe how the permit would be consistent.

Response: 97-0037-EIG _ Consent Decree was terminated on March 10, 2011, and a reference to the Consent Decree will accordingly not be incorporated into the permit.

Comment ZW17 Comment Letter Page # 5

Summary: Region 9 has suggested a revision of section E.2.f.2 of January 7, 2011 permit to enhance the enforceability of the permit for certain roadway and parking lot repaving and resurfacing activities which may not be subject to the CGP. The Aug 18th 2011 draft permit was not revised in this regard and we reiterate our suggested language: " the Department is required to implement BMPs to reduce the discharge of pollutants in stormwater to the MEP, for all roadway and parking lot repaving and resurfacing activities not subject to the CGP."

Response: The language in the draft permit under the title Construction Activities not Requiring Coverage Under the Construction General Permit, is currently: "The Department shall also implement BMPs to reduce the discharge of pollutants to the MEP for construction and maintenance activities that do not involve land disturbance such as roadway and parking lot repaving and resurfacing."

Comment ZX1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Comment ZY1 Comment Letter Page # 1

Summary: Proposed MS4 permit risks putting Caltrans in permanent state of non-compliance by setting unrealistic standards and control measures.

Response: The permit provision has been substantially revised to address the comment.

Comment ZY2 Comment Letter Page # 1

Summary: The draft permit gives the Regional Boards greater authority and empowers those boards to impose additional permitting requirements that could raise compliance costs even higher.

Response: The power and scope of the Regional Water Boards is contained in the Porter-Cologne Act. This permit cannot grant Regional Water Boards any more or less power or authority.

Comment ZY3 Comment Letter Page # 2

Summary: OCTA is concerned that the stringent requirements would result in fewer projects being built, harming job creation and the already fragile California economy.

Response: See comment response to Q1 and R2.

Comment ZZ1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofiting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Comment ZZC1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofitting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.

Comment ZZF1 Comment Letter Page # 1

Summary: Permit would impose extensive new regulations on future Caltrans projects that surpass the requirements of the Clean Water Act. Permit would cost thousands of people their jobs. Caltrans could be forced to change efforts from improving roadways to retrofiting existing infrastructure to meet permit requirements; road conditions will worsen causing unsafe driving. No evidence to suggest permit will improve water quality enough to justify the cost.

Response: See comment responses to Q1, Q2, Q3 and R2.