

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
1	1	Alameda Countywide Clean Water Program		<p>We are concerned that the State Board’s decision on this General Permit for Phase II Small MS4s may set a precedent that would adversely affect our member agency permittees. More specifically, the third paragraph of Section XI of the Fact Sheet contains un-necessary and potentially misleading language that is inaccurate and inconsistent with prior State Water Board policy concerning compliance with water quality standards and how and over what time period that compliance is to be achieved. This language has never before appeared with respect to other State Water Board-issued MS4 permits, including the current draft Caltrans permit and its fact sheet, and should therefore be deleted in its entirety.</p>	<p>The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Staff accordingly has not revised the third paragraph of the discussion under Section XI (Receiving Water Limitations) of the Fact Sheet because it accurately reflects the existing position of the State Water Board. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
2	1	Bay Area Stormwater Management Agencies Association (BASMAA)		We are concerned that the State Board’s decision on this General Permit for Phase II Small MS4s may set a precedent that would adversely affect our member agency permittees. More specifically, the third paragraph of Section XI of the Fact Sheet contains un-necessary and potentially misleading language that is inaccurate and inconsistent with prior State Water Board policy concerning compliance with water quality standards and how and over what time period that compliance is to be achieved. This language has never before appeared with respect to other State Water Board-issued MS4 permits, including the current draft Caltrans permit and its fact sheet, and should therefore be deleted in its entirety.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.
3	1	Calaveras County, Department of Public Works		Additional Undetermined Costs: Various specific permit requirements are not cost efficient, impracticable, or infeasible. As mentioned in the previous correspondence, the cost to provide Community-based Social Marketing as may be required by Section E.7 is unknown.	The draft order has been substantially revised to address comments received regarding costs of implementation as outlined in Section III, Economic Considerations, of the Fact Sheet.
4	1	California Coastkeeper Alliance/American Rivers		The Board cannot solely include BMP requirements in NPDES permits. The Board’s authority to impose BMPs is supplemental to its duty to impose numeric, technology-based effluent limitations – a point the regulations themselves make clear when allowing for BMPs when they are “reasonably necessary to achieve effluent limitations,” (i.e., to supplement the effluent limitations by ensuring measures are taken to meet them). The allowance for BMPs in NPDES permits is separate and distinct from the requirement that permits contain numeric, technology-based effluent limitations.	Staff does not agree with this comment. The Blue Ribbon 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.” Therefore, this Order requires Permittees to implement BMPs in order to reduce pollutant in storm water to MEP.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
4	2	California Coastkeeper Alliance/American Rivers		<p>The discharge community is putting increasing pressure on the State Water Board to incorporate safe harbor provisions from citizen suits into permits. This is illegal and wholly inappropriate. Regardless of whether or not a Permittee is engaged in an iterative process, exceedances of water quality standards constitute a permit violation subject to enforcement action by the Water Boards, or through public citizen suits. This is not illogically punitive, as has been suggested. Rather, this result is necessary to ensure that MS4 permit holders actually comply with their obligations to review, analyze, and respond to shortcomings in their stormwater management programs, as required by the Permit. Providing an automatic safe harbor to permittees would have the likely effect of undermining the Board's and the public's ability to ensure compliance with the Permit and the protection of public waterways.</p>	<p>The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.</p>
4	3	California Coastkeeper Alliance/American Rivers		<p>The Revised Draft Permit does not require monitoring for a Permittee not falling into one of the four categories. The purpose of a Phase II MS4 Permit is to protect and improve water quality, which cannot be attained without monitoring to demonstrate that water quality standards are being iteratively approached or met. Furthermore, all Permittees are prohibited from discharging in a manner that degrades natural water quality. This mandate is impossible to meet without monitoring to provide both the permit holder and the public with necessary certainty. Because the prohibition on discharges that violate water quality standards applies to all Permittees, baseline water quality monitoring likewise must be mandatory for all Permittees.</p>	<p>Staff recognizes that monitoring and assessment represent a critical component in understanding the link between permit requirements, the benefits achieved due to those requirements and the condition of receiving water conditions. However, through careful consideration of input from stakeholders throughout the state, it is clear that a one-size-fits all monitoring approach is a challenge to implement. Further, some estimates have claimed monitoring constitutes 20 – 30% or permit cost. As such, staff revised monitoring requirements based on priority areas and increased flexibility. Monitoring requirements have been revised to include increased specificity in study design and reporting requirements.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
4	4	California Coastkeeper Alliance/American Rivers		Further, the current receiving water monitoring parameters are insufficient to meet the goals of a receiving water program. Pollutants such as nutrients, specific metals and conventional pollutants are notably absent. This list should be greatly expanded. This inadequacy is compounded by the fact that there is only one monitoring location per HUC 12 watershed. There will be extremely limited monitoring data collected under this scheme. We urge the Board to enhance the monitoring program by expanding the parameters monitored and the number of monitoring locations.	Please see response to comment 4. Additionally, the monitoring section as a whole has been revised to add clarity. While additional monitoring locations have not been added, the list of parameters have been revised to provide clear guidance and specificity.
4	5	California Coastkeeper Alliance/American Rivers		The Draft Permit does not include any monitoring at end-of-pipe outfalls. The Board must include this type of monitoring for compliance-assurance purposes. Drainages carrying stormwater from commercial, industrial, and high-use transportation areas should be prioritized. In addition to outfall monitoring, there should be downstream receiving water monitoring for each outfall monitoring station to determine if MS4 discharges are causing or contributing to exceedances of water quality standards. Monitoring should occur at the first storm event of the wet season and two additional events.	Staff recognizes the importance of monitoring end-of-pipe outfalls, however, the cost of implementation for both receiving water monitoring and effluent is infeasible for most Phase II Permittees. In order to assess the condition of Beneficial Uses in receiving water, staff determined that receiving water monitoring was the most effective option for Permittees. However, the Special Studies section allows Permittees the flexibility to select effluent monitoring in their jurisdiction.
4	6	California Coastkeeper Alliance/American Rivers		We support the inclusion of TMDL monitoring requirements and other TMDL implementation milestones in Attachment G of the Draft Permit. “[O]nce a TMDL is developed, effluent limitations in NPDES permits must be consistent with the WLA’s in the TMDL.” The Draft Permit requires that TMDL responsible parties consult with the regional board within six months of adoption to create a monitoring plan for those TMDLs not specified in Attachment G. It is concerning that there are entire regions and associated TMDLs absent from Attachment G, especially given the lengthy stakeholder process involved in this Permit. At a minimum, we urge the Board to require that approved TMDL monitoring begin within one year from the Permit’s adoption date. Many of these TMDLs have been in effect for numerous years. Monitoring should have already started. In cases where it has not been implemented, it should start as soon as possible.	TMDLs applicable to Non-Traditional dischargers in the region of the Los Angeles Regional Water Board are listed in Attachment G without TMDL-specific requirements. The Los Angeles Water Board is being directed to develop and propose TMDL-specific permit requirements for Attachment G in consultation with Permittees and the State Water Board staff within one year of the effective date of this Order.
4	7	California Coastkeeper Alliance/American Rivers		We are disappointed that the proposed toxicity monitoring in the previous draft has been eliminated in the Revised Draft Permit. The Revised Draft Permit should include toxicity monitoring in the receiving water and outfalls in order to evaluate if stormwater is causing or contributing to toxic impacts of aquatic life. This monitoring should be conducted at all monitoring locations at least on a quarterly basis, as toxicity can often be intermittent.	Staff recognizes the assessment and evaluation value in toxicity monitoring. However, in an attempt to create a monitoring program for Phase II Permittees that is economically viable, staff determined a list of constituents that are most commonly found in urban storm water. Toxicity monitoring will be revisited in the next permit cycle.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
4	8	California Coastkeeper Alliance/American Rivers		<p>Stormwater runoff is a major source of beach bacteria pollution. The Permittees must be on hand to undertake beach water quality monitoring at stormwater impacted sites should the Health Department discontinue weekly monitoring, as this program is crucial to a major public health issue. We are disappointed to see that beach monitoring requirements have been eliminated from the previous draft. The Revised Draft Permit should require that Permittees discharging to AB 411 beaches must comply with the Ocean Plan monitoring requirements. The monitoring program should include year-round monitoring at beach locations. Nuisance flows occur on a year-round basis and are a known source of bacteria to beaches. Specifically, the Ocean Plan requires weekly bacteria indicator samples from each site. The Permit should additionally state clearly that monitoring be conducted in accordance with AB 411 procedures. Lastly, the Permit should specify that monitoring take place at the wave-wash directly in front of stormdrain and stream sources (point zero). This is necessary to ensure that the waters closest to the discharge are evaluated.</p>	<p>Staff recognizes the value of beach water quality monitoring. However, in an attempt to create a monitoring program for Phase II Permittees that is economically viable, staff decided to restrict ocean monitoring to what is required in the Ocean Plan.</p>
4	9	California Coastkeeper Alliance/American Rivers		<p>As stated in previous comment letters, the Revised Draft Permit does not specify any Regulated Special Project Category for sites that discharge to Environmentally Sensitive Areas (“ESAs”). The Revised Draft Permit should require that any project creating and/or replacing 2,500 square feet or more of impervious surface (collectively over the entire project site) or that will increase the area of imperviousness of a proposed project site to 10 percent or more of its naturally occurring condition, and that discharges to an ESA, must meet the Water Quality Runoff Standards. In addition, all new development and redevelopment projects must meet other California laws governing discharges to ESAs. For example, the California Ocean Plan provides, “[w]aste shall not be discharged to areas designated as being of special biological significance. Discharges shall be located a sufficient distance from such designated areas to assure maintenance of natural water quality conditions in these areas.”</p>	<p>Comment noted.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
4	10	California Coastkeeper Alliance/American Rivers		While we fully support the Draft Permit’s generally applicable standard requiring retention of the 85th percentile, 24-hour storm event, we are concerned that the Draft Permit’s definitions for “Regulated Project Categories” under section E.12.d.1.a could be construed as unlawfully limiting the type of development that the permit’s LID provisions are applied. For example, while the Draft Permit requires projects under specific commercial designations to comply with the Permit’s LID controls, as well as broadly “industrial,” “mixed-use,” and “residential housing subdivisions,” there is no catch-all category for commercial development generally. We suggest the Draft Permit include all commercial development under its categories of Regulated Projects, and that the Draft Permit additionally provide a catch-all for “all other development not specified under the category of Regulated Projects, with a threshold trigger of creating and/or replacing 10,000 square feet of impervious surface.”	This permit provision has been revised to address this comment.
4	11	California Coastkeeper Alliance/American Rivers		While the Permit appropriately requires retention of the 85th percentile, 24-hour storm event, the Draft Permits LID based Site Design Measures, mention that the methods employed under E.12.d.2(ii)(2) “are based on the objective of achieving infiltration, evapotranspiration and/or harvesting/reuse of the 85th percentile rainfall event,” it would clarify Draft Permit requirements if this section instead referred to use of the above practices, “to the extent feasible, to meet the Permit’s “Numeric Sizing Criteria for Storm Water Retention and Treatment” under Section E.12.d.2(ii)(3)d.	This permit provision has been revised to address this comment.
4	12	California Coastkeeper Alliance/American Rivers		The Draft Permit’s Alternative Designs provisions list 4 categories of “effectiveness” that may allow for use of an alternative design to the Permit’s Stormwater Treatment Measures requirements. (See E.12.d.2(ii)(3)(a). The Draft Permit should specify that all 4 criteria must be met in order for the Permit term to apply, and given the section’s reference to biotreatment (i.e., filtration with discharge), must specify that BMPs resulting in discharge of runoff and/or pollutant loading are permitted only where on-site retention of the design volume is technically infeasible. To this end, to the extent that the Draft Permit allows use of biofiltration in place of retention to meet a project’s LID requirements, the Draft Permit must specify that biofiltration is available only in cases of technical infeasibility for on-site retention, and then must, in line with other permit’s in California, require a performance multiplier to ensure that receiving waters are adequately protected.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
4	13	California Coastkeeper Alliance/American Rivers		We agree with the Board's finding that, in addition to the benefits LID provides for stormwater pollution mitigation, reduction in flooding, creation of green space, and fish and wildlife habitat enhancement, "[s]torm water is a resource and an asset and should not be treated as a waste product. Managing rainwater and storm water at the sources is a more effective and sustainable alternative to augmenting water supply. . . ." There is substantial opportunity in California to increase water supplies through use of captured stormwater, and, while ensuring protection of water quality to the MEP, this permit should encourage retention practices that serve to increase water supplies.	Comment noted.
4	14	California Coastkeeper Alliance/American Rivers		We disagree that industrial and commercial inspection requirements in the Revised Draft Permit are redundant with those in the Industrial General Permit (IGP). At the MS4 Phase II Workshops, Board Staff explained that the Industrial/Commercial Inspection Program was deleted from the Draft Permit due to redundancy with IGP requirements. The Industrial/Commercial Facility Retrofit section was deleted from the Revised Draft Permit with the same reasoning. We recommend that the State Water Board re-insert the Industrial/Commercial Inspection Program in its entirety to improve overall Permittee compliance as stated below. At a minimum, the State Water Board should ensure that no gaps exist between the Revised Draft Permit and the IGP, and when overlap does occur, the more stringent permit will have priority	Industrial and commercial inspection have been revised and included as an action required through the Illicit Discharge Detection and Elimination section. In the case that an illicit discharge is identified, the permittee must investigate and inspect the source of the discharge.
4	15	California Coastkeeper Alliance/American Rivers		We disagree with Staff's assertion that the mandatory construction inspection frequency and inventory requirements are not necessary because of the potential to leverage the oversight provided by local health inspectors. The initial Draft Permit required Permittees to "implement procedures for inspecting public and private construction projects and conducting enforcement if necessary."	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
4	16	California Coastkeeper Alliance/American Rivers		We disagree that the construction inventory requirement is an unnecessary burden. The initial Draft Permit required Permittees to “maintain an inventory of all grading and construction activity within its jurisdiction.” Keeping an inventory of all construction activities in a Permittee’s jurisdiction is not a random administrative burden placed upon dischargers. An inventory of construction activities helps Regional Boards, and the public, determine the location of construction activities. This leads to better permit compliance and enforcement. Without an inventory of construction activities, Regional Water Boards will not know whether BMPs are being implemented properly. In the urban areas of Southern California, construction activities may be well documented and understood, but Northern California and more rural communities rely heavily on construction inventories to identify where BMPs should be implemented. We ask that the State Water Board re-insert the mandatory construction inspection frequency and the construction inventory and tracking requirements.	Staff did not delete the requirement to maintain an inventory of construction projects. Permittees may utilize the inventory of projects that are more than one acre from the SMARTS database. There are specific requirements for Permittees to maintain an inventory of projects that are less than one acre.
4	17	California Coastkeeper Alliance/American Rivers		Staff improperly removed the Trash Reduction Program from the initial Permit. At a minimum, Staff should require: a mandatory re-opener clause, baseline trash reduction strategies, and voluntary source reduction programs. The initial Permit required “[a]ll Traditional Small MS4 Permittees with a population greater than 25,000 shall require at least 20 percent of the Permittee's jurisdiction zoned, commercial retail/wholesale, comply with a Trash Abatement Plan.” However, during recent MS4 Phase II Permit Staff Workshops, Staff indicated that the Trash Reduction Program was removed because of the pending Trash Policy, expected to be adopted in the summer of 2013.	Staff has included a permit re-opener clause in the draft Order to include the State Trash Policy expected for adoption summer of 2013.
4	18	California Coastkeeper Alliance/American Rivers		It is inappropriate for Board Staff to rely on the Trash Policy’s projected adoption in mid-2013 as a reason for eliminating a Trash Reduction Program from the Revised Draft Permit. The development and adoption of State Water Board policies can take years. The Once-Through Cooling (OTC) Policy began in 2005, and was not adopted until 2010. Even after adoption, amendments to the Policy and legal challenges are still ongoing, delaying implementation and making compliance requirements uncertain. Further, at the release of the first Draft Permit, Board Staff was aware that a Trash Policy was being developed. In September 2010, the State Water Board created a Scoping Document ⁶⁹ to begin the CEQA process of creating a Trash Policy. In October 2010, the State Water Board held two CEQA Scoping	Please see response to comment 17.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
4	19	California Coastkeeper Alliance/American Rivers		While the Draft Permit designates numerous non-traditional MS4s including, but not limited to: universities, prisons, large hospitals, military bases, and State parks, the State Water Board has improperly omitted airports from the list of newly covered permittees. The CWA requires discharges composed entirely of stormwater, which are not required to obtain a permit, to obtain a NPDES permit if the State Water Board “determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.” ⁷⁵ Given the degree to which the impervious surfaces associated with airports are actually or potentially significant sources of stormwater pollution to California waters, this omission seems illogical at best.	Airports are covered by the Industrial General Permit. Municipal airports, however, are required to be inspected by Permittees through the Pollution Prevention and Good Housekeeping section of this draft Order. In addition, Regional Boards may designate airports on case by case basis after adoption of this Order.
4	20	California Coastkeeper Alliance/American Rivers		The Draft Permit provides an unclear threshold for Permittees to seek a waiver from the Permit. The Draft Permit allows “[r]egulated Small MS4s [to] seek a waiver from the General Permit requirements if they meet criteria specified in 40 CFR §122.32(c)-(e).” Federal Regulations allow a Permittee to obtain a Permit waiver if the MS4 “is not contributing substantially to the pollutant loadings of a physically interconnected regulated MS4.” While we understand that §122.32(d)(2) is a federally mandated standard, the State Water Board can and should provide guidance regarding what threshold constitutes “not contributing substantially.” The State Water Board provides additional criteria for seeking a waiver; therefore there is no excuse to not add additional criteria explaining the threshold to “contributing substantially.”	In general, if the Small MS4 discharges more than ten percent of its storm water to the permitted MS4, or its discharge makes up more than ten percent of the permitted MS4's total storm water volume, it is a significant contributor of pollutants to the permitted MS4. Please see Finding 25, page 9.
4	21	California Coastkeeper Alliance/American Rivers		One of the most significant shortcomings in previous stormwater permits is the lack of performance-based criteria for BMPs. As a result, BMPs are added as part of permit requirements or pollution abatement efforts without any focus on the quality of the water exiting the BMPs. An effective way to ensure the success of stormwater programs and the attainment of water quality standards is to assess BMPs based on performance. Flow-based design criteria are simply not adequate to ensure that water quality standards are consistently met because flow, and corresponding BMP size, is but one factor determining BMP effectiveness.	The permit has been revised to address this comment. There are several sections throughout the permit that address BMP effectiveness. Section E.12.h. Post Construction Best Management Practice Condition Assessment, Section E.13 Receiving Water Monitoring and Section E.14 Program Effectiveness and Assessment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
4	22	California Coastkeeper Alliance/American Rivers		We commend State Water Board Staff for defending the State Water Board's professional licensing requirements during its MS4 Phase II Workshops. Currently, state, county or city government agencies have the ability to require professionals to take training courses or require certification or licensing to ensure that they are qualified to perform duties necessary to protect public health and safety. For example, current law requires that any person employed to operate a wastewater treatment plant must pass a written examination administered by the State Water Board. This certification ensures that plant operators are qualified and that they are educated on the latest technology and requirements for safely treating wastewater. We believe that the authority to provide this type of professional licensing and education should remain within the government agencies that have the knowledge and experience with services that these agencies provide. We thank Staff for continuing to defend this requirement.	Comment noted.
5	1	California Council for Environmental and Economic Balance		Because of the nature of linear underground/ overhead projects (LUPs), the SWRCB's Storm Water Construction General Permit exempts these types of project from post-construction BMPs, such as SUSMPs, LID and hydromodification. We believe that the draft Permit also needs to include that exemption.	Staff does not agree that linear underground/overhead construction projects should be excluded from post-construction standards. The CGP exemption is based on soil disturbance threshold, whereas the Small MS4 post-construction threshold is based on impervious surface. As such, the threshold for the Small MS4 permit would apply to linear underground/overhead construction projects and the exemption does not apply.
5	2	California Council for Environmental and Economic Balance		Section B. of The Findings states that certain non-storm water discharges are authorized under this permit and under separate NPDES permits. However, this distinction is not carried out through the entire draft Permit. In many cases, the permit only references "non-storm water" and the need to terminate the discharge.	Section B. Discharge Prohibitions describe a list of non-storm water discharges that are not prohibited provided that no pollutant discharges are identified, and, if appropriate control measures are implemented. Any reference in Sections E and F Provisions to non-storm water discharges do not include those listed in Section B.3 (a-n).
5	3	California Council for Environmental and Economic Balance		It is important and necessary that this permit contain the appropriate language (finding and exception language) to provide for the continued discharge of non-storm water in compliance with a NPDES permit to Small MS4s that discharge to an ASBS.	This permit provision has been revised to address this comment. However, the suggested language to include hydrostatic test water and construction dewatering is not included. The aforementioned activities are not covered by a General Statewide Permit and as such, staff does not agree that they should be exempt.
5	4	California Council for Environmental and Economic Balance		The language in Attachment C of the draft Permit is missing language that was contained in the ASBS exception adopted in March, 2012 Specifically, it omits the language from the Exception Attachment B, Section I.A.1.e.2.ii	Please see response to comment number 3.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
5	5	California Council for Environmental and Economic Balance	E.10.b.ii.a	Requires preparation and submittal of an erosion and sediment control plan for each project prior to a permittee issuing the applicant a grading permit or building permit. Linear projects subject to the CGP are required to prepare a SWPPP which is developed by certified QSDs. These projects should not be required to obtain further review and authorization from the small MS4 permittee. The draft permit should be revised to state that the SWPPP satisfies this erosion and sediment control plan requirement and a separate plan is not required. Typical linear underground/overhead project construction does not include grading, conforms to pre-existing contours and, within urban areas, is conducted in existing paved areas. Further, trenches and excavations are closed up, covered or otherwise protected from erosion and sediment runoff at the end of each working day. Linear projects not subject to the CGP implement standard construction BMPs and should not require an erosion and sediment control plan.	This permit provision has been revised to address this comment.
5	6	California Council for Environmental and Economic Balance	E.10.b.ii.b	These erosion and sediment control plans are developed by trained professionals using their best professional judgment in determining the specific BMPs to be implemented. There is no value in providing an explanation of why all other BMPs have not been selected. This requirement would only add to the burden, time and cost of developing the erosion and sediment control plans.	This permit provision has been revised to address this comment.
5	7	California Council for Environmental and Economic Balance	E.10.b.ii.c	Large projects may require numerous permits, both significant and less significant permits. It should not be a requirement to list all of the permits in the Erosion and Sediment Control plan. This requirement should be limited to those federal and state permits which are not under the control of the local MS4. Further, this section requires that ALL permits be must be obtained prior to conducting work for which the permits are required. however, linear underground/overhead projects can span a number of miles and not all permits for the entire project may be necessary to be obtained prior to commencing dirt disturbing activities. For example, a traffic control permit for a section of a project that is not scheduled to begin for six months after the project starts should not be required to be obtained prior to soil disturbing activities on the beginning portion of the project.	Staff does not agree that the sentence stating, "include as a condition of the grading permit that the operator submit evidence to the MS4 that all permits required for the project have been obtained prior to commencing soil disturbing activities" should be deleted. The erosion and sediment control plan should list all applicable permits that pertain to soil disturbance and its effects. The Construction General Permit, State Water Board 401 Water Quality Certification, U.S. Army Corps 404 Permit and California Department of Fish and Game 1600 Agreement are all required to be obtained prior to soil disturbance. Including the condition that evidence must be submitted prior to commencing soil disturbing activities is an appropriate measure to ensure compliance with the aforementioned State and Federal permits.
5	8	California Council for Environmental and Economic Balance	e.6.a.ii.g	Specifies the MS4 have the authority to require information to assess compliance with the permit, including requiring "... other information deemed necessary to assess compliance with this order."	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
5	9	California Council for Environmental and Economic Balance	E.9.c.3.b	This section contains action level concentrations. However, the permit, including the Fact Sheet, does not provide a basis or support for the concentrations for the Indicator parameters.	The indicator parameters and the action level concentrations are based on the Center for Watershed Protection's (CWP) Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments. The indicator parameters have been shown to be capable of confirming the presence or origin of an illicit discharge. The Guidance Manual can be located at: http://www.cwp.org/store/free-downloads.html . References to this document have been incorporated into this section.
5	10	California Council for Environmental and Economic Balance	E.10.c.i & ii	Specify requirements for conducting inspections on construction projects. These sections should also state that the MS4 permittees work with other permitting agencies with NPDES or MS4 permitting authority to coordinate inspections so that construction projects are non needlessly inspected multiple times by different agencies. This will streamline the inspection process and reduce the cost to the MS4s	This permit provision has been revised to address this comment.
6	1	California County Superintendent's Educational Services Association	Throughout	County Offices of Education are to be treated just like school districts.	County Offices of Education have been included as an exception.
7	1	California Department of Public Health		Stormwater conveyance systems, both above- and belowground, are among the most important sources of vector mosquitoes in the capacity for vector control agencies to apply public health pesticides to MS4s is protected by not imposing additional restrictions. To this end, public health pesticides specifically should be included as exempted discharges into permitted MS4s.	In some cases, the requested changes can be made. However in other areas, staff does not agree that additional specific language should be added to permit language. Please see specific responses to comments below.
7	2	California Department of Public Health	Finding 47	Minor clarification to this Finding would ensure that Permittees are fully aware of the types of stormwater structures that may produce mosquitoes unintentionally. In particular, certain LID site design measures such as rainwater capture systems are highly conducive to mosquito production if not carefully designed and maintained. Please consider adding the following language (in bold) and removing the strikethrough text.	This permit provision has been revised to address the comment.
7	3		Section B.3	As previously mentioned, it is critical that the capacity for vector control agencies to apply public health pesticides to MS4s be protected by not imposing additional restrictions. Please consider adding a 16th item to the list of exempted discharges.	The non-storm water discharges are determined by federal regulations, and as such, staff can not make the suggested changes.
7	4	California Department of Public Health	Section E.6.a.ii.g	It may be beneficial to more specifically refer to the California Health and Safety Code in this subsection. Please consider adding the following language (in bold) and removing the strikethrough text.	While there are many specifics for several agencies and organizations, staff revised this permit provision to apply generally.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
7	5	California Department of Public Health	Section E.12.g.ii.b	Minor clarification to this subsection is necessary. Many "hydromodification management controls" provide little or no habitat for vectors, whereas certain LID site design measures that hold standing water are highly conducive to mosquito production and should be included. Please consider adding the following language (in bold) and removing the strikethrough text.	The inclusion of general terms such as "installed treatment systems and hydromodification management controls" applies to LID site design measures. Staff does not agree that specific language is necessary.
7	6	California Department of Public Health	Section E.12.g.iii.b	Minor clarification to this subsection is necessary. It is critical that local vector control agencies routinely be notified of new structural stormwater treatment systems and LID site design measures that hold standing water installed within their jurisdictional boundaries to mitigate potential mosquito production if necessary. In order to be most effective, the minimum information needed by vector control agencies is location of the structure, the type of structure (or proprietary name), and owner or responsible party. Determination of when the list of stormwater treatment systems should be made available can be determined locally as required on page 59, Section E.12.g.ii.(b), thus "before the wet season" is unnecessary and should be removed. Please consider adding the following language (in bold) and removing the strikethrough text.	Please see response to comment number 5.
7	7	California Department of Public Health	F.5.g.4.ii.b	This subsection is identical to Section E.12.g.ii.(b) discussed above and we request that the Board consider including the same changes.	Please see response to comment number 5.
7	8	California Department of Public Health	F.5.g.4.iii	This subsection is identical to Section E.12.g.iii.(b) discussed above and we request that the Board consider including the same changes.	Please see response to comment number 5.
7	9	California Department of Public Health	Fact Sheet	The April 27, 2012 revision to the Fact Sheet for NPDES Permit No. CAS000003 ORDER No. 2012-XX-DWQ, State of California Department of Transportation included a paragraph on page 18 entitled Potential Unintended Public Health Concerns Associated with Structural BMPs. We propose that the Board consider the addition of a similar paragraph to the Fact Sheet of Water Quality Order No. XXX-XXX-DWQ for the purpose of raising awareness of the potential unintended consequences associated with the implementation of certain stormwater management structures and public health obligations of owner /operators as defined in the California Health and Safety Code. We suggest the following language.	This permit provision will be made to address this comment. (This permit provision was inadvertently omitted from the November 16, 2012 circulated draft and will be added prior to adoption).
7	10	California Department of Public Health	References	Should the aforementioned suggested changes be incorporated into the final permit, two key references should be placed in the footnotes for the new language in the Fact Sheet and revised language in Finding #47. Superscript numbers are included above that indicate the available references, which are as follows.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
8	1	California State Association of Counties/Regional Council for Rural Counties/League of California Cities		Thus, the cost of implementing the redrafted permit still presents a significant burden to local governments at a time when nearly every revenue stream (property tax, sales tax, and state funding) has fallen precipitously, and almost every city and county has already implemented or is strongly considering deep cuts and widespread layoffs.	Please see Section III, Economic Consideration of the Fact Sheet. We understand State agencies face unique fiscal impacts implementing provisions in this draft order. However, the draft order has undergone substantial revisions to address cost implications, while still protecting storm water quality.
8	2	California State Association of Counties/Regional Council for Rural Counties/League of California Cities		In addition, cities and counties must comply with Proposition 218, which requires local governments to meet the two-thirds voter approval requirement for increasing property-related fees. This presents a significant challenge particularly in our current fiscal climate, where voter tolerance for increased fees is close to zero. As a result, local governments will have to reach into their general funds and decide which core services to cut in order to implement the new storm water permit. For this reason, we still maintain that the draft permit constitutes an unfunded mandate	Please see Response to Comment number 2, above.
8	3	California State Association of Counties/Regional Council for Rural Counties/League of California Cities		Beyond cost, our biggest concern is the new language contained in Section E.12.j, "Planning and Building Document Updates." The section requires a general plan update within the first year of the permit, and prescribes specific updates of planning and building requirements. We feel that most of the requirements in this section are inappropriate, and that the Water Board lacks the authority to compel local governments to comply. Our suggested changes to this section are attached.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
8	4	California State Association of Counties/Regional Council for Rural Counties/League of California Cities		<p>In addition, we also question the Water Board’s authority to mandate such items as parking lot ratios. Under current law, local jurisdictions determine the parking standards for their communities based upon numerous factors that are unique for each neighborhood. Prescribing parking standards or a reduction based upon a one-size-fits-all mandate would be opposed by local governments because it doesn’t allow enough flexibility to address individual projects or other competing statewide interests such as affordable housing, infill development, transit or other factors that must be taken into consideration when determining parking standards. We believe the expertise in this area should be left to local jurisdictions that have to answer to their communities’ needs. However, many jurisdictions are moving in the direction of reducing parking standards. To the extent that models or incentives to reduce parking can be supplied, jurisdictions might find this useful. Our organizations would be happy to facilitate a meeting between Water Board staff and local experts on the parking issue to discuss some alternatives to including these requirements in the final permit.</p>	<p>This permit provision has been revised to address this comment.</p>
8	5	California State Association of Counties/Regional Council for Rural Counties/League of California Cities		<p>Our organizations are also still concerned about the overly prescriptive nature of the permit. While some flexibility has been added, we still feel that the permit alienates municipalities that have crafted extremely successful storm water programs under the current permit, and are seeing good results from their BMPs and water quality improvement efforts. This draft still prevents municipalities from customizing their programs, and will interfere with some of the programs currently in place due to the costs of implementing new requirements</p>	<p>Provision E.1.b allows for continued implementation of storm water programs that are equally or more effective at reducing pollutant discharges than the implementation of requirements in this permit. Please see the permit for specific language regarding this provision. For new permittees, the permit has been drafted with specific requirements based on lessons learned over the last approximately 30 years of storm water regulation. U.S. EPA on-site audits of MS4s nationwide have repeatedly shown the necessity for clear, measurable requirements in MS4 permits to ensure an effective and enforceable program.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
9	1	California State Parks	Provision D	The Receiving Water Limitations language will open CSP to third party lawsuits.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.
9	2	California State Parks	Section F	Exclusions that applied to both Traditional and Non-Traditional MS4s have been excluded from Section F. Non-Traditionals MS4s	Revisions have been made to exclude projects that must comply with Americans with Disabilities Act. (This revision was inadvertently omitted from the November 16, 2012 draft and will be made prior to adoption).
9	3	California State Parks	Table 1, 2011 Draft	Table 1 of 2011 Draft listed specific Program Elements which were exempted for State Parks. These exemptions appear to have been eliminated in the Final Draft Permit.	First, Industrial and Commercial requirements have been deleted from the second draft Permit and do not apply. Second, Section F Non-Traditional Provisions have been tailored to non-traditionals unique program structure. Thus, staff does not agree that California State Parks are exempt from Construction requirements. Provision F.3 Maximize Efficiency allows CSP to incorporate required storm water provisions into already existing programs and leverage existing staff to implement BMPs during its day to day business and operations.
9	4	California State Parks	Section F.5.b.2	We appreciate the option to contribute to an existing outreach and education program. For CSP, we may pursue options to participate in another permittee's public education program.	This permit provision has been revised to address this comment.
9	5	California State Parks	Section F.5.d	This section requires Permittee to maintain an up-to-date and accurate outfall map. Unlike most MS4s, CSP has remote facilities located throughout the State, so outfall mapping cannot be completed in the same timeframe as the other MS4s.	This permit provision has been modified to address this comment. While the timeframe has not revised, mapping of remote outfall locations is not required.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
9	6	California State Parks	F.5.d.1	Our facilities include natural springs and perennial sources for water. It would not be productive to sample these discharges.	Mapping of remote outfalls and therefore sampling of remote outfalls is not required.
9	7	California State Parks	F.5.e.	We wish to clarify that the Park System, nor its CIP, will be considered a "common plan of development".	Staff does not agree that CIP is not considered a common plan of development under the CGP. Please see the definition of Common Plan of Development in the Glossary of the CGP.
9	8	California State Parks	F.5.f.3	Annual review and assessment of all facilities is excessive. An initial determination with biannual review is sufficient to detect changes in facility operations or the addition of new facilities.	Staff disagrees that facility assessments should be evaluated every other year. The Permittee has three years to inventory permittee-owned and operated facilities. Utilizing the aforementioned inventory, assessments should be done to evaluate the potential for surface water quality impacts. Pollutant discharge potential could arise at any given time and it is important for Permittee's to proactively manage their facilities.
9	9	California State Parks	F.5.f.5	This section requires non-hotspot inspection of each inventoried facility once per permit term. This will be unnecessary for facilities that are inventoried, but have no potential for stormwater pollution.	CSP must inspect non-hotspot facilities once per permit term. Maintenance and proactive measures are crucial to preventing water quality impacts. For example, an office building may not be a threat at the time of facility inventory, but overtime may develop a potential threat to water quality. As with many managed natural resources, preventive and proactive measures are equally important in their protection and preservation.
9	10	California State Parks	F.5.f.6	This section requires Permittees to assess and prioritize the MS4 storm drain system, on the same schedule as required for the Phase I Elimination Program.	Staff does not agree that the timeline should be extended to the end of the permit term for storm drain system assessments and prioritization. The value in the assessment and prioritization is vastly reduced when the implementation schedule is delayed until the last year of the permit term. Permittees should have utilize this information to effectively manage their storm water programs. Through this assessment Permittees can appropriately direct limited resources to storm drain areas that are higher priority areas. Further, it is likely that the storm drain systems within CSP are not located in remote locations. Rather, storm drain systems are typically located within more urbanized areas.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
9	11	California State Parks	F.5.g	CSP facilities are located throughout the state, and would be subject to multiple and varied Phase I programs. Properties eligible or listed on National, State or Local Historic Registers must be exempt from post-construction stormwater requirements.	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.
9	12	California State Parks	F.5.g	Most construction projects are outside of an urbanized area and therefore subject to the CGP.	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.
9	13	California State Parks	F.5.g.2	Historic properties are constrained by The Secretary of The Interior Standards and the Historic Building Code, which do not always conform to modern site design.	This permit provision has been revised to address this comment .

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
9	14	California State Parks	F.5.g.2	Design details for treatment devices are not appropriate to be included in an MS4 permit which essentially specifies the method of compliance. Specifying the method of compliance is prohibited pursuant to CWC Section 13360.	<p>More generally, a municipal storm water permit must ensure compliance with the Clean Water Act. Water Code section 13372 states in part that “the provisions of this chapter [chapter 5.5, establishing compliance with the provisions of the Clean Water Act] shall prevail over other provisions of this division to the extent of any inconsistency.” To the extent that this comment suggests that Water Code section 13360 would prohibit programs necessary to comply with federal requirements, the federal requirements must take precedence over section 13360.</p> <p>Even where section 13360 is applicable, goals and standards to be achieved and attained that are laid out in the Draft Order do not constitute a mandate of the method of compliance. Further, where the Draft Order allows dischargers to propose and substitute a best management practice or other manner of compliance in lieu of any practice specifically enumerated in the Order, the Order complies with section 13360. “Section 13360 is a shield against unwarranted interference with the ingenuity of the parties subject to a waste discharge requirement; it is not a sword precluding regulation of discharges of pollutants. It preserves the freedom of persons who are subject to a discharge standard to elect between available strategies to comply with that standard.” (Sierra Preservation Council v. SWRCB (1989) 210 Cal. App. 3d 1421, 1438.)</p>
9	15	California State Parks	F.5.g.2.	Paragraph iii, Reporting is excessive. Records are kept on the installation of LID projects in our facilities, but we do not see the value in reporting this information annually to the State.	This permit provision has been revised to address this comment.
9	16	California State Parks	F.5.g.3	For certain types of geomorphic provinces, post-project runoff shall not exceed the estimated pre-project flow rate for the 5-year, 24-hour storm. However, the Fact Sheet does not explain why the geomorphic provinces in Section (b) are required to meet a higher standard.	Please see response to comment number 11.
9	17	California State Parks	F.5.l	TMDL requirements may require time and expenses to implement the necessary actions and should be established as part of the reviews to be conducted by the Regional Water Boards.	As specified in the Order, such TMDL-specific permit requirements must be consistent with the assumptions and requirements of the applicable WLAs and with the goals of the TMDL. Staff recognizes the challenges posed by past-due compliance deadlines. However, the TMDL requirements in the Order are consistent with the implementation schedules laid out in the relevant resolutions and Basin Plan amendments that established the TMDLs. Staff may consider employing time schedules to address such deadlines, where appropriate, during the one-year review and development period for TMDL-specific permit requirements that will follow adoption of the Order.
9	18	California State Parks	F.5.l	Many of the permit requirements discussed in Attachment G do not apply to CSP.	Attachment G contains a column labeled "Municipality" that identifies the relevant parties subject to the TMDL requirements.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
9	19	California State Parks		Stormwater discharges onto State Parks Property is an issue that needs to be addressed. CSP does not have authority over Mexico or Indian lands for their stormwater discharges onto Park property, but CSP also has no authority over any other entity that discharges stormwater onto Parks.	Staff recognizes the challenge in regulating storm water discharges from an unregulated area into a regulated area. However, the nature of water quality is a complex matrix of water systems that are not isolated. A regulated permittee must show good faith effort to protect water quality within their jurisdiction and document on-flow storm water discharges.
9	20	California State Parks	page 2 ASBS	Inconsistencies between the ASBS requirements an the permit.	This permit provision has been revised to address this comment.
9	21	California State Parks	page 2 - I.A.1	Sub-paragraph d requires that there be no new contribution of waste to an ASBS.	The provision contested by commenter is dictated by SWRCB Resolution No. 2012-0012, approving exceptions to the California Ocean Plan for selected discharges into ASBS. Staff does not have flexibility to alter the provision
9	22	California State Parks	page 4 - I.A.2.d.	Sub-paragraph should be consistent with the adopted Special Protections.	The language in Section I.A.2.d is consistent with the adopted Special Protections.
9	23	California State Parks	page 6 - I.A.3.b	Developing a plan within one year of the effective date of the exception is not practical.	This permit provision has been revised. Compliance Plans shall be developed within 18 months of the effective date of the exception.
9	24	California State Parks	Facilities ASBS	There is no justification to place these additional requirements on CSP beyond the 'compliance plan' required in Section I.	Please see response to comment number 21
9	25	California State Parks	page 8 - II.A.3.	CSP should not be responsible for the discharge of pesticides that it does not use or apply on its facilities.	Please see response to comment number 21
9	26	California State Parks	page 17 - Flow Chart	It is unclear how the 85% threshold will apply and the Toxicity Policy has not been adopted by State Board and it is premature to include in the Phase II Permit.	Please see response to comment number 21
9	27	California State Parks	ASBS	The Permit should not contain specific requirements for Parks and Recreation Facilities unless language included is simple restating already established ASBS requirements. We cannot meet the current schedule, and a more realistic compliance date is needed.	Please see response to comment number 21
10	General 1	California State University, Office of the Chancellor	Throughout	Campuses currently address certain storm water issues though a number of programs and services which are in places. The administrative requirements within the Draft Permit will result in significant administrative cost.	The process to develop a campus storm water management plan would require adequate public review and comment. This Order specifies actions necessary to reduce the discharge of pollutants in storm water to the MEP in a manner designed to achieve compliance with water quality standards and objectives. As such, this approach satisfies the public involvement requirements of both the federal Clean Water Act and the California Water Code. Moreover, Provision F.4 allows Non-Traditional Permittees to utilize existing documents and program elements to satisfy the requirements specified in this Order. Staff recognizes the complex diversity amongst Non-Traditional Permittees and has developed F.4 to address Permittee discrepancies. The proposal of creating a separate program plan for CSUs may be taken up in the next permit cycle.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
10	General 2	California State University, Office of the Chancellor	Throughout	The draft permit will require many actions within the several years of the program. Due to impacted personnel and financial resource levels at CSU campuses as compared to other public university systems, the ability to address such actions according to this schedule in the Draft Permit is quite constrained.	Staff carefully considered the implementation schedule throughout the permit provisions. Generally, compliance dates were pushed out one year from the original proposed dates in the first draft permit. However, there are few provisions that must be implemented within the first year. For example, legal authority must be certified in the first year to ensure authorization to implement and enforce permit provisions.
10	General 3	California State University, Office of the Chancellor	Post-construction	Budgets for CSU state-funded capital projects are established many years prior to the completion of construction, with the ability to revise the budget quite limited due to the need to obtain approval from State Joint Legislative Budget Committee for any significant increase. As a result, an increase in costs to capital projects cannot be absorbed in the immediate future.	This permit provision has been revised to address this comment.
10	General 4	California State University, Office of the Chancellor	Post-construction	The numeric sizing criteria for storm water retention and treatment, as currently contained within the Draft Permit will result in identification of an excessive volume of storm water which must be captured.	Staff does not agree that the numeric sizing criteria should be revised. The sizing criteria was developed as a result of extensive stakeholder collaboration and coordination. Staff and stakeholders made the conclusion that the criteria contained in this permit represents an accurate standard for rainfall runoff volume capture.
10	1	California State University, Office of the Chancellor	Throughout	The draft permit will require many actions within the several years of the program. Due to impacted personnel and financial resource levels at CSU campuses as compared to other public university systems, the ability to address such actions according to this schedule in the Draft Permit is quite constrained.	Please see response to general comment number 2.
10	2	California State University, Office of the Chancellor	Throughout	A common comment among various groups who are reviewing the new draft have is that many of the terms, conditions and requirements are not defined or not defined sufficiently. There is a large difference of opinion among participants about interpretation and implementation.	This permit has been revised to address this comment.
10	3	California State University, Office of the Chancellor	B.4.d., p. 17	Since incidental discharges are not intended or planned, it is not possible to notify the regional board before the discharge.	This permit provision has been revised to address this comment.
10	4	California State University, Office of the Chancellor	E.12.d, p. 51	Traditional LID requirements for traditional small MS4 permittees include exclusions for sidewalks, etc., but such exclusions are not included in the section of the Permit for non-traditional small MS4 permittees	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
10	5	California State University, Office of the Chancellor	E.4., p. 19.	Permit does not distinguish between discharging upstream (indirectly) of an ASBS and discharging directly to an on-campus ASBS.	The provision contested by commenter is dictated by SWRCB Resolution No. 2012-0012, approving exceptions to the California Ocean Plan for selected discharges into ASBS. Staff does not have flexibility to alter the provision
10	6	California State University, Office of the Chancellor	E.5, p.19	A separate implementing entity (SIE) is not defined.	A definition of SIE has been provided. A separate implementing entity is defined as an entity that a permittee may utilize to satisfy one or more of the permit obligations. SIE may include a flood control agency, a Phase I permittee, a storm water consulting firm, etc.
10	7	California State University, Office of the Chancellor	F.5.b.1 , p. 79	Requires the permittee to identify which compliance participation option to be used for complying with the public education/public outreach requirements. CSU does not regulate private property, so an external public education/outreach requirement is not necessary. CSU campuses already have campus community outreach efforts, so requiring a new outreach effort (as provided in the Draft Permit) is not necessary	The permit currently allows permittees to utilize existing and equivalent documents as detailed in Provision F.4. In this case where an existing outreach program is in place, the permittee may use that program to satisfy the public outreach and education requirements. The existing program must be equally or more effective at achieving water quality protection to the maximum extent practicable.
10	8	California State University, Office of the Chancellor	F.5.b.1, p. 80	Requires designating which public outreach and education is to be used and then reporting collaborations	If public outreach is accomplished through an individual effort there is no need to report on collaborative efforts.
10	9	California State University, Office of the Chancellor	F.5.b.2., p. 80	How is an institution able to "measurably increasing the public knowledge?"	Staff does not agree with the request to eliminate the requirement to measure public knowledge. There are several methods to evaluate public knowledge. Such methods include: direct evaluations, surveys, interviews, review of media clippings, tracking the number of storm water related calls/emails/letters received. The U.S. Environmental Protection Agency has provided a guidance document titled Getting in Step: A Guide to Effective Outreach in Your Watershed (www.epa.gov/watertrain/gettingstep/). Staff recommends that permittees utilize this document for public outreach guidance and support.
10	10	California State University, Office of the Chancellor	F.5.b.3.(i), p. 82	Requires that a training program for all permittee staff be developed and implemented for persons that may be notified of, come into contact with or otherwise observe an illicit discharge or illicit connection to the storm drain system. This description includes virtually anyone on campus.	Permit language currently allows the flexibility for Permittees to establish appropriate individuals responsible for illicit discharge detection and elimination. The permit encourages Permittees to maximize efficiencies through provision F.3 whereby it is stated that "Permittees may incorporate the required storm water provisions into already existing programs and leverage existing staff...".

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
10	11	California State University, Office of the Chancellor	F.5.b.4, p. 82	Requires annual training program.	This permit provision has been revised to address this comment.
10	12	California State University, Office of the Chancellor	F.5.c., p. 84	Some terms are undefined, such as "activism" and "high foot traffic" storm drain inlets.	Activism is defined as the practice of action or involvement as a means of achieving goals. Staff recognizes the value in public involvement and participation as an essential component of storm water quality protection. Staff does not agree that storm water centered public involvement/participation activism should be deleted. It is important for the public to be involved in activism aimed at achieving storm water quality protection.
10	13	California State University, Office of the Chancellor	F.5.d(ii), p. 84	Some campuses (if not most) have storm drains owned and operated by other agencies or districts that pass through the campus. The campus discharges into the drain, but does not operate the drain. The section states (specifically) that the Permittee is required to map outfalls operated by the permittee. The permittee should not be required to map an outfall within its jurisdiction but operated by another entity.	In the case that campuses are discharging to a drain that is owned and operated by another entity, the responsibility of the discharge remains with the discharger, the campus. The outfall inventory requires permittees to document outfalls within their jurisdiction. However, if the drain system is operated by another entity the permittee may record information related to the owner of the drain system as part of their inventory.
10	14	California State University, Office of the Chancellor	F.5.d(ii), p. 84	Drainage from adjacent property passes through the campus storm water system in some cases, and is discharged to the campus. In some cases, this is by underground storm drain; in other cases this is by surface flow. This flow and any pollutants are generated off-site and thus not under the control of the permittee.	Sampling of outfalls is to be conducted at the point of entry of the outfall into the receiving water body.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
10	15	California State University, Office of the Chancellor	F.5.d(ii), p. 84	There is no definition of an outfall. Does this include, for example, a street gutter discharging street runoff to another street or across a property line? Does this include underground storm drains that cross from the permittee's jurisdiction to another jurisdiction?	<p>EPA regulations define 'outfall' and 'point source' at 40 CFR 122.26(b)(9), and 40 CFR 122.2, respectively as follows:</p> <p>"Outfall means a point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States"</p> <p>"Point source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (See § 122.3)."</p> <p>The aforementioned definitions have been added to the Glossary.</p>
10	16	California State University, Office of the Chancellor	F.5.d.1, p. 85	Sampling of all outfalls exceeds the CWA. Draft Permit language implies that an illicit discharge has been detected and sampling is to help determine the source. However, there is no point to the sampling if no illicit discharge is detected.	This permit provision has been revised to address this comment.
10	17	California State University, Office of the Chancellor	F.5.d.1, p.85	CSU campuses do not have staff trained in collecting samples from storm drainage facilities.	This permit provision has been revised to address this comment, and as a result, no longer applies. Please see the Center for Watershed Protection's Illicit Discharge Detection and Elimination Guidance Manual located at: www.cwp.org . The manual outlines practical, low cost, and effective techniques for Phase II Permittees seeking to establish Illicit Discharge Detection and Elimination (IDDE) programs and investigate non-stormwater entries into storm drainage systems. It details the types of testing used to detect illicit discharges, information on estimating program costs in terms of capital and personnel expenses, and timelines that estimate how long program implementation will take.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
10	18	California State University, Office of the Chancellor	F.5.d.1, p. 85	Requires sampling for drains that in some case are underground.	This permit provision has been revised to address this comment.
10	19	California State University, Office of the Chancellor	F.5.d.1, p. 85	Requires sampling of flowing outfalls during mapping.	Staff does not agree that CSU should be exempt from sampling outfalls. In the case that dry weather flow is detected, it is important to sample to identify the potential illicit discharge and its source so that the potential water quality issue may be remedied. The permit does not require all outfalls to be sampled. Language has been revised to clarify the intent to sample only outfalls that are flowing.
10	20	California State University, Office of the Chancellor	F.5.d.1(i), p. 85	Refers to Section B.4.a. This appears to be a typo. B.4.a does not discuss inventory of outfalls.	This permit provision has been revised to address this comment.
10	21	California State University, Office of the Chancellor	F.5.d.2., p. 86	Does not designate a year that reporting is required to begin.	This permit provision has been revised to address this comment.
10	22	California State University, Office of the Chancellor	F.5.d.2.(d), p. 86	Section uses "hotspots" and "high priority" sites. What is the difference between these terms?	Storm water pollutant hotspots produce high levels of stormwater pollutants and present a high risk for spills, leaks or illicit discharges. A high priority site may include pollutant hotspots. A definition has been included in the permit Glossary.
10	23	California State University, Office of the Chancellor	F.5.f.5.(i), p. 90	Requires quarterly inspections.	Staff does not agree that language regarding quarterly inspections should be formatted into one requirement. Quarterly visual, comprehensive and non-storm water discharge inspections have been delineated in the permit language to provide clear guidance to the permittee. However, a Permittee may conduct these inspections as one, or divide them into separate inspections.
10	24	California State University, Office of the Chancellor	F.5.f.5.(ii)a),b),c) and d), p. 90	Requires quarterly inspections	Quarterly inspections are an integral part of storm water pollution prevention. Pollution prevention should not be viewed as a one-time task. Rather, Permittees must maintain pollution prevention practices in an ongoing effort that is improved over time. Proactive measures such as quarterly inspections lend to the ongoing maintenance required to ensure storm water pollution is prevented.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
10	25	California State University, Office of the Chancellor	F.5.f.6, p. 91	Requires "assessment/prioritization" of "all" catch basins within the permittee's jurisdiction. Some campuses have hundreds or thousands of catch basins. Some catch basins are very small - 3" or 4" - and drain very small areas.	This permit provision has been revised to address this comment.
10	26	California State University, Office of the Chancellor	F.5.f.9., p. 93	There is no definition of a "project."	There is no reference to "project" in section F.5.f.9, page 93 nor a requirement within this section to track projects.
10	27	California State University, Office of the Chancellor	F.5.f.9.(ii)(e), p. 93	Requires limiting or eliminating the use of fertilizers within five feet of pavement, 25 feet of a storm drain inlet, and 50 feet of a water body.	Organic slow release fertilizer is a viable alternate fertilizer application option.
10	28	California State University, Office of the Chancellor	F.5.f.9.(iii), p. 93	Reporting requirements do not allow enough time.	Staff does not agree that an evaluation of materials used and activities performed for pollution prevention, source control opportunities and a list of implemented practices will take three years to implement. Staff does not agree that the provision schedule should be revised. Urban runoff transports fertilizers, pesticides and herbicides into storm drains that ultimately discharge to creeks, rivers, streams. Urban runoff is a main source of water quality impairments and attention to this water quality issue should not be delayed by an additional year. Moreover, reporting requirements have been revised to address this comment.
10	29	California State University, Office of the Chancellor	F.5.g, p. 94	Requires implementation in the first year, which means as soon as the permit is operable, soon after adoption. Budgets for CSU state-funded capital projects are established many years prior to the completion of construction (i.e., 5-7 years or more, depending upon funding availability), with the ability to revise the budget quite limited due to the need to obtain approval from the State Joint Legislative Budget Committee for any significant increase. Budgets for CSU non-state funded capital projects (e.g., student unions, parking structures, housing) are also established in a similar time frame, with the ability to revise the budget constrained due to the use of Systemwide Revenue Bonds with associated CSU debt limitations. As a result, any increase in costs to capital projects cannot be absorbed in the immediate future. It is thus critical to provide an appropriate time frame within the Phase II Small MS4 General Permit for the inclusion of post-construction management measures in CSU capital projects.	This permit provision has been revised to address the comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
10	30	California State University, Office of the Chancellor	F.5.g., 94	Some Phase I MS4s do not have hydromodification plans, i.e. Los Angeles County and City of Los Angeles. This requirement seems to be duplicative because of Site Design Measures and LID Requirements.	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.
10	31	California State University, Office of the Chancellor	F.5.g.1. and F.5.g.2., p. 95	One section requires measures for sites 2,500 square feet and larger; the other section requires measures for sites 5,000 square feet and larger. Is there a difference between these two? 2,500 square feet and 5,000 square feet apply to simple pavement repair and rehabilitation projects and would trigger major construction for what are normally maintenance tasks.	Site design measures are required for projects that are 2,500 square feet and larger. Projects that are 5,000 square feet and larger are required to implement site design measures if not technically infeasible and any remaining runoff from impervious drainage management areas (DMAs) must be directed to a biofiltration system. Staff does not agree that the threshold for low impact development standards should be triggered at 10,000 square feet. Low impact development measures provide economical as well as environmental benefits. LID practices result in less disturbance of the development area, conservation of natural features, and are less expensive than traditional storm water controls. The cost savings applies not only to construction costs, but also to long-term maintenance and life cycle cost.
10	32	California State University, Office of the Chancellor	F.5.g.1.(ii)(2), p. 96	Uses the term "maximum extent technically feasible." There is no definition of this term.	This permit provision has been revised to address this comment.
10	33	California State University, Office of the Chancellor	F.5.g.2(ii), p. 96	Requires dividing site into Drainage Management Areas (DMAs) for sites as small as 5,000 square feet. This is not practical. A 5,000 square foot site is too small for discreet drainage areas with different characteristics. Small drains may drain areas smaller than 5,000 square feet, but these are typically part of larger, single use area with the same characteristic. Other projects will not lend themselves to this delineation simply because the area draining is larger than 5,000 square feet and there are discernible boundaries on which DMA limits can be set.	Staff does not agree that DMAs should be deleted or revised as suggested. The permit emphasizes runoff reduction at the site scale which necessitates the delineation of and management of runoff within discrete DMAs that are generally less than 1/2 acre.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
10	34	California State University, Office of the Chancellor	F.5.g.2(ii), p. 96	Uses the term "extent technically feasible." This is similar to "maximum extent technically feasible." There is no definition for either term.	This permit provision has been revised to address this comment.
10	35	California State University, Office of the Chancellor	F.5.g.2(ii)(1), p. 96	Refers to operational source control BMPs. Operational requirements cannot be addressed during design, but are instead implemented through campus policies on operations	The text refers to either standard permanent and/or operation source control BMPs.
10	36	California State University, Office of the Chancellor	F.5.g.2(ii)(3), p. 97	What is a "maximum surface loading rate?"	The loading rate is the rainfall equivalent of whatever flow is under consideration. Mathematically, it is represented by the water flow rate per wetted land area.
10	37	California State University, Office of the Chancellor	F.5.g.2(ii)(3)d), p. 96	This section will require large set asides of land on campuses. It is not clear how this section works with other LID requirements in the order. Is this section supplemental to the LID section? Is this section an alternative? This section will restrict long term planning and expansion on most campuses. In cases where an obsolete building or other facility is replaced in kind, this requirement will consume much more land area for the same purpose with no additional educational benefit than the original facility. This would severely impact the mission of each campus <u>to adapt to changing higher education requirements.</u>	Please see response to comment number 43.
10	38	California State University, Office of the Chancellor	F.5.g.2(ii)(3)d), p. 98	Current BMP technology does not work at high flows. This is counter to storm drainage, which requires that low flows are transmitted quickly and high flows are retained or attenuated to a rate that downstream conduit can transmit. Some CSU campuses are located at the top of a watershed, some are within larger watersheds and some are on the ocean or a bay. Some campuses cover hundreds of acres and include extensive storm drain systems, whose function requires runoff be discharged quickly. The introduction of low-flow BMPs in the middle of one these systems will disrupt functioning of the overall system. This is distinct from a city or county, which require BMPs on individual projects throughout the municipality or county where individual projects are limited by property lines. No such lines exist on a university campus and project sites often overlap and intrude on each other. Installation of low flow BMPs may not be technically feasible in many conditions.	Staff does not agree with the traditional flood conveyance approach being proposed by the commenter. Conveying smaller recurrents water quality storms swiftly through drainage systems has led to many of our contemporary urban water quality problems.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
10	39	California State University, Office of the Chancellor	F.5.g.2(ii)(3)d)(2)a., p. 89	0.2 inches per hour will equal the capture of 100% of all flow in many climates in California	Water quality BMPs are designed for a smaller rain event than what is typical for flood control and channel protection. On an annual basis, these smaller events happen more frequently and deliver most of the pollutant loads to our receiving waters. Designing for a less frequent, larger event (e.g., 1- or 2-year) would not be protective of water quality.
10	40	California State University, Office of the Chancellor	F.5.g.2(ii)(3)d)(2)b, p. 89	No period for rainfall data is given over which the 85th percentile of runoff is to be calculated. This can vary widely over short periods in some climates. Annual rainfall in Los Angeles has varied from as low a 6 inches to as high as 35 inches in 2004-2005. Designing a system that captures runoff equal to 2 times the 85th percentile of rainfall events during this period would probably capture all runoff in most Southern California climates. Also, "rain event" is not defined. A data period and rain event must be defined before these criteria can be evaluated	The permit establishes specific numeric sizing criteria for storm water retention and treatment. Retention and treatment of smaller water quality storms are required for the reasons stated in comment 40.
10	41	California State University, Office of the Chancellor	F.5.g.2(ii)3, p. 96	There are campuses with underground storm drains which discharge into concrete lined channels. These should be exempt from peak runoff reduction requirements.	We will develop hydromodification standards as part of a permit re-opener. This comment will be addressed.
10	42	California State University, Office of the Chancellor	F.5.g.4.(ii)(a), p. 102	Requires signed statement accepting responsibility for operations and maintenance.	This permit provision has been deleted.
10	43	California State University, Office of the Chancellor	F.5.g.2(ii)(3)c), p. 98	LID requirements have no exceptions or waivers for special conditions, such as areas on campuses where vegetation cannot be grown or where the areas are available to implement BMPs	The permit requires the implementation of specific site design measures. Runoff reduction and water quality benefits can be derived from measures that do not require the use of vegetation (e.g., soil quality preservation and enhancement, porous pavement, etc.)
10	44	California State University, Office of the Chancellor	General, p. 103	Have forms/data entry pages been designed for SMARTS yet? We anticipate situations in which permittees have data to enter that do not fit into form, or where a yes/no answers are required, but that type of answer does not exist. The campuses and the Chancellor's Office budget years in advance and will need to estimate the effort needed to complete the required reports.	A MS4 Phase II Permit SMARTS working group is under formation to test data entry pages. Permittees and stakeholders will be notified of opportunities to participate.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
10	45	California State University, Office of the Chancellor	F.5.g, p. 94-104	This section overlaps with requirements from the CGP for Post Construction Water Balancing. There is no clear implementation date. The reporting is required to take place by the third year. Under F.5.g.1, Site Design Measures are required in the first year. There is no time stated in F.5.g.2 Low Impact Development Runoff Standards. This creates a level of uncertainty for projects currently in the pre-construction development stage, particularly those that are already designed. There is no direction given for projects that are now designed, that will be subject to the CGP Water Balancing and that will then be subject to MS4 requirements. This also has large cost implications. Projects with designs that are complete cannot be redesigned without incurring large costs.	This permit provision has been revised to address this comment.
11	1	California Stormwater Quality Association (CASQA)	E.6.a(ii)(a) &(b), F.5.a.1.(ii)(a) & (b)	This section requires the Permittee to have adequate legal authority to prohibit and eliminate non-stormwater discharges to the MS4. It also requires the Permittee to prohibit and eliminate illicit discharges and illegal connections to the MS4. Eliminating all non-stormwater discharges and illegal connections may not be possible	While staff recognizes that CWA section 402(p)(3)(B)(ii) requires MS4 permits to contain a requirement to "effectively prohibit" non-stormwater discharges, the federal regulations direct the MS4 to "develop, implement and enforce a program to detect and eliminate illicit discharges." (40 CFR 122.34(b)(3).) Therefore, it is appropriate to use the term "eliminate" in the context of laying out legal authority and program requirements for illicit discharges. The term non-storm water is not defined in the CWA or the regulations, but the term illicit discharge is (40 C.F.R. § 122.26(b)(2)), and the terms are often used interchangeably. The preamble to the Phase II regulations explains that inclusion of the illicit discharge detection and elimination program for regulated small MS4s "is consistent with the "effective prohibition" requirement for large and medium MS4s." (64 FR 68722, 68756.) Because the term non-storm water discharges is used in E.6.a.(ii)(a), that provision has nevertheless been revised in response to the comment to state: "Effectively prohibit non-storm water discharges through the MS4." (Please note that the word "effectively" was inadvertently left off in the draft circulated on November 16, 2012, but will be inserted prior to adoption.) However, the word "eliminate" has been retained in E.6.a.(ii)(b) where the reference is to "illicit discharges."
11	2	California Stormwater Quality Association (CASQA)	E.6.a(ii)(f)	Delete "industrial and commercial facilities" from this requirement as it is a relic from previous iterations of the draft permit	This permit provision has been revised to address this comment.
11	3	California Stormwater Quality Association (CASQA)	E.6.a.(ii)(g)	This section requires the Permittee to have the legal authority to obtain "information pursuant to local development policy or public health regulations, and other information deemed necessary to assess compliance with this Order." This requirement as written is open-ended and could have broad implications.	This permit provision has been revised to address this comment. The intent of the requirement is to ensure Permittees obtain any information deemed necessary to assess compliance with the draft permit.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
	4	California Stormwater Quality Association (CASQA)		<p>CASQA GENERAL COMMENT #1: CASQA believes that the draft language needs to be changed to avoid a situation where municipalities implementing the permit, including the iterative process, are subject to (and required to devote their limited resources towards) enforcement and third party lawsuits for alleged violations of their permit's terms. Response: Hearing Nov 20th</p>	<p>The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.</p>
	5	California Stormwater Quality Association (CASQA)		<p>GENERAL COMMENT #2: Several elements of the implementation timeline remain unrealistic. Individually, the requirements and associated timeline may be feasible, but collectively, the comprehensive and more complex nature of the requirements makes compliance difficult, if not infeasible for Phase II permittees. Notably, many significant milestones are required in the second year...</p>	<p>Each implementation timeline has been carefully examined and revised to be collectively feasible.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
	6	California Stormwater Quality Association (CASQA)		<p>. There a few additional requirements of concern to Phase II permittees and we wish to ensure that the State Water Board is aware of these areas which are further discussed in Attachment A:</p> <ul style="list-style-type: none"> • Incidental Runoff Requirements (B.4): This requirement goes above and beyond what is required of Phase Is and as written could present a significant enforcement burden on Phase IIs. • Municipal Watershed Pollutant Load Quantification (E.14.b): A written, this section would require Phase IIs to annually quantify subwatershed pollutant loads and estimate loads reduced by BMPs. This requirement could result in a large amount of work with very little value to stormwater programs. • Urban Areas: Although State and Regional Water Boards have discretion to determine what areas outside of urbanized areas may be regulated as Small MS4s, CASQA requests that the State Water Board clarify that when the Small MS4 in question is a County, that the requirements contained in the draft Phase II permit do not automatically apply County-wide. Rather, the Phase II permit requirements should only apply to those urbanized areas within the County's jurisdiction, and other areas made on a case-by-case determination if the non-urbanized area contributes substantially to the pollutant loadings of the MS4 system within the urbanized area that is subject to the Phase II requirements. <p>Recommendation: Direct State Water Board staff to incorporate the revisions as provided in Attachment A and clarify applicability of Phase II permit to un-urbanized portions of Counties as indicated above.</p>	<p>Response is as follows:</p> <ul style="list-style-type: none"> - Incidental Runoff Requirements: This permit provision has been revised to address this comment. - Municipal Watershed Pollutant Load Quantification has been removed from the draft permit: This provision has been deleted. - Urban areas: The requirements contained in the draft permit do not automatically apply County-wide. Section A. Application Requirements for all Small MS4 Permittees states that for designated Counties the permit boundaries must include urbanized areas and include places in Attachment A. Therefore, the permit does not always apply county-wide. However, Regional Board staff assisted in developing additional non-urbanized places in Attachment A subject to regulation. These non-urbanized County areas have been designated based on threat to water quality and Regional Board staff have submitted justification for inclusion.
11	7	California Stormwater Quality Association (CASQA)	E.6.a.(ii)(h)	<p>Authority to enter private property to inspect for active or potential stormwater discharges on various types of property such as commercial, industrial, and residential is required by this section. Entry to private property usually requires a property owner to grant consent. Without consent, an inspection warrant is necessary which cannot be granted by this ordinance.</p>	<p>Appropriate operation and maintenance are critical aspects to the function of any suite of controls. In many cases, controls may be located on private property, and it is necessary to establish some provision to assure responsibility and accountability for the operation and maintenance of these controls. This permit provision has been revised to address this comment.</p>
11	8	California Stormwater Quality Association (CASQA)	E.6.a.(ii)(k)	<p>The reference to Section E.4.c is incorrect. We believe this should be E.6.c.</p>	<p>This permit provision has been revised to address this comment.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	9	California Stormwater Quality Association (CASQA)	E.6.b.(i)	The Reporting section (ii) requires the certification be signed by "...both the Permittee's legal counsel and an authorized signatory." The Task Description (i) only indicates one signature is required.	This permit provision has been revised to address this comment.
11	10	California Stormwater Quality Association (CASQA)	E.6.b.(ii) a	This section requires certification of an organizational chart of the jurisdiction, designation of all key personnel, and their contact information and responsibilities. This task will be time consuming and require very frequent revisions to keep up-to-date.	This permit provision has been revised to address this comment.
11	11	California Stormwater Quality Association (CASQA)	E.6.B	The certification is required within the first year of the online Annual Report. However, the certification requirements must include a description of enforcement actions such as administrative orders. This requirement is not consistent with the Enforcement Response Plan Report which is required by year 3. It may not be feasible for a new designee to certify that enforcement mechanisms are in place prior to finishing the Enforcement Response Plan.	Certification is required to certify compliance of the draft permit provisions. Therefore, it is essential that certification is completed within the first year of the permit.
11	12	California Stormwater Quality Association (CASQA)	E.6.c.(ii) d	This section requires Permittees to refer Industrial General Permit and Construction General Permit non-filers to the appropriate Regional Board. Please include the State web address utilized to submit non-filer information. This section also requires the Permittee to follow a prescriptive progressive enforcement process in relationship to the violations at construction projects or industrial facility locations and to report very specific information to the Regional Boards regarding these sites. Permittees will not inspect industrial facilities. Permittees will only interface with industrial facilities on a complaint basis for illicit discharges and not routine inspection. This process will be very resource intensive for the Permittee and somewhat redundant with already existing State programs.	This permit provision has been revised to address this comment.
11	13	California Stormwater Quality Association (CASQA)	E.7	The Regional Board will determine, on a case-by-case basis, whether a permittee will have to implement "Community-Based Social Marketing" requirements. These are complex and would likely require a consultant to develop and help with implementing. The basis for making such a determination by the Regional Board will be is not clear	This permit provision has been revised to address this comment.
11	14	California Stormwater Quality Association (CASQA)	E.7.a.(i), (ii), and (iv)	The requirement in E.16.c that Permittees involved in regional programs are mandated to report ALL aspects of the permit collectively does not allow enough flexibility. As written, this requirement would be too cumbersome and burdensome and is perceived to far outweigh any benefits garnered from shared programming. This reporting provision would act as a deterrent to the formation of new or maintenance of existing regional groups.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	15	California Stormwater Quality Association (CASQA)	E.7.a.(i)	Please define “targeted communities” and “target audiences” to clarify if they are intended to be the same or are somehow different. Please provide examples of how Permittees determine targeted communities and target audiences.	See glossary. This permit provision has been revised to address this comment.
11	16	California Stormwater Quality Association (CASQA)	E.7.a	Please correct outline numbering so that the Options (i), (ii), and (iii) can be easily referenced and distinguished from (i) Task Description, (ii) Implementation Level, and (iii) Reporting.	This permit provision has been revised to address this comment.
11	17	California Stormwater Quality Association (CASQA)	E.7.a(ii) and the second (i) (format off in this section - there are two (i)s)	The order requires the Permittee to implement a “storm water Public Outreach and Education program” that shall measurably increase the knowledge and awareness of the target audiences. A Permittee must also determine how to facilitate behavior changes. Measuring and demonstrating an increase in awareness and change in behavior is not always a good indicator of the success of a program. For example, Monterey Regional has been educating different sectors for over five years. As a result, it is difficult to show significant changes in awareness and behavior since target populations have been exposed to messaging for quite some time. As some of the experienced existing traditional Permittees have found, measuring the efficacy of education and outreach programs has been quite difficult and measuring an increase in improved behavior is not always feasible. Additionally, the language as currently worded, makes the Permittee responsible for behavior changes. The Permittee cannot be held accountable for industries and audiences that are not receptive to outreach and education programs. Behavioral changes take years (often 10 – 20) to occur. For example, recycling has taken over 20 years to get to where it is now.	The underlying principle of any public education and outreach effort is to change behaviors. The permittee must develop a process to assess how well its public education and outreach programs is changing public awareness and behaviors and to determine what changes are necessary to make its public education program more effective. Therefore, its crucial to measurably increase the knowledge and awareness of the target audiences to improve storm water water quality. The permittee is encouraged to use a variety of assessment methods to evaluate the effectiveness of different public education activities. EPA’s Getting In Step: A Guide to Effective Outreach in Your Watershed (www.epa.gov/watertrain/gettinginstep/) can provide useful information on setting up and conducting the evaluations.
11	18	California Stormwater Quality Association (CASQA)	E.7.a.(ii).b, F.5.b.2.(ii)	Specify the ‘target audiences” are determined by the Permittee.	See Glossary.
11	19	California Stormwater Quality Association (CASQA)	E.7.a.(ii)(d) / F.5.b.2.(ii)(d)	Permittees are required to “develop and disseminate appropriate educational materials in multiple languages when appropriate”. There should either be a specific population threshold defined, or authority for this determination should be given to the Permittee. The word “develop” should be deleted, as many agencies will use material developed by others.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	20	California Stormwater Quality Association (CASQA)	E.7.a(ii)(j), F.5.b.2.(ii)(j)	The provision requires the Permittee to conduct stormwater education to school-age children. Permittees may use California’s Education Initiative Curriculum or equivalent. California’s Education Initiative Curriculum (CEIC) has not been adopted by districts or teachers statewide and may not be implementable. Additionally, none of the 85 modules of the CEIC program contain any information related to stormwater pollution prevention or urban runoff.	This permit provision has been revised to address this comment.
11	21	California Stormwater Quality Association (CASQA)	E.7.a(ii)(k)	Charity car washes, mobile cleaning and pressure washing operations and irrigation activities are not always known to the Permittee. This makes it very difficult for a Permittee to measure a reduction.	This permit provision has been revised to address this comment.
11	22	California Stormwater Quality Association (CASQA)	E.7.a(iii), F.5.b.2.(iii)	This section states to “annually report number of trainings....” Who gets training and what training? What studies and results are being reported on? This section indicates education of “elementary” children; is this same as “school-age”?	This permit provision has been revised to address this comment.
11	23	California Stormwater Quality Association (CASQA)	E.7.b.2.a.(ii)	The Permit requires Permittee staff to have training including Qualified SWPPP Developer (QSD) or Qualified SWPPP Practitioner (QSP) certifications for staff members involved in reviewing development Plans and/or inspecting sites. This was not previously required unless the development projects were > one acre in size. The cost and effort associated with having Permittee staff members obtain and maintain these certifications is not warranted, if those staff members are only reviewing and/or inspecting small projects such as single family residential construction or remodeling, small additions, or remodels of commercial establishments.	This permit provision has been revised to address this comment.
11	24	California Stormwater Quality Association (CASQA)	E.7.b.2.b.(ii).(d)	Change language under reporting to say “Update Permittee’s website, <u>as necessary</u> , to include....”	This permit provision has been revised to address this comment.
11	25	California Stormwater Quality Association (CASQA)	E.7.b.2.b (ii) and (iii)	According to this section a Permittee can “provide information” on training opportunities. However, the reporting section seems to indicate the Permittee has to conduct the training. It should not be the responsibility of Permittees to educate the construction contractor community. Providing contractors with information regarding training that is being held in the area and providing information on a website should suffice. Getting training should be the responsibility of the contractor or engineer, not the Permittee.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	26	California Stormwater Quality Association (CASQA)	E.7.b.3 (i) and (ii) F.5.b.4.(i) & (ii)	This section is unclear as to the training frequencies required. The Task Description indicates training every two years (biennial) with evaluations in the alternate years, and the Implementation section indicates annual training with annual assessments of staff.	This permit provision has been revised to address this comment.
11	27	California Stormwater Quality Association (CASQA)	E.7.b.3, F.5.b.4.(ii) & (iii)	This section states that the annual report is to include "oversight procedures."	Oversight of contractor activities to ensure that contractors are using appropriate BMPs, good housekeeping practices and following standard operating procedures.
11	28	California Stormwater Quality Association (CASQA)	E.8.(ii)(a)	The requirement to submit information on "who" is responsible for specific tasks and goals appears redundant to what is already required under the Certification requirements E.6.b(ii)(a) that requires information on staff roles and responsibilities. It is unclear why the Permittee must establish a "budget" for this element.	This permit provision has been revised to address this comment.
11	29	California Stormwater Quality Association (CASQA)	E.9 & F.5.d.	During conversations with State Water Board staff, they indicated that an annual outfall walk was required. If an annual or permit term walk of all outfalls is intended, this is not clearly stated in the draft permit.	This permit provision has been revised to address this comment.
11	30	California Stormwater Quality Association (CASQA)	E.9.a. & F.5.d.(ii)	Development of an outfall map was required with first permit term. This provision requires that an outfall map include, among other things, coordinates and photographs	This permit provision has been revised to address this comment.
11	31	California Stormwater Quality Association (CASQA)	E.9.a.(ii)(d)	It is not clear what is meant by "field sampling station". Does this mean a permanent flowmeter and shed needs to be implemented or just designation of sampling site?	Field sampling stations refers to existing sampling stations within the Permittee's urbanized area. Staff does not agree that a minimum outfall size should be established for field sampling stations. Both EPA and CWP recommend mapping and sampling of all outfalls within the urbanized area (http://cfpub.epa.gov/npdes/stormwater/idde.cfm)
11	32	California Stormwater Quality Association (CASQA)	E.9.b.(i)	The Task Description specifies that the Permittee maintain an inventory in the second year but the Reporting section (iii) states by year three.	Reporting compliance dates have been revised for consistency with the Task Description.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	33	California Stormwater Quality Association (CASQA)	E.9.b.(ii)(a)	The requirement for the inclusion of the physical location of a storm drain receiving discharge from an industrial or commercial facility is very onerous as there may be multiple locations where discharge from these facilities occurs and it may require site visits in order to verify/determine. This information should be required of industrial permittees in their industrial permits and should not be required as part of a desktop inventory.	The Permittee may use simple applications such as Google Earth to determine the physical location of storm drains receiving discharges.
11	34	California Stormwater Quality Association (CASQA)	E.9.b.(ii)(c)	This element requires "The Permittee shall determine if the facilities that are required to be covered under a NPDES storm water permit have done so." As simply interpreted this requires Permittees to actively contact all facilities within the inventory to make this determination. It is our understanding this is not the intent of this item. Rather if in the course of a municipal inspection or IDDE investigation staff are made aware that a facility should be but is not permitted then the Permittee is obligated to notify the Regional Board.	The language does not directly imply that the Permittee must actively contact all facilities within the inventory. The language stating "upon discovering" is intended to imply such.
11	35	California Stormwater Quality Association (CASQA)	E.9.b.(ii)(d)	This item requires a Permittee update the facility inventory annually through "collection of new information obtained during inspections". During stakeholder meetings with the State, the State agreed to remove inspections of industrial and commercial facilities and yet this item implies those are still required.	While commercial/industrial inspections are not required by this permit, the reference to "inspections" as a means to update the inventory does not imply that inspections are a requirement. Information from inspections conducted by other municipal departments may be useful in updating the inventory. The inclusion of this item is a reference to readily available intra-agency informational databases.
11	36	California Stormwater Quality Association (CASQA)	E.9.c.(i) & F.5.d.1.	The Task Description indicates that priority area outfalls shall be sampled annually. When? During dry weather only? All outfalls or just outfalls 18" or greater?	Staff does not agree that a minimum outfall size should be established for field sampling stations. Both EPA and CWP recommend mapping and sampling of all outfalls within the urbanized area (http://cfpub.epa.gov/npdes/stormwater/idde.cfm)
11	37	California Stormwater Quality Association (CASQA)	E.9.c.(ii)(a) & F.5.d.1.(ii)(a)	This sections states that the Permittee is required to conduct monitoring for source tracking. Are these the parameters that are required to be sampled during the once/permit term outfall walk down?	This permit provision will be made to address this comment. (This permit provision was inadvertently omitted from the November 16, 2012 circulated draft and will be added prior to adoption).
11	38	California Stormwater Quality Association (CASQA)	E.9.c.(ii)© & F.5.d.1.(ii)(a)	What happens if the exceedances of action levels on outfall monitoring are due to discharges coming into a Permittee's jurisdiction (i.e. agriculture)? The Permittee has no jurisdictional authority to resolve the exceedances.	This permit provision has been revised to address this comment.
11	39	California Stormwater Quality Association (CASQA)	E.9.c(ii)(b)	Where did the Table 2 Action levels come from?	The Action Levels listed in Table 2 are derived from the Center for Watershed Protection's Guide on Illicit Discharge Detection and Elimination. The Action Levels are intended to be compared against results from the Indicator Parameters. This language has been clarified to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	40	California Stormwater Quality Association (CASQA)	E.9.d.(i) & F.5.d.2.(i)	When are the written procedures required to be in place?	This permit provision has been revised to address this comment.
11	41	California Stormwater Quality Association (CASQA)	E.10	Most Traditional Permittees track basic information of State storm water permitted construction projects over one acre or under one acre if part of a larger project. This draft now requires the tracking, inspection and reporting of all projects less than one acre as described by Ordinance regardless of scope.	Comment noted. All projects, whether one acre or more or less can/may be a threat to receiving waters and are not excluded from the program.
11	42	California Stormwater Quality Association (CASQA)	E.10 Throughout	The terms Construction Site Storm Water Runoff Control Ordinance and Erosion and Sediment Control Ordinance seem to be used interchangeably. Is the intent of the permit to have both or are multiple terms being used to present one item?	This permit provision has been revised to address this comment.
11	43	California Stormwater Quality Association (CASQA)	E.10.a	Inventory has to have a starting point, and it would be easier for Permittees to have that starting point defined.	This permit provision has been revised to address this comment.
11	44	California Stormwater Quality Association (CASQA)	E.10.a. (ii)(d)	Project threat to water quality is too vague. Define threat with respect to risk level analysis or other method to be considered.	This permit provision has been revised to address this comment.
11	45	California Stormwater Quality Association (CASQA)	E.10.a. (ii)(e)	Provision states, "Current construction phase, as described in this Section." There does not appear to be a description of current construction phase within the Section.	This permit provision has been revised to address this comment.
11	46	California Stormwater Quality Association (CASQA)	E.10.a. (ii)(f)	Most if not all Permittees' Stormwater Ordinances do not have an inspection frequency component.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	47	California Stormwater Quality Association (CASQA)	E.10.b(ii)(b)	The erosion and sediment control plan would include the rationale, selection, and identification of preferred BMPs for the proposed project. No benefit would be achieved for including rejected BMPs not planned for use.	This permit provision has been revised to address this comment.
11	48	California Stormwater Quality Association (CASQA)	E.10.c.(i)	Define “public construction project.” Both competitive bid and service agreement projects use public funds, thus typically defined as “public construction projects”. Competitive bid projects are larger in nature (over one acre) and include provisions for contractor reimbursement for BMPs during construction. However, the majority of smaller type service agreement projects, (less than one acre), do not involve stormwater issues and shouldn’t be included in site inspection and enforcement requirements. A clear and descriptive definition is needed.	See Glossary (This revision was inadvertently omitted from the draft circulated November 16, 2012, but will be made prior to adoption.)
11	49	California Stormwater Quality Association (CASQA)	E.10.c(ii)	CASQA appreciates the replacement of arbitrary minimum inspection frequencies with minimum inspections at milestones based on the Permittee's local ordinances or via a program approved by the Regional Water Board Executive Officer.	Comment noted.
11	50	California Stormwater Quality Association (CASQA)	E.10.c.(iii)(f)	The number of sites with discharges of sediment or other construction related materials, both actual and those inferred through evidence, is not directly be representative of actual occurrences as defined above in E10.c.ii. Reporting by inferred occurrences would not generate useful and/or accurate data which would lead to subjective interpretation, should State legal representatives utilize for potential litigation purposes.	This permit provision has been revised to address this comment.
11	51	California Stormwater Quality Association (CASQA)	E.11.c.(ii) & F.5.f.3.(ii)	The requirement to annually assess facilities conflicts with time frames described in E.11.e in which non-hotspots require inspections 1 time per permit term. Also, the traditional section requires a comprehensive hotspot review annually, with non-traditional required quarterly. The non-traditional section also has the same facility assessment time frame conflict as stated above.	The requirements in E.11.c do not conflict with the requirements in E.11.e. E.11.c requires Permittees to assess municipally owned and operated facilities by the third year of the effective date of the permit. E.11.e. requires Permittees to conduct inspections of municipally owned and operated facilities that have been identified as hotspots (per E.11.c. assessment).
11	52	California Stormwater Quality Association (CASQA)	E.11.d.(ii)(a) & F.5.f.4.(ii)(a)	Include identification of existing BMPs. BMPs may include existing infrastructure and/or management practices. Not all sites will need additional BMPs.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	53	California Stormwater Quality Association (CASQA)	E.11.d.(ii) © & F.5.f.4.(ii) ©	To #4 add "...and existing BMPs identified". To #7 add "Existing BMPs, proposed BMPs, if necessary"	This permit provision has been revised to address this comment.
11	54	California Stormwater Quality Association (CASQA)	E.11.e.(ii)(b)	Allow annual inspections to count as one of the required quarterly inspections provided the quarterly inspection requirements are also met.	The permit language does not imply that the annual inspection does not count as one of the required quarterly inspections provided the quarterly inspection requirements are also met. Quarterly visual, comprehensive and non-storm water discharge inspections have been delineated in the permit language to provide clear guidance to the permittee. However, a Permittee may conduct these inspections as one, or divide them into separate inspections.
11	55	California Stormwater Quality Association (CASQA)	E.11.e.(ii)(a) - © & F.5.f.5.(ii)(a) - ©	Permit language should allow records to be kept electronically as paper is inefficient and wasteful.	Permit language does not prohibit electronic keeping of inspection records.
11	56	California Stormwater Quality Association (CASQA)	E.11.h.(i-ii) & F.5.f.8.(i)	E.11.h.i states all O&M BMPs are to be inspected quarterly, while E.11.h.ii.d states annually.	This permit provision has been revised to address this comment.
11	57	California Stormwater Quality Association (CASQA)	E.11.h.(iii)(d) & F.5.f.8.(iii)	It is unclear what is meant by documentation of high priority designated facilities for this section as it is for O&M activities and these are not classified as facilities or low/medium/and high priority.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	58	California Stormwater Quality Association (CASQA)	E.11.j.(ii)(b)(2)(h) & F.5.f.9.(ii)(b) (2)e	This requirement prohibits the “application of pesticides, herbicides and fertilizers within five feet of pavement, 25 feet of a storm drain inlet, or 50 feet of a water body.” This may not be feasible, beneficial or practical for several reasons: 1. Some turf areas have storm drain inlets in them or the turf area is adjacent to a sidewalk or pathway. Prohibiting fertilizer would decrease the health of the turf causing uneven footing that could cause a tripping hazard, or cause exposed soil areas that would be susceptible to erosion. 2. Proper fertilization (that incorporates water quality considerations) reduces the need for herbicides and is part of some IPM programs. 3. Municipalities with strong IPM programs should be allowed to prioritize their program as needed. A parks department may be able to reduce overall fertilizer and pesticide use by converting turf to native grasses/plants, however, some flexibility is needed for municipalities to properly manage some turf areas.	This permit provision has been revised to address this comment.
11	59	California Stormwater Quality Association (CASQA)	E11.j(ii)(b)(2)a and b	The requirement for agencies to create drought resistant soils and to create microbial this will significantly increase on-going maintenance costs to ensure there are sufficient compost layers to be effective. The language does not indicate when this is to be done. Is this for new and/or existing landscaping areas?	Comment noted. Rich soil contributes to plant health and eliminates the need for pesticides. This provision applies to new landscaping areas.
11	60	California Stormwater Quality Association (CASQA)	E11.j(ii)(b)(2)c	Native plants are not always the best choice depending on site conditions. There is a larger variety of plants that are water-conserving and have a longer life. Further agencies are implementing their Water Efficient Landscape Ordinance which should address water savings needs.	This permit provision has been revised to address this comment.
11	61	California Stormwater Quality Association (CASQA)	Throughout E.12	Due to the number of recommended formatting, reorganizational, and technical edits for this provision, a track changes version of this provision is provided in Attachment C. Please see Attachment C to better understand how these changes come together in one document. Note that Attachment C goes through E.12.f and does not cover all of the Post-Construction Provision language or CASQA’s recommendations related to this section.	Comment noted.
11	62	California Stormwater Quality Association (CASQA)	Throughout E.12 and F.5.g	Reorganize outline levels, provide consistent outline content, adjust schedules / timing	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	63	California Stormwater Quality Association (CASQA)	Throughout E.12 and F.5.g	Allow enough time for Permittees to 1) analyze, change, and adopt ordinances and policies to give them authority to require projects to implement the permit provisions; 2) develop guidance and standards; and 3) provide education and outreach to municipal staff and the development community.	This permit provision has been revised to address this comment.
11	64	California Stormwater Quality Association (CASQA)	E.12.a and F.5.g	It is not clear what stormwater treatment measures are required during Year 1 and Year 2 before Provisions E.12.b-E.12.e take effect.	Post-construction requirements applicability will be clarified and detailed prior to adoption. This revision will be made to address this comment in the Fact Sheet.
11	65	California Stormwater Quality Association (CASQA)	E.12.a and E.12.b.	Combine E.12.a and E.12.b for clarity. Remove reference to Timing and Reporting because these vary by requirement and are defined later in the text. Consider removing this introductory summary of requirements altogether, since it adds nothing to permit.	This permit provision has been revised to address this comment.
11	66	California Stormwater Quality Association (CASQA)	E.12.c.(i)	Site Design Measures should follow same schedule as LID and align with Planning and Building updates. Residential projects of any size greater than 2,500 sf should follow Site Design Measures, whereas other projects > 5,000 sf will address Source Control and Site Design as defined in E.12.d.2.	This permit provision has been revised to address this comment, and align with Planning and Building updates.
11	67	California Stormwater Quality Association (CASQA)	E.12.c(ii) & E.12.d.2(ii) (2) & F.5.g.1.(ii) & F.5.g.2.(ii)(2)	Delete METF for small projects' site design measures. METF creates uncertainty since these measures have no numeric criteria to determine if METF threshold is met. Additional edits to the site design list are provided below. Treatment BMPs such as green roofs and vegetated swales should not be listed as site design BMPs.	This permit provision has been deleted.
11	68	California Stormwater Quality Association (CASQA)	E.12.d.1	Change header and delete sub header that's repeated below.	This permit provision has been revised to address this comment.
11	69	California Stormwater Quality Association (CASQA)	E.12.d.1(i)	Move details on Implementation Level and Reporting to those appropriate sections.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	70	California Stormwater Quality Association (CASQA)	E.12.d.1.(ii)	The current provision does not differentiate between projects that create or replace 5,000 sf impervious and those that are "Regulated Projects." Listing individual "Regulated Projects" types may imply that other types of projects are not be regulated (winery, school, clinic, greenhouse, etc.). It is particularly unclear why industrial is listed, but not commercial.	This permit provision has been revised to address this comment.
11	71	California Stormwater Quality Association (CASQA)	E.12.d.1(b) and (c)	Delete "treatment" since these provisions refer to Site Design, Source Control, and LID. Include MEP to address conditions where measures cannot be applied at a redeveloped site.	This permit provision has been revised to address this comment.
11	72	California Stormwater Quality Association (CASQA)	E.12.d.(2)	Not all "public" projects are under the authority of the Permittee. State, federal, Special Districts are public but not regulated by the Permittee under this Draft Order.	This permit provision has been revised to address this comment.
11	73	California Stormwater Quality Association (CASQA)	E.12.d.(1)(d)	The draft language proposed is unnecessary as planning laws set the requirements for when project's development rights become "vested" or "grandfathered." Excerpting portions of planning law can place this Draft Order in conflict with future planning law as it changes over time. The trigger for when standards are applied to development projects is well established in Subdivision Map Act and State Planning Laws, rendering the ministerial vs. discretionary discussion irrelevant.	This permit provision has been revised to address this comment.
11	74	California Stormwater Quality Association (CASQA)	E.12.d.(1)(d)	Provide language to clarify the effective date.	This permit provision has been revised to address this comment.
11	75	California Stormwater Quality Association (CASQA)	E.12.d.1.e. 2.(i & ii)	This section states that an entire roadway project needs to be treated if the proposed improvements affect 50% of the impervious surface of the existing roadway, but allows no minimum amount of new roadway. A limit of 5,000 sf is recommended so that it is in the same category as "regulated projects" (see above). It is impractical to segregate street "sheds" since they have constant cross slopes for driver safety. Requiring treatment for all of the roadway when < 50% impermeable surface is added is not practical. Suggest treating an equivalent volume generated from the additional "new" pavement, but that can come from another portion of the full section roadway.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	76	California Stormwater Quality Association (CASQA)	E.12.d.2	Move Source Control up to a higher level under E.12.d and make LID Design Standards E.12.e. Move the DMA discussion to E.12.e.(ii)(b).	This permit provision has been revised to address this comment.
11	77	California Stormwater Quality Association (CASQA)	E.12.d.2 (ii) (1)	Source Control requirements should be at least as rigorous and effective as Attachment 4. At a minimum, provide reference to standard design measures such as those found in the CASQA BMP Handbook (e.g. fueling stations).	This permit provision has been revised to address this comment.
11	78	California Stormwater Quality Association (CASQA)	E.12.d.2 (ii)	Provide guidance on conducting a site assessment to reflect the goals of LID.	This permit provision has been revised to address this comment.
11	79	California Stormwater Quality Association (CASQA)	E.12.d.2.(ii)	For ease of use, modify the formatting such that the Drainage Management Area language becomes its own sub header under Site Assessment.	This permit provision has been revised to address this comment.
11	80	California Stormwater Quality Association (CASQA)	E.12.d.2(ii)	Site design measures for projects > 5,000 sf should be designed with a higher level of site assessment and with design criteria for infiltrating the 85th percentile volume criteria, per treatment/baseline hydromod requirements. CASQA recommends deletion of this section with reference to the Site Design measures described earlier in the provision (E.12.b).	The alternative designs language is referring to E.12.d.2.(3) Storm Water Treatment Measures and Baseline Hydromodification Management Measures. Staff will revise the typo that erroneously refers to E.12.d.2.(2) Site Design Measures.
11	81	California Stormwater Quality Association (CASQA)	E.12.d.2.(ii) (3)a. & F.5.g.2.(ii)(3) a)	As currently written, the demonstration of equivalent effectiveness for Alternative Designs is overly restrictive and will eliminate the use of all infiltration facilities, underground facilities, harvest and use, and green roofs.	Staff does not agree with this comment. If a Permittee chooses to select an alternative design for bioretention they must demonstrate that they meet all four criteria. The alternative design criteria does not eliminate the use of all infiltration facilities, underground facilities, harvest and use and green roofs.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	82	California Stormwater Quality Association (CASQA)	E.12.d.2.(ii)(3)b.	Modify language as follows: Allowed <u>Adjustments Variations</u> for Special Site Conditions - The bioretention system design parameters in (2e) may be adjusted for the following special site conditions as follows : (1) Facilities located within 10 feet of structures <u>or other potential geotechnical hazards established by the geotechnical expert for the project</u> may incorporate an impermeable cutoff wall between the <u>bioretention</u> facility and the structure <u>or other geotechnical hazard</u> . 2) Facilities <u>in areas</u> with documented high concentrations of pollutants in underlying soil or groundwater, facilities located where infiltration could contribute to a geotechnical hazard, and facilities located on elevated plazas or other structures may incorporate an impermeable liner and may locate the underdrain discharge at the bottom of the subsurface drainage/storage layer (this configuration is commonly known as a “flow-through planter”). (3) Facilities located in areas of <u>highly infiltrative soils groundwater</u> , or where connection of an underdrain to a surface drain or to a subsurface storm drain are infeasible, may omit the underdrain. (4) <u>Facilities serving high-risk areas such as fueling stations, truck stops, auto repairs, and heavy industrial sites may be required to provide additional treatment to address pollutants of concern unless these high-risk areas are isolated from stormwater runoff or bioretention areas with little chance of spill migration.</u>	This permit provision has been revised to address this comment.
11	83	California Stormwater Quality Association (CASQA)	E.12.d.2.(ii)(3)c. & F.5.g.2.(ii)(3) c)	Modifications for clarity and addition of historic sites as a possible exemption.	This provision has been revised to address the comment.
11	84	California Stormwater Quality Association (CASQA)	E.12.d.2(ii)(3)c.	The reopener language is unnecessary and will create uncertainty about the standards in this provision. During this permit term, Permittees will have to go through significant effort to revise ordinances and policies at least once for LID standards and possibly twice if modified hydromodification management criteria are adopted, and should not have to make additional changes to address a reopener. They should be allowed to implement the LID requirements for this permit term without changes.	This permit provision has been revised to address this comment.
11	85	California Stormwater Quality Association (CASQA)	E.12.d.2.(iii)	Revise schedule to Year 3. Information should be collected and retained by Permittee. Revise language as follows:	Staff does not agree that reporting should initiate in year three. Post-construction program elements have been established as a priority area in this Order. As such, reporting for approved Regulated Projects must be completed and made available beginning the end of second year. In order to maintain consistency with low impact development standards implementation schedule (required within second year), Permittees should be also be reporting on approved Regulated Projects.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	86	California Stormwater Quality Association (CASQA)	E.12.e & F.5.g.3	The interim hydromodification management (HM) standard requiring peak matching for discrete storm events is inconsistent with HM studies and approaches to date and is not as protective of stream channels as a flow duration control approach. In fact, studies by MacCrae (1996) and others have shown that implementation of a peak matching standard could be more damaging to stream channels than doing nothing (beyond the baseline measures). All Regulated Projects that create or replace 5,000 square feet or more of impervious surface will be implementing baseline HM measures, which will have a positive effect towards protecting watershed processes. CASQA recommends that Phase II Permittees wait until more work is done by the State and Regional Water Boards on developing appropriate HM criteria instead of implementing an ineffective approach with possibly negative consequences.	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.
11	87	California Stormwater Quality Association (CASQA)	E.12.e.(ii) & F.5.g.3.(ii)	Exemptions should be provided for hydromodification criteria.	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	88	California Stormwater Quality Association (CASQA)	E.12.f & F.5.g.2. 3.c	Include general statement that Regional Board-approved HMPs or other LID/Hydromod control plans could override the state permit's requirements for LID/Hydromod. The Regional Board would have to determine which portions of their provisions supersede this Order since it would vary considerably based upon the region and the content of the plans. Revise language as follows:	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.
11	89	California Stormwater Quality Association (CASQA)	E.12.f.ii	Clearly allow permittees to develop and implement in-lieu programs that allow program applicants to participate in projects that protect or enhance watershed processes as an alternative to on-site compliance. In the interest of timing, this should not be incumbent on the Regional Boards to initiate.	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.
11	90	California Stormwater Quality Association (CASQA)	E.12.f(ii)	Enforceable Mechanisms do not address Watershed Processes and should be raised to a higher organizational level. Implementation schedule also needs to be consistent with other provisions. See below for recommended revisions to E.12.j (now E.12.h).	This permit provision has been revised to address this comment.
11	91	California Stormwater Quality Association (CASQA)	E.12.g.	O&M only addresses Regulated Projects, not those less than 5,000 sf.	Comment noted. Revised language specifies applicability of O & M.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	92	California Stormwater Quality Association (CASQA)	E.12.g.	Revise schedule and place under Implementation. Revise language as follows: (i) Task Description – Within the second year of the effective date of the permit, The Permittee shall implement an O&M Verification Program for new development Regulated Projects regulated under this Order (ii) Implementation Level – <u>By Year 3, at</u> a minimum the O&M Verification Program shall include the following elements:	Please see response to comment number 90.
11	93	California Stormwater Quality Association (CASQA)	E.12.g(iii)	In the Reporting section the “fiscal year” is called out. This is not done in any other section of the permit.	This provision has been revised to address this comment.
11	94	California Stormwater Quality Association (CASQA)	E.12.h	Progress cannot be measured until data is developed.	The schedule as written for post-construction will remain, therefore, the schedule does allow for measure of effectiveness after one year of implementation of post-construction requirements. Please see response to comment number 90.
11	95	California Stormwater Quality Association (CASQA)	E.12.i	Statement is redundant with other provisions of Draft Order. Any Regional Board can implement their own watershed-based criteria as discussed above. Establishing this as a Provision of the permit with separate Reporting requirements is confusing, unnecessary, and not reflective of State Water Board’s effort to develop consistency statewide. Details of implementation schedule should be left to the individual Regional Boards.	Staff does not agree that this provision should be deleted. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures. In relation to the Central Coast Joint Effort, a watershed process-based approach is already being used for Phase II MS4s that participated in the Central Coast Joint Effort for developing hydromodification control criteria.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	96	California Stormwater Quality Association (CASQA)	E.12.j	Requiring Permittees, by Year 1, to “modify codes, regulations, standards, and/or specifications”, and by Year 4 to “revise general plans, specific plans, and zoning” is not feasible. Reviewing, identifying gaps and impediments, finding an appropriate correction, and possible approval required at Council/ Commission level cannot be achieved in one year. General Plans are long-term planning documents for growth and resource protection that are updated infrequently due to the overall work updates require. Permittees have Land Use and Conservation Elements that address protection of water resources from development. Further, communities in Coastal Zone would need Coastal Commission Approval of any changes.	This permit provision has been revised to address this comment.
11	97	California Stormwater Quality Association (CASQA)	Throughout	CASQA would like to emphasize the importance of having monitoring options available to Phase IIs. A one-size-fits-all approach is not appropriate given that the Phase II permit is a statewide permit that applies to municipalities of varying sizes, geographies and MS4 implementation experience. Having options also has the benefit in allowing Permittees to select the an option that will help them to obtain information useful to answering questions about their own stormwater program(s).	Comment noted.
11	98	California Stormwater Quality Association (CASQA)	Attachments A & G	Review, compare, and revise Attachment A and Attachment G for accuracy and consistency, as needed.	The provision contested by commenter is dictated by SWRCB Resolution No. 2012-0012, approving exceptions to the California Ocean Plan for selected discharges into ASBS. Staff does not have flexibility to alter the provision. Attachments A is based on Ocean Plan, Special Protections language and cannot be changed by State Board municipal storm water staff. Similarly, Attachment G language is based on Regional Board Basin Plans and requirements and cannot be modified by State Board municipal storm water staff.
11	99	California Stormwater Quality Association (CASQA)	E.13 & E.15 & F.5.i	Where E.13 or E.15 (Attachment G) monitoring requirements require Permittees to obtain Regional Board approval before proceeding with monitoring, ensure that the implementation due dates are tied to the date of Regional Board approval instead of the effective date of the permit. For example, E.13.c.ii should be modified as follows: “The Permittee shall develop and implement a special study plan and shall submit to an applicable Regional Board for review and approval. Within the second year of the effective date of the permit, the Permittee shall begin implementation of the special study plan <u>within six months of Regional Board approval.</u> ”	This permit provision has been revised to address this comment.
11	100	California Stormwater Quality Association (CASQA)	E.13 & Monitoring Flow Chart	The permit should clearly state that consultations with Regional Board for 303(d) list –related monitoring only need occur when “urban runoff” is listed as a source.	Staff does not agree that discharges to waterbodies listed as impaired on the 303(d) list should only be limited to populations that are greater than 2,500. However, this permit provision will be revised to address the inclusion of language referencing urban runoff. (This revision was inadvertently omitted from the draft circulated November 16, 2012, but will be made prior to adoption.)

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	101	California Stormwater Quality Association (CASQA)	Monitoring Flow Chart & E.13.vi	<p>Further clarify in section E.13 and on the monitoring flow chart, that any Permittee performing ASBS, TMDL or 303d monitoring is not required to perform any additional monitoring from E.13.a, E.13.b, or E.13.c. Recommend adding the following language to E.13.iv: (iv). Traditional Small MS4 Permittees with a population greater than 50,000 listed in Attachment A that are not already conducting ASBS, TMDL or 303(d) monitoring efforts shall participate in one of the following monitoring programs, subject to Regional Water Board Executive Officer approval:</p> <p>a) E.14.a. Regional Monitoring b) E.14.b. Receiving Water Monitoring c) E.14.c. Special Studies</p> <p><u>Traditional Small MS4 Permittees that are already conducting ASBS, TMDL, 303(d) monitoring efforts are not required to perform additional monitoring as specified in E.13.a, E.13.b, and E.13.c.</u></p>	This permit provision has been revised to address this comment.
11	102	California Stormwater Quality Association (CASQA)	E.13.(iv)	The Tentative Order specifies that Permittees may choose from several monitoring options. Option (b) includes two components that are not necessarily coordinated or dependent on each other. Either component alone would provide baseline pre-development information or general characterization.	Receiving water monitoring includes both urban/rural interface monitoring and urban area monitoring. Monitoring at the urban/rural interface provides insight to the Permittee regarding effectiveness of post-construction best management practices. The monitoring site within an urban area provides valuable information to the Permittee regarding constituents that may enter waterbodies due to urbanization. Permittees can utilize this data to effectively assess the condition of receiving water in their jurisdiction and effectively evaluate and assess water quality data. Relationships may be drawn from urban/rural interface storm water data and urban storm water data.
11	103	California Stormwater Quality Association (CASQA)	Monitoring Flow Chart	Correct flow chart to refer to section E.13 of the permit instead of E.12.	The flow chart has been revised.
11	104	California Stormwater Quality Association (CASQA)	Provision F.	Under Section F. Non-Traditionals, please clarify requirements for Permittees covered by the General Exception to the California Ocean Plan for ASBS discharges.	The applicability of ASBS requirements for Non-traditionals is stated in Section E.4.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	105	California Stormwater Quality Association (CASQA)	E.13.b.1(ii). a & E.13.b.2(ii) a	Define HUC 12 watershed in the permit and in the glossary. Change language in the permit to address that Permittee jurisdictional boundaries do not correspond to HUC 12 watershed boundaries. Some municipalities, for example, may be located in the top 2/3 of a few HUC 12 watersheds and therefore cannot place a monitoring station at the bottom of the watershed.	The following definition of a HUC-12 watershed has been added to the Glossary: The hydrologic unit code (HUC) is the "address" of the watershed. The HUC is the numerical code of the USGS watershed classification system used to identify the watersheds, or drainage basins, at various scales. The HUC organizes watersheds by a nested size hierarchy, so large scale watershed boundaries for an entire region may be assigned a two-digit HUC, while small scale, local watershed boundaries (within the larger regional watershed) may be assigned a 12-digit HUC. A HUC-12 watershed averages 22 square miles in size.
11	106	California Stormwater Quality Association (CASQA)	E.13.b.1(ii) b	Change language to "permanent monitoring location."	This permit provision has been revised to address this comment.
11	107	California Stormwater Quality Association (CASQA)	E.13.b.1.(ii) c	Please describe the intent of "correlations to flow records". It is not clear from the Permit if the intent is to develop flow volume estimates based on stage and rainfall information or to develop relationships between flow measured and constituent concentrations.	This permit provision has been deleted.
11	108	California Stormwater Quality Association (CASQA)	E.13.b.1	Many communities do not have distinct interface boundaries. A more general definition may be more inclusive. More specific guidance would exclude some communities. Additionally, Permittees subject to E.13 monitoring may be located in an urbanized area that is built out. In this case, the assumption is that Permittees subject to E.13 monitoring would choose E.13.a, E.13.b.2 or E.13.c instead of E.13.b.1. In addition, not all "rural" areas are located upstream from an "urban" area and in such cases where the rural area is downstream of the urban area; it doesn't seem to make sense to monitor at the urban/rural interface regardless of whether development is planned or not in the rural area.	This permit provision has been clarified and revised. "Urban/rural interface" refers to the geographical location at which the urban land use and rural land use interact.
11	109	California Stormwater Quality Association (CASQA)	E.13.b.	Clarify that "Receiving Water" in this case must be inland fresh water (non-tidally influenced).	Staff does not agree that "Receiving Water" only applies to inland fresh water. Regional Board Basin Plans contain receiving water standards for tidally-influenced waters (e.g., Sacramento River north of the City of Sacramento). There is no compelling reason to exempt tidally-influenced waters. In the case that Receiving Water monitoring does not satisfy the local conditions of a Permittee's jurisdiction there is an alternative option offered under Section E.13.c Special Studies.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	110	California Stormwater Quality Association (CASQA)	E.13.b.1. Table 3	The stated monitoring question for this section is: "are new development LID BMPs effective at minimizing degradation in waterways?" This question cannot be answered by analyzing a single bacteria grab sample during three storms/year. A single grab sample analyzed for fecal coliform will not measure program effectiveness or provide comparable results. In addition, hold times should be considered when developing the monitoring requirements. Bacteria monitoring results are highly variable, background levels of bacteria due to wildlife can confound results, and it will be difficult to link changes in bacteria counts to the effectiveness of LID BMPs that are implemented on a project-by-project basis per the requirements of Section E.12 of the draft permit. For inland waters, it is not helpful to assess the protection of recreational beneficial uses with fecal coliform sampling during storm events in receiving waters that are primarily storm runoff as 1) these receiving waters are unsafe during high runoff periods, and 2) IDDE dry weather monitoring is used to monitor illicit connections during dry weather.	Staff does not agree that bacteria should be removed from the list of constituents. Further, this section has been revised and clarified to address this comment.
11	111	California Stormwater Quality Association (CASQA)	E.13.b.(1-2)	We assume that channel cross sections and pebble counts listed in Table 3 and PHAB assessment listed in Table 4 would be conducted during the fall index period, at the same time the bioassessments would be conducted. Also, sediment samples to be analyzed for pyrethroids should not be collected during storms.	This permit provision has been revised to address this comment.
11	112	California Stormwater Quality Association (CASQA)	E.13.b.2.(i) c	Change language as follows: c) Within the <u>By the end</u> of the second year of the effective date of the permit, the Permittee shall fully develop an inland fresh water receiving water monitoring program. <u>Monitoring shall be initiated at the beginning of year 3...</u> "By the end of the second year of the effective date of the permit,	Staff does not agree that monitoring should initiate at the beginning of year three. Receiving water monitoring begins the second year of the permit. In this way, Permittees may develop and prepare a monitoring program throughout the first year of the Permit, begin monitoring the second year, continue monitoring in years 3 and 4 and submit a report of data results the last year of the permit term. By pushing out monitoring initiation to year 3 less data will be available to the Permittee to assess the effectiveness of LID BMPs at minimizing degradation in receiving water bodies.
11	113	California Stormwater Quality Association (CASQA)	E.13.b.1(ii) (d)	The permit requires Permittees to establish a monitoring fund into which all new development contributes on a proportional basis.	This permit provision has been revised to address this comment.
11	114	California Stormwater Quality Association (CASQA)	E.13.b.2. Table 4	DO and temperature may be more appropriate parameters to observe during summer months (dry season).	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	115	California Stormwater Quality Association (CASQA)	E.14.	There are several locations throughout the provision that explicitly require or infer that the Permittee conduct an assessment for “each BMP.” It is not feasible, realistic or a good use of resources for Permittees to conduct an assessment of each BMP.	Revisions have been made to address this comment accordingly. Please see Order for changes. Staff is in concurrence with the commenter that Permittees should utilize the development of their Program Effectiveness Assessment and Improvement Plan to identify pollutants of concern and the key, critical aspects of their program and associated BMPs that program effectiveness will focus on.
11	116	California Stormwater Quality Association (CASQA)	E.14. & F.5.h.1.	The annual assessment including such requirements as surveys and inspection should be aligned with the requirement for twice per permit cycle surveys found in the Education and Outreach Section E.7 to leverage the resources that must be used for the surveys to inform this assessment.	Comment noted.
11	117	California Stormwater Quality Association (CASQA)	E.14.a.(i) & F.5.h.1.(i)	The Task Description should be modified as follows: document compliance with permit conditions and to adaptively manage its storm water program and make necessary modifications to the program to improve program effectiveness at reducing pollutant-loads <u>pollutants of concern</u> , achieving the MEP standard, and protecting water quality. The Program Effectiveness Assessment and Improvement Plan shall identify the strategy used to gauge the effectiveness of each <u>prioritized BMPs</u> and program implementation as a whole. The annual effectiveness assessments will help identify potential modifications to the program to ensure long-term effectiveness.	This permit provision has been revised to address this comment.
11	118	California Stormwater Quality Association (CASQA)	E.14.a(ii)(a)	The Program Effectiveness Assessment Improvement Plan, depending on program goals and prioritized BMPs may not be able to effectively address all of the required elements. Language should be changed to “as applicable” and also identify the establishment of program goals and prioritized BMPs. Determining the pollutant reductions of individual BMPs is not a effective use of resources – delete “individual.” The text “(including expected pollutant removal efficiency and BMP Condition” appears to be redundant with the next element which states “Assessment of pollutant source reductions achieved by individual BMPs” – clarify the difference between the two or delete one. Additionally, since many Permittees will just be starting up their water quality monitoring programs, most will not be able to determine if BMPs enhanced or changed urban runoff, or receiving water quality. These are long-term assessments that cannot be answered within this permit term. However, Permittees can, within their Program Effectiveness Assessment Improvement Plan, identify how they are going to answer these questions beyond this permit term.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	119	California Stormwater Quality Association (CASQA)	E.14.(ii)(b)	(b) The Program Effectiveness Assessment and Improvement Plan shall assess BMP and program effectiveness in terms of the following Outcome Levels, <u>as applicable</u> : (1) Storm Water Program Activities (2) <u>Awareness</u> (3) Behavior (4) Pollutant Load Reductions (5) MS4 Discharge Quality (where assessment is supported by MS4 discharge quality data) (6) Receiving Water Conditions	The intention of Program Effectiveness Assessment and Improvement Plan is to evaluate the program collectively. As such, it is important to assess program effectiveness in light all listed Outcome Levels.
11	120	California Stormwater Quality Association (CASQA)	E.14.(ii)(b)(3)	It is very difficult to assess (quantify) pollutant load reductions from a stormwater program other than perhaps tracking the amount of pollutants removed by street sweeping and/or catch basin cleaning.	This permit provision has been revised to address this comment.
11	121	California Stormwater Quality Association (CASQA)	E.14 (ii)(d)	(d) is intended so it appears that it is a subset of (c) which applies to privately owned BMPs	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	122	California Stormwater Quality Association (CASQA)	E.14.(ii)(e)	<p>Modify language as follows:</p> <p>e) The Program Effectiveness Assessment and Improvement Plan shall ask and answer the following Management Questions for <u>prioritized</u> each BMPs or group of BMPs for which answers to Management Questions can be based on quantitative data appropriate to the question being answered.</p> <p>(1) Was the <u>Were prioritized</u> BMPs or group of BMPs implemented in accordance with the permit requirements? The Permittee shall develop quantitative data using the following or equivalent methods:</p> <p>(i) Confirmation – Documenting whether an activity or task has been completed, expressed as positive or negative outcome (i.e., yes or no)</p> <p>(ii) Tabulation – Simple accounting expressed in absolute (e.g., number of people participating), or relative terms (e.g. percent increase in recycled household hazardous waste)</p> <p>(2) To what extent did the <u>prioritized</u> BMPs or group of BMPs change the target audience’s behavior?-. The Permittee shall develop quantitative data using the following or equivalent methods:</p> <p>(i) Surveys - Surveys or interviews to discern knowledge, attitudes, awareness, behavior of specific population, etc.</p> <p>(ii) Interviews – Interviews of site personnel to discern awareness and behavior</p> <p>(ii) Inspections - Inspections or site visits to directly observe or assess a practice.</p> <p>(3) To what extent did the <u>prioritized</u> BMPs or group of BMPs reduce pollutant loads from their sources to the storm drain system?</p>	This permit provision has been revised to address this comment.
11	123	California Stormwater Quality Association (CASQA)	E.14.a(ii)(f)	As previously indicated the permit should recognize that determining the impact of BMPs on urban runoff and receiving water are long-term questions that cannot be answered by Phase IIs who will just be starting to identify pollutants of concern and obtain water quality monitoring data. It is realistic to require that Permittees plan out how they are going to answer these long-term questions beyond this permit term.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	124	California Stormwater Quality Association (CASQA)	E.14.b(i)	<p>This section requires the Permittee to quantify annual subwatershed pollutant loads. Furthermore, it is required that the permittee shall use the Center for Watershed Protection’s Watershed Treatment Model (WTM) or equivalent. There are several concerns associated with this requirement including:</p> <p>The WTM is based on nationally available data and has not been calibrated to reflect local or statewide conditions.</p> <p>A desktop quantification of pollutant loads would be based on estimates upon estimates. The value and accuracy of this data will be questionable and unproven.</p> <p>It is not clear what the usefulness of this data will be given the amount of uncertainty associated with it. Additionally, this appears to be a very time consuming task with little benefit to the Permittee</p>	This permit provision has been deleted.
11	125	California Stormwater Quality Association (CASQA)	E.14.b(i) and (ii)	<p>As previous mentioned, the WTM, or equivalent, is not a small undertaking for Permittees. It could result in a large amount of work with very little value to stormwater programs. As such, the scope of this task should be limited to 1 pilot watershed for this permit term. This will allow Permittees to test and calibrate the WTM, or equivalent and determine, in conjunction with Regional Board and State Water Board staff whether there is value in continuing to pursue this type of quantification in future permit terms. Permittees should be given the option of piloting 1 watershed either individually or in collaboration with other permittees.</p>	This permit provision has been deleted.
11	126	California Stormwater Quality Association (CASQA)	E.14.b.(i)	<p>The WTM does not have parameters in place for cadmium, chromium, copper, lead, nickel, zinc or trash. This means that each permittee will have to create these modules for their own use. This will be expensive and extremely time consuming for the Permittee and potentially beyond their capabilities. Phase IIs should not be required to calibrate and add parameters to a model from scratch. The constituents should be limited to those readily available through the WTM.</p>	This permit provision has been deleted.
11	127	California Stormwater Quality Association (CASQA)	E.14.c	<p>Given the prescriptiveness and specificity of the draft permit, Permittees will not have much ability to shift or prioritize resources unless they are provided with the flexibility to ramp up implementation in one area and decrease it in another (e.g., increase corp yard inspections but decrease storm drain cleanouts).</p> <p>Additionally, this section introduces the term “priority program areas.” This is not previously defined or discussed. CASQA recommended the use of “priority BMPs” for inclusion in the Program Effectiveness Assessment Improvement Plan. It would make sense to utilize consistent terminology throughout E.14.</p>	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	128	California Stormwater Quality Association (CASQA)	E.14.c(i)	Delete reference to "BMP Condition Assessment" as this is a relic from the previous iteration of the draft permit.	This reference has been deleted.
11	129	California Stormwater Quality Association (CASQA)	E.15.a. [page 75] & F.5.i. [page 105]	Revise E.15.a as follows: The Permittee shall comply with all applicable TMDLs approved pursuant to 40 Code of Federal Regulations section 130.7 for which the Permittee has been assigned a Waste Load Allocation or that has been identified in Attachment G.	TMDL requirements in Attachment G are based on specific Regional Board requirements, submitted by individual Regional Boards. Requirements are specified in Attachment G in order to assist and guide the Permittee in implementation of TMDL requirements. Further, requirements may be based on Waste Load Allocations for that specific TMDL or may be based on requirements specified in Attachment G.
11	130	California Stormwater Quality Association (CASQA)	E.15.b. [page 75] & F.5.i. [page 105]	CASQA Recommendation: Revise E.15.b as follows: Waste Load Allocations (WLA), Load Allocations (LA), effluent limitations, implementation requirements, and monitoring requirements are specified in the adopted and approved Regional Water Board Basin Plans and authorizing resolutions which are incorporated herein by reference as enforceable parts of this General Permit. Applicable Basin Plan amendments and resolutions are identified in Attachment G. Attachment G additionally contains a list of TMDL-specific permit requirements developed by the Regional Boards <u>that clarify, but do not expand upon the requirements in relevant BPAs for compliance with the implementation requirements of the relevant TMDLs. The requirements are an enforceable component of this Order.</u>	Attachment G additionally contains a list of TMDL-specific permit requirements that have been developed by the Regional Boards that do 'clarify, but do not expand upon the requirements in relevant BPAs'. However, it is important to include language that states that they are an 'enforceable component' of the Order so as to ensure Permittee awareness that Attachment G specific requirements are in fact enforceable. Instead of pointing to a separate document that states enforceable language, staff wants to ensure such language is included in Section E.15.b.
11	131	California Stormwater Quality Association (CASQA)	E.15.b. [page 75] & F.5.i. [page 105]	This section states "In some cases, dates are given that fall outside the term of this General Permit. Compliance dates that have already passed are enforceable on the effective date of this General Permit....." However, how can a jurisdiction retroactively comply or be enforced against? This requirement is of significant concern. Permittees must comply with their NPDES permits. The Federal Clean Water Act does not require implementation plans and due dates, so requiring immediate compliance with a Regional Board implementation plan is not necessary under the federal NPDES program.	As specified in the Order, such TMDL-specific permit requirements must be consistent with the assumptions and requirements of the applicable WLAs and with the goals of the TMDL. Staff recognizes the challenges posed by past-due compliance deadlines. However, the TMDL requirements in the Order are consistent with the implementation schedules laid out in the relevant resolutions and Basin Plan amendments that established the TMDLs. Staff may consider employing time schedules to address such deadlines, where appropriate, during the one-year review and development period for TMDL-specific permit requirements that will follow adoption of the Order.
11	132	California Stormwater Quality Association (CASQA)	E.15.d.(iii) [page 76] & F.5.i. [page 105]	CASQA Recommendation: Provide a description of what will be expected for a statistical analysis of the data to assess progress towards attainment of WLAs within the TMDLs specified timeframes	Statistical analyses of data to assess progress towards attainment of WLAs within the TMDLs specified timeframes is left up to the individual Permittee.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	133	California Stormwater Quality Association (CASQA)	E.15.d. [page 76] & F.5.i. [page 105]	<i>CASQA Recommendation: Strike language from E.15.d: TMDLs will have their own individual sets of required analyses, BMP implementation and reporting, follow-up requirements, etc.</i>	Comment noted. The Regional Water Boards are directed to review, within 1 year of the effective date of the permit, the TMDL-specific permit requirements contained in Attachment G and to propose to the State Water Board any appropriate revisions after consultation with the Permittees and State Water Board staff.
11	134	California Stormwater Quality Association (CASQA)	E.15.e. [page 76] & F.5.i. [page 105]	<i>CASQA Recommendation: Provide some additional language that will help to interpret and clarify level of effort required in section E.15.e.</i>	Comment noted. The Regional Water Boards are directed to review, within 1 year of the effective date of the permit, the TMDL-specific permit requirements contained in Attachment G and to propose to the State Water Board any appropriate revisions after consultation with the Permittees and State Water Board staff.
11	135	California Stormwater Quality Association (CASQA)	E.16 [page 77] & F.5.j. [page 106]	<i>Please provide a chart of the reporting requirements that indicates specifically which items need to be submitted with the Annual Report and which need to be "made available" for Regional Board review.</i>	Reporting requirements have been revised to address this comment.
11	136	California Stormwater Quality Association (CASQA)	E.16.c [page 77] & F.5.j. [page 107]	What does "full reporting" mean for regional reports? Do all the reporting requirements need to be met by each individual Permittee that participate in a regional effort? Can individual Permittees in a regional group submit its own report and thus only be required to certify compliance? Requiring regional group reports (vs. individual) can be time consuming and may act as a deterrent to the formation of regional groups.	'Full reporting' for Permittees involved in a regional program means all the reporting requirements need to be met by either each individual within the regional program, or by one representative that submits the report for all Permittees involved in the regional program. With the Permittees Notice of Intent, reporting submittal must be indicated (individually or as a group).
11	137	California Stormwater Quality Association (CASQA)	Finding 8 [page 6]	<i>Clarify that the State Water Board recognizes that the Order will affect Historic places (as defined hereinafter by the State and Federal Antiquities Acts) and other sites that may have unique requirements, and in those areas, the Regional Boards may provide allowances for Permit compliance .</i>	In lieu of making several revisions throughout the Order to address California State Park Historic Places (Historic Places) exceptions, staff included Finding 44 to recognize and address such exceptions.
11	138	California Stormwater Quality Association (CASQA)	Finding 9 [page 6]	Historic places are often "restored" from a rundown condition. During such restoration or reconstruction the work may be governed by the Historic Building Code and any planning may require approval of the State Historic Preservation Officer (SHPO).	Please see response to comment number 137.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	139	California Stormwater Quality Association (CASQA)	Finding 27 [page 9]	This finding already recognizes that Phase IIs cannot be regulated by one size fits all approaches.	Please see response to comment number 137.
11	140	California Stormwater Quality Association (CASQA)	Finding 33 [page 10]	<i>The stormwater program compliance document for historic places shall also include the estimated time frame for compliance and indicate the additional constraints necessary to implement stormwater measures within historic settings.</i>	Please see response to comment number 137.
11	141	California Stormwater Quality Association (CASQA)	A.3.b.(2) [page 15]	<p><i>Under Option 2, add language (e) as follows:</i></p> <p><i>(e) The Regional Water Board has determined that future discharges from the Regulated Small MS4 are solely from a designated historic place and that the required retrofits needed to minimize potential discharges will take longer to implement than non-historic places. The Regional Water Board shall allow additional time for full compliance as long as incremental progress is being made, and the storm water compliance document is kept current and indicates overall compliance objectives, timelines, methods and means.</i></p> <p><i>Note: This option should apply to places such as Old Town Monterey, and the like. Basically any Historic Park inside, or adjacent to, a Permittee.</i></p>	Please see response to comment number 137.
11	142	California Stormwater Quality Association (CASQA)	A.3.b.(3) [page 15]	<p><i>Under Option 3, add language as follows:</i></p> <p><i>This option would also apply to historic places intended primarily for education and interpretation and conservation or preservation that do not house a population over 1,000 made up primarily of in-holdings and resident operational staff.</i></p>	Please see response to comment number 137.
11	143	California Stormwater Quality Association (CASQA)	F.5.a.1.(ii)(a) [page 78]	Typo. This Section refers to "B.3. of the draft Order,..."	This word has been deleted.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	144	California Stormwater Quality Association (CASQA)	F.5.d.(ii)(b) [page 84]	This provision requires photographs be taken of outfalls to provide baseline information and track operation and maintenance over time. UC Santa Cruz (UCSC) has hundreds of outfalls throughout its 2,000 acres. It is not feasible to inspect and photograph all outfalls. As USCS has discussed with the State Water Board staff, Grounds staff are assigned to all areas on Campus making it highly unlikely an illicit discharge could happen. Because USCS owns and maintains all areas on Campus, we are in control of every activity that happens. Grounds staff are provided maps showing all outfalls, associated catch basins, and drainage areas flowing to those catch basins. Providing a photo of the outfall will not likely provide additional useful information for the staff that maintains the area. In addition, some outfalls are normally submerged. Photographs of submerged outfalls will be of no value in determining if illicit discharges are occurring.	Revisions have been made to exclude photograph requirements of submerged outfalls. Staff does not agree that a minimum outfall size should be established for field sampling stations. Both EPA and CWP recommend mapping and sampling of all outfalls within the urbanized area (http://cfpub.epa.gov/npdes/stormwater/idde.cfm)
11	145	California Stormwater Quality Association (CASQA)	F.5.d.1. [page 85]	This section refers to outfall inventory under Section B.4.a. This appears to be an incorrect reference. Is the correct reference Section F.5.d.? It might be easier to understand and therefore comply if this section does not refer to another section of the permit. The Permit should clearly state the intent of this requirement and what is required. Most non-traditionals have never collected samples from storm drainage facilities before. The State Water Board staff should provide clear guidance regarding the procedures and methods that are to be used for sample collection (e.g.is use of water quality test strips acceptable for determining pH?).	The reference to Section B.4.a has been corrected to refer to Section F.5.d Outfall Inventory. Section F.5.d.1 Field Sampling to Detect Illicit Discharges has been revised to clarify requirements and provide clear guidance. Please refer to Section F.5.d.1 of this Order for specific changes. In general, the intent of this requirement is to address illicit discharges from outfalls into receiving water bodies and verify that indicator parameters (ammonia, color, conductivity, detergents, fluoride, hardness, pH, potassium and turbidity) do not exceed specified action level concentrations. The indicator parameters and action level concentrations are based on the CWP. Field test kits can be used to conduct sampling. Submerged outfalls are not required to be sampled.
11	146	California Stormwater Quality Association (CASQA)	F.5.d.2. [page 86]	<i>Clarify what year the reporting has to begin.</i>	Clarification of Section F.5.d.2 reporting is included in the Order. Reporting of illicit discharge source investigations and corrective actions will occur in the second year annual report.
11	147	California Stormwater Quality Association (CASQA)	F.5.f.1.(i) [page 88]	This Section requires an inventory of Permittee-owned or operated facilities within their jurisdiction that are a threat to water quality.	This permit provision has been revised to address this comment.
11	148	California Stormwater Quality Association (CASQA)	F.5.f.2.(ii) [page 88]	<i>Under Implementation, add the following language:</i> <u><i>Historic storm water collection facilities, conveyances and drainages located at historic places that are being operated for public interpretation and education shall be noted on this map so that the Regional Water Board can differentiate between modern and historic during site reviews or audits.</i></u>	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	149	California Stormwater Quality Association (CASQA)	F.5.f.5.(i) [page 90]	Section requires regular inspections of Permittee-owned and operated facilities.	This permit provision has been revised to address this comment.
11	150	California Stormwater Quality Association (CASQA)	F.5.f.6.(ii) and F.5.f.7 (i) [page 91]	For example: The UCSC Campus has approximately 2,000 catch basins and 26 miles of storm sewer pipe. Assessing/prioritizing all catch basins and storm sewer piping will be extremely resource intensive.	This permit provision has been revised to address this comment.
11	151	California Stormwater Quality Association (CASQA)	F.5.g. [page 94]	Clearly allow permittees to develop and implement an in-lieu programs that allows program applicants to participate in project that protect or enhance watershed processes as an alternative to on-site compliance. See edits in Attachment C.	This permit provision has been revised to address this comment.
11	152	California Stormwater Quality Association (CASQA)	F.5.g.1. [page 95]	Remove reference to detached single-family homes as it does not apply.	This reference has been deleted.
11	153	California Stormwater Quality Association (CASQA)	F.5.g.2.(ii)(3) c) [Page 98]	Under Exceptions to Requirements for LID Facilities, add paragraph 4. that reads as follows: <u>4. Historic sites, structures or landscapes that cannot alter their original configuration in order to maintain their historic integrity.</u>	A fourth paragraph has been added to 'Exceptions to Requirements for LID Facilities' that includes language excepting California State Park Historic Places. Please see section F.5.g.2.(ii)(3)(c).
11	154	California Stormwater Quality Association (CASQA)	F.5.g.2.(ii)(3) c) [page 98]	Allow for exceptions from LID requirements in areas where plants will not grow. For example, at UCSC has many areas that are built under redwood trees and vegetation growth is not feasible even for tree-box type biofilter.	In areas that have been determined to not support plant life, LID site design measures such as soil quality improvements do not require the use of plants. Staff does not agree that this exception should be included. Further, the post-construction calculator gives credit for tree preservation, particularly evergreens.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	155	California Stormwater Quality Association (CASQA)	F.5.g.2.(ii) [page 99]	<p>Specific exclusions provided on page 51 of the tentative order should also be allowed for Non-Traditionals. Add the following Specific Exclusion section Traditional Small MS4s in E.12.d.1.(ii) with addition of paragraph (e):</p> <p><u>Specific exclusions are:</u></p> <p><u>(a) Sidewalks built as part of new streets or roads and built to direct storm water runoff to adjacent vegetated areas.</u></p> <p><u>(b) Bicycle lanes that are built as part of new streets or roads that direct storm water runoff to adjacent vegetated areas.</u></p> <p><u>(c) Impervious trails built to direct storm water runoff to adjacent vegetated areas, or other non-erodible permeable areas, preferably away from creeks or towards the outboard side of levees.</u></p> <p><u>(d) Sidewalks, bicycle lanes, or trails constructed with permeable surfaces</u></p> <p><u>(e) Historic places that are either on national or state registries of historic places or are eligible for inclusion on such registries.</u></p>	This permit provision has been revised to address this comment.
11	156	California Stormwater Quality Association (CASQA)	F.5.g.3(ii) [page 100]	<p>Allow Phase II Non-Traditional Permittees that are subject to the hydromodification requirements to negotiate the requirements with the surrounding Phase Is during Year 1 (rather than comply with the existing approved Phase I Hydromodification Plan).</p> <p>Add exemptions to hydromodification. When runoff is discharged directly into receiving waters with no risk of erosion or damage to the environment, hydromodification should not be necessary. Example: most Port of Oakland outfalls discharge directly into San Francisco Bay. In the past, Regional Water Board 2 has allowed exemptions from hydromodification requirements in this case.</p>	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.
11	157	California Stormwater Quality Association (CASQA)	F.5.g.4.(ii)(a) [page 102]	<p>Because most small municipal agencies serve as the developer and final owner of their projects, there is no need for a signed statement accepting responsibility.</p>	This requirement has been deleted.
11	158	California Stormwater Quality Association (CASQA)	F.5.h.1. [page 104]	<p>No reporting subsection or milestone has been included for this task. Add a milestone for the development of the PEAIIP.</p>	This permit provision will be revised to address this comment. (This revision was inadvertently omitted in the November 16, 2012 and will be included prior to adoption).

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	159	California Stormwater Quality Association (CASQA)	A.1.b.3.A [page 13]	For renewal counties it should be clear that the activities established in this permit are only for the urbanized areas. Current permit boundaries as established by the regional boards can be much larger areas than as defined by this permit (Placer County, for example, permit area only includes 15% urban with the remainder of the 272,000+ acres of permit area being rural). Having to complete permit tasks in the entire permit area will be overly burdensome and does not meet the intent of the MS4 permit.	Phase II MS4 permit boundaries may be developed in conjunction with the applicable Regional Water Board. In the case of Placer County (15% urbanized), Permittees are encouraged to work with the applicable Regional Board to produce an appropriate permit boundary requiring implementation of this Order. The intent of this MS4 permit is to protect water quality statewide. In order to achieve this goal, Permittees and regulators must work collaboratively together.
11	160	California Stormwater Quality Association (CASQA)	A.2.b [page 4]	This section is titled "Construction Education and Outreach Program" and resides under the higher level heading of "A.2 Public Education and Outreach." Section A.3.b on page 7 is titled "Construction Outreach and Education" and resides under the higher level heading of "Staff and Site Operator Training and Education." If Site Operator education is set forth in A.3.b, it is not clear who is this section (A.2.b) trying to reach.	Attachment E Community Based Social Marketing (CBSM) has been clarified and revised to address Comments 160 -162. Please see the Order for specific changes.
11	161	California Stormwater Quality Association (CASQA)	A.2.b [page 4]	The Task Description states "...the Permittee shall develop and implement a construction outreach and education program for construction sites smaller than one acre."	Please see response to comment number 160.
11	162	California Stormwater Quality Association (CASQA)	A.2.b (ii) (c) [page 5]	This element does not seem to fit under the construction education and outreach program.	Please see response to comment number 160.
11	163	California Stormwater Quality Association (CASQA)	Attachment G	Attachment G should not expand the TMDL implementation actions beyond their referenced Basin Plans. Requirements in Attachment G, in some cases, go beyond what has been adopted in the Basin Plan Amendments (BPA). When the State Board includes effluent limitations in an NPDES permit based upon a TMDL, it must do so in a manner that is "consistent with the assumptions and requirements of any available wasteload allocation for the discharge..." (40 CFR section 122.44(d)(1)(vii)(B)). Although there is variability in the level of detail and specificity in adopted TMDLs, Attachment G should only be used to clarify requirements, not to expand them.	As specified in the Order, such TMDL-specific permit requirements must be consistent with the assumptions and requirements of the applicable WLAs and with the goals of the TMDL. Staff recognizes the challenges posed by past-due compliance deadlines. However, the TMDL requirements in the Order are consistent with the implementation schedules laid out in the relevant resolutions and Basin Plan amendments that established the TMDLs. Staff may consider employing time schedules to address such deadlines, where appropriate, during the one-year review and development period for TMDL-specific permit requirements that will follow adoption of the Order.
11	164	California Stormwater Quality Association (CASQA)	Attachment G	Not all Permittees named in the draft Phase II permit are municipalities and not all implementing parties named in TMDLs are municipalities. Regional Boards should revise contents of Attachment G to include all intended implementing parties.	The second column heading of Attachment G has been changed to "Permittee" from "Municipality".

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
11	165	California Stormwater Quality Association (CASQA)	Page 6	We would like to see a definition for “outfalls” in the glossary.	<p>EPA regulations define ‘outfall’ and ‘point source’ at 40 CFR 122.26(b)(9), and 40 CFR 122.2, respectively as follows:</p> <p>“Outfall means a point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States”</p> <p>“Point source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (See § 122.3).”</p> <p>The aforementioned definitions have been added to the Glossary.</p>
11	166	California Stormwater Quality Association (CASQA)	Page 6	Would like to see a definition for “pollutant hotspots” in the glossary.	Comment noted. A definition for “pollutant hotspots” has been added to the Glossary.
12	1	City and County of San Francisco, Public Utilities		Confirm SF will be a Traditional	Comment noted. This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
12	2	City and County of San Francisco, Public Utilities		We recommend that Section D.4 (Receiving Water Limitations) be modified in light of the recent case, Natural Resources Defense Council v. County of Los Angeles, 636 F.3d 1235 (9th Cir. 2011), cert, granted _ U . S . _ (2012).	The Ninth Circuit held in Natural Resources Defense Council, Inc. v. County of Los Angeles (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process. .
12	3	City and County of San Francisco, Public Utilities		Creation of a comprehensive Guidance Document requires significant resources and coordination across many departments. We ask that the deadline for submittal be increased to one year rather than six months.	Comment noted. 180 days is the standard permit reapplication time frame for MS4 permits in the U.S. 40 CFR Part 122, [FRL-5533-7] Interpretive Policy Memorandum on Reapplication Requirements for Municipal Separate Storm Sewer Systems.
12	4	City and County of San Francisco, Public Utilities		The last sentence of this provision is unclear. We do not understand what water would in fact be considered incidental if intentional application is not incidental, and negligent application is not incidental. Please clarify this sentence and provide examples to better illustrate intent.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
12	5	City and County of San Francisco, Public Utilities		Please see comment made above in more depth regarding the legal need to make explicit the understanding that if a Permittee is making good faith efforts to correct the cause of an exceedance, the Permittee should not be considered to be in violation of the permit. San Francisco supports the approach outlined by CASQA in the letter it submitted to Chair Hoppin on February 21, 2012 to address this situation (attached as Exhibit A).	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.
12	6	City and County of San Francisco, Public Utilities		It is infeasible for Permittees to completely eliminate illicit discharges because these discharges are usually outside of the agency's direct control. Accordingly, we suggest that the language be modified to "Prohibit and require elimination of illicit discharges"	While staff recognizes that CWA section 402(p)(3)(B)(ii) requires MS4 permits to contain a requirement to "effectively prohibit" non-stormwater discharges, the federal regulations direct the MS4 to "develop, implement and enforce a program to detect and eliminate illicit discharges." (40 CFR 122.34(b)(3).) Therefore, it is appropriate to use the term "eliminate" in the context of laying out legal authority and program requirements for illicit discharges. The term non-storm water is not defined in the CWA or the regulations, but the term illicit discharge is (40 C.F.R. § 122.26(b)(2)), and the terms are often used interchangeably. The preamble to the Phase II regulations explains that inclusion of the illicit discharge detection and elimination program for regulated small MS4s "is consistent with the "effective prohibition" requirement for large and medium MS4s." (64 FR 68722, 68756.) Because the term non-storm water discharges is used in E.6.a.(ii)(a), that provision has nevertheless been revised in response to the comment to state: "Effectively prohibit non-storm water discharges through the MS4." (Please note that the word "effectively" was inadvertently left off in the draft circulated on November 16, 2012, but will be inserted prior to adoption.) However, the word "eliminate" has been retained in E.6.a.(ii)(b) where the reference is to "illicit discharges."

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
12	7	City and County of San Francisco, Public Utilities		The reference in this section incorrectly refers to E.4.c, but should refer to E.6.c.	Comment noted.
12	8	City and County of San Francisco, Public Utilities		San Francisco objects to this measure. It would be inappropriate to conscript small MS4s into acting as an inspection and enforcement arm for the State's CGP and IGP permits, permits which the small MS4 entities neither control nor issue. Moreover, the proposed jurisdictional encroachment is not small -this section envisions an elaborate set of tracking, enforcement, and reporting requirements which includes setting up schedules for returning to compliance and requiring the small MS4 entities to develop incentives, disincentives and escalating enforcement responses. These requirements would comprise a significant burden to perform. San Francisco recommends that the State delete this provision from the MS4 permit. At a minimum, this provision should be made optional.	Comment noted. Permittees enforce their own storm water policies and ordinances, not the State CGP or IGP. If a tenant or business owner within a Permittees jurisdiction is in violation of a the Permittees storms water policy or ordinance the Permittee must have appropriate enforcement measures and tracking to ensure storm water water quality protection.
12	9	City and County of San Francisco, Public Utilities		On page 24 there are two sections labeled E.7.a(i). There are also two sections labeled E.7.a(ii), one on page 24 and the other on page 25.	Comment noted.
12	10	City and County of San Francisco, Public Utilities		This implementation provision identifies a component that does not appear to be related to either education or outreach. We therefore respectfully request the requirement be incorporated into E.9: Illicit Discharge Detection and Elimination.	Comment noted.
12	11	City and County of San Francisco, Public Utilities		We request that clarification that inspectors having QSP/QSD (which requires some level of background education such as CISEC) is sufficient training to qualify as adequately trained. In addition, we request that the Water Boards host qualifying trainings.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
12	12	City and County of San Francisco, Public Utilities		Construction site operators are outside contractors not MS4 employees. It would be unduly burdensome for MS4 entities to obtain, track and report the training detail of other entities' employees. Like other required trainings, construction operators should bear the burden of construction operator training. We therefore request that the permit be revised to remove the reporting requirements for this section.	Comment noted. In certain cases, Construction site operators are MS4 employees. Anyone working within a Permittees jurisdiction and responsible for storm water compliance shall be trained on storm water quality management.
12	13	City and County of San Francisco, Public Utilities		Section E.7.b.3.(i) requires that the Permittee develop a biennial employee training program. However E.7.b.3(iii)(a) requires an annual training program. We request the SWRCB align the implementation level to match the task description, thus requiring a biennial employee training program in E.7.b.3(iii)(a)	This permit provision has been revised to address this comment.
12	14	City and County of San Francisco, Public Utilities		This implementation provision identifies a component (oversight procedures and tracking) that would be better suited to be addressed in provision E. 11: Pollution Prevention/Good Housekeeping, rather than as an education or outreach requirement.	Comment noted.
12	15	City and County of San Francisco, Public Utilities		Please provide a definition for "outfall."	Please see Glossary.
12	16	City and County of San Francisco, Public Utilities		Under this section the Permittee is required to prioritize areas with 1) older infrastructure, 2) sensitive water bodies. We request clarification on what constitutes "older infrastructure" and "sensitive water bodies." For instance, is the entire San Francisco bay considered a "sensitive water body?" In addition, please clarify that "a history of sewer overflows" refers to sanitary sewer overflows.	Sewer lines with a history of sewer overflows or cross- connections. Yes, history of sewer overflows refers to sanitary sewer overflows.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
12	17	City and County of San Francisco, Public Utilities		This requirement seeks to make the Permittee accountable for checking for permit coverage for permits that are outside of the Permittee's control or responsibility. As discussed previously, it is inappropriate to conscript small MS4s into becoming enforcement arms for other jurisdiction's permits. We request that the requirement be revised to be optional, allowing the Permittee to report on lack of coverage if the Permittee becomes aware of it.	Comment noted. Because of the often similar control measures required in MS4 construction and industrial program requirements, the draft permit requires permittees to make an honest effort at achieving compliance with their local requirements before referring a violator to the State or Regional Water Board.
12	18	City and County of San Francisco, Public Utilities		San Francisco requests clarification of this section. In E.9.c.i, the permit states that "[t]he Permittee shall also sample outfalls annually identified as priority areas." Does this anticipate that the sampling will be conducted during a rain event? If not, how else would an annual sample of outfalls in the priority areas be conducted? If yes, then does that mean MS4 Permittees will be required to examine outfalls in the priority areas twice a year -once for sampling and once for the annual inventory? If so, please clarify this in the provision's language. We also request clarification that in-pipe sampling is acceptable where sampling the outfall would be unsafe or where the outfall is underwater.	This permit provision has been revised to address this comment. Sample locations and sampling periods must be determined considering safety issues. Sampling may be postponed upon notification to the State and Regional Water Boards if hazardous conditions exist.
12	19	City and County of San Francisco, Public Utilities		The Permittee is required to provide an inventory at the end of the first year of the permit term. We are finalizing the SF Construction Site Runoff Control Ordinance, and we expect to have the Ordinance adopted in tandem with the Construction Plan Review and Approval Procedures timeline outlined in the permit. However, it is not feasible to implement the Ordinance and ensure full compliance with the projects in SF within the required reporting timeline. In order for the Permittee to provide a complete inventory, the Construction Plan Review and Approval Procedures must be in place and be done sequentially. Therefore, we respectfully request that the construction site inventory reporting requirement be delayed to the second year Annual Report, in order to enable implementation of the Construction Plan Review and Approval Procedures within the first year.	Comment noted. To effectively conduct inspections, the permittee must know where construction activity is occurring. A construction site inventory tracks information such as project size, disturbed area, distance to any waterbody or flow channel, when the erosion and sediment control/stormwater plan was approved by the Permittee, and whether the project is covered by the State's CGP. This inventory will allow the permittee to track and target its inspections. Because of State has SMARTS in place to track construction activity in their jurisdiction making it fairly simple to obtain construction inventory information.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
	20	City and County of San Francisco, Public Utilities		This provision requires that the Permittee conduct inspections, at a minimum, at major project milestones. We request that you provide the criteria for determining "major project milestones," with examples to ensure clarity.	This permit provision has been revised to address this comment.
12	21	City and County of San Francisco, Public Utilities		The permit requires the Permittee to report on the "total number of active sites disturbing less than one acre of soil requiring an inspection" by the second year Annual Report. Since the permit requires implementation of the Plan Review and Approval Process and Legal Authority within the second year, we request that the timeline for this requirement be revised to be "by the third year Annual Report" to allow a full year's worth of projects to be captured by the required Plan Review and Approval process and Legal Authority. Otherwise, it is infeasible for the Permittee to provide the SWRCB with an accurate depiction of program inspection and enforcement. During the Santa Rosa workshop on this draft permit (June 20, 2012), staff told participants that the de minimums size of project required to be tracked for purposes of this provision could correspond to the de minimums size of projects the MS4 entity regulates under its permits. We respectfully request that this clarification be put in writing in this section.	Comment noted. To effectively conduct inspections, the permittee must know where construction activity is occurring. The timeline for this provision is not changed.
12	22	City and County of San Francisco, Public Utilities		We request that the reporting requirement identifying the "total number of active sites disturbing one acre of more of soil" be removed. This requirement is duplicative of the State Construction General Permit, and as all of this information is available on the States SMARTS website.	Comment noted. USEPA Phase II stormwater regulations require permittees to develop a construction site program addressing "land disturbance of greater than or equal to one acre." Some Permittees local ordinance/policy have more stringent requirements that apply to construction projects 1 acre or less. For example, smaller, built-out cities may have many small redevelopment projects that fall below the one acre threshold. In such cases, controlling construction site stormwater entering the MS4 to the maximum extent practicable may require stormwater controls at smaller sites. At a minimum, the draft permit references the applicable local ordinance/policy.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
12	23	City and County of San Francisco, Public Utilities		This is the only requirement in this section that is related to all "municipally owned/operated facilities" - the other requirements relate to Permittee owned/operated facilities. We request that the language for requirements E . I be modified to "Permittee" owned and operated facilities for consistency and because this distinction is one that matters to San Francisco which has many municipally owned facilities outside of the MS4 areas (in its extensive combined sewer area).	This permit provision has been revised to address this comment.
12	24	City and County of San Francisco, Public Utilities		The permit currently does not explicitly distinguish "flood management facilities" between typical stormwater conveyance infrastructure and other types of flood management facilities. We recommend that the following sentence be added to the end of the glossary definition: "Facilities or structures designed for the explicit purpose of controlling flood waters safely in or around populated areas (e.g., dams, levees, bypass areas). Flood management facilities do not include traditional stormwater conveyance structures (e.g. stormwater sewerage, pump stations, catch basins, etc.)."	The following definition has been added to the glossary : "Facilities or structures designed for the explicit purpose of controlling flood waters safely in or around populated areas (e.g., dams, levees, bypass areas). Flood management facilities do not include traditional stormwater conveyance structures (e.g. stormwater sewerage, pump stations, catch basins, etc.)."
12	25	City and County of San Francisco, Public Utilities	E.12.C.	The requirement to review of projects between 2,500 and 5,000 square feet is problematic. It would be very time consuming for Permittees to review this scale since it implicates a significant number of projects. It is also quite uncertain whether this time would be well spent as there is no performance measure or required site design elements MS4 must require of construction projects under this provision. We suggest removing this requirement for parcels between 2,500 and 5,000 square feet.	Staff does not agree. When viewed cumulatively, projects sized 2, 500 sf to 5,000 sf do impact water quality.
12	26	City and County of San Francisco, Public Utilities	E.12.d.I.ii	State Board staff, at the Santa Rosa workshop on June 20, 2012), told participants that the intention of the permit is to require all projects that create or replace 5,000 square feet of impervious surface to meet the Low Impact Development Runoff Standards regardless of the land-use type.	This permit provision has been revised to address this comment.
12	27	City and County of San Francisco, Public Utilities	E.12.d.I.b&c	Please add text to exclude road projects from the Source Control requirements (E.12.d.2.ii.1) and Site Design requirements (E.12.d.2.ii.2). The Source control and Site Design requirements are not appropriate for road projects.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
12	28	City and County of San Francisco, Public Utilities	E.12.d.2.ii.1	The permit states that "the following standard permanent and/or operational source control BMPs shall be adopted and implemented to address the following pollutant sources, as applicable." The pollutant sources are addressed, but the standard permanent and/or operational source control BMPs are not addressed in this permit. We respectfully request guidance for what types of standard source control BMPs are desired.	This permit provision has been revised to address this comment.
12	29	City and County of San Francisco, Public Utilities	E.12.d.2.ii.3	The design parameters listed in the permit do not necessarily reflect the conditions of individual sites and therefore may not be the best ones for specific geographies and local conditions.	The permit includes language that accounts for site-specific variability.
12	30	City and County of San Francisco, Public Utilities	E.12.d.2.ii.3.a&b	"Design Alternative" and "Allowed variations" both reference the criteria outlined in "(2)" which is the site design measures.	This permit provision has been revised to address this comment.
12	31	City and County of San Francisco, Public Utilities	E.12.d.2.ii.3.b(c)	BMPs in areas with high groundwater should be allowed to be lined and under-drained.	This permit provision has been revised to address this comment.
12	32	City and County of San Francisco, Public Utilities	E.12.d.2.ii.3.c(c)	We request a definition be provided for "smart growth credits."	This permit provision will be revised to address this comment. (This revision was inadvertently omitted in the November 16, 2012 and will be included prior to adoption).
12	33	City and County of San Francisco, Public Utilities	E.12.d.2.ii.3.c(c)	The May 15, 2014 date identified within this section appears to be a vestige from the previous draft, since all the dates in this draft, except this one, were removed in favor of a period of time (e.g., within the third year of the effective date of the permit).	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
12	34	City and County of San Francisco, Public Utilities	E.12.d.2.iii. j & m	These two sections identify the opportunity to gain compliance through off-site locations. However, language identifying parameters of allowable off-site compliance is not provided and we request a description.	This permit provision will be revised to address this comment. (This revision was inadvertently omitted in the November 16, 2012 and will be included prior to adoption).
12	35	City and County of San Francisco, Public Utilities	E.12.e.i	Please describe how Hydromodification Management requirements also apply to road projects that are greater than or equal to 1 acre	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.
12	36	City and County of San Francisco, Public Utilities	E.12.f.i	The permit says "... are protective of the watershed processes identified below." However, "below" should be changed to "above."	This permit provision has been revised to address this comment. Please see response to comment number 35.
12	37	City and County of San Francisco, Public Utilities	E.12.g.iii	It is not clear from this provision what is expected of the Permittee in terms of which or how many facilities need to be inspected and with what frequency.	This permit provision has been revised to address this comment.
12	38	City and County of San Francisco, Public Utilities	E.12.g.iii.a. 4	This section describes compliance in off-site locations. However, there is no mention of how off-site compliance is allowed under this order. Please describe.	This permit provision will be revised to address this comment. (This revision was inadvertently omitted in the November 16, 2012 and will be included prior to adoption).

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
12	39	City and County of San Francisco, Public Utilities		It would be highly challenging to assess the expected pollutant removal efficiency for each BMP. This level of individual assessment is costly and resource intensive. Therefore, we respectfully request being allowed to devote our resources to program implementation and enforcement instead of re-allocating our resources to pollutant removal efficiency assessment.	This permit provision has been revised to address this comment.
12	40	City and County of San Francisco, Public Utilities		We request removal of the reference to the "BMP Condition" - the Condition Assessment was removed in this new draft and this requirement appears to relate to the deleted section from the previous draft.	Comment noted.
12	41	City and County of San Francisco, Public Utilities		Please add "where available" after "Receiving water quality data," as not all Permittees are required to monitor receiving waters.	This permit provision has been revised to address this comment.
12	42	City and County of San Francisco, Public Utilities		The efforts required by this section would require significant staff time. In addition, the pollutant concentration data from the National Stormwater Quality Database is likely to be non-representative of local conditions and therefore is unlikely to produce useful information. We believe that this time could be better spent implementing other elements of the stormwater program. Therefore, we request that this provision be deleted.	This permit provision has been deleted from the draft permit.
12	43	City and County of San Francisco, Public Utilities		Pollutant loads can be affected by a variety of factors, both natural and anthropogenic. As a result, the pollutant load quantification described in this requirement would be an inaccurate measure of program effectiveness. Further, this level of quantification would also be costly and resource intensive. It is unwarranted for a small MS4 that is likely to be contributed relatively little pollution to the overall load. Therefore, we respectfully request that this requirement be deleted.	This permit provision has been deleted from the draft permit.
12	44	City and County of San Francisco, Public Utilities		Please add "where available" after "Receiving water monitoring" as not all Permittees are required to monitor receiving waters.	Comment noted.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
12	45	City and County of San Francisco, Public Utilities		Remove the San Francisco V A Medical Center and San Francisco State University from the list of non-traditional permittees because these entities discharge to the combined system and therefore do not qualify as MS4s.	This permit provision has been revised to address this comment.
13	1	City of Anaheim, Department of Public Works	Section D.	Due to the recent Ninth Circuit Court of Appeals ruling in NRDC v. County of Los Angeles, Provision D requires discharges to receiving waters meet water quality standards to not be in violation of the Permit. With the difficulties in managing all sources of runoff pollution, including issues such as aerial deposition or runoff from Caltrans rights-of-way, Federal property, etc. it is unrealistic to expect any Phase I or Phase II entity to immediately be in compliance at the time of Permit adoption. A more reasonable approach would be to allow the use of an iterative process to address water quality standard exceedances, as has been the case under previous Permits.	The Ninth Circuit held in Natural Resources Defense Council, Inc. v. County of Los Angeles (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
14	1	City of Belmont	Section D.	<p>Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the Importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognizes current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period.</p>	<p>The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
15	1	City of Brisbane	Section D.	<p>Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the Importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognizes current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period.</p>	<p>The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
16	1	City of Caramillo, Department of Public Works	Section D.	<p>Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the Importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognizes current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period.</p>	<p>The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.</p>
17	1	City of Carmel-by-the-Sea, Community Planning and Building Department	Finding 30, page 9	<p>If the RWQCB wishes to, it may then require that the permittee continue to implement its current BMPs rather than those contained in the new General Permit, even if some of the BMPs in the existing SWMP are more comprehensive than those required under the new General Permit. This is clearly discriminatory against current permittees, in that it would allow the RWQCB to hold current permittees to potentially more stringent requirements than new permittees that enroll for the first time under the General Permit.</p>	<p>Comment noted. The Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their authority as specified in (Wat. Code §13377.)</p>
17	1	City of Carmel-by-the-Sea, Community Planning and Building Department	E.1.a	<p>Renewal MS4s are required to continue implementing their existing SWMP activities for those Sections of the new General Permit for which the specified compliance date is past the effective date of the new General Permit.</p>	<p>Comment noted. Language is clear and succinct.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
17	2	City of Carmel-by-the-Sea, Community Planning and Building Department	E.1.b	Same comment as Comment 1 above	Comment noted. The Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their authority as specified in (Wat. Code §13377.)
17	3	City of Carmel-by-the-Sea, Community Planning and Building Department	E.7	the RWQCB will determine, on a case-by-case basis, whether a permittee will have to implement "Community-Based Social Marketing" requirements. These are complex and would likely require a consultant to develop and help with implementing. It is not clear what the basis for making such a determination by the RWQCB will be.	This permit provision has been revised to address this comment. USEPA has developed a document that identifies principles of CBSM. See http://www.epa.gov/owow/watershed/outreach/documents/getnstep.pdf The Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their authority to require CBSM as specified in (Wat. Code §13377.)
17	4	City of Carmel-by-the-Sea, Community Planning and Building Department	E.7.b.2.a. (ii)	The cost and effort associated with having Permittee staff members obtain and maintain QSD/QSP certifications is not warranted, if those staff members are only reviewing and/or inspecting small project < one acre.	This permit provision has been revised to address this comment.
17	5	City of Carmel-by-the-Sea, Community Planning and Building Department	E.7.b.3	Section states that annual report is to include "oversight procedures".	This permit provision has been revised to address this comment.
17	6	City of Carmel-by-the-Sea, Community Planning and Building Department	E.13	It appears that if a Permittee discharges to ASBS and is therefore subject to complying with the ASBS Special Protections requirements, that doing so will comply with all of the requirements set forth in this Section.	Please see Monitoring Flow Chart. This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
17	7	City of Carmel-by-the-Sea, Community Planning and Building Department	E.14.a	It appears that subsection E.14.a.ii.f should not apply to ASBS dischargers who are subject to the ASBS Special Protections.	The intent of E.14.a.ii.f. is to assess the effectiveness of storm water BMPs implemented through program implementation. This requirement applies to ASBS dischargers as well.
17	8	City of Carmel-by-the-Sea, Community Planning and Building Department	Fact Sheet IV	There are several references in this Section of the Fact Sheet that incorrectly deny that any of the requirements imposed by the MS4 Permit will be unfunded mandates.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program “designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.
17	9	City of Carmel-by-the-Sea, Community Planning and Building Department	Fact Sheet VII	This section states that an NOI must be filed within six months (100) days from the effective date of the Permit. Six months does not equal 100 days	Comment noted.
18	1	City of Clearlake		The City of Clearlake fully supports the comments submitted to the State Board by Stanislaus County.	Comment noted.
19	1	City of Cloverdale		The permit is overly burdensome, with much of the work lacking a benefit to storm water quality	The draft permit was developed using USEPA's MS4 Improvement Guide, April 2010 EPA 833-R-10-001 and represents the direction that USEPA is taking to strengthen the program. The Guide focused on Phase II MS4s and was developed to facilitate the creation of MS4 permits which are clear, consistent with applicable regulations,
19	1	City of Cloverdale		The draft permit requirements still reach far beyond those of the Phase I permit requirements, despite the far fewer technical, financial and human resources of the Phase II permittees.	Comment noted.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
19	2	City of Cloverdale		The cost of this program will provide a significant burden to the City's General Fund. This would require the city to make difficult decisions between funding MS4 permit compliance activities or funding basic city services, such as policing. Over the past four years due to financial constraints, the City has eliminated 25% of its workforce.	The Public Resources Code requires that the Proposition 84 Storm water Grant Program funds be used to provide matching grants to local public agencies for the reduction and prevention of storm water contamination or rivers, lakes and streams. Please visit the following website for more information: http://waterboards.ca.gov/water_issues/program/grants_loans/prop84/index.shtml Additional financial assistance information including information on the Clean Water State Revolving Fund loans, is available at: http://www.waterboards.ca.gov/water_issues/programs/grants_loans/
19	3	City of Cloverdale		The timeline to ramp up permit compliance is unrealistic and extremely improbable for new permittees to meet. New permittees would need to create a new and resource intensive program and comply with most if not all requirements of the program in a very condensed timeline.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program "designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act," (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CRF 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.
19	4	City of Cloverdale		Extend the initial six-month period for starting the compliance clock to one year to enable the establishment of critical program components, including budget, staff and consultant contracts;	Please see Section III, Economic Consideration of the Fact Sheet.
19	5	City of Cloverdale		Delete the sections covered by other programs and regulations, including land use planning and pesticide applications, among others	Comment noted.
19	6	City of Cloverdale		Delete the requirement to "enter private property for the purpose of inspecting... for noncompliance," because it endangers public employees.	Appropriate operation and maintenance are critical aspects to the function of any suite of controls. In many cases, controls may be located on private property, and it is necessary to establish some provision to assure responsibility and accountability for the operation and maintenance of these controls.
19	7	City of Cloverdale		Revise the monitoring requirement from all outfalls to a sample of the outfalls, and limit this sampling to a single annual event, such as the first rain after the summer dry period. Monitoring results are sensitive to sampling methods, timing, exact location, etc. and have not been shown to be effective in improving water quality.	Comment noted.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
20	1	City of Corona, Public Works Department		<p>Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the Importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognizes current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period.</p>	<p>The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.</p>
21	1	City of Cotati		<p>Reduce the excessive amount of reporting which will take significant staff time and instead focus on reporting what is necessary for the Improvement of the stormwater programs</p>	<p>This permit provision has been revised to address the comment.</p>
21	2	City of Cotati		<p>Eliminate or reduce the scope the special studies and assessments of best management practices and low impact development measures, as it doesn't make sense to run a research project on an individual permittee basis. This should be done on a regional or statewide basis to study effectiveness of these measures with a more robust sample size, and should be done by a state university or other institution with expertise in these areas and not by the permittees</p>	<p>Comment noted.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
22	1	City of Cupertino, Public Works Department		The third paragraph of Section XI of the Fact Sheet contains unnecessary and potentially misleading language that is inaccurate and inconsistent with prior Water Board policy concerning compliance with water quality standards and how and over what time period that is to be achieved. It has never before appeared with respect to other State water Board-issued MS4 permits, including the current draft Caltrans permit and its fact sheet.	The Fact Sheet discussion of the Order's receiving water limitations has been revised since the July 23, 2012, draft of the Fact Sheet. In particular, the Fact Sheet now explains that the State Water Board has held a workshop to consider the issue of the receiving water limitations language in municipal storm water permits and seek public input. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section H to facilitate any future revisions as necessary. However, the Fact Sheet language at question in this comment has not been revised because staff disagrees that it is inaccurate or inconsistent with prior policy of the State and Regional Water Boards. The Caltrans MS4 permit's Fact Sheet, as adopted, incorporates a similar discussion of the Boards' position on the receiving water limitations language.
23	1	City of Daly City, Department of Water and Wastewater Resources			The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
24	1	City of Dana Point, Department of Public Works		The Draft Phase II Permit should allow the Regional Boards authority to hold all agencies, including Caltrans, State Parks and School Districts, etc., to the same standards as they use to regulate municipalities, just as the Federal Government has allowed local jurisdictional control over environmental issues	The Clean Water Act and the federal regulations distinguish between Phase I and Phase II municipal dischargers (Clean Water Act section 402(p); 40 C.F.R. sections 122.26) and Phase I and Phase II dischargers are subject to different sections of the federal regulations (See 40 CFR sections 122.26(d) and 122.34). The State Water Board has to date found the practice of having the Regional Water Boards issue permits to the Phase I dischargers and having a general state-wide permit for the Phase II dischargers to be an appropriate use of permitting resources. Further, the federal regulations, in the designation criteria, also acknowledge differences between Phase II dischargers in urbanized and non-urbanized areas. (40 C.F.R. section 122.32.) Finally, within the framework of a general permit for Phase II dischargers, the State Water Board recognizes that there are differences in size, function, legal authority, and resources between the traditional municipal dischargers and non-traditional dischargers. Accordingly, staff disagrees that a uniform set of requirements must apply to all MS4s within the San Diego Region. It should also be noted, however, that the revised tentative Order provides for Regional Water Board discretion in determining appropriate requirements in a number of areas, including the authority to require dischargers to continue programs under existing SWMPs, to require certain types of public education and outreach programs, and to to approve monitoring proposals.
24	2	City of Dana Point, Department of Public Works		The Clean Water Act and the Porter Cologne act standards should be applied equally to all agencies contributing runoff to the MS4 by region or watershed.	See response to comment number 1. Staff additionally notes that the Regional Water Boards have authority to designate additional Small MS4s as regulated Small MS4s on a case by case basis based on the potential of the Small MS4's discharges to result in exceedances of water quality standards, including impairment of designated uses, or to result in other significant water quality impacts, including habitat and biological impacts.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
24	3	City of Dana Point, Department of Public Works			<p>The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.</p>
25	1	City of Del Mar		<p>This Permit should serve as an enforcement mechanism for all applicable water quality standards, programs, etc. that are applicable to the Phase II MS4s. As such, any approved TMDLs in the San Diego Region should be included in the Revised Draft Tentative Order to ensure that water quality standards can be obtained through the implementation of programs and activities by all dischargers, including Phase II dischargers. Many sections throughout the Revised Draft Tentative Order such as Sections E.13, E.15, and F.5.I refer to Appendix G for TMDL requirements. Appendix G does not contain any of the approved TMDLs for the San Diego Region.</p>	<p>Region 9 TMDLs have been incorporate into Attachment G.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
25	3	City of Del Mar		NCTD has properties that could contribute to water quality issues and impairments, and therefore should be regulated under the Phase II MS4 Permit. NCTD has jurisdiction over the railroad track berm which bisects the Los Peñasquitos and influences hydrology in the lagoon. As noted in the Los Peñasquitos Lagoon Sediment/Siltation TMDL Technical Report (October 20, 2010), "this berm acts as a barrier between the eastern and western portions of the Lagoon for much of its length". The berm alters the natural drainage of the lagoon by cutting off lagoon channels and may contribute to the restricting of the lagoon mouth. The Los Peñasquitos Lagoon currently has a RWQCB approved TMDL for sedimentation, which also requires specific vegetation habitat improvements. The Findings on page 8 item #24 of the Revised Draft Tentative Order state, "Designation of additional Small MS4s outside of Urbanized Areas as Regulated Small MS4s may be made by the Regional Water Boards on a case by case basis. Case by case determinations of designation shall be based on the potential of a Small MS4's discharges to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts".	Please see Fact Sheet for changes.
25	3	City of El Paso De Robles		Section G, Regional Water Board Authorities, appears to give the Regional Board Executive Officer broad authority with this statement: "Permittees shall modify and implement their storm water management programs and monitoring as required by the Regional Water Board Executive Officer." This statement must be qualified by a statement that any Regional Board Executive Officer requirements above and beyond the General Permit are State requirements that are subject to review by the Commission on State Mandates and may require state funding. The Regional Board Executive Officers should be required to consider costs when establishing requirements above and beyond the General Permit.	Under the Water Code, either the State Water Board or the Regional Water Boards have authority to issue NPDES permits (Wat. Code, §13377.) The State Water Board is issuing this Order; however Regional Water Board staff will continue to have the authority to evaluate compliance with permit conditions. The Regional Water Board Executive Officers also have discretion to designate entities under the Order, as well as to require renewal permittees to continue to implement their existing programs. In response to comments and recognizing the need for some level of statewide consistency and accountability in interpretation of Order provisions, the revised Order now includes a dispute resolution process at Provision H to address cases where there is disagreement between a Permittee and a Regional Water Board over the interpretation of any provision of the Order. The dispute resolution process may be employed where a discharger believes a Regional Water Board staff determination is beyond the scope of the Order's requirements. For a discussion specifically of unfunded mandates, see the Fact Sheet.
26	1	City of El Paso De Robles		The Draft Permit includes additional programs and higher service levels beyond the minimum control measures outlined in 40 CFR 122.34(b).	Please see Unfunded Mandate and Economic Considerations in the Fact Sheet.
26	2	City of El Paso De Robles		The Draft Permit continues to include requirements that are redundant of other programs. This redundancy increases staff workload for other programs in the City by requiring additional tracking and reporting. Requiring redundant tracking and reporting is not effective.	Reporting requirements have been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
26	3	City of El Paso De Robles	E.6	Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance.	In response to this comment, a discussion of state mandates has been incorporated into the Fact Sheet at Section IV, Unfunded Mandates. More broadly, staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or in conflict with non-binding guidance provided in those regulations. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program “designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)).
26	4	City of El Paso De Robles	E.6.a.ii.h	The City is limited by the United States and California Constitutions to enter private property for the purpose of inspection.	This permit provision has been revised to address the comment. Appropriate operation and maintenance are critical aspects to the function of any suite of controls. In many cases, controls may be located on private property, and it is necessary to establish some provision to assure responsibility and accountability for the operation and maintenance of these controls.
26	5	City of El Paso De Robles	E.6.a.ii.b	The proper method of reducing discharges from organized car washed is through education which is required under E.7.a(ii)(I).	Comment noted. There has been documented cases of organized/fundraiser car washes contributing to degradation of storm water quality in local water ways such as fish kills. The Sacramento Stormwater Quality Partnership’s (SSQP) has an active River-Friendly Fundraiser Carwash Program. The River-Friendly Fundraiser Carwash Program was developed to provide guidance and help facilitate successful fundraiser carwashes while protecting local creeks and rivers from the pollution that can be carried in the wastewater from carwashing activities.
26	6	City of El Paso De Robles	E.6.c	The Draft Permit under E.6a Legal Authority requires Permittees to have ordinances or other regulatory mechanisms including imposing more substantial civil or criminal sanctions and escalate corrective response for persistent non-compliance, repeat or escalating violations.	Comment noted: Staff does not agree this provision is redundant. Permittees are required to develop and implement an enforcement response plan (ERP), which clearly describes the action to be taken for common violations associated with the construction program, industrial and commercial program, or other storm water programs. A well-written ERP provides guidance to inspectors on the different enforcement responses available, actions to address general permit non-filers, when and how to refer violators to the State, and how to track enforcement actions. Legal Authority simply requires ordinance or other regulatory mechanisms are in place without clearly describing actions taken such as when to issues civil or criminal sanctions and escalate enforcement.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
26	7	City of El Paso De Robles	E.7	The Central Coast RWQCB has stated that they plan to have Permittees implement CBSM. Permittees are required to develop and implement a public education strategy that will include CBSM strategies or equivalent. The City does not have the staff or funding to develop a CBSM strategies or a CBSM equivalent. Additionally, it should left up to the Permittees to determine a public outreach program that is appropriate for its community.	The draft permit was developed using USEPA MS4 Improvement Guide, April 2010 EPA 833-R-10-001 and represents the direction that USEPA is taking to strengthen the program. The MS4 improvement guide identifies "Getting In Step: A Guide to Effective Outreach in Your Watershed" (www.epa.gov/watertrain/gettinginstep/). This guide explains the steps in developing an outreach plan, presents information on creating outreach materials, and provides tips in working with the media. This document clearly cites the principles of CBSM.
26	8	City of El Paso De Robles	E.7.a.ii.i	This language implies that Permittees will develop a program for charity car washes. The requirement that Permittees should develop a program for charity car washes is above and beyond the requirements in 40 CFR 122(B).	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or in conflict with non-binding guidance provided in those regulations. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program "designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act," (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CRF 122.34(g)).
26	9	City of El Paso De Robles	E.7.b.2.a.	It is not feasible or necessary to have every plan checker and permitting staff certified as a QSD.	This permit provision has been revised to address the comment.
26	10	City of El Paso De Robles	E.7.b2.ii.a	The implementation level of this section requires the development and distribution of educational materials to construction site operators, however the reporting requires that Permittees include (b) the dates of training (c) the number and percentage of Permittee operators, inspectors, and number of contractors attending each training (d) results of any surveys conducted to demonstrate the awareness and potential behavioral changes in the attendees.	This permit provision has been revised to address the comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
26	11	City of El Paso De Robles	E.9.a.ii.c	This requirement should be modified to read that priority areas may include and if applicable. The priority area listed may not be applicable to all communities. For example, if an MS4 has an area with older infrastructure but is covered by the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (WDR) and has not had any reportable sewage overflows then this should not be a high priority area. Inspecting and sampling outfalls is not an effective method for preventing sewage from entering the waterways.	This permit provision has been revised to address the comment.
26	12	City of El Paso De Robles	E.9.b.ii.a	This requirement is too burdensome due to the detail required for the inventory.	Comment noted. The inventory is crucial to the IDDE program. A Permittee should have an inventory of facilities in their jurisdiction to assist in identifying possible illicit or illegal discharges.
26	13	City of El Paso De Robles	E.9.b.ii.c	The SWRCB is responsible for the oversight and enforcement of the IGP and receives fees for this program. The State Board cannot shift this obligation to the Permittees. Since the inventory is required to be submitted with the annual report the Board Staff can use it to determine if a facility should be covered or not.	Comment noted: Many of these industrial facilities are already inspected by an existing municipal inspection program. The on-site inspector will make a good faith effort to question of whether or not the facility should be covered under the IGP or not and include this storm water question in their already existing inspection program.
26	14	City of El Paso De Robles	E.9.c	It is not cost effective to have staff sample and investigate dry weather flows that the source is known. Documentation of the source is all that should be needed.	Comment noted.
26	15	City of El Paso De Robles	E.9.c.ii.b	The City questions the legality of the action levels listed in the Draft Permit. How these limits were derived should be stated in the permit. How does the SWRCB know that any exceeding these action levels necessitates an investigation?	The indicator parameters and the action level concentrations are based on the Center for Watershed Protection's (CWP) Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments. The indicator parameters have been shown to be capable of confirming the presence or origin of an illicit discharge. The Guidance Manual can be located at: http://www.cwp.org/store/free-downloads.html . References to this document have been incorporated into this section.
26	16	City of El Paso De Robles	E.9.d.ii.e	Not every incident can be corrected within 72 hours.	Comment noted: Correction is to be made with 72 hours of notification. 72 hours is sufficient time to address any discharge given the Permittees have a facility inventory and outfall maps as an immediate identify and track possible sources.
26	17	City of El Paso De Robles	E.10.c	The City appreciates the State allowing the Permittee to determine the inspection frequency.	Comment noted.
26	18	City of El Paso De Robles	E.11.a	This language should be modified to include "if a facility is covered under the Industrial General Permit (IGP) it should be noted".	Comment noted. The comment does not include facilities that fail to obtain coverage under the IGP (non-filers).

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
26	19	City of El Paso De Robles	E.11.c	Conducting a comprehensive inspection and assessment of facilities covered by the IGP is redundant.	Section E.11.c. permit requirements apply to Permittee-owned and operated facilities. Generally, such facilities are covered by the Small MS4 permit and not necessarily by the IGP.
26	20	City of El Paso De Robles	E.11.e	Airports, landfills, and fleet maintenance facilities that work on public transportation vehicles are required to be covered under the IGP and are required to conduct detailed facility inspections and sample storm water and non-storm water discharges under this program. The City should not have to track and report the inspections and sampling results under two different storm water programs.	Section E.11.c. permit requirements apply to Permittee-owned and operated facilities. Generally, such facilities are covered by the Small MS4 permit and not necessarily by the IGP.
26	21	City of El Paso De Robles	E.11.g	This maintenance program will require additional staff to be hired. This is not feasible within the third year for the City.	Comment noted. Permittees should leverage already existing staff to conduct maintenance activities. Many of these facilities already include maintenance activities, therefore the on-site inspector simply needs to include several stormwater elements in their maintenance schedule. The Permittee therefore effectively implements the program without creating a separate maintenance program.
26	22	City of El Paso De Robles	E.11.h	The requirement to inspect all O&M BMPs on a quarterly basis is impossible. Staff do not know every BMP that will be implemented on a daily basis. It is not feasible to expect a staff person to follow field staff around for days at a time to inspect BMPs, nor is it feasible for field staff to keep track of which BMPs they implemented. This level of detail in tracking implemented BMPs lessens the productivity of field staff. The City would like clarification on the reporting requirement for documentation of high priority designated facilities maintained. This appears to be redundant of Section E.11.d, Storm Water Pollution Prevention Plans. Also it is not clear what type of verification should be submitted annually that identified BMPs that were effectively implemented for all operation and maintenance activities.	Comment noted. Quarterly basis is essential due to the change in seasons. Permittees should inspect BMPs for efficacy and identify failures. It is important to conduct regular inspections and perform maintenance as necessary throughout seasonal changes. If not properly inspected, BMP can result in pollutant discharges.
26	23	City of El Paso De Robles	E.13	The permit should set parameters to ensure that the Regional Boards do not require monitoring that is above and beyond that necessary to determine compliance with the General Permit.	The Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their authority as specified in (Wat. Code §13377.)
26	24	City of El Paso De Robles	E.14	This requirement is above and beyond the requirements in 40 CFR 122(g) and should be deleted.	Staff disagrees this section is not above and beyond (40 CFR 122.34(g)). Permittees must evaluate program compliance, the appropriateness of identified best management practices, and progress towards achieving your identified measurable goals. This provisions points to CASQA Effectiveness Assessment manual or equivalent.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
26	25	City of El Paso De Robles	E.14.b	This requirement is not feasible for the City. It is not possible to conduct this exercise without taking actual samples. It is very unlikely that pollutant concentrations data exists for our region.	This permit provision has been deleted.
27	1	City of Irvine, Community Development		Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the Importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognizes current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.
28	1	City of Lakeport		City of Lakeport fully supports the comments submitted to the Regional Water Quality Board by Stanislaus County on July, 16, 2012, on the 2nd Draft Phase II MS4 General Permit.	Comment noted.
29	1	City of Lompoc	Throughout	Post-construction provisions would function as a regulatory moratorium on development in California, except for those areas and property owners with the highest land values and greatest financial resources.	Staff does not agree with the commenter's assertion that post-construction provisions would halt development in California. There is no data to support such a claim.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
29	2	City of Lompoc	Throughout	Many of the draft permit provisions constitute unfunded mandates, and are inappropriate and unrealistic given the current economic environment, and needlessly impose time-consuming and expensive reporting requirements, data gathering and other provisions that have not been shown to have direct link to improved water quality.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program “designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CRF 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.
29	3	City of Lompoc	B.4, E.6.c., E.7, E.7.b.2., E.9.c, E.9.d, E.9.e, E.10.c, E.11.a, E.11.c-j, E.12, E.13, E.14.a.ii.b, E.15, E.16	Article XIII B, Section 6 of California’s Constitution requires the State to reimburse local governments for any new State-mandated programs or higher level of service. All draft requirements above and beyond 40 CFR 122.34 are State mandates.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or in conflict with non-binding guidance provided in those regulations. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program “designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CRF 122.34(g)). Additionally, a discussion has been included in the Fact Sheet at Section IV, Unfunded Mandates.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
29	4	City of Lompoc	Throughout	The Porter Cologne Act, Section 13000 requires the State Board to consider the economic effects of the regulation it imposes. ‘§ 13000. Legislative findings. The Legislature finds and declares that the people of the state have a primary interest in the conservation, control, and utilization of the water resources of the state, and that the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state. The Legislature further finds and declares that activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and City of Lompoc Draft Letter of Comment Attachment A Draft NPDES MS4 Permit Page 3 July 17, 2012 social, tangible and intangible.” Many of the provisions of this draft permit are not directly related to water quality improvement and instead focus on labor intensive and expensive community surveys, procedural and recordkeeping tasks that could be simplified, achieved using a different method, or eliminated. In addition, many of the Draft permit’s requirements address tasks, inspections, characterizations that are more appropriately conducted by the State Board or Regional Board staff, or are already being addressed under the General Industrial Permit, the General Construction Permit or through the implementation of the Water Efficient Landscape Ordinance provisions required by the State.	The draft order has been substantially revised to address comments received regarding costs of implementation as outlined in Section III, Economic Considerations, of the Fact Sheet.
29	5	City of Lompoc	Throughout	Revise wording that stipulates the Permittee shall Where in fact the Permittee shall require the property owner/business owner, etc.	This permit provision has been deleted.
29	6	City of Lompoc	Throughout	MEP takes into account, cost, availability, acceptability and other factors, where as METF is merely a technical based standard, requiring whatever method is technically most effective, without consideration for cost or availability. This should be replaced with Maximum Extent Practicable (MEP).	This term has been deleted.
29	7	City of Lompoc	Throughout	The City of Lompoc asserts that, as the review of the small MS4 regulations by USEPA is scheduled within as little as six months after the proposed implementation of the revised MS4 permit, that no additional requirements beyond the minimum control measures should be imposed in this revision of the MS4 Permit.	Comment noted.
29	8	City of Lompoc	Throughout	The State Water Resources Control Board should focus its efforts on amending Proposition 218, instead of adding more requirements to the MS4 Permit, so small MS4s may have an opportunity to begin funding their existing storm water programs.	Comment noted.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
29	9	City of Lompoc	Throughout	These regulations appear to be in conflict with existing California Land Use Law and the Subdivision Map Act. A land use attorney should review the proposed regulation for conflict with existing law, especially regarding the conditioning of Ministerial permits and date of effectiveness in discretionary and ministerial permits. Provisions should be consistent with existing state law.	This permit provision has been revised to address the comment.
29	10	City of Lompoc	Throughout	Lompoc is both a Disadvantaged Community and Environmental Justice Community. The median household income of Lompoc residents is less than 80% of the Median Household Income of California residents. The proposed Draft MS4 Permit is so prescriptive in nature that it removes all latitude for a community to determine where its limited resources would best be used in the effort to improve storm water quality.	The draft permit includes language that any Regulated Small MS4s may seek a waiver from the General Permit requirements if they meet criteria specified in 40 CFR §122.32(c)-(e) or additional criteria specified in A.3.b.(3). In order for a Regional Water Board to waive requirements for a Regulated Small MS4, (1) the Regulated Small MS4 must certify that its discharges do not cause or contribute to, or have the potential to cause or contribute to, a water quality impairment, and (2) the Regulated Small MS4 must meet one of the waiver options in section b. Option 3 (applicable to Small MS4s outside an Urbanized Area only) applies to Small Disadvantaged Community – The Regulated Small MS4 certifies that it is a community with a population of 20,000 or less with an annual median household income (MHI) that is less than 80 percent of the statewide annual MHI. (Wat. Code, § 79505.5 , subd.(a)). The City of Lompoc may seek a waiver from the general Permit requirements.
29	11	City of Lompoc	Throughout	Please review the regulation's outline levels and ensure the outline is consistent throughout. Also, for any timelines that are indicated as being required "during" a particular year, please revise the language to state the required item be completed prior to the subsequent year. For example, instead of complete component C within the 3rd permit year, state Complete component C by the 4th permit year.	Comment noted.
29	12	City of Lompoc	Throughout	The permit should be freestanding, without reference to or compliance with separate documents.	Comment noted.
29	13	City of Lompoc	Finding 28	The City of Lompoc believes that it is not enough to merely have two sets of "prescriptive requirements" for Traditional and Non-traditional MS4's.	The commenter is referring to the first draft permit. Please see the second draft dated May 18, 2012 for significant changes.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
29	14	City of Lompoc	A.3	A disadvantaged community with a population larger than 20,000 would likely face an even more difficult economic situation than those below 20,000. A disadvantaged community larger than 20,000 has a greater number of disadvantaged persons, coupled with larger infrastructure and responsibility in addressing community needs.	<p>Comment noted. The draft permit includes language that any Regulated Small MS4s may seek a waiver from the General Permit requirements if they meet criteria specified in 40 CFR §122.32(c)-(e) or additional criteria specified in A.3.b.(3).</p> <p>In order for a Regional Water Board to waive requirements for a Regulated Small MS4, (1) the Regulated Small MS4 must certify that its discharges do not cause or contribute to, or have the potential to cause or contribute to, a water quality impairment, and (2) the Regulated Small MS4 must meet one of the waiver options in section b.</p> <p>Option 3 (applicable to Small MS4s outside an Urbanized Area only) applies to Small Disadvantaged Community – The Regulated Small MS4 certifies that it is a community with a population of 20,000 or less with an annual median household income (MHI) that is less than 80 percent of the statewide annual MHI. (Wat. Code, § 79505.5 , subd.(a)).</p> <p>The City of Lompoc may seek a waiver from the general Permit requirements.</p>
29	15	City of Lompoc	B.3	The Draft Phase II Small MS4 General Permit lists allowable non-storm water discharges but does not include landscape irrigation, irrigation water, lawn watering, and individual residential car washing. According to the Federal Register, these are allowable discharges.	<p>Comment noted. Staff disagrees with the comment. Incidental runoff of potable or recycled water from landscaped areas are allowed in accordance with Section B.4 of the draft permit. With respect to individual residential car washing, this permit provision has been revised to address the comment.</p>
29	16	City of Lompoc	B.4	E.5.b. (ii) (i) requires technical and financial assistance and implementation guidance related to storm water-friendly landscaping. Local jurisdictions do not have the technical and financial resources to provide storm water friendly landscaping assistance. This is not a service that Cities should be asked to provide without first receiving full and direct funding from the State.	<p>The commenter is referring to the first draft permit. Please see the second draft dated May 18, 2012 for significant changes.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
29	17	City of Lompoc	Section. D	Insert the word “applicable” into the second paragraph of D on page 17, as follows: “The Permittee shall comply with applicable Receiving Water Limitations...”	<p>The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process. .</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
29	18	City of Lompoc	Section D.	Revise the draft permit related to Receiving Water Limitations in order to maintain consistency with the MEP Standard and the intended iterative process.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.
29	19	City of Lompoc	E.5	Draft Permit Section E.5 prescribes a list of over 13 public education measures that each MS4 must implement, at a minimum. Prescribing such a lengthy prescriptive list of measures is contrary to 40 CFR Section 122.24, which states that the public education program be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities.	Comment noted. Please see Section II. Permitting Approach of the Fact Sheet.
29	20	City of Lompoc	E.6.a(ii)(f)	This section requires retrofitting of Industrial and Commercial facilities with stormwater BMPs. This requirement should be removed until the State performs an evaluation as to the cost impacts to the business community within the Phase II jurisdictions. CASQA BMP reference sheets are a good guidance for BMP implementation but should not be written into the legal authority section of a municipality's ordinance. This basically elevates them to code.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
29	21	City of Lompoc	E.6.a.ii.f. and g.	It is not appropriate to require MS4's to establish the legal authority to require construction sites, commercial and industrial facilities to install, implement and maintain BMPs. Phase II permittees do not have the funds or staff to oversee or enforce the terms and requirements of the Construction or Industrial Permits issued by the State, or permits of other agencies (public health). If these items remain as requirements, fees collected by the state be must directly allocated to local permittees, so agencies will have the resources to implement these regulations.	Comment noted. The USEPA Phase II stormwater regulations require permittees to develop a construction site program addressing "land disturbance of greater than or equal to one acre" and requires legal authority.
29	22	City of Lompoc	E.6.a(ii)(h)	These requirements do not seem feasible. They would require both Construction and Industrial Permit oversight by Phase 2 MS4s (which is a State responsibility). Private property owners may not allow public entities onto their land.	The USEPA Phase II stormwater regulations require permittees to develop a construction site program addressing "land disturbance of greater than or equal to one acre" and require legal authority to protect storm water quality with the Permittees jurisdiction. The draft permit requires enforcement of Permittees storm water ordinance or legal equivalent, not regulation of the State CGP and IGP. Phase II Permittees should leverage already existing staff to conduct construction and possible industrial inspections. Many of these sites/facilities already include inspections and therefore the on-site inspector simply needs to include several stormwater elements to their inspection checklist.
29	23	City of Lompoc	E.6.a.ii.j.	Revise to read: "Permittee shall have the ability to levy citations or administrative fines against responsible parties." The timing of citations and fines should not be stipulated, as it is too specific and may not be appropriate or able to be implemented as quickly as the Draft Permit proposes. Generally, the only persons who have authority to issue citations are the police, who are often too busy and understaffed to address water leaks or other minor infractions. Issuance of a Stop Work order, or Verbal Warning could occur on-site where appropriate, but otherwise, the legal basis for an action must be evaluated and proper procedures followed, if a citation or fine is to be issued.	Comment noted. Adequate legal authority is required to implement and enforce most parts of the Storm water program. (See 40 CFR 122.26(d)(2)(i) and 40 CFR 122.34(b)(3)(ii)(B), (b)(4)(ii)(A), and (b)(5)(ii)(B)). Without adequate legal authority the MS4 would be unable to perform many vital storm water program functions such as performing inspections and requiring installation of control measures. In addition, the permittee would not be able to penalize and/or attain remediation costs from violators.
29	24	City of Lompoc	E.6.a.ii.i.1.	While permittees can provide authorization and take action to require that a discharger abate and clean up their discharge, spill or pollutant release within 48 hours, ensuring this occurs in this timeframe is not feasible. Other legal requirements apply, such as proper notification. However, it may take additional enforcement actions to force the property owner to take appropriate action.	Comment noted. For these reasons, an Enforcement Response Plan is essential to a storm water program.
29	25	City of Lompoc	E.6.b.ii.	The items required in this section extend far beyond what is called for in a certification statement. There appears to be no reason why the standard certification used in the past, and used for construction and industrial storm water permits is not sufficient. These specific record keeping items could easily be reallocated to other permit areas more appropriate for this type of documentation.	Comment noted. Certification is required to certify compliance of the draft permit provisions.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
29	26	City of Lompoc	E.6.b.iii.	The reporting timeline should be eliminated, as the presence of a Storm Water Ordinance should be sufficient to show the ability to enforce the terms of the permit. It is not clear what additional benefit would be gained by such a certification.	Comment noted. Certification is required to certify compliance of the draft permit provisions.
29	27	City of Lompoc	E.6.c.	This section requires the development of an Enforcement Response Plan, eliminating the autonomy of local jurisdictions to govern themselves as they deem appropriate. Moreover, the measure duplicates effort as local storm water ordinances already establish enforcement provisions and procedures. This will result in taking valuable staff time to write a Plan, when other more pressing storm water issues could have been addressed with the same resources. The City of Lompoc recommends that this section be revised to delete the requirement for development and implementation of a separate Enforcement Response Plan. Local jurisdictions will have authority under their Storm Water Ordinances to enforce against violators, while saving money and staff time in not having to prepare an explicit, separate plan to discuss the provisions of their ordinance.	Comment noted. The Enforcement Response Plan is developed by the Permittee. Local Ordinance/policy do not typically include the enforcement response procedures.
29	28	City of Lompoc	E.6.c.ii.d.	While identifying construction permit non-filers is possible, requiring referral of industrial non-filers does not appear to be an appropriate requirement. Given the complex nature and definitions in the General Industrial permit requirements and SIC Classifications, permittees cannot be expected to clearly determine which industrial sites house what operations and would be required to be under permit. This function should be allocated to the State and Regional Board staffs, through inspections. The State Board charges significant Industrial and Construction permit fees which are intended to cover implementation of their permit program. If this task is to be allocated instead to local small municipalities, so should the related funds be allocated. This section also requires the MS4, not the RWQCB, to perform follow-up inspections, pursue enforcement actions and write demand letters if the industrial facility fails to comply. It also requires MS4s to “develop incentives or increase inspection frequency” to prevent chronic violations. This is an onerous requirement and a transfer of State permit oversight responsibilities to local municipalities who do not have the financial or staff resources to complete this task.	Many of these industrial facilities are already inspected by an existing municipal inspection program. For example Health Inspectors. The on-site inspector shall make a good faith effort to question whether or not the facility should be covered under the IGP or not and include this storm water question in their already existing inspection program. Permittees can refer non-filers through the Cal/EPA online Environmental Complaint Form http://www.dtsc.ca.gov/database/CalEPA_Complaint/index.cfm

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
29	29	City of Lompoc	E.6.c(ii)(f)	The City of Lompoc recommends removal of this section, as it duplicates the requirement for permittees to have effective enforcement provisions in their Storm Water Ordinances. It is possible to identify chronic storm water violators and encourage them, through escalating enforcement provisions, to cease violations. However, it is not possible to ensure that every property owner, their agents or tenants will cease violating the regulations, even in the face of significant sanctions.	Comment noted.
29	30	City of Lompoc	E.7.a.ii.b	The referenced surveys should be clearly described as requiring non-statistical sample methods only. Statistical sampling is too costly and difficult to achieve when seeking volunteer cooperation. Non-statistical methods can also achieve the end of identifying areas where additional public information and outreach is needed.	Comment noted. No specification is made for flexibility.
29	31	City of Lompoc	E.7.a.iv.ii.d	There is no definition, standard, threshold for when "appropriate educational materials" are required to be developed /disseminated "in multiple languages". Would this be a Census demographic standard or does the State have their own population demographic studies? This can be difficult to provide given limited budgets, as funding for translators is not available. Will the state be developing and making available more multi-language educational materials?	Comment noted. No specification is made for flexibility.
29	32	City of Lompoc	E.7.a.iv.ii.j.	Remove the current wording and replace with "The MS4 shall provide for storm water educational opportunities to school-age children." It is not feasible or reasonable for a MS4 to implement California's Education and Environment Initiative Curriculum (EEIC) or equivalent.	This permit provision has been revised to address the comment.
29	33	City of Lompoc	E.7.b.2.	This Section constitutes an unfunded mandate and funding must be provided before this activity can be accomplished. In addition, this section is focused on construction sites <1 acre, with the assumption that there is a "construction community" to be studied, put through a pilot project, etc.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or in conflict with non-binding guidance provided in those regulations. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program "designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act," (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)). Additionally, a discussion has been included in the Fact Sheet at Section IV, Unfunded Mandates.
29	34	City of Lompoc	E.9.a.ii.c	This section should include a definition for older infrastructure (what constitutes old, plus storm water and/or sewer?).	Sewer lines with a history of sewer overflows or cross-connections.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
29	35	City of Lompoc	E.9.b(i)	Section (i) requires the Permittee to maintain an inventory in the second year but the Reporting section (iii) states by year three. Revise (i) to allow for maintaining the inventory in the third year.	Comment noted. The inventory must be in place the second year to ensure the progressively moves forward in the 5 year permit term.
29	36	City of Lompoc	E.9.b(ii)(a)	The requirement for the inclusion of the physical location of a storm drain receiving discharge from an industrial or commercial facility will often not be feasible to determine without expensive inspections and investigations by the MS4. This information should be required of industrial permittees in their industrial permits.	This permit provision has been revised to address the comment.
29	37	City of Lompoc	E.9.b(ii)(a)	The 4th bullet requires the decimal latitude-longitude of the storm drain receiving discharge. Please clarify that information obtained from Google Earth is acceptable in providing this information.	Information can be taken from Google Earth.
29	38	City of Lompoc	E.9.c.	The analytical monitoring costs associated with the proposed provisions of the Illicit Discharge Detection and Elimination Program (IDDE) Monitoring Program would be prohibitive for a small municipality. This program is an unfunded mandate and not required for MS4's under the CWA.	Please see Section IV, Unfunded Mandate in the Fact Sheet.
29	39	City of Lompoc	E.10.	The language in this permit assigns the work of ensuring compliance with the State's separate Construction General Permit (CGP) to the MS4 permittee, without providing them the financial resources to comply. If the State Board wants to pass along this responsibility, they need to provide the necessary financial resources to the Phase II permittees. The City of Lompoc supports proportional allocation of the full WDID Fee currently paid by the developer and submitted to the State, to local MS4's for implementation of the proposed provisions.	Comment noted. The State Board is not passing responsibility to the Permittees to inspect and regulate the CGP. Permittees must ensure compliance with their local storm water ordinance or equivalent to ensure protection of storm water quality.
29	40	City of Lompoc	E.10.a.i.	The City of Lompoc recommends only projects that meet the CGP criteria be included in the inventory, allowing permittees to use SMARTS for this database, rather than creating a redundant database. Including all projects would needlessly increase burden on local jurisdictions. In a case where there was an egregious violation of discharge prohibitions, the jurisdiction's storm water ordinance should be available to address the violation.	Comment noted. To effectively conduct inspections, the permittee must know where construction activity is occurring. A construction site inventory tracks information such as project size, disturbed area, distance to any waterbody or flow channel, when the erosion and sediment control/stormwater plan was approved by the Permittee, and whether the project is covered by the State's CGP. This inventory will allow the permittee to track and target its inspections. Because of State has SMARTS in place to track construction activity in their jurisdiction making it fairly simple to obtain construction inventory information. Some Permittees local ordinance/policy have more stringent requirements that apply to construction projects 1 acre or less. For example, smaller, built-out cities may have many small redevelopment projects that fall below the one acre threshold. In such cases, controlling construction site stormwater entering the MS4 to the maximum extent practicable may require stormwater controls at smaller sites.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
29	41	City of Lompoc	E.10.a. (ii)	Inventory to include (a – i). This inventory is needlessly repetitive, would take hours of staff time to input and manage and is not directly related to whether any of the identified projects pose a risk to water quality. The term “Water bodies” needs clarification. This data should already be included in SMARTS or should be unnecessary in enforcing storm water discharge prohibitions. Continuous updating of this database would significant time and funds, resulting in no clear benefit to water quality.	Comment noted. To effectively conduct inspections, the permittee must know where construction activity is occurring. A construction site inventory tracks information such as project size, disturbed area, distance to any waterbody or flow channel, when the erosion and sediment control/stormwater plan was approved by the Permittee, and whether the project is covered by the State's CGP. This inventory will allow the permittee to track and target its inspections. Because of State has SMARTS in place to track construction activity in their jurisdiction making it fairly simple to obtain construction inventory information.
29	42	City of Lompoc	E.10.b.ii.c.	It is not within the role or ability of the local jurisdiction to determine whether or not a particular contractor / developer has obtained all required agency permits (federal, state, local). It is up to a property owner to determine what is required and comply with the law. Local agency staff does not have the time or ability to try to verify applications, compliance, conditions etc. of federal or state permits. That is why permit fees are paid to these agencies and not to the local government. This section should be removed from the permit.	Comment noted. Permittees should leverage already existing staff to determine compliance of environmental permits. Many of Permittee have Inspectors out in the field on a daily basis, therefore, the on-site inspector simply needs to include a couple of stormwater questions to their already existing inspection checklist. In addition, prior to issuing a grading permit, most Permittees require verification of other environmental permits such as CA DFG 1600/Streambed Alteration Agreement and/or the U.S. Army Corps 404 permit. The Permittee therefore effectively implements the provision without creating a separate inspection/verification program.
29	43	City of Lompoc	E.10.b.ii.d.	Documentation again appears to be the priority over reducing soil loss and erosion and improving water quality in this section. The City of Lompoc recommends the State Board simplify and require submittal and review of an Erosion and Sediment Control Plan only.	Comment noted. Documentation is crucial to ensure compliance proper implementation of erosion and sediment controls.
29	44	City of Lompoc	E.10.c.	Requiring a QSP on-site to implement storm water BMPs and a QSP to write a SWPPP should be adequate measure to ensure there is not a storm water problem. The above mentioned storm water professionals are qualified to properly ensure storm water controls are implemented on construction sites under their authority and are responsible for ensuring that proper BMPs are implemented. Local jurisdictions should be required only to inspect each project with a SWPPP once during the dry season (June – September) and monthly through the rainy season (October through May).	This permit provision has been revised to address the comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
29	45	City of Lompoc	E.10.c.iii.	This required database is redundant for those projects which are already entered in SMARTS under the Construction General Permit. This requirement focuses on reporting, at the expense of controlling runoff. With limited staff, permittees are forced to choose between preparing and submitting reports and taking actions to control polluted runoff. Permittees can readily understand and address construction runoff issues without the need for formal inventory preparation and maintenance of this redundant database, because they can reference SMARTS. This redundancy adds unnecessary time and expends precious resources without a clear improvement in water quality. In addition, the requirements for QSD and QSP oversight on construction sites, coupled with the Permittee's Storm Water Ordinance will adequately address the need for evaluation and enforcement on construction sites .	To effectively conduct inspections, the permittee must know where construction activity is occurring. A construction site inventory tracks information such as project size, disturbed area, distance to any waterbody or flow channel, when the erosion and sediment control/stormwater plan was approved by the Permittee, and whether the project is covered by the State's CGP. This inventory will allow the permittee to track and target its inspections. Because of State has SMARTS in place to track construction activity in their jurisdiction making it fairly simple to obtain construction inventory information.
29	46	City of Lompoc	E.10.c.iii.	Eliminate increases in reporting requirements and reduce the current reporting burden on Phase II communities, to increase program cost effectiveness. Increased reporting simply spends more money and has not been shown to improve water quality or the effluent from construction sites .	Reporting requirements have been revised to address this comment.
29	47	City of Lompoc	E. 11.e.ii.	Section E.9.e.ii should be revised to the following: "Inspections of Hotspots shall be completed biannually to ensure Standard Operating Procedures for Storm Water Pollution Prevention are being followed. Trained staff will ensure facilities are being maintained in accordance with permit requirements and take corrective actions when necessary. Non- hot spots shall be inspected every 2 years."	Comment noted.
29	48	City of Lompoc	E. 11.g.ii.b, d	Revise this section to read: "Clean all catch basins, inlets and storm conveyances once per year prior to the rainy season. Clean any problem areas again in the Spring. If blockages occur and/or complaints are received regarding inlets, response to these locations shall be made as soon as practicable to determine what action may be required, so maintenance needs can be addressed ."	This permit provision has been revised to address the comment.
29	49	City of Lompoc	E. 11.h.i	Change BMP evaluation from quarterly to annually. In practice this has been found to be adequate to achieve maintenance and compliance, as procedures are reviewed annually.	Quarterly basis is essential due to the change in seasons. Permittees should inspect BMPs for efficacy and identify failures. It is important to conduct regular inspections and perform maintenance as necessary throughout seasonal changes. If not properly inspected, BMP can result in pollutant discharges.
29	50	City of Lompoc	E. 11.i	The City of Lompoc requests the removal of this requirement from the Permit. The requirement to assess and implement changes to two flood management projects per year is inappropriate for most local jurisdictions, as unless they are flood control entities, they may never design and implement a flood management project. For an agency which does deal exclusively with flood control, this may be too onerous, as other requirements and life safety priorities may already claim the limited staff and funds they have to allocate.	The focus of stormwater management in the past had been to control flooding and mitigate property damage, with less emphasis on water quality protection. These structures may handle a significant amount of stormwater and therefore offer an opportunity to modify their design to include water quality features for less than the cost of building new controls. This requirement applies to new flood control projects, not existing

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
29	51	City of Lompoc	E.11.i.	This section should be eliminated, as the permittee municipalities do not have jurisdiction over Flood Control Districts to require that flood management projects be either assessed or enhanced.	Often Permittees review and approved construction and maintenance of Flood management facilities and work in conjunction with Flood Control Districts. The focus of stormwater management in the past had been to control flooding and mitigate property damage, with less emphasis on water quality protection. These structures may handle a significant amount of stormwater and therefore offer an opportunity to modify their design to include water quality features for less than the cost of building new controls. This requirement applies to new flood control projects.
29	52	City of Lompoc	E.11.j.ii.b.2.i.	Please show how reduction or elimination of grass mowing provides greater pollutant removal. Mowing is used to keep grass healthy and appropriate for the intended purpose (i.e. sports fields) or to reduce fire danger.	The permit clearly states that reduction of grass mowing is contingent upon public safety.
29	53	City of Lompoc	E12 a	Use consistent terminology throughout clearly identifying applicable standards. This section is too dispersed and convoluted and the actual requirements are not clearly set out.	This permit provision has been revised to address this comment.
29	54	City of Lompoc	E.12.a	Redevelopment projects can produce less impervious cover per capita than their greenfield counterparts, making it desirable to encourage redevelopment projects. Allowing for existing developed sites to maximize their utility through greater density and lot coverage directly reduces the demand for development of agricultural lands. In addition, it may not be appropriate or feasible for redevelopment projects to either infiltrate, evapotranspire or harvest/reuse the full 85th percentile storm event. As such, the City of Lompoc strongly recommends flexibility be inserted into the post-construction treatment requirements to ensure this type of development is encouraged.	This permit provision has been revised to address this comment.
29	55	City of Lompoc	E.12.a	Site conditions will exist where full retention is neither feasible and/or desirable.	Comment noted.
29	56	City of Lompoc	E.12.a	In addition to the criteria identified for new development projects, the City of Lompoc recommends the permit exempt from LID / Hydromodification standards high density housing projects with densities over 30 dwelling units per acre, as well as mixed use retail / office and housing projects in city centers or nodes.	This permit provision has been revised to address this comment.
29	57	City of Lompoc	E12a and E12b	E.12.a and E.12.b. Eliminate redundancy. Remove reference to Timing and Reporting because these vary by provision and are defined later in the text. Consider removing this introductory summary of requirements altogether, since it adds nothing to permit. Reference to Permittees in a Phase I permit boundary is moved to (see comment #23) Pg 26-47	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
29	58	City of Lompoc	E.12.c.	Eliminate the requirement for non-quantitative site design measures for development creating or replacing 2,500 square feet of impervious area. This requirement will be difficult to administer, considering the additional requirements in the remaining portions of this section and permit, and is not clearly linked to beneficial impacts as it doesn't require measures whose impacts can be quantified, requires only one method be used and then requires the METF standard. These elements are internally inconsistent.	This permit provision has been revised to address this comment.
29	59	City of Lompoc	E.12.d	Revise title to read: E.12.d. New and Redevelopment Standards	This permit provision has been revised to address this comment.
29	60	City of Lompoc	E.12.d.1(d)	<p>Delete the following Sections:</p> <p>a. E.12.d.1(d)(1); and</p> <p>b. E.12.d.1(d)(2)</p> <p>2. Replace the above deleted language with the following:</p> <p>a. Revise title of Section E.12.d.1(d)(1) to "Effective Date for Private and Public Development Projects."</p> <p>b. Add the following new paragraph under Section E.12.d.1(d)(1) as subsection (i): "As of the effective date of the new development and redevelopment requirements in the Order, all discretionary permit projects or project phases that have not been deemed complete for processing, or discretionary permit projects without vesting tentative maps that have not requested and received an extension of previously granted approvals must comply with the requirements in Section E.12.d.2., E.12.d.2, and E.12.E. For Permittee's projects, the effective date shall be the date the governing body or their designee approves initiation of the project design."</p> <p>c. Add the following new paragraph under Section E.12.d.(d)(1) as subsection (ii): The Permittee shall apply the low impact development runoff standards of Section E.12.d.2 to all projects both private and public development that are determined to be "regulated projects" as listed in Section E.12.d.1.(a).</p>	This permit provision has been revised to address this comment.
29	61	City of Lompoc	E.12.d.1.	Delete header since it's repeated below.	This header has been deleted.
29	62	City of Lompoc	E.12.d.1(b) and (c).	<p>(b) Where a redevelopment project, in the categories specified above, results in an increase of more than 50 percent of the impervious surface of a previously existing development, these requirements apply to the entire site.</p> <p>(c) Where a redevelopment project, in the categories specified above, results in an increase of less than 50 percent of the impervious surface of a previously existing development, these requirements apply only to the newly created or replaced portion.</p>	Comment noted.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
29	63	City of Lompoc	E.12.d.1(d) and E.12.d.2	Because not all "public" projects are under the building authority of the Permittee, recommend the following revision. (d) ... and public projects constructed by the Permittee. And on pg. 50 Public Permittee's Development Projects - The Permittee shall develop and implement an equivalent approach, to the approach used for private development projects, to apply the development runoff standards to applicable public development projects.	This permit provision has been revised to address this comment.
29	64	City of Lompoc	E.12.d.2.	E.12.d.2 Low Impact Development Standards should be deleted as a header at this location. Source control should be a separate section.	This permit provision has been revised to address this comment.
29	65	City of Lompoc	E.12.d.2.(ii)	It seems to be an added and unnecessary step to require a separate map with Drainage Management Areas. This information is generally provided on the grading and drainage plan and on an Erosion Control Plan.	Comment noted.
29	66	City of Lompoc	E12d.2.(ii)(1)	This section should be revised to state: "Permanent and/or operational source control BMPs shall be adopted...". The reference to the following BMPs needs to be eliminated as no BMPs are listed.	This permit provision has been revised to address this comment.
29	67	City of Lompoc	E12.d.2.(ii)(2)	This section mentions a standard, infiltration, evapo-transpiration and or harvesting reuse of the 85th percentile rainfall event. The 85th percentile storm event needs to be defined and the methodology used to determine this event provided	Comment noted.
29	68	City of Lompoc	E12.d.2.(ii)(2)	These "Site Design" measures should not be stipulated, as the measures necessary to infiltrate storm water on sites as variable as those found throughout California are much greater in number. It is also important, as the field develops, to allow for other structural methods of collection and infiltration which may not yet have been developed. Simply stating the requirement to infiltrate the 85th percentile storm should be enough.	This permit provision has been revised to address this comment.
29	69	City of Lompoc	E12.d.2.(ii)(3)	Are the standards given for the bioretention system intended to modify the requirement to bio-treat stated in this section? If yes, this should be clearly stated and set apart from the requirement itself	Comment noted.
29	70	City of Lompoc	E.12.d.1.(ii)(e).	Road Post-Construction Treatment requirements may be constrained in some situations by existing development, and discrete right-of-way limitations. Options for these cases should be addressed.	Comment noted.
29	71	City of Lompoc	E.12.d.2.(ii)(2)	Revise E.12.d.2.(ii) to include the following language clearly stating the regulatory requirement. Projects that create or replace 5,000 s.f. or more of impervious area shall infiltrate the 85th percentile, 24-hour storm. As this is a succinct requirement and other site design measures not related to volume control already apply to Regulated Projects under Provision E.12.c (see projects >2,500 sf). The remainder whole of the Site Design Measures section should be deleted.)	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
29	72	City of Lompoc	E.12.d.2.3.d.	Move Numeric Sizing Criteria (pg 54) for LID measures to follow Source Control.	This permit provision has been revised to address this comment.
29	73	City of Lompoc	E12.d.2.(ii)(3)c	Tree-box-type filters needs to be defined and a diagram provided, or a Technical Guidance Manual prepared and approved by the State Board, detailing construction requirements and providing BMP details.	Comment noted.
29	74	City of Lompoc	E.12.j(ii) and (iii).	This implementation requirement is too prescriptive. The requirements in this section are not necessarily consistent with state land use law, subdivision law and building and fire codes. In addition, it is up to the MS4 to determine the type of community it desires to have and reflect that in its General Plan and Zoning Ordinance. This requirement should be as simple as ensuring the MS4 has the ability to regulate under the permit. This section was already addressed in E.6.a. and that should be sufficient. In addition, much planning and building regulation is dictated by the state and cannot be changed by local government.	This permit provision has been revised to address the comment.
29	75	City of Lompoc	E.12.d.2.(ii)3(h)(b)	Move infeasibility criteria to follow numeric sizing criteria. Add additional criteria.	This permit provision has been revised to address the comment.
29	76	City of Lompoc	E.12.d.2.(ii)3	Revise header for biotreatment performance criteria(3) Storm Water Treatment Measures-Runoff that cannot be evapotranspired, infiltrated, or harvested onsite due to Special Site Conditions shall be treated and discharged through a biotreatment system, or its equivalent, with the following design parameters.	This permit provision has been revised to address the comment.
29	77	City of Lompoc	E.12.d.2.(ii)3(h)(c)	The Reopener paragraph sits awkwardly at this location. If necessary to specify a reopener of permit for LID, the paragraph should be distinguished in the outline with a header and placed in an appropriate location in the Provisions such as the end of LID section or the end of the E.12.	This permit provision has been revised to address the comment.
29	78	City of Lompoc	E.12.d.2.(iii)	Reporting. Revise schedule to Year 3. Information should be collected and retained by Permittee.	This permit provision has been revised to address the comment.
29	79	City of Lompoc	E.12.d.2.(iii)	(iii) Reporting – For each Regulated Project approved, the following information shall be completed and be available starting in Year 3	This permit provision has been revised to address the comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
29	80	City of Lompoc	E.12.e.	Hydromodification Management E.12.e. Addressing peak runoff alone has been shown to exacerbate instream conditions. This in fact is why the infiltration requirements for LID are implemented. CASQA recommends deleting the peak runoff requirements in lieu of the onsite retention of stormwater. MS4s have Flood Control programs designed to address peak runoff for downstream impacts and facility capacity. These existing programs should not be affected by this Order. This order is intended to improve upon the traditional approach of installing peak-runoff control measures alone, without assessing instream conditions or overall watershed character. Recommend delete entire provision E.12.e.	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.
29	81	City of Lompoc	E.12.h	BMP Condition Assessment revise schedule such that effectiveness is measured after one year of data.	This permit provision has been revised to address the comment.
29	82	City of Lompoc	E.12.j.	E.12.j. There are a number of problems such as schedule, specificity, and expectations.	Comment noted. See permit for changes.
29	83	City of Lompoc	E.13	A receiving water monitoring program is not required under the Federal Phase II Rule. This section should be removed. Receiving water monitoring should continue to be conducted by the State and Regional Boards. In arid areas and/or those where hydrology has been significantly altered by dams, channels or other structures, adequate samples are often not possible to obtain, as water flow is a trickle or non-existent, stagnant and therefore not representative of any contribution.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or in conflict with non-binding guidance provided in those regulations. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program “designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)). Additionally, a discussion has been included in the Fact Sheet at Section IV, Unfunded Mandates.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
30	1	City of Malibu		<p>Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the Importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognizes current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period.</p>	<p>The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.</p>
30	2	City of Malibu		<p>Many necessary non-traditional public agencies located in the North Santa Monica Bay watershed have not been included for coverage under the Draft Permit.</p>	<p>The State Water Board has designated only State Park and Recreation areas and certain OHV parks that discharge to Areas of Special Biological Significance (ASBS). The State Water Board has determined ASBS as priority areas to protect.</p> <p>The Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their designation discretion accordingly. See Finding 24.</p> <p>In addition, only regulated MS4s conveyances owned by a state, city, town, village, or other public entity that discharges to waters of the U.S. can be designated under the draft permit. For example, Pepperdine University is a private entity.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
31	1	City of Merced		The second draft Phase II MS4 General Permit needs to better consider the economic impact on cities on counties with disadvantaged communities. This second draft introduced under the guise of the federal Clean Water Act imposes unfunded mandates onto local government.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program “designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CRF 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.
32	1	City of Mission Viejo, Public Works Department		Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the Importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognizes current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.
33	1	City of Morro Bay		This permit will exponentially increase the cost of implementation. The fact that California is in a severe recession and that the City of Morro Bay has had significant cutbacks is a fact that cannot be dismissed	As part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater 2) NPDES stormwater 3) Irrigated lands, and 4) Waste discharge requirements (WDR).

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
33	2	City of Morro Bay		The City of Roseville retained Best Best and Krieger (BB&K), Attorneys at Law to provide legal comments on the draft permit. The City is supporting the comments made by BBK. These comments are extremely important and need to be addresses before adoption of the permit.	Comment noted.
33	3	City of Morro Bay		The City of Morro Bay's MAJOR concern with the Draft Permit is the Receiving Water Limitation Language. The language in the Draft Permit does not clearly allow permittees to comply with water quality standards over time by using best management practices supplemented by the iterative process. The Draft Permit would require the City of Morro Bay to achieve all allocations by November 19,2013. This is an unachievable allocation and therefore the Draft Permit is setting up the City for enforcement actions and third party lawsuits even i f the City is fully implementing its stormwater program.	The Ninth Circuit held in Natural Resources Defense Council, Inc. v. County of Los Angeles (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process. .

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
33	4	City of Morro Bay		The City of Morro Bay is concerned about the open-ended and vague permit terms, which leave allow our local regional water board to apply stricter regulations than this permit. If this permit meets the clean water act then why should one region be subject to stricter regulations. The permit should be a general permit for the entire state to follow.	Under the Water Code, either the State Water Board or the Regional Water Boards have authority to issue NPDES permits (Wat. Code, §13377.) The State Water Board is issuing this Order; however Regional Water Board staff will continue to have the authority to evaluate compliance with permit conditions. The Regional Water Board Executive Officers also have discretion to designate entities under the Order, as well as to require renewal permittees to continue to implement their existing programs, as pointed out by this comment. Staff believes that it is appropriate for the Order to provide for Regional Water Boards requiring continued implementation of existing programs, where such programs, because of region or MS4-specific reasons, are designed to achieve MEP. However, in response to comments and recognizing the need for some level of statewide consistency in interpretation of Order provisions, the revised Order includes a dispute resolution process where there is disagreement between a Permittee and a Regional Water Board over the interpretation of any provision of the Order, including the need to continue an existing program. Under the dispute resolution process, the Permittee should first attempt to resolve the issue with the Executive Officer of the Regional Water Board. If a satisfactory resolution is not obtained at the Regional Water Board level, the Permittee may submit the issue in writing to the Executive Director of the State Water Board or his designee for resolution, with a copy to the Executive Officer of the Regional Water Board. The issue must be submitted to the Executive Director within ten days of any final determination by the Executive Officer of the Regional Water Board. The Executive Officer of the Regional Water Board will be provided an opportunity to respond. The determination of the Executive Director or his designee will be considered a final decision of the State Water Board subject to judicial review under Water Code section 13330.
33	5	City of Morro Bay		There are areas in this permit which are redundant of other stormwater permits, and duplicate reporting for these permits should be removed. For example in the Section E.9.b Illicit Discharge Source/Facility Inventory. The City should not be responsible for inventorying these facilities. If the City finds that one of these facilities has an illicit discharge in the MS4 then the City will contact the local Water Board and inform them of the issue.	Comment noted. The inventory information will provide the Permittee with information on potential pollutant sources that contribute to its MS4 system, and at what locations in the system into which they discharge.
33	6	City of Morro Bay		Another concern the City has with the permit is the over-specificity. There are areas in the permit in which the State Water Board is too detailed and there areas should be left up to the City to determine how the situation will be handled and there can be used as guidelines. For example in Section E.9.c Field Sampling to Detect Illicit Discharges.	See Section II, Permitting Approach of the Fact Sheet for rationale for prescriptive permit language.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
33	7	City of Morro Bay		It is the City of Morro Bay's position these higher levels of services and increasing permit regulations with no perceived tangible water quality benefit are excessive. The current economic times make such a program difficult to fund and yet still provide adequate police, fire protection, street repairs, and other essential services. Lastly the City would just like to reiterate the importance of implementing a permit that will accomplish water quality results and is implementable in these tough economic times.	Please see Section III, Economic Consideration of the Fact Sheet. Please see Economic considerations in Fact sheet. In addition, as part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater, 2) NPDES stormwater 3) Irrigated lands, and 3) Waste discharge requirements (WDR).
34	1	City of Napa	B.4	Napa should be allowed to establish, as needed, the conditions under which runoff from landscaped areas is to be prohibited or controlled. The controls required in B.4 a-e are not always feasible to achieve. Napa already has market-driven and educational approaches believed to be more effective than the top-down regulatory approach in the Draft Permit.	This permit provision has been revised to address the comment.
34	2	City of Napa	Section D.	The State Board's Receiving Water Limitations language must be revised to make it consistent with the State Board's stated intent to achieve compliance with water quality standards "over time, through an iterative approach requiring improved BMPs".	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
34	3	City of Napa	E.1.a	Rather than making this in lieu provision a unilateral decision of the Regional Board EO, Napa requests that Permittees be permitted to apply to the Regional Board EO to continue current programs in lieu of the Draft Permit for all sections, including E.12 - 13. The EO's decision should also be subject to review by the State Board through the Water Code petition process, not just subject to State Board review.	Staff expects this provision to be invoked in only a limited number of cases where the existing program is clearly equivalent to the requirements of the Order in reducing pollutant discharges. In general, staff believes that the permit requirements are more effective than existing programs. Allowing dischargers to initiate the request would likely to lead to multiple requests that the Regional Water Boards will have limited resources to process and address. Accordingly, no changes have been made to this provision.
34	4	City of Napa	E.7	CBSM is a time-consuming process that is not the best approach for Napa. Napa should not have to deviate from its current local program and its procurement processes at the unilateral direction of the Regional Board EO.	USEPA has developed a document that identifies principles of CBSM. See http://www.epa.gov/owow/watershed/outreach/documents/getnstep.pdf The Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their authority to require CBSM as specified in (Wat. Code §13377.)
34	5	City of Napa	E.11.i	This provision is unnecessary and should have no application to Napa. To burden Napa with the additional requirements of this section is unreasonable in light of the efforts Napa has already taken.	Comment noted.
34	6	City of Napa	E.12	In 1973 the voters in Napa established the basis for what has become the City's Rural Urban Limit (RUL), an urban growth boundary identifying a limited area subject to urban development that includes "smart growth" principles. However, the volume and flow criteria in section E.12 will prevent Napa from achieving the goals of the RUL. Section E.12 requirements does not accommodate infill and redevelopment projects because achieving the volume and flow criteria demand more land than such projects have available.	Listed under "Exceptions to Requirements for Bioretention Facilities" is Smart growth projects. Section E.12.ii(i)(3).
34	7	City of Napa	E.13.c	Napa believes that the Draft Permit's monitoring requirements as a whole are excessive and not required by the CWA and its implementing regulations.	40 CFR 122.26(d)(2)(v) and 122.34(g) requires MS4s to assess controls and the effectiveness of their stormwater programs. Water Quality Monitoring is the most direct—and usually the best—approach to evaluating the effectiveness of a program. Additionally, Special Studies allow for ongoing monitoring efforts for specific projects. In this case, monitoring can be conducted for existing flood control, habitat enhancement and stream restoration projects.
34	8	City of Napa	E.16.c	While part of NCSPPP, Napa administers its own stormwater program and is separately enrolled under the Permit.	This permit provision has been revised to address the comment.
34	9	City of Napa	Fact Sheet Section III	Instead of relying on outdated studies of Phase I program costs, the State Board should conduct a true cost assessment of the controls required. State Board should then assess these costs in light of actual estimates of the pollutant control benefits to be achieved by each control. Napa included an attachment that estimates cost of Draft Permit implementation.	Please see Section III, Economic Consideration of the Fact Sheet. Please see Economic considerations in Fact sheet. In addition, as part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater, 2) NPDES stormwater 3) Irrigated lands, and 3) Waste discharge requirements (WDR).

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
34	10	City of Napa	Fact Sheet - Unfunded Mandates	Napa contends that the new programs and higher levels of service in the Draft Permit constitute unfunded state mandates, for all the reasons expressed in the SSC letter.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program “designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.
35	1	City of Redding	Throughout	The Permit imposes compliance costs which are not feasible or sustainable; the process for implementing the permit is unclear and leaves permittees vulnerable to legal challenge; and parts of the permit are redundant and unreasonably specific.	Please see Section III, Economic Consideration of the Fact Sheet. In addition, as part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater, 2) NPDES stormwater 3) Irrigated lands, and 3) Waste discharge requirements (WDR).

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
35	2	City of Redding	Throughout	The Permit exposes Permittees to enforcement actions and lawsuits even if the discharger is fully implementing its stormwater program. The Board has not used its discretion to allow dischargers to comply with water quality criteria over time through the iterative process.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.
35	3	City of Redding	E.14	The requirement to annually quantify subwatershed pollutant loads and estimate loads reduced by BMPs is excessive and will not add value to stormwater programs.	This permit provision has been deleted.
35	4	City of Redding	Throughout	Regional Board has great discretion with open ended terms and provisions which presents potentially costly uncertainties for communities. Such uncertainties will not be known until after the permit is adopted and too late to effectively make changes.	The Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their designation discretion accordingly, as specified in (Wat. Code §13377.)
36	1	City of Rocklin		Support of California Stormwater Quality Association's Cover Letter and Technical Comments.	Comment noted.
36	2	City of Rocklin		Support of Statewide Stormwater Coalition Comments.	Comment noted.
36	3	City of Rocklin		Support of Other Entities' Comments	Comment noted.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
36	4	City of Rocklin	Throughout	Because several major provisions of the permit will be mandated at the discretion of the Regional Board Executive Officer after permit adoption, the City is unable to accurately estimate what the costs of implementation will be under the current draft permit.	The Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their designation discretion accordingly. In addition, as part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater 2) NPDES stormwater 3) Irrigated lands, and 4) Waste discharge requirements (WDR).
37	1	City of Rohnert Park	Throughout	The draft permit pays too much attention to low risk activities at the expense of large risk activities. A few years ago the Federal EPA relaxed requirements on low risk Industrial User inspections for wastewater in order to concentrate on users posing a greater risk. This permit does the opposite. It requires attention and reporting of very low risk elements which will detract from the ability of municipalities to monitor higher risk elements.	The draft permit was developed using USEPA's MS4 Improvement Guide, April 2010 EPA 833-R-10-001 and represents the direction that USEPA is taking to strengthen the program. The Guide focused on Phase II MS4s and was developed to facilitate the creation of MS4 permits which are clear, consistent with applicable regulations. In addition, the draft permit focuses on areas where the State Water Board has determined as priorities, ASBS and TMDLs.
37	2	City of Rohnert Park	Throughout	The paperwork and reporting requirements contained in the permit exceed those in other State regulatory frameworks. There are many laws pertaining to public works construction so this provides a ready comparison. Section E.7.b.2.b requires construction outreach and training for contractors working in the city. It requires that the City provide an annual report on training topics covered, dates of training contractors attending training, and results of surveys to demonstrate potential behavioral changes. The requirement is vague as to the extent of training required and to whom training must be given. This places a burden on the City to monitor, enforce and report training of contractor personnel for storm water training.	This permit provision has been revised to address the comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
37	3	City of Rohnert Park	Throughout	<p>The balance between paperwork and effective maintenance is skewed and misplaced. As noted above there are two types of work required by the permit: (1) Work that actually protects the environment, and (2) paperwork. We believe that the paperwork cost is excessive and detracts from the resources that can be devoted to actually protecting the environment. The tracking and reporting requirement doubles the workload involved in these inspections.</p> <p>Doing this tracking and reporting will reduce the time available for inspection and correction.</p>	<p>An important part of any municipal stormwater program is to document and track information on activities the permittee undertakes to comply with the Permit Requirements. Tracking should be integrated into each of the program elements.</p> <p>The permittee must develop a tracking system to monitor implementation of its various programs in order to document the permittee's compliance with its Permit Requirements, such as the number of construction sites and industrial facilities inspected. In addition, the tracking system will allow the permittee to monitor the compliance status of those entities within its jurisdiction, such as construction sites and industrial facilities, and to ensure compliance of municipally-owned and operated facilities.</p> <p>Any tracking system should be coordinated with the monitoring and evaluation programs developed by the permittee. Ideally, a monitoring and evaluation program will link the "actions" (e.g., the inspections, maintenance, education and other activities the permittee implements) with the "results" (e.g., water quality monitoring data, improvements in environmental indicators) of the monitoring program.</p> <p>In addition, adequate tracking is necessary to generate and provide reports of program progress not only to the permitting authority, but to a permittee's internal management for planning and funding purposes.</p>
37	4	City of Rohnert Park	Throughout	<p>The costs for excessive paper work cannot be reasonably funded. There is no funding source for this outside of the general fund. Municipalities like Rohnert Park will be forced to choose between the requirements of this permit and other functions such as police and fire protection and roads maintenance, at a time when municipalities are facing unprecedented budget pressures. Clean water is important, but the paperwork burden associated with this permit does not clean water and is much of the expense of the program. Further, we question whether the cost estimate is accurate.</p>	<p>Please see Section III, Economic Consideration of the Fact Sheet. Please see Economic considerations in Fact sheet. In addition, as part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater, 2) NPDES stormwater 3) Irrigated lands, and 3) Waste discharge requirements (WDR).</p>
37	5	City of Rohnert Park	Throughout	<p>Support Russian River Watershed comment letter.</p>	<p>Comment noted.</p>
38	1	City of Roseville, City Council	Throughout	<p>Support California Stormwater Quality Association letter.</p>	<p>Comment noted.</p>
38	2	City of Roseville, City Council	Throughout	<p>We appreciate the efforts of State Board staff to respond to our initial request to re-draft the permit and to engage in discussion on permit concerns. These discussions were facilitated through the California Stormwater Quality Association (CASQA) Phase II subcommittee. While we were able to reach general agreement on many areas of the Permit, significant issues and concerns remain. These issues are thoroughly documented within the attached legal opinion as well as the CASQA and SSC comment letters.</p>	<p>Comment noted.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
38	3	City of Roseville, City Council	Throughout	The 2nd draft Permit is economically infeasible. Jurisdictions during this economic downturn have neither staff nor resources capable of responding to increased requirements. For instance, there are over 130 specific tasks that must be completed within the first five years of the Permit. The reality of local government's limited funds must be addressed within the Permit through safe-harbor provisions for permittees who are fiscally unable to comply.	Please see Section III, Economic Consideration of the Fact Sheet. Please see Economic considerations in Fact sheet. In addition, as part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater, 2) NPDES stormwater 3) Irrigated lands, and 3) Waste discharge requirements (WDR).
38	4	City of Roseville, City Council	Throughout	The City of Roseville respectfully requests that the State Board thoroughly review and respond to all issues presented. Special attention should be provided to the issues associated with the following: Receiving Water Limitation Language, Regional Board Discretion, Alignment with the Clean Water Act, and Permit Front Loading.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
38	5	City of Roseville, City Council	Section D	The language as included in the 2nd draft Permit places all Phase II MS4s at significant risk for water quality violations and third party lawsuits. It is incumbent upon the State Board Members to fully understand the issues presented by permittees, revisit this language and revise it to protect permittees from the real dangers currently imposed in the 2nd draft Permit. The BB&K letter provides a complete analysis of the difficulties and dangers with the current language as presented in the 2nd draft Permit. CASQA has also provided suggested language to address these concerns. The CASQA and BB&K proposed language would rectify the language in keeping with the stated intent of the State Board in working with Permittees through an iterative process to address water quality challenges.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.
38	6	City of Roseville, City Council	Throughout	The 2nd draft Permit leaves several areas open for determination by the executive officer of a local Regional Water Quality Control Board. The 2nd draft Permit does not provide any criteria for executive officers to use in making these determinations. This leaves Permittees “hanging” in terms of being able to fully understand the implications of the 2nd draft Permit. This is especially true as it relates to budgetary needs to achieve compliance.	The Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their discretion accordingly, as specified in (Wat. Code §13377.)
38	7	City of Roseville, City Council	Throughout	Many provisions within the 2nd draft Permit do not align with the clear language of the federal Clean Water Act. In some places the 2nd draft Permit misinterprets the federal language or court findings related to the Clean Water Act. These areas of misalignment and misinterpretation are described within the attached BB&K letter.	Comment noted.
38	8	City of Roseville, City Council	Throughout	Staff concluded there are over 130 specific tasks that must be completed within the 5 year permit term. Of the over 130 tasks counted, 89% of the tasks must be started or completed on or before the end of the third year of the Permit. This front-loading of permit requirements will be exceedingly challenging for Phase II Permittees to accomplish.	Comment noted.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
39	1	City of Roseville, Environmental Services Department	E.6.c.(ii) d [page 22]	Please include the State web address utilized to submit non---filer information. . Permittees will not inspect industrial facilities. Permittees will only interface with industrial facilities on a complaint basis for illicit discharges and not routine inspection. This process will be very resource intensive for the Permittee and somewhat redundant with already existing State programs.	Comment noted.
39	2	City of Roseville, Environmental Services Department	E.7.a(ii)(k) [page 26]	Charity car washes, mobile cleaning and pressure washing operations and irrigation activities are not always known to the Permittee. This makes it very difficult for a Permittee to measure a reduction	This permit provision has been revised to address this comment.
39	3	City of Roseville, Environmental Services Department	E.12.d.2.ii.3 [page 52]	In this item states "Runoff from remaining impervious DMAs must be..." Please explain remaining from what? Do you really mean remaining runoff from impervious DMAs?	Comment noted.
39	4	City of Roseville, Environmental Services Department	E.12.d.2.ii.3 [page 52]	There is no allowance given to sites that have low soil permeability.	In the case that site design measures are infeasible, the permit allows for the use of biotreatment facilities with engineered soils.
39	5	City of Roseville, Environmental Services Department	E.12.f [pages 57 and 58]	The first section is confusing. Unlike other "Task Description" this starts out with a statement of fact and not a task element.	This permit provision has been revised to address this comment.
39	6	City of Roseville, Environmental Services Department	E.12.hii [page 62]	This section references post construction "structural" BMPs to be maintained, but permit says only bioretention can be used. Does bioretention fall under "structural" BMP or is this just referring to the proprietary structural vaults and filters currently installed.	A definition of structural BMPs will be added to the permit. (This revision was inadvertently omitted from the November 16, 2012 draft circulated)
39	7	City of Roseville, Environmental Services Department	E.12.j.9.i. [page 63}	Why mandate a local Zoning Ordinance Amendment?	This permit provision has been revised to address the comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
39	8	City of Roseville, Environmental Services Department	E.12.j.ii.a.ii [page 64]	The Permittee shall review and modify planning and building requirement language so that it includes, at a minimum: reduced parking ratios, parking within setbacks, flexible setbacks, etc.	This permit provision has been revised to address this comment.
39	9	City of Roseville, Environmental Services Department	E.12.j.ii.b. [page 64]	It is reasonable to require Permittees to amend General Plans to include stormwater policies. However, mandating changes to existing specific plans is not feasible in many instances for projects with development agreements. Can't unilaterally amend Specific Plans.	This permit provision has been revised to address this comment.
39	10	City of Roseville, Environmental Services Department	E.12.j.ii.a.ii . 1. and 2. [page 64]	Has the benefit of these measures to close gaps and remove impediments been quantified and what is the return on the cost of these measures? If a water quality value has been determined, consider an approach that offers these items as possible measures "or others that have equal or better water quality benefit/value". Some these have significant effect on the way a community looks and may create other issues.	This permit provision has been revised to address this comment.
39	11	City of Roseville, Environmental Services Department	E.14.a.(ii).a [page 71]	Programmatic BMPs should be the focus for Effectiveness Assessment as opposed to individual BMPs.	See permit for changes.
40	1	City of San Diego	Attachment B	Due to the increased compliance burden within Areas of Special Biological Significance within watersheds where impairments are listed, or where Total Maximum Daily Loads are being developed or adopted, the City is requesting additional entities be incorporated in Attachment B.	Community colleges or Transit Agencies are not automatically designated under this Order. However, the Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their designation discretion accordingly.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
41	1	City of San Jose, Environmental Services Department	Provision D	<p>Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the Importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognizes current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period.</p>	<p>The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.</p>
42	1	City of San Luis Obispo	Throughout	<p>The City of San Luis Obispo supports the comments from CASQA and SSC.</p>	<p>Comment noted.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
42	2	City of San Luis Obispo	Provision D	<p>Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the Importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognizes current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period.</p>	<p>The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
42	3	City of San Luis Obispo	Throughout	Although the second draft permit claims to prescriptive and clear, it contains open-ended terms and provisions subject to interpretation by the Executive Officer of Regional Boards. For example, CBSM and Post-construction requirements for the Central Coast MS4s exceed those required for other permittees. No criteria are provided to determine how or when this determination would be made.	Under the Water Code, either the State Water Board or the Regional Water Boards have authority to issue NPDES permits (Wat. Code, §13377.) The State Water Board is issuing this Order; however Regional Water Board staff will continue to have the authority to evaluate compliance with permit conditions. The Regional Water Board Executive Officers also have discretion to designate entities under the Order, as well as to require renewal permittees to continue to implement their existing programs. In response to comments and recognizing the need for some level of statewide consistency in interpretation of Order provisions, the revised Order includes a dispute resolution process where there is disagreement between a Permittee and a Regional Water Board over the interpretation of any provision of the Order. Under the dispute resolution process, the Permittee should first attempt to resolve the issue with the Executive Officer of the Regional Water Board. If a satisfactory resolution is not obtained at the Regional Water Board level, the Permittee may submit the issue in writing to the Executive Director of the State Water Board or his designee for resolution, with a copy to the Executive Officer of the Regional Water Board. The issue must be submitted to the Executive Director within ten days of any final determination by the Executive Officer of the Regional Water Board. The Executive Officer of the Regional Water Board will be provided an opportunity to respond. The determination of the Executive Director or his designee will be considered a final decision of the State Water Board subject to judicial review under Water Code section 13330.
42	4	City of San Luis Obispo	E.7	Permittees have no legal authority to impose curriculum on schools. Further, the curriculum suggested has limited if any direct stormwater quality educational pieces.	This permit provision has been revised to address the comment. In addition, classroom education plays an integral role in any stormwater pollution outreach program. Providing stormwater education through schools conveys the message not only to students but to their parents. Many municipal stormwater programs partner with educators and experts to develop storm water-related programs for the classroom. These lessons need not be elaborate or expensive to be effective.
42	5	City of San Luis Obispo	E.9	Pollution Prevention/Good Housekeeping for permittee Operations indicates that the MS4s maintain an inventory of over 19 industrial business types, some of which are already covered under the IGP.	Permittees can download the information from State Water Board SMARTS, however, maintaining ownership of the inventory is crucial to the IDDE program. A Permittee should have an inventory of facilities in their jurisdiction to assist in to identifying possible illicit or illegal discharges.
42	6	City of San Luis Obispo	E.14.b	Pollutant Load Quantification is predicted to be a huge work load increase. This is an effort that could be readily collected by the Water Boards CCAMP (Central Coast Ambient Monitoring Program) since they are trained and have protocols for conducting these studies. This would be a duplicative effort to pass this along to the MS4 staff.	This provision has been deleted.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
42	7	City of San Luis Obispo	Throughout	The City of San Luis Obispo has a very comprehensive SWMP that was identified to meet MEP and was developed in conjunction with the local Regional Board. With funding limitations imposed by Prop 218, the City has adopted a decentralized approach to remain in compliance and have done well. With the increased work load in the new draft permit, we will have to rearrange the program to remain in compliance but also adopt some triage system since we will not have additional staff to help remain in compliance.	The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. It emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. BMP development is a dynamic process and may require changes over time as the Permittees gain experience and the science progresses. Accordingly, a SWMP that was considered to achieve MEP when approved may no longer represent MEP at a later date. On the other hand, the Tentative Order recognizes that, where an existing program of BMPs is equally or more effective at reducing pollutants, for region-specific or MS4-specific reasons, than the requirements of a given subsection of the Tentative Order, the Regional Water Board can require continued implementation of that SWMP. See Section E.1. This approach intends to strike a balance between the need to update storm water programs with advancing knowledge and technology and avoiding re-inventing the wheel where a program is already achieving MEP as defined by the updated permit.
43	1	City of Santa Barbara, Parks and Recreation Department	Throughout	Many of the requirements in the 2nd Draft General Permit still exceed the MEP standard.	The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. It emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. BMP development is a dynamic process and may require changes over time as the Permittees gain experience and the science progresses. Accordingly, a SWMP that was considered to achieve MEP when approved may no longer represent MEP at a later date. On the other hand, the Tentative Order recognizes that, where an existing program of BMPs is equally or more effective at reducing pollutants, for region-specific or MS4-specific reasons, than the requirements of a given subsection of the Tentative Order, the Regional Water Board can require continued implementation of that SWMP. See Section E.1. This approach intends to strike a balance between the need to update storm water programs with advancing knowledge and technology and avoiding re-inventing the wheel where a program is already achieving MEP as defined by the updated permit.
43	2	City of Santa Barbara, Parks and Recreation Department	Throughout	Several permit provisions in the 2nd Draft General Permit appear to be unfunded mandates that are above and beyond the federal requirements.	Comment noted. Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program “designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
43	3	City of Santa Barbara, Parks and Recreation Department	E.13	The water quality monitoring requirements have been revised to a more reasonable level, but would still require an excessive use of limited local agency resources, and would be an unfunded mandate from the State.	40 CFR 122.26(d)(2)(v) and 122.34(g) requires MS4s to assess controls and the effectiveness of their stormwater programs. Water Quality Monitoring is the most direct—and usually the best—approach to evaluating the effectiveness of a program.
43	4	City of Santa Barbara, Parks and Recreation Department	E.1.b	The primary concern the City has is section E.1.b. The City strongly supports the option this section offers, which enables a Regional Board Executive Officer to permit continued implementation of the Permittee's current BMPs and reporting requirements in lieu of implementing the requirements of a particular section in the General Permit. The City opposes the inclusion of the exceptions for Post-Construction and Monitoring.	This permit provision has been revised to address the comment.
44	1	City of Santa Maria	Section D	Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the Importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognizes current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
44	2	City of Santa Maria	E.1.b	This provision should be changed in two ways: (1) Permittees should be able to request to the Regional Board EO allow continuation of existing BMPs in lieu of the requirements in the General Permit. Continuance of a current program should only be required when requested by the discharger and approved by the RB EO. (2) If the decision remains a unilateral one made by the RB EO, Permittees should be permitted as allowed by the Water Code section 13320 - to petition the Regional Board's decision to the State Board.	Staff expects this provision to be invoked in only a limited number of cases where the existing program is clearly equivalent to the requirements of the Order in reducing pollutant discharges. In general, staff believes that the permit requirements are more effective than existing programs. Allowing dischargers to initiate the request would likely to lead to multiple requests that the Regional Water Boards will have limited resources to process and address. Accordingly, no changes have been made to this provision.
44	3	City of Santa Maria	E.6.a.ii.h and i	Both the United States and California Constitutions limit the ability of Permittees to enter private property for purposes of inspection. Permittees simply lack the legal authority to unilaterally enter private property. Rather, Permittees must obtain consent to enter private property or, absent consent, must obtain an inspection warrant.	Appropriate operation and maintenance are critical aspects to the function of any suite of controls. In many cases, controls may be located on private property, and it is necessary to establish some provision to assure responsibility and accountability for the operation and maintenance of these controls. This permit provision has been revised to address the comment.
44	4	City of Santa Maria	E.6.b. i - iii	One certification by either the Permittee's authorized signatory or legal counsel should be required, not both. Additionally, review of ordinances is required in year two and certification in year one.	Certification is required to certify compliance of the draft permit provisions. Therefore, it is essential that certification is completed within the first year of the permit.
44	5	City of Santa Maria	E.6.c	An Enforcement Response Plan is redundant and unnecessary because Santa Maria's enforcement policy and authority is already set forth in its Municipal Code. Compliance with the City's Municipal Code is a consideration taken into account by the City under the City's own rules when it considers permits; it need not concern the State. In addition, the State, not Santa Maria, is responsible for enforcing the IGP and CGP.	An ERP is necessary because most if not all Permittees' Stormwater Ordinances do not include enforcement response procedures.
44	6	City of Santa Maria	E.7	There is no legal requirement to use a particular type of public outreach, and the decision on how best to satisfy the requirement to develop an education and outreach program is best left to Permittees.	The Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their discretion accordingly, as specified in (Wat. Code §13377.).
44	7	City of Santa Maria	E.7.b.2.a.	The requirement that plan reviewers, permitting staff and inspectors be certified as QSDs or QSPs is excessive and beyond the requirements of the Phase II regulations. Currently, the City's planners are not certified. The City believes it is costly and redundant because the private consultants who develop and implement SWPPPs for local projects are already certified.	Erosion Sediment Control/Storm Water Inspectors must be qualified individuals, knowledgeable in inspection procedures. The draft order requires one designated staff or an individual supervising inspectors to be certified pursuant to a State Water Board sponsored program as either a Qualified SWPPP Developer (QSD) or a Qualified SWPPP Practitioner (QSP) program. The designated staff or the individual supervising inspector can complete the QSP and QSD training. That is, require the completion of the QSP or QSD course and pass the exam, but do not require completion of the underlying certification (e.g. CPESC, CISEC, PE, PG).

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
44	8	City of Santa Maria	E.9.c.(i)	This section presents unique challenges to the City. The City is located downstream of significant agricultural land uses. The Central Coast Regional Board has acknowledged in the FIB TMDL that the City's system is "complex because the stormwater within the City's jurisdiction is a mix of agricultural return flows coming in the City from the east and of urban runoff within the City limits" and that "comingled water makes source analysis challenging". Run-on flows are already above water quality standards. Additionally, due to agricultural flows, outfalls do flow in dry weather.	Staff recognizes the diverse conditions of Permittee jurisdictions throughout the state of California. In this case, the Permittee may continue to work collaboratively with the local Regional Water Board to establish an outfall sampling program that is conducive to the unique conditions at hand.
44	9	City of Santa Maria	E.9.c.(ii).(a) and (b)	Due to combined flow in the City's system, the data samples will be useless in determining illicit discharges. This "one size fits all approach" will result in sampling that yields little useful information.	Please see response to comment number 8.
44	10	City of Santa Maria	E.12.d.2	This section is problematic for two reasons (1) Santa Maria is well-suited to achieve significant groundwater recharge through a citywide approach using existing or planned facilities. The site-specific approach for every project will inhibit this important reuse opportunity. (2) This requirement will demand additional civil engineering work to prepare additional plan sheets for the grading and drainage plan. This may be feasible on larger development but cost-prohibitive on smaller ones. Also, it will increase plan review by more City departments an more "finished plans" at an earlier stage.	This permit provision has been revised to address this comment.
44	11	City of Santa Maria	E.12.i	There is no technical or legal justification for carving the entire Central Coast Region out of a major section of the Draft Permit, a statewide general permit. Santa Maria and others within the Central Coast Region should be on an equal footing with other municipal dischargers unless there are compelling reasons (absent here) to do otherwise.	Staff does not agree that this provision should be deleted. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures. In relation to the Central Coast Joint Effort, a watershed process-based approach is already being used for Phase II MS4s that participated in the Central Coast Joint Effort for developing hydromodification control criteria.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
44	12	City of Santa Maria	E.12.j	Local land use and planning is properly left within the City's local discretion. Unless law is amended to require the City to include certain considerations in its General Plan, local zoning ordinance, and other planning documents, the State Board should not tell Santa Maria what local land use issues it must consider. Some of the specific requirements of this Section E.12.j may not be appropriate for the City.	This permit provision has been revised to address the comment.
44	13	City of Santa Maria	E.13.b.1.(ii).(d)	The ability for Santa Maria to establish a monitoring fund is governed by limitations under state law, including California Constitution Article XIII B. The State Board cannot compel dischargers to establish a fund in contravention of state law.	This permit provision has been revised to address the comment.
44	14	City of Santa Maria	E.13.b.2.(i)	The receiving water monitoring that is required by this Section will be redundant with the TMDL monitoring that Santa Maria is already required to do.	This permit provision has been revised to address the comment. Please see Monitoring Flow Chart.
44	15	City of Santa Maria	E.13.b.2.(ii)	Monitoring requirements will be costly, especially in addition to the illicit detection monitoring and the TMDL monitoring. The City would have to hire more staff.	Please see Section III, Economic Consideration of the Fact Sheet. Please see Economic considerations in Fact sheet. In addition, as part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater, 2) NPDES stormwater 3) Irrigated lands, and 3) Waste discharge requirements (WDR).
44	16	City of Santa Maria	E.14.b	The pollutants of concern are already known and identified in the current 303(d) list impairments. These requirements do not help the City address known impairments. To the contrary, they require the City to start from scratch and address pollutants that may have no relevance to the City. These provisions merely add work with no meaningful purpose or anticipated outcome.	This provision has been deleted.
44	17	City of Santa Maria	Fact Sheet - Section III	The State Board's discussion of economic considerations misses the mark on the balance between resources spent and effective outcomes.	Please see Section III, Economic Consideration of the Fact Sheet. Please see Economic considerations in Fact sheet. In addition, as part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater, 2) NPDES stormwater 3) Irrigated lands, and 3) Waste discharge requirements (WDR).

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
44	18	City of Santa Maria	Fact Sheet Section IV	Santa Maria disagrees with the State Board's unfunded mandates analysis. EPA's Phase II regulations expressly provide that the six minimum control measures, when properly implemented "will reduce pollutants to the maximum extent practicable". Because the Draft Permit contains many requirements beyond the six minimum control measures, it contains unfunded state mandates.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program "designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act," (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CRF 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.
45	1	City of Santa Rosa	Throughout	The Draft Permit creates a program that is completely distinct from the existing Phase I program. The great level of inconsistency prevents Phase II Permittees who choose to apply for coverage under the statewide permit from participating in regional programs with larger Phase I communities.	In accordance with Code of Federal Regulations section 122.34(b)(3), a Regulated Small MS4 in the same urbanized area as a medium or large MS4 may jointly with the medium or large MS4 seek a modification of the other MS4s permit to be added as a limited co-permittee. As such, the Phase II Permittees can participate in a regional program with a larger Phase I community. See section A. Application Requirements. Any Small MS4s designated under this Order that chooses instead to apply for an individual permit or request to join the permit of a Phase I Permittee must notify the Regional Water Board of its intent to do so within six months of the General Permit effective date.
45	2	City of Santa Rosa	Throughout	From a Phase I perspective, the Draft Permit is largely unimplementable. (1) Many of the provisions require a specific result as opposed to a specific action and as such expose Permittees to third party lawsuits (2) Many of the provisions are not technically feasible or do not provide enough specific information to be implemented (3) The level of reporting is excessive and provides no water quality benefit.	The draft permit was written based on the U.S. ENVIRONMENTAL PROTECTION AGENCY MS4 Improvement Guide, APRIL 2010 EPA 833-R-10-001. R: An important part of any municipal stormwater program is to provide reports of program progress not only to the Regional Water Board , but to a permittee's internal management for planning and funding purposes.
45	3	City of Santa Rosa	Throughout	The City of Santa Rosa supports the comments submitted by the Russian River Watershed.	Comment noted.
45	4	City of Santa Rosa	Section A [page 13]	Is there a formal process for Phase II to notify their Regional Board? How shall notification be documented to demonstrate compliance to a third party?	See section A. Application Requirements. Any Small MS4s designated under this Order that chooses instead to apply for an individual permit or request to join the permit of a Phase I Permittee must notify the Regional Water Board of its intent to do so within six months of the General Permit effective date.
45	5	City of Santa Rosa	Section A.1.b.4 [page 14]	It is unclear what is meant by "Guidance Document". Is this a "Storm Water Management Plan" or another document?	Please see Fact Sheet discussion for Guidance Document requirements.
45	6	City of Santa Rosa	Section B.3. [page 16]	List of non storm water discharges does not match those listed in the Region 1 Phase I Permit. These non storm water discharges are categorically allowed but the minimum BMPs are not specified. This type of generic language exposes Phase II Permittees to third party lawsuits.	Comment noted. The list of non-storm water discharges is derived from the federal regulations.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
45	7	City of Santa Rosa	Section B.4 [page 16]	It is unclear if this section is meant to apply to incidental runoff from irrigation only or both irrigation and municipal water supply systems.	This permit provision has been revised to address the comment.
45	8	City of Santa Rosa	B.4.e. [page 17]	The over arching language in this section particularly exposes Permittees to third party lawsuits. It would be very difficult to prove that the Permittee had taken "any other actions necessary" even with their best efforts.	This permit provision has been revised to address the comment.
45	9	City of Santa Rosa	Section D. [page 17]	Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the Importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognizes current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.
45	10	City of Santa Rosa	E.1.b [page 18]	This section states that all renewing Permittees must implement monitoring programs as specified by this Order. However, none of the Phase II Permittees in our region fall within the criteria established in Section E.13's monitoring programs.	This permit provision has been revised to address the comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
45	11	City of Santa Rosa	E.6.a. [page 19]	The requirement seems to require that the Permittees to write new storm water ordinances or take other measures to expand their legal authority. This is a very involved and time intensive process.	Adequate legal authority is required to implement and enforce most parts of a Permittees storm water program. (See 40 CFR 122.26(d)(2)(i) and 40 CFR 122.34(b)(3)(ii)(B), (b)(4)(ii)(A), and (b)(5)(ii)(B)). Without adequate legal authority the MS4 would be unable to perform many vital Storm water program functions such as performing inspections and requiring installation of control measures. In addition, the permittee would not be able to penalize and/or attain remediation costs from violators. If the Permittees existing ordinance does not contain the minimum requirements listed in the draft permit, then the Permittee must amend or take other measures to expand their legal authority. However, If the Permittee can use their existing authority to implement the permits minimum requirements then no additional action is needed.
45	12	City of Santa Rosa	E.6.a.(ii)(h) [page20]	The requirement to enter private property is not consistent with the Phase I permit and may not be legally obtainable by the Permittees.	Appropriate operation and maintenance are critical aspects to the function of any suite of controls. In many cases, controls may be located on private property, and it is necessary to establish some provision to assure responsibility and accountability for the operation and maintenance of these controls. This permit provision has been revised to address the comment.
45	13	City of Santa Rosa	E.6.a.(ii)(i)(1-2) [page 20]	The timeframe specified for abatement of spills is inconsistent with the Phase I Permit.	Comment noted.
45	14	City of Santa Rosa	E.6.a.(ii)(j)(1-2) [page 20]	The requirement to be able to administer fines and collect costs will require significant work to establish and may not be feasible for small communities, nor is it required in the Phase I permit.	Permittees are required by the Phase I and Phase II regulations to include in their ordinance, or other regulatory mechanism, penalty provisions to ensure compliance with construction and industrial requirements, to require the removal of illicit discharges, and to address noncompliance with post- construction requirements. In complying with these requirements, USEPA recommends the use of enforcement responses that vary with the type of permit violation, and escalate if violations are repeated or not corrected. EPA recommends that the permittee be required to develop and implement an enforcement response plan (ERP), which clearly describes the action to be taken for common violations associated with the construction program, industrial and commercial program, or other Storm water programs. A well-written ERP provides guidance to inspectors on the different enforcement responses available, actions to address general permit non-filers, when and how to refer violators to the State, and how to track enforcement actions.
45	15	City of Santa Rosa	E.6.b.(ii)(a-e) [page 21]	These requirements are time intensive without providing a direct water quality benefit nor are they required by the Phase I permit.	Certification is required to certify compliance of the draft permit provisions.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
45	16	City of Santa Rosa	E.6.c.(ii)(d)(1)(a-d) and (2)(a-e) [page 22]	This language inappropriately places the responsibility of verifying and tracking applicants for other State permits on the Phase II Permittee.	Staff disagrees. The draft permit requires Permittees to ensure compliance with local ordinances/policy not State permits.
45	17	City of Santa Rosa	E.6.c.(ii)(d)(2)(f) [page 23]	The recidivism reduction language exposes Permittees to third party lawsuits.	Comment noted: The draft permit was written based on the U.S. EPA's MS4 Improvement Guide, APRIL 2010 EPA 833-R-10-001 where this provision is recommended. The provision is also common in many MS4 permits in CA. For example, the 2009 San Francisco Bay Municipal Regional Stormwater Permit (Order No. R2-2009-0074; www.swrcb.ca.gov/sanfranciscobay/board_decisions/adopted_orders/2009/R2-2009-0074.pdf) and the Los Angeles MS4 Permit (Part 3; www.swrcb.ca.gov/rwqcb4/water_issues/programs/stormwater/municipal/ms4_permits/los_angeles/2001-2007/LA_MS4_Permit2001-2007.pdf)
45	18	City of Santa Rosa	E.6.c.(iii) [page 23]	This level of reporting is not required for Phase I Permittee.	Comment noted
45	19	City of Santa Rosa	E.7.a.(i) [page 24]	It is unclear what is meant by "targeted communities" and how they would be selected. It is also unclear how the Permittee would demonstrate a "measurable increase" in knowledge.	There is a great deal of guidance available on the issue of developing outreach and education for storm water awareness, including the glossary of terms. Please see the EPA's Getting in Step series which addresses McKenzie-Mohr's work on community-based social marketing (McKenzie-Mohr and Smith, 1999; Fostering Sustainable Behavior website), and the Communications Toolkit from Cause Communications (Hershey, 2005).
45	20	City of Santa Rosa	E.7.a(ii)(a) [page 25]	It is unclear what "water quality problems" would need to be addressed and how they would be selected.	There is a great deal of guidance available on the issue of developing outreach and education for storm water awareness, including the glossary of terms. Please see the EPA's Getting in Step series which addresses McKenzie-Mohr's work on community-based social marketing (McKenzie-Mohr and Smith, 1999; Fostering Sustainable Behavior website), and the Communications Toolkit from Cause Communications (Hershey, 2005).
45	21	City of Santa Rosa	E.7.a.(ii)(b) [page 25]	The requirement to complete two surveys during the permit term is above and beyond what is required by the Phase I permit, which requires one survey during the permit term.	The underlying principle of any public education and outreach effort is to change behaviors. The permittee must develop a process to assess how well its public education and outreach programs is changing public awareness and behaviors and to determine what changes are necessary to make its public education program more effective. This assessment of public education programs is typically conducted via surveys. The permittee is encouraged to use a variety of assessment methods to evaluate the effectiveness of different public education activities. EPA's Getting In Step: A Guide to Effective Outreach in Your Watershed (www.epa.gov/watertrain/gettinginstep/) can provide useful information on setting up and conducting the evaluations.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
45	22	City of Santa Rosa	E.7.a.(ii)(h) [page 25]	It is unclear what is meant by "daily" frequency for checking the non-emergency number is intended to mean normal working day.	Daily" means normal working day and to have emergency personnel respond to after hour emergencies.
45	23	City of Santa Rosa	E.7.a.(ii)(l) [page 26]	The requirement to target organized car washes is above and beyond what is required in the Phase I Permit.	Staff disagrees. There has been documented cases of organized/fundraiser car washes contributing to degradation of storm water quality in local water ways such as fish kills. The Sacramento Stormwater Quality Partnership's (SSQP) has an active River-Friendly Fundraiser Carwash Program. The River-Friendly Fundraiser Carwash Program was developed to provide guidance and help facilitate successful fundraiser carwashes while protecting local creeks and rivers from the pollution that can be carried in the wastewater from carwashing activities.
45	24	City of Santa Rosa	E.7.b.2.(ii)(a-b) [page27]	The requirement to have all city staff who review sediment and erosion control plans and inspect projects be QSD/QSP certified is above and beyond what is required in the Phase I permit.	This permit provision has been revised to address the comment.
45	25	City of Santa Rosa	E.9.a(i) [page 30]	Clarify mapping requirement. This requirement is considered fundamentally important for any storm water program.	Staff disagrees. The mapping requirement is succinct and clear.
45	26	City of Santa Rosa	E.9.a(ii)(a) [page 30]	Requiring the mapping of drainage areas and land uses is above and beyond what is required by the Phase I Permit. This information would not change the level or method of response.	Staff disagrees. The U.S.EPA MS4 Permit Improvement Guide recommends mapping.
45	27	City of Santa Rosa	E.9.a.(ii)(b) [page 30]	The requirement to include baseline photographs is above and beyond Phase I requirements. Huge work load, will not change level of response, will not provide water quality benefit, difficult to implement.	Staff disagrees. In order to trace the origin of a suspected illicit discharge or connection, the permittee must have an up-to-date map of its storm drain system. This is critical in order to isolate the potential source of the non-stormwater discharges and the areas of potential impact. The provision identifies photographs or an electronic database in order to demonstrate compliance. Photographing of outfalls as required in section E.9.a has been made optional. Staff does not agree that photographing outfalls provides little or no practical information about water quality discharges. Visual representations of outfalls are extremely useful.
45	28	City of Santa Rosa	E.9.a.(ii)© 1-5 [page 30-31]	Priority Areas is above and beyond what the Phase I permit requires. Requirement would not change level or method of response, will not provide a direct water quality benefit. Every area in our region drains to a 303d listed waterbody so entire region would be a priority area.	Staff disagrees. The permit requires an evaluation of the permittee's neighborhoods and land uses to identify areas that are more likely to have illicit discharges. These areas must be prioritized for more frequent screening and investigations. The identification of priority areas must include "hotspots" or areas where dumping, spills, or other illicit discharges are a common occurrence. These hotspots will help identify potential field screening locations and may help target educational activities. For example, if evidence of motor oil dumping is found quite frequently and traced to the same apartment complex, information about motor oil disposal could be distributed to residents in response.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
45	29	City of Santa Rosa	E.9.b [page 31 -32]	Inventory will impose huge work load for even a Phase I Permittee. Information would not yield vital information or direct water quality benefit.	Staff disagrees. In order to trace the origin of a suspected illicit discharge or connection, the permittee must have an inventory of industrial/commercial facilities/sources within their jurisdiction. This is critical in order to isolate the potential source of the non-stormwater discharges and the areas of potential impact.
45	30	City of Santa Rosa	E.9.b.(ii)© [page 32]	This language inappropriately places the responsibility of verifying and tracking applicants for other State permits on the Phase II Permittee.	Comment noted. The State Board is not passing responsibility to the Permittees to inspect and regulate state permits. However, the draft permit expects existing Permittee Inspectors to make a good faith effort to verify known non-filers of State general permits if already out in the field.
45	31	City of Santa Rosa	E.9.c [page 32-33]	This section is above and beyond the Phase I Permit, costly. In Santa Rosa area, almost all outfalls are continuously flowing, all drain to 303 (d) listed water bodies, all required to sample outfalls annually. Approximately 17,000 outfalls in this area, infeasible number to sample.	U.S.EPA MS4 Permit Improvement Guide requires the development of a dry weather field screening and analytical monitoring program for Phase II Permittees. An effective IDDE program is more than just a program to respond to complaints about illicit discharges or spills. Permittees must proactively seek out illicit discharges, or activities that could result in discharges, such as illegal connections to the storm sewer system, improper disposal of wastes, or dumping of used motor oil or other chemicals. U.S. EPA recommends that permittees refer to the Center for Watershed Protection's guide on Illicit Discharge Detection and Elimination (IDDE): A Guidance Manual for Program Development and Technical Assistance (IDDE Manual, available at www.cwp.org) when developing an IDDE program.
45	32	City of Santa Rosa	E.9.d.(ii)(a-e) and (iii) [page 33-34]	It is infeasible to identify and locate source of any prohibited non-storm water discharge within 72 hours of becoming aware. Often the source is unable to identify at all.	Staff disagrees. 72 hours is sufficient time to identify source. Permittees should make a good faith effort to document identification efforts for sources that are too difficult to identify.
45	33	City of Santa Rosa	E.9.d.(iii)(a-f) [page34]	This level of reporting is excessive, creates massive work load and provides no direct link to water quality benefit.	This permit provision has been revised to address the comment.
45	34	City of Santa Rosa	E.9.e.(iii) [page 35]	Above and beyond what is required in Phase I Permit.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program "designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act," (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CRF 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
45	35	City of Santa Rosa	E.10. [page 35]	Need a lower limit on project size threshold 'that disturb less than one acre of soil'. Some projects are so small that they don't require permitting. Without such a limit, Phase II permittees will be subject to third party lawsuits.	This permit provision has been revised to address the comment.
45	36	City of Santa Rosa	E.10.b(ii)© [page 36]	The language requiring that the applicant submit proof of obtaining other applicable permits to the Permittee prior to issuance of a grading permit will be administratively cumbersome and may present legal difficulties. This is specifically prohibited in the City of Santa Rosa and may be legally infeasible in other communities as well.	Staff does not agree that the sentence stating, "include as a condition of the grading permit that the operator submit evidence to the MS4 that all permits required for the project have been obtained prior to commencing soil disturbing activities" should be deleted. The erosion and sediment control plan should list all applicable permits that pertain to soil disturbance and its effects. The Construction General Permit, State Water Board 401 Water Quality Certification, U.S. Army Corps 404 Permit and California Department of Fish and Game 1600 Agreement are all required to be obtained prior to soil disturbance. Including the condition that evidence must be submitted prior to commencing soil disturbing activities is an appropriate measure to ensure compliance with the aforementioned State and Federal permits.
45	37	City of Santa Rosa	E.10.c(iii) [page37]	The level of reporting represents a large workload without a direct water quality benefit.	This permit provision has been revised to address the comment.
45	38	City of Santa Rosa	E.9.(a,d,e) [pages 38-39,40,41,42]	Above and beyond what is required in Phase I Permit.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program "designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act," (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CRF 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.
45	39	City of Santa Rosa	E.11.f and g [page 42-43]	Inconsistent with Phase I permit. Are 'catch basins' defined as structures with a sump?	Please see Glossary.
45	40	City of Santa Rosa	E.11.g.(ii)(a) [page43]	Inspecting a storm drain line is just as much work as cleaning it.	Comment noted.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
45	41	City of Santa Rosa	E.11.h. [page 43-44]	Inconsistent and above and beyond the Phase I Permit.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program “designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.
45	42	City of Santa Rosa	E.11.i [page 45]	Above and beyond what is required in Phase I Permit. Unclear if this is meant to apply to projects undertaken by Permittees only or all projects.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program “designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.
45	43	City of Santa Rosa	E.11.j [page 45-46]	Many sites irrigated with recycled water agency properties. This requirement is inconsistent with the Water Efficient Landscape Ordinance (WELO).	This permit provision has been revised to address the comment.
45	44	City of Santa Rosa	E.12.c [page 47 - 48]	Inconsistent with Phase I permit. Project size threshold is smaller and list of design measures is inconsistent.	Any Small MS4s designated under the General Permit can choose to apply for an individual permit or request to join the permit of a Phase I MS4 Permit. The Permittee must notify the Regional Water Board of its intent to do so within six months of the General Permit effective date.
45	45	City of Santa Rosa	E.12.d. [page 48-56]	Inconsistent with Phase I Permit. Missing information such as recurrence interval of design storm, makes this section unimplementable.	Any Small MS4s designated under the General Permit can choose to apply for an individual permit or request to join the permit of a Phase I MS4 Permit. The Permittee must notify the Regional Water Board of its intent to do so within six months of the General Permit effective date.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
45	46	City of Santa Rosa	E.12.d. [page 57-58]	Please clarify this section.	This permit provision has been revised to address this comment.
45	47	City of Santa Rosa	E.12.g.(ii)© [page 59]	The requirement to enter private property is not consistent with the Phase I permit and may not be legally obtainable by the Permittees.	Appropriate operation and maintenance are critical aspects to the function of any suite of controls. In many cases, controls may be located on private property, and it is necessary to establish some provision to assure responsibility and accountability for the operation and maintenance of these controls.
45	48	City of Santa Rosa	E.12.g(ii)(e) (8) [page 60]	The language as written exposes Permittees to third part lawsuits because it places the maintenance responsibility on the Permittee.	This permit provision has been revised to address this comment.
45	49	City of Santa Rosa	E.12.h [page 62]	Is the intent all post construction treatment BMPs as required under the Phase II Order? If so, language needs to be revised. Requiring inventory and assessment of BMPs for flood control and other not required by this permit is not appropriate and may constitute unfunded mandates.	This permit provision has been revised to address this comment.
45	50	City of Santa Rosa	E.12.j. [page 63]	If the intent is that the Phase II Permittees use their existing authority to implement the permit, the language needs to be revised to state that. The timeframe is short and may be problematic if the intent is to have the Permittees revise or create new documents.	This permit provision has been revised to address this comment.
45	51	City of Santa Rosa	E.12.j(ii)a.ii and E.12.j.(ii)b	The required items listed in these sections are land use planning issues and are not under the authority of the State Board and should be removed in favor of water quality objectives. The tasks are inappropriate and constitute large and infeasible work load.	This permit provision has been revised to address this comment.
45	52	City of Santa Rosa	E.13.(iii) [page 65]	The entire Santa Rosa region drains to a 303(d) listed water body so it is our understanding that the Phase II Monitoring program will be determined by the Regional Board and that the programs listed in this permit will not apply.	Regional Water Boards are autonomous entities responsible for water quality protection within their boundaries. While this permit is intended to achieve stateside consistency, there are slight nuances regionally based upon the varying degrees to which receiving waters need to be protected. Accordingly, the Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their designation discretion accordingly.
45	53	City of Santa Rosa	E.13.b.1 [page 67-68]	See above comment. However, determining LID BMP effectiveness would be infeasible even for a Phase I community with a funding source like Santa Rosa.	Comment noted.
45	54	City of Santa Rosa	E.13.b.2.(ii) [page 769-70]	See above comment. However, annual bioassessments will be cost prohibitive for Phase II Permittees. Not feasible even for Santa Rosa, Phase I with a funding source.	Any Small MS4s designated under the General Permit can choose to apply for an individual permit or request to join the permit of a Phase I MS4 Permit. The Permittee must notify the Regional Water Board of its intent to do so within six months of the General Permit effective date.
45	55	City of Santa Rosa	E.13.c [page70]	The timeline for the completion of this special study is unrealistic.	This permit provision has been revised to address the comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
45	56	City of Santa Rosa	E.14.a [page 71-73]	This section provides a high level of exposure to third party lawsuits. It is infeasible to implement. It is above and beyond what Phase I Permit requires, would require a huge work load. Specifics under 'implementation level' are very specific yet not clear.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program "designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act," (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.
45	57	City of Santa Rosa	E.14.b [page 73-74]	This section seems to overlap with monitoring requirements.	Comment noted.
45	58	City of Santa Rosa	E.14.b.(i) [page 73-74]	See previous comment. This list of constituents may be inconsistent with what is determined by the Regional Board or what is listed in a TMDL. The testing methods should be included.	Comment noted. The provision is left open for flexibility for Regional Water Board discretion. Additionally, Regional Water Boards are autonomous entities responsible for water quality protection within their boundaries. While this permit is intended to achieve stateside consistency, there are slight nuances regionally based upon the varying degrees to which receiving waters need to be protected. Accordingly, the Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their designation discretion accordingly.
45	59	City of Santa Rosa	E.14.c [page 74-75]	This language seems to place the responsibility of BMP monitoring and replacement on the Permittee. The associated cost with taking out a previously installed BMP, such as a raingarden, and replacing it with another BMP would be infeasible.	Comment noted. This provision was not intended to require removal of privately installed BMPs, but to use the mentoring information gained to guide future BMP installation decision making. In addition, if BMPs were municipally owned and not working as designed or intended, it behooves the Permittee to discontinue the BMPs that may no longer be productive and replace it with more effective BMPs.
45	60	City of Santa Rosa	E.15.d and E.16 [page 76-77]	Submittal through the SMARTS system has proven to be very difficult as the system is still undependable and difficult to navigate and sections seem to be missing.	This permit provision has been revised to address the comment.
45	61	City of Santa Rosa	E.16 [page 77]	Clarify how submittal of the first annual report happens. Depending on the date of adoption, the year may span two permits. This matters most for items that must be reported in the Year 1 Annual Report.	This permit provision has been revised to address the comment.
46	1	City of Solvang	Section E.7	We believe education and outreach programs are far more successful and cost effective when performed on a regional basis.	This permit provision has been revised to address the comment.
46	2	City of Solvang	Section E.10	The opening paragraph of this section is unclear.	This permit provision has been revised to address the comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
46	3	City of Solvang	Sections E.13 and E.14	The requirements of these sections are complex and very difficult for small local agencies to comply with.	This permit provision has been revised to address the comment.
46	4	City of Solvang	Section I	This section is unclear.	Comment is unclear. Please contact State Board staff to for response to comment.
47	1	City of Sonoma	Throughout	Please remove all requirements without a demonstrated water quality nexus.	Comment noted.
47	2	City of Sonoma	Throughout	Please provide more flexibility to support implementation and prioritization of the draft Permit by region or community.	Comment noted. Any Small MS4s designated under the General Permit can choose to apply for an individual permit or request to join the permit of a Phase I MS4 Permit. The Permittee must notify the Regional Water Board of its intent to do so within six months of the General Permit effective date.
47	3	City of Sonoma		Provide a clear, documented, regulatory path to allow implementation of existing programs.	This permit provision has been revised to address the comment.
47	4	City of Sonoma		Establish Phase II program requirements that are within the capacity of the current and anticipated resources of cities an counties or provide the funding necessary for implementation.	Please see Economic considerations in Fact sheet. In addition, as part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater, 2) NPDES stormwater 3) Irrigated lands, and 3) Waste discharge requirements (WDR).
47	5	City of Sonoma	Section B.	The Permittee should not be required to reduce the discharges from charity car washes, mobile cleaning and pressure washing operations and landscape irrigation. The City is concerned that they may receive negative feedback from the political community if it attempts to regulate charity car washes.	Comment noted. There has been documented cases of organized/fundraiser car washes contributing to degradation of storm water quality in local water ways such as fish kills. The Sacramento Stormwater Quality Partnership's (SSQP) has an active River-Friendly Fundraiser Carwash Program. The River-Friendly Fundraiser Carwash Program was developed to provide guidance and help facilitate successful fundraiser carwashes while protecting local creeks and rivers from the pollution that can be carried in the wastewater from carwashing activities. Additionally, the General Permit does not preclude you from including a charity car wash organizers, mobile cleaning and pressure washing operations outreach efforts into your Public Outreach and Education Program.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
47	6	City of Sonoma	Section D.	Please remove the third paragraph of Section XI of the Fact Sheet that refers to the Ninth Circuit decision. The City of Sonoma feels that if it is not removed, it will create multiple issues.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.
47	7	City of Sonoma	E.7	The Permittee should not be required to use CBSM strategies or equivalent. Instead, the Permittee should be allowed to create a Public Outreach and Education Program based on its own unique community goals and watershed attributes.	CBSM implementation will be based on Regional Water Board discretion. Regional Water Boards are autonomous entities responsible for water quality protection within their boundaries. While this permit is intended to achieve stateside consistency, there are slight nuances regionally based upon the varying degrees to which receiving waters need to be protected. Accordingly, the Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their designation discretion accordingly.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
47	8	City of Sonoma	E.7.a.ii.b	The Permittee should not be required to implement surveys to gage the level of awareness and behavior change in target audiences and effectiveness of education tasks. The City of Sonoma has found that surveys are unuseful, time consuming and use up staff time that could be used to implement more successful programs.	Staff disagree. The underlying principle of any public education and outreach effort is to change behaviors. The permittee must develop a process to assess how well its public education and outreach programs is changing public awareness and behaviors and to determine what changes are necessary to make its public education program more effective. This assessment of public education programs is typically conducted via surveys, but other assessment methods that quantify results can be used. The permittee is encouraged to use a variety of assessment methods to evaluate the effectiveness of different public education activities. EPA's Getting In Step: A Guide to Effective Outreach in Your Watershed (www.epa.gov/watertrain/gettinginstep/) can provide useful information on setting up and conducting the evaluations. Additionally, the General Permit does not preclude the City of Sonoma from engaging in face-to-face conversations with the target audience on specific desired behaviors such as controlling pet waste to reduce pathogen levels in Sonoma Creek.
47	9	City of Sonoma	E.7.a.ii.j	The No Child Left Behind Program currently administered by the State limits the available classroom time for many programs such as stormwater programs.	This permit provision has been revised to address this comment. Permittees have the authority to work with place-based environmental educators that can conduct effective storm water education to children.
47	10	City of Sonoma	E.9.a.ii.b	Please do not require that photographs be taken to provide baseline information to track operation and maintenance needs over time. It may seem like a simple task but most outfalls in the City are located on private property and gaining access to private property is timely and expensive. Additionally, many are inundated with vegetation.	This permit provision has been revised to address the comment.
47	11	City of Sonoma	E.12.j	Please remove the requirement to modify general plans and zoning codes. The City of Sonoma updates its general plan every five years and it takes years to get a general plan update approved.	This permit provision has been revised to address the comment.
47	12	City of Sonoma	E.14	This is an expensive and staff intensive requirement that is based on assumptions that would not result in useful information that would not result in a more effective stormwater program.	Comment noted. Staff disagrees. A key requirement in the stormwater Phase II rule is a report (40 CFR 122.34(g)(3)) that includes "the status of compliance with permit conditions, an assessment of the appropriateness of identified [control measures] and progress towards achieving identified measurable goals for each of the minimum control measures." This assessment is critical to the stormwater program framework which uses the iterative approach of implementing controls, conducting assessments, and designating refocused controls leading toward attainment of water quality standards.
47	13	City of Sonoma	Attachment G	On page 8 of Attachment G, please explain why the City of Sonoma has been identified as a Municipality with responsibility for an Urban Creek TMDL when Sonoma Cree has not been identified as an impaired water body.	Comment noted. The Regional Water Boards are directed to review, within 1 year of the effective date of the permit, the TMDL-specific permit requirements contained in Attachment G and to propose to the State Water Board any appropriate revisions after consultation with the Permittees and State Water Board staff.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
48	1	City of Sonoma, City Council		The City of Sonoma fully supports the letters submitted by CASQA, BASMAA and the SCC.	Comment noted.
49	1	City of Turlock	Throughout	The Draft Permit exceeds the six minimum control measures in 40 CFR Part 122.34. Without justification, the State Board proposes new programs and higher levels of service in the Draft Permit compared to the existing permit.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program “designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CRF 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.
49	2	City of Turlock	Throughout	The Draft Permit contains unfunded state mandates.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program “designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CRF 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.
49	3	City of Turlock	E..6.c	The Draft Permit makes MS4s responsible for the implementation of the State's CGP and IGP.	The USEPA Phase II stormwater regulations require permittees to develop a construction site program addressing “land disturbance of greater than or equal to one acre” and require legal authority to protect storm water quality with the Permittees jurisdiction. The draft permit requires enforcement of Permittees storm water ordinance or legal equivalent, not regulation of the State CGP and IGP. Phase II Permittees should leverage already existing staff to conduct construction and possible industrial inspections. Many of these sites/facilities already include inspections and therefore the on-site inspector simply needs to include several stormwater elements to their inspection checklist.
49	4	City of Turlock	Throughout	The Draft Permit is overreaching and overly prescriptive.	Please see Section II, Permitting Approach of the Fact Sheet.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
50	1	City of Ukiah	Throughout	It is Department of Public Work's (DPW) estimate that it will cost \$185,000 per year to comply with this permit. This level of funding is not available in the general fund for DPW's current budget.	Please see Economic Considerations in Fact sheet. In addition, as part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater, 2) NPDES stormwater 3) Irrigated lands, and 3) Waste discharge requirements (WDR).
50	2	City of Ukiah	Throughout	The draft permit places an excessive burden to local agencies to comply with reporting on all aspects of the permit.	This permit provision has been revised to address the comment.
50	3	City of Ukiah	throughout	The draft permit exceeds the requirements of existing Phase I permits.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program "designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act," (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CRF 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.
50	4	City of Ukiah	Throughout	The draft permit has substantial requirements for monitoring, inspection and assessment. These requirements appear to have more relation to scientific study of stormwater as opposed to existing program requirements which have a direct benefit on improving stormwater quality.	Please see Section II, Permitting Approach of the Fact Sheet.
50	5	City of Ukiah	Throughout	Overall, the Draft Permit has many onerous requirements which will severely affect the City in this time of reduced general fund revenues and reduced staff.	Please see Economic considerations in Fact sheet. In addition, as part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater, 2) NPDES stormwater 3) Irrigated lands, and 3) Waste discharge requirements (WDR).
51	1	City of Woodland	Throughout	The City supports the letters submitted by CASQA and SSC.	Comment noted.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
51	2	City of Woodland	Section D	<p>Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the Importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognizes current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period.</p>	<p>The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.</p>
51	3	City of Woodland	Throughout	<p>The substantial new commitment of staff time and funding that would be required for permit compliance, much of which would be spent on extensive recordkeeping and documentation, redundant training and certifications, and pollutant load calculations are of questionable value to water quality protection.</p>	<p>Comment noted. Reporting and redundancy has been addressed in the permit revisions. Pollutant load quantifications has been deleted.</p>
51	4	City of Woodland	Throughout	<p>The inclusion of new programs and higher levels of service exceed Clean Water Act requirements. Local governments have inadequate fee authority to pay for mandated programs and services due to severe limitations imposed by Prop 218.</p>	<p>Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program “designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
51	5	City of Woodland	Throughout	There is substantial uncertainties in program requirements and costs resulting from undefined discretion left to the Regional Boards, such as potential imposition of CBSM requirements.	CBSM implementation will be based on Regional Water Board discretion. Regional Water Boards are autonomous entities responsible for water quality protection within their boundaries. While this permit is intended to achieve stateside consistency, there are slight nuances regionally based upon the varying degrees to which receiving waters need to be protected. Accordingly, the Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their designation discretion accordingly.
51	6	City of Woodland	Throughout	Overly prescriptive terms, such as the Section E.11.j prohibition on applying pesticides, herbicides and fertilizers within 5 feet of pavement, 25 feet of drain inlet and 50 feet of a water body, when the permit already requires strict control of landscape runoff.	Please see Section II, Permitting Approach of the Fact Sheet.
51	7	City of Woodland	Throughout	Completely unrealistic timelines, such as the Section E.9.d requirement to identify the source of any prohibited discharge within 72 hours.	Staff disagrees. 72 hours is sufficient time to identify source. Permittees should make a good faith effort to document identification efforts for sources that are too difficult to identify.
52	1	City of Yreka	Throughout	The City supports the letters submitted by CASQA, the City of Roseville and SSC.	Comment noted.
52	2	City of Yreka	Throughout	The benefits to be derived from this designation are disproportionate to the costs of compliance. Costs may be as much as 5% of the City's annual \$5 million General Fund budget.	Please see Economic considerations in Fact sheet. In addition, as part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater, 2) NPDES stormwater 3) Irrigated lands, and 3) Waste discharge requirements (WDR).
52	3	City of Yreka	Attachment G	The Shasta River TMDL does not effectively segregate conditions in Yreka Creek from the whole watershed. Yreka Creek currently provides riparian shade and cold water habitat that is actively used by endangered salmon and steelhead.	Comment noted. The Regional Water Boards are directed to review, within 1 year of the effective date of the permit, the TMDL-specific permit requirements contained in Attachment G and to propose to the State Water Board any appropriate revisions after consultation with the Permittees and State Water Board staff.
52	4	City of Yreka	Attachment G	The Shasta River TMDL is not an appropriate measure for Yreka's designation because it does not represent current conditions or consider a wide variety of recent improvements. The TMDL is due for a 5-year update in 2012 and this process will provide an opportunity to acknowledge the effort already made by the City of Yreka, numerous restoration projects and to incorporate updated water quality information.	Comment noted. The Regional Water Boards are directed to review, within 1 year of the effective date of the permit, the TMDL-specific permit requirements contained in Attachment G and to propose to the State Water Board any appropriate revisions after consultation with the Permittees and State Water Board staff.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
52	5	City of Yreka	Throughout	Compliance with the Draft Permit would divert the City's scarce staff and funding resources away from beneficial community projects and our core municipal services.	Please see Economic considerations in Fact sheet. In addition, as part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater, 2) NPDES stormwater 3) Irrigated lands, and 3) Waste discharge requirements (WDR).
52	6	City of Yreka	Throughout	There are several existing mechanisms available to control pollutant contributions and protect water quality. The City has already implemented many activities that address the TMDL and many requirements of the Phase II Permit, yet it appears these actions are given no consideration in the decision to designate Yreka. It seems that action will never satisfy the unending spiral of increasing regulations, which only discourage our voluntary efforts.	Comment noted.
52	7	City of Yreka	Throughout	Numerous road blocks to beneficial projects exist within the existing regulatory framework.	Please see Section II, Permitting Approach of the Fact Sheet.
52	8	City of Yreka	Throughout	The Board has the authority to delay the effective period of this designation for Yreka, however the City of Yreka respectfully requests to be eliminated from the Phase II Small MS4 General Permit. This would ensure its voluntary program of beneficial watershed enhancements is not derailed by the need to create a new administrative bureaucracy for compliance with the General Permit. For the Board to proceed with the proposed regulation, without showing by its decision making that it has considered and weighed these point, would be an abuse of the Board's discretion.	The City of Yreka is designated because of urbanizing areas and because the City is listed in the Shasta River Temperature and Dissolved Oxygen TMDL Resolution No. R1-2006-0052
52	9	City of Yreka	Throughout	We appreciate the efforts of the State Board staff to reduce the burden of these new regulations by reducing inspection frequencies, offering outreach alternatives and reducing education related efforts. These proposed regulations still exceed the requirement of the Clean Water Act, and some are so specific that the unique character of individual communities is threatened. We are very concerned about what this Permit means to the future of our community.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program "designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act," (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CRF 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
53	1	City/County Association of Governments of San Mateo County	Section D	<p>Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognize current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period.</p>	<p>The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.</p>
54	1	Coalition for Adequate School Housing	Throughout	<p>K-12 schools including County Offices of Education (COE) are unique entities with regard to complying with State Water Resources Control Board (SWRCB) permits. Specifically, building and modernizing schools requires a complex and often lengthy approval and funding process which poses unique challenges for compliance, as new construction and modernization projects must be approved by several organizations. In addition, school budgets have been drastically reduced in the past five years, including the capital side of school districts where funding to maintain schools has essentially been eliminated and funding for approved School Facility Program (SFP) projects has been exhausted without a statewide school bond on the immediate horizon.</p>	<p>Comment noted.</p>
54	2	Coalition for Adequate School Housing	Throughout	<p>With regard to county offices of education, C.A.S.H. believes that it is vital for county offices of education to be included in the non-designation language with school districts. After expressing our concerns about county offices of education initially not being included in the nondesignation provision, we were assured by SWRCB staff that the exclusion was a technical oversight and that going forward the inclusion of county offices of education would be made explicit in the language of the permit.</p>	<p>This permit provision has been revised to address the comment.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
54	3	Coalition for Adequate School Housing		C.A.S.H. is concerned that, while school districts and county offices of education are not designated, other agencies can/may be able to force school districts to pay for project work that the school district was excluded from performing.	Comment is unclear. Please contact State Board staff for response to comment.
54	4	Coalition for Adequate School Housing		C.A.S.H. would be remiss if we did not highlight the efforts of your staff, Jonathan Bishop, Eric Bernstsen and Christine Sotelo in particular. We spent many hours with them in stakeholder meetings, as well as communicating by phone and e-mail. We found your staff to be genuinely willing to dedicate time and effort to listen to our concerns, as well as to being open to exploring alternative processes that could meet both of our objectives.	Comment noted.
54	5	Coalition for Adequate School Housing		Before we conclude our comments, we would like to express our conceptual support for an education-specific permit in the next permit cycle that would include K-12 schools and county offices of education, as well as community colleges. We believe an education-specific permit has the potential to address and clarify issues that we think are likely to arise in this permit cycle, particularly the jurisdiction issue outlined above. C.A.S.H. will initiate an effort to work with stakeholders and the SWRCB staff to explore this concept.	Comment noted.
55	1	Colusa County Office of Education		While we believe it was a technical oversight, please also grant County Offices of Education the same exclusion from automatic designation that K-12s and community colleges were granted.	This permit provision has been revised to address the comment.
56	1	County of Los Angeles, Department of Public Works	Attachment A	The Draft Permit Should Not Designate Unincorporated County of Los Angeles as "New Traditional Permittees". Specifically, Castaic and Stevenson Ranch in Region 4, and Quartz Hill, Sun Village, and Lake Los Angeles in Region 6.	Staff does not agree. CDPs should not be removed from Attachment A. In order to ensure that they are indeed designated under the existing Phase II permit it is important to list them on Attachment A. We understand that CDPs do not have a government entity but are within the County UA and within an existing NPDES permit area.
56	2	County of Los Angeles, Department of Public Works	Attachment B	Like the cities, the County of Los Angeles has no authority over schools to review or approve plans for new school facilities, nor can the County compel implementation of stormwater quality BMPs in the design or construction of new schools. Although the Division of the State Architect provides design and construction oversight for K-12 schools and community colleges throughout California, it has not emphasized stormwater quality in its Sustainable Schools program.	Comment noted. In the event of a disagreement between a Permittee and the Regional Water Board, a Dispute Resolution process is identified in Section H of the General Permit.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
56	3	County of Los Angeles, Department of Public Works	Section D	The County believes that Provision D of the Draft Phase II Permit is contrary to the historical interpretation of established State Water Board policy and will create an inability for a regulated entity to comply. In wet weather, multiple constituents in stormwater runoff from urban areas may exceed receiving water quality standards, thereby creating the potential for stormwater discharges to cause or contribute to exceedances of standards in the receiving water itself. If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. The County certainly recognizes the importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognize that current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period of time.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.
57	1	County of Marin	Throughout	Conservative estimates indicate that the new regulations could increase the combined compliance costs to Marin's local agencies on the order of \$5 million per year. The State Board provides no funding or alternative mechanism to comply if a County or municipality lacks the funding to comply. Funds are limited through Prop 218.	As part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater 2) NPDES stormwater 3) Irrigated lands, and 4) Waste discharge requirements (WDR).
57	2	County of Marin	Throughout	Marin County and its municipalities share a strong commitment to protecting the environment and water quality. The State Board's new Phase II stormwater permit includes uniform, prescriptive, "one size fits all" standards that would be applied statewide.	Please see Section II, Permitting Approach of the Fact Sheet.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
57	3	County of Marin	Section D	Revise the draft permit related to Receiving Water Limitations in order to maintain consistency with the MEP Standard and the intended iterative process.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.
57	4	County of Marin	Throughout	Only include requirements that an external scientific peer review confirms will result in appreciable improvements to water quality.	Comment noted. The General Permit was drafted based on the US EPA's MS4 Improvement Guide.
57	5	County of Marin	Throughout	Provide more flexibility in the permit language that will support implementation and prioritization by region or community based on local issues.	Please see Section II, Permitting Approach of the Fact Sheet.
57	6	County of Marin	Throughout	Provide a clear, documented, regulatory path to allow implementation of existing programs.	This permit provision has been revised to address the comment.
57	7	County of Marin	Throughout	Modify the compliance timelines to provide more time to prepare for the new requirements.	This permit provision has been revised to address the comment.
57	8	County of Marin	Throughout	Only include requirements that can be implemented with existing municipal or County resources or provide an alternative funding mechanism to support implementation.	As part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater 2) NPDES stormwater 3) Irrigated lands, and 4) Waste discharge requirements (WDR).
58	1	County of Orange, Public Works	A.1.b.3)(a)	Coto de Caza and Ladera Ranch continue to be incorporated into the County's Phase I Program.	This permit provision has been revised to address the comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
58	2	County of Orange, Public Works	Section B.3.n	Section does not prohibit “incidental runoff” where it is not allowed. This creates a potential conflict for Phase II Permittees within the area of south Orange County subject to the Phase I MS4 Permit issued by the San Diego Regional Water Quality Control Board (Order No. R9-2009-0002), which expressly prohibits the discharge of irrigation runoff to the MS4. Additionally, under B.4.d, a Permittee who discharges large volumes of ponded recycled water is required to first contact the applicable Regional Board, but not the owners/operators of the downstream MS4, who would be directly impacted by the discharge.	Comment noted. The language is based on the Recycle Water Policy and CA DWR's Warer Efficient Landscape Ordinance.
58	3	County of Orange, Public Works	Section D	Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the Importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognizes current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process. .
58	4	County of Orange, Public Works	Section F.1	Section F.1 identifies Non-traditional Small MS4 Permittees by reference to Attachment B. For Orange County, Doheny State Beach and San Clemente State Beach are not located in Region 8, but rather Region 9.	This permit provision has been revised to address the comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
58	5	County of Orange, Public Works	Section F.5.b	Section F.5.b includes the option for a Non-traditional Small MS4 Permittee to fulfill education and outreach requirements within their jurisdictional boundaries on their own. Within Orange County, the Phase I MS4 Permittees, led by the County as the Principal Permittee, implement a robust community-based social marketing (CBSM) public education and outreach program, with a consistent pollution prevention message that has been nurtured for more than a decade. While the County supports development of public education and outreach programs by Non-traditional Small MS4 Permittee in Orange County, failure to coordinate with the countywide program that is being implemented could lead to inconsistencies and conflicts in terms of the messages and other information that is developed.	This permit provision has been revised to address the comment.
58	6	County of Orange, Public Works	Section D.5.d	Section F.5.d requires Non-traditional Small MS4 Permittees to maintain an up-to date and accurate outfall map using a geographical information system (GIS). In Orange County, most Non-traditional Small MS4 Permittees will discharge runoff from their MS4 into an MS4 owned and operated by the County or one of the cities. Understanding where these Small MS4s ie into the regional MS4 will provide the Phase I Permittees with a greater ability to understand contributions of stormwater runoff on a sub-watershed scale.	This permit provision has been revised to address the comment.
58	7	County of Orange, Public Works	Section F.5.d	The table of Action level concentrations for Indicator Parameters in F.5.d.1.(ii)(b) bear no relation to Non-Stormwater Action Levels in the Phase I MS4 Permit for south Orange County (Order No. R9-2009-0002). Given the current language of this Permit, non-stormwater discharges could be deemed by the Small MS4 Permittee as below any prescribed action level, while the County or city which owns and operates the regional MS4 would be required to investigate the very same discharge as a potential illegal discharge or illicit connection.	This permit provision has been revised to address the comment.
58	8	County of Orange, Public Works	Section F.5.d.2.ii.(a) and ©	There is no requirement in this section to notify and coordinate with the owners/operators of the downstream and/or regional MS4 that would be most impacted. F.5.d.2.(ii)(c) requires notification to the local Health Department, but in the case of Orange County, it is the Phase I MS4 Permittees who are required to immediately respond to any potential threats to their MS4.	This permit provision has been revised to address the comment.
58	9	County of Orange, Public Works	Section F.5.f.9.(ii)(b)(4)	Requires Non-traditional Small MS4 Permittees to minimize irrigation run-off, but not outright elimination where it is expressly prohibited from entering the MS4, as is the case in south Orange County (see comment number 2).	Please response to comment number 2.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
58	10	County of Orange, Public Works	Section F.5.g Footnote 29	Requires Non-traditional Small MS4 Permittees located within a Phase I MS4 Permit boundary with a Regional Board approved Hydromodification Plan to implement that plan's requirements for "region-wide hydromodification consistency". At the same time, Section F.5.g.2. requires no similar "region-wide consistency" with respect to Low Impact Development (LID) Runoff Standards. In the case of Orange County, the hydromodification plan and low impact development (LID) runoff standards are inextricably linked as one Regional Board approved plan (Model Water Quality Management Plan for Orange County). There literally is no means of coordinating on one without coordinating on the other.	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.
58	11	County of Orange, Public Works	F.5.g	With respect to section F.5.g., municipalities do not have the legal authority to issue building and/or grading permits to school districts. Therefore, should a school district be designated by an MS4, requiring the new development projects to comply with Regional Board approved plans for hydromodification and LID for the surrounding Phase I program, would fall under the responsibility of the Division of the State Architect.	This permit provision has been revised to address the comment.
58	12	County of Orange, Public Works	Section F.5.g.2.(ii)(2)	There is an enormous gap between what is technically feasible and what is practicable and financially feasible. This language is unlike that in F.5.g.1(ii) which allows for one or a combination of these same measures.	This permit provision has been revised to address the comment.
58	13	County of Orange, Public Works	Section F.5.g.4.(ii)(b)	Requires Non-traditional Small MS4 Permittees to notify vector control agencies of installed stormwater runoff treatment systems and hydromodification management controls not owners/operators of the downstream MS4.	This permit provision has been revised to address the comment.
58	14	County of Orange, Public Works	Section F.5.1	This section references Attachment G for applicable TMDLs, but Attachment G is missing Orange County TMDLs	Comment noted. The Regional Water Boards are directed to review, within 1 year of the effective date of the permit, the TMDL-specific permit requirements contained in Attachment G and to propose to the State Water Board any appropriate revisions after consultation with the Permittees and State Water Board staff.
59	1	County of San Luis Obispo, Board of Supervisors		We find that the draft continues to be determinative in nature and does not provide sufficient clarity for implementation or assurances that proposed measures, when implemented, will achieve desired results. The Permit contains provisions that exceed federal requirements that potentially subject jurisdictions to litigation and additional cost.	As part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater 2) NPDES stormwater 3) Irrigated lands, and 4) Waste discharge requirements (WDR).

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
59	2	County of San Luis Obispo, Board of Supervisors		Support comments made by SSC.	Comment noted.
60	1	County of Santa Barbara		The County participated in the California Stormwater Quality Association (CASQA) Phase II subcommittee review of the Draft General Permit and fully supports the detailed comments and recommendations contained in their July 2012 letter.	Comment noted.
61	1	County of Santa Clara, Department of Planning and Development		The County appreciates that the State Water Resource Control Board (Water Board) staff incorporated our comments and eliminated many of the requirements that 1) are not mandated by law or reflected in US Environmental Protection Agency (USEPA)-issued municipal stormwater permits; 2) would represent a significant expenditure of public resources that are not available at the local level; and (3) with a few notable exceptions (which still need to be fine tuned to avoid wasting resources), are unlikely to produce a significant return in terms of increased water quality benefits. However, some of our concerns were not addressed and still remain a concern. These concerns include requirements that are more demanding than our Phase I Permit, too prescriptive and must be further prioritized.	Comment noted. Please see Section II. Permitting Approach of the Fact Sheet.
61	2	County of Santa Clara, Department of Planning and Development		The Revised Draft Permit includes requirements that will significantly increase the cost of stormwater management program, and with the passage of Prop 218 it is difficult for the County to secure additional revenue sources to fund and operate the stormwater management program at an increasingly higher level. In addition the Revised Draft Permit claims to maximize efficiency by "leveraging existing staff," the reality is that those staff are already fully allocated, and do not have the extra time to engage in the additional stormwater activities mandated in the Revised Draft Permit.	As part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater 2) NPDES stormwater 3) Irrigated lands, and 4) Waste discharge requirements (WDR).

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
61	3	County of Santa Clara, Department of Planning and Development		The County is also concerned with language in the third paragraph of the Fact Sheet Section Xi-Receiving Water Limitation, which is unnecessary, potentially misleading and inconsistent with other Water Board-issued MS4 permits. This language does not allow the County to comply with water quality standards over time by using best management practices (BMPs) supplemented by the iterative process. It also exposes the County to enforcement actions and lawsuits even if the County is fully implementing our Stormwater Program.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.
61	4	County of Santa Clara, Department of Planning and Development		The Revised Draft Permit requires data gathering and/or tracking be tabulated in a new database format and has little or no impact on water quality outcomes. Gathering this level of information is time consuming and costly for the County.	As part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater 2) NPDES stormwater 3) Irrigated lands, and 4) Waste discharge requirements (WDR).
61	5	County of Santa Clara, Department of Planning and Development	E.9.a	Mapping all outfalls that are County operated will take much longer than two years to complete.	Staff disagrees. It is important to utilize resources effectively and to target field screening activities in priority areas that are the most common sources of illicit discharges. For example, municipalities with older neighborhoods should prioritize those areas for targeted investigation due to the likelihood of cross connections with the sanitary sewer. Older parts of the storm drain system may also be deteriorating and require repair or replacement.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
61	1	County of Santa Clara, Department of Planning and Development	E.9.b	The County recognizes that the Water Board did make revisions to this section on the type of facility and what information should be collected.	This permit provision has been revised to address the comment.
61	2	County of Santa Clara, Department of Planning and Development	E.10.a	The Water Board did remove a lot of the tracking requirements that the County has no influence over.	This permit provision has been revised to address the comment.
61	3	County of Santa Clara, Department of Planning and Development	E.11.a	Many of the facilities listed in this section are already covered under another permit and additional tracking inventories would be duplicative. Furthermore, some of these facilities do not have activities that are located outside and, thus, would not result in any potential discharge of pollutants. By comparison, the County's Phase I Permit only requires the County to track and inspect corporation yards and pump stations making this proposed requirement more stringent than the phase I permit.	Comment noted. Permittees do not inventory facilities covered under the IGP. The intent of the inventory is a resource when tracking illegal or illicit discharges. The provision remains.
61	4	County of Santa Clara, Department of Planning and Development	E.11.b	Mapping all the County owned and operated facilities including all the storm drain systems and receiving water bodies will take a long time and will need more time than two years to complete. The County is not required to map County owned and operated facilities in our Phase I permit.	Staff disagrees. In order to trace the origin of a suspected illicit discharge or connection, the permittee must have an up-to-date map of its storm drain system. This is critical in order to isolate the potential source of the non-stormwater discharges and the areas of potential impact.
61	5	County of Santa Clara, Department of Planning and Development	E.11.c	The implementation level section discusses what needs to be included in the assessment.	Staff disagrees. The CWP manual is helpful guidance.
61	6	County of Santa Clara, Department of Planning and Development	E.11.h	The CASQA Handbook for Municipal Operations contains many of these O&M activities and also discusses targeted constituents and appropriate BMPs to use for each activity. Therefore the County recommends removing the requirements to develop applicable BMPs for O&M activities. In addition, O&M activities can be quick projects that last only a few days. Inspecting O&M BMPs on a quarterly basis is not practicable.	This permit provision has been revised to address the comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
61	7	County of Santa Clara, Department of Planning and Development	Throughout	The Phase II Permit is intended to be a less complex permit than the Phase I Permit. The following Draft Permit requirements meet or exceed the Phase I Permit requirements. The County recommends the following revisions to these requirements: comments (8 - 18)	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program “designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CRF 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.
61	8	County of Santa Clara, Department of Planning and Development	E.6.c	The enforcement response plan needs to allow flexibility on which enforcement actions will be taken. Not all County departments have the same range of enforcement powers. In addition, the onerous referral documentation requirements to the regional water Board need to be simplified	Please see Section II, Permitting Approach of the Fact Sheet.
61	9	County of Santa Clara, Department of Planning and Development	E.7.b.1.ii.(e)	The County recommends revising this requirement to say "provide training for inspectors annually", which is consistent with our Phase I Permit.	Comment noted.
61	10	County of Santa Clara, Department of Planning and Development	E.7.b.2	Requiring plan reviewers and inspectors to be either QSD/QSP certified or supervised by someone that does goes beyond the requirements of the Phase I Permit. The County does agree with training staff but does not believe staff needs to be a certified QSD/QSP to properly review plans or perform inspections.	This permit provision has been revised to address the comment.
61	11	County of Santa Clara, Department of Planning and Development	E.9.b	County recommends removing the requirement to determine if a facilities is required to be covered under a NPDES stormwater permit. The County does not have jurisdiction over the NPDES permit and should not be responsible for this requirement.	Comment noted. The State Board is not passing responsibility to the Permittees to inspect and regulate state permits. However, the draft permit expects existing Permittee Inspectors to make a good faith effort to verify known non-filers of State general permits if already out in the field.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
61	12	County of Santa Clara, Department of Planning and Development	E.9.c	The County suggests removing the outfall sampling requirements and increasing the time between each inspection point to make this requirement less costly.	Comment noted. Staff disagrees based on the Center for Watershed Protection's (CWP) guide on Urban Sub-watershed and Site Reconnaissance and U.S. EPA MS4 Permit Improvement Guide.
61	13	County of Santa Clara, Department of Planning and Development	E.9.d	This section includes requirements that more stringent than our Phase I permit requirements. The County recommends removing the requirement to conduct an investigation to identify and locate the source of any prohibited non- stormwater discharge within 72 hours. The County's Phase I permit does not put any constraints on when an investigation must occur.	Staff disagrees. 72 hours is sufficient time to identify source. Permittees should make a good faith effort to document identification efforts for sources that are too difficult to identify.
61	14	County of Santa Clara, Department of Planning and Development	E.9.e	The spill response plan will requires substantial resources to develop, update and maintain. In addition, the response for private projects the County would follow the ERP and for County discharges the County would follow best management practices or other hazardous Material Policies/Procedures.	Staff disagrees. Spills, leaks, sanitary sewer overflows, and illicit dumping or discharges can introduce a range of stormwater pollutants into the storm system. Prompt response to these occurrences is the best way to prevent or reduce negative impacts to waterbodies. The spill response plan includes an investigation procedure. Often, a different entity might be responsible for spill response in a community (i.e. fire department), therefore, it is imperative that adequate communication exists between stormwater and spill response staff to ensure that spills are documented and investigated in a timely manner.
61	15	County of Santa Clara, Department of Planning and Development	E.10.b	This section contains the requirement that erosion/sediment control plans include a rationale for selecting or rejecting BMPs including quantifying the expected soil loss from different BMPs. This requirement is time consuming for to develop and review. The County does not have the expertise to inform an applicant of the BMPs that can or cannot be used. The County is able to inform the applicant that construction BMPs implemented at a construction site are not effective and must install additional construction BMPs.	This permit provision has been revised to address the comment.
61	16	County of Santa Clara, Department of Planning and Development	E.11.d	The County recognizes that the Water Board made some significant changes to the requirements under this section. However, these requirements are still more burdensome than our Phase I Permit Requirements.	Comment noted. Staff disagrees that the requirements of the permit is consistent with the provisions of the federal regulations. Additionally, a discussion has been included in the Fact Sheet at Section IV, Unfunded Mandates.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
61	17	County of Santa Clara, Department of Planning and Development	E.12.h	BMPs used for flood control should only be included in the assessment if they were used to meet permit compliance. Flood control should be left to the responsibility of the local jurisdiction and FEMA.	The reference to BMPs used for flood control in the Section E.12.h is intended to apply to dual-purpose storm water/flood control structural BMPs.
61	18	County of Santa Clara, Department of Planning and Development	E.14.b	In order for the County to perform this modeling it would require substantial staff with technical expertise that are not currently employed by the County. Under the Phase I program the County is required to perform an analysis on monitoring data but not required to calculate annual runoff, pollutant load and BMP removal Efficiency.	This provision has been deleted.
61	19	County of Santa Clara, Department of Planning and Development	Throughout	The NPDES municipal Stormwater Permit should not include other requirements that are already regulated under other existing programs. The County recommends the following revisions to these requirements: comments (20 - 23)	Comment noted. Permittees enforce their own storm water policies and ordinances, not the State CGP or IGP.
61	20	County of Santa Clara, Department of Planning and Development	E.11.i	Flood management projects should not be regulated under the NPDES Municipal stormwater permit. It should be left to FEMA and the local agency to regulate.	The General Permit requires that water quality be considered when designing flood management projects. The focus of stormwater management in the past had been to control flooding and mitigate property damage, with less emphasis on water quality protection. These structures may handle a significant amount of stormwater and therefore offer an opportunity to modify their design to include water quality features for less than the cost of building new controls. This requirement applies not only to new and rehabilitated flood control projects.
61	21	County of Santa Clara, Department of Planning and Development	E.11.j	Many agencies have already implemented integrated pest management programs, water conservation program or landscape maintenance programs. These existing programs should be given credit under this section.	Comment noted. The intent of the General Permit is to utilize existing resources and programs. If Permittees already implement IPM, take credit, but ensure the program includes the minimum program elements that the permit provision requires.
61	22	County of Santa Clara, Department of Planning and Development	E.13	It is unclear what monitoring is required for a Permittee with a population less than 50,000 and this needs to be clarified.	This permit provision has been revised to address the comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
61	23	County of Santa Clara, Department of Planning and Development	E.12.j.ii.a.ii .1.c	Reporting requirement sections # a and # c both require documentation submittal to demonstrate modification of applicable codes with different due dates. The County recommends that reporting section #a be revised to require submittal of codes identified that need to be modified.	This permit provision has been revised to address the comment.
61	24	County of Santa Clara, Department of Planning and Development	Throughout	It is essential that the Draft Permit be further revised to address water quality problems in a cost effective manner consistent with the available staff and funding resources available to the small cities, counties and special districts that are subject to the Phase II Permit.	As part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater 2) NPDES stormwater 3) Irrigated lands, and 4) Waste discharge requirements (WDR).
62	1	County of Sonoma, Permit and Resource Management Department		My six points below describe generally why the County of Sonoma is not supportive of the second edition Phase II permit. The County has significant concerns regarding: the State Water Board is overreaching of state authority and lacks the legal authority to require certain provisions within the permit; lack of water quality nexus with most of the required tasks; cost of implementation and lack of cost-effectiveness assessment; exposure of permittee to third-party challenges; technical infeasibility; burdensome reporting, analysis and assessment requirements.	Please see Section IV, Unfunded Mandate in the Fact Sheet.
62	2	County of Sonoma, Permit and Resource Management Department		Asking the County to do watershed studies where the land area extends beyond the NPDES permit boundary and where there are no MS4s is entirely inappropriate and likely illegal. Another example of overreaching state authority occurs on pg. 67 of the permit which requires the County to establish a receiving water monitoring program. The local jurisdiction occurs within the MS4 and does not extend into receiving waters which is state jurisdiction. Until clarity is given I must oppose asking the County to provide storm water education to "school-age" children (pg. 25). Will the County be in compliance if it only send out the URL for the SurfRider program to schools? However, providing extensive education programs for all K-12 students within the County where a given school may be outside the NPDES boundary and not drain to a County MS4 is beyond the scope of the MS4 requirements.	With regard to watershed studies, Staff has concluded that delineation of watershed management zones (WMZs) are a pivotal management strategy in applying Hydromodification measures. As such, staff will develop WMZs within the next two years. Upon completion of WMZ delineation, there will be a permit reopener to include Hydromodification. Please see the Fact Sheet regarding Post-Construction Hydromodification for a more detailed discussion and rationale. Additionally, please see Section IV, Unfunded Mandate in the Fact Sheet.
62	3	County of Sonoma, Permit and Resource Management Department		The original estimated line item cost for new programs was expected to triple the County Phase II costs. Asking the County of Sonoma to find an additional \$1,000,000 for the storm water program essentially translates into laying off 10 staff.	As part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater 2) NPDES stormwater 3) Irrigated lands, and 4) Waste discharge requirements (WDR).

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
62	4	County of Sonoma, Permit and Resource Management Department		Support comments from SSC, CASQA and RRWA.	Comment noted.
62	5	County of Sonoma, Permit and Resource Management Department		Supports the Little Hoover Report (2009).	As part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater 2) NPDES stormwater 3) Irrigated lands, and 4) Waste discharge requirements (WDR).
63	1	County of Ventura, Public Works Agency	Section D	Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the Importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognizes current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.
63	2	County of Ventura, Public Works Agency	B.4	The County is concerned that as currently worded, the State Water Resources Control Board (SWRCB) is requiring municipalities to take on a "sprinkler police" enforcement role when such effort should be conducted by the water purveyor. Neither Phase I nor Phase II MS4s have the capacity to detect and enforce "minimal over-spray from sprinklers".	Comment noted. The provision has been edited, however, it remains unchanged. This provision is based on the Water Board Recycled Water Policy and CA DWR Water Efficient Landscaping Ordinance.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
63	3	County of Ventura, Public Works Agency	E.6.a	Discharges currently regulated under the NPDES Permits and specifically exempt from the MS4 Permit's Discharge Prohibitions should not be subject to redundant regulations under the MS4 Phase II Permit.	Comment noted. The State Board is not passing responsibility to the Permittees to inspect and regulate state permits or implementing redundant regulations. However, the draft permit expects existing Permittee Inspectors to make a good faith effort to verify known non-filers of State general permits.
63	4	County of Ventura, Public Works Agency	E.12	The post-construction provision introduces a new term: maximum extent technically feasible (METF). The County is concerned about the precedent-setting potential of this term since it is intentionally different than maximum extent practicable (MEP) provision in the Federal Clean Water Act.	This term has been deleted.
63	5	County of Ventura, Public Works Agency	E.12	The lower threshold is inconsistent with Phase I MS4 Permit requirements and will likely translate to higher development costs for smaller projects and increased staff time for reviewing and inspecting smaller projects; the review and inspection fees will need to be adjusted to account for the increase in staff time.	The permit requires landscape-based site design measures at a 2,500 square foot impervious surface threshold. Although seemingly benign, these projects, when looked at cumulatively, do impact water quality. These measures do not require extensive engineering review. Any review that is necessary is far less than what is currently required for the mandatory water efficient landscape ordinance. In addition, California Department of Transportation (Caltrans), a Phase I entity, is required to implement post-construction standards for non-highway projects at the 5,000 square feet threshold.
63	6	County of Ventura, Public Works Agency	E.14	This is a very time consuming exercise that is unlikely to result in useful or reliable information. Determining load quantification using a simple spreadsheet model, such as the Watershed Treatment Model, is limited in that it relies on many estimates and assumptions and cannot take into account storm size variability or the impact of back-to-back storms (e.g., pollutant loads that might not be reduced due to BMPs that bypass larger storm events). The result will be load estimates that have a large error bar associated with them. This information will still be available for public consumption via SMARTS and the future implications of this, while unknown, could leave MS4s vulnerable to third party action.	Municipal Pollutant Load Quantification has been deleted from the General Permit. The permit has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
63	7	County of Ventura, Public Works Agency		<p>The Attachment G of the Draft Phase II Permit does not list all established TMDLs with WLAs assigned to a Phase II MS4s within the Region 4 Los Angeles Regional Water Quality Control Board (LARWQCB). In addition, Attachment G should align with Basin Plan Amendments (BPA) and established TMDL implementation plans. The MS4 NPDES Permits should be utilized as a compliance mechanism for TMDLs, but they should not supersede processes that are in-place to determine appropriate and effective measures to reduce pollutants of concern. We recognize that MS4s cannot retroactively comply with deadlines that have already passed. This is a challenging issue and a more constructive solution must be found instead of finding the municipality in non-compliance on Day 1 of an adopted order.</p>	<p>TMDL-specific permit requirements for TMDLs established in the Los Angeles Regional Water Quality Control Board's region have not been included in Attachment G. In the context of the Small MS4 permit, these TMDLs apply to non-traditional Small MS4s within the region. Staff determined that the lack of specificity of these TMDLs with regard to the obligations of the specific non-traditional dischargers necessitated the development of more specific permit requirements to provide clarity to the Permittees regarding their responsibilities for compliance. The Order currently requires the Permittees to comply with all applicable TMDLs; however, TMDL-specific permit requirements for these TMDLs will be developed and clarified during a one-year process of consultation among the Permittees, Regional Water Board staff, and State Water Board staff. Attachment G is expected to be reopened after the one-year development process for incorporation of the permit-specific requirements. As specified in the Order, such TMDL-specific permit requirements must be consistent with the assumptions and requirements of the applicable WLAs and with the goals of the TMDL. Staff recognizes the challenges posed by past-due compliance deadlines. However, the TMDL requirements in the Order are consistent with the implementation schedules laid out in the relevant resolutions and Basin Plan amendments that established the TMDLs. Staff may consider employing time schedules to address such deadlines, where appropriate, during the one-year review and development period for TMDL-specific permit requirements that will follow adoption of the Order.</p>
63	8	County of Ventura, Public Works Agency		<p>Several Ventura County unincorporated areas are mistakenly listed as new Permittees in Attachment A (Traditional Small MS4 Designation and Monitoring Matrix) of the Draft Phase II Permit including: El Rio Census Designated Place (COP), Mira Monte COP, and Oak Park COP. These existing unincorporated Ventura County communities are already regulated under the County's Phase I MS4 permit as stated on page 13 (section 0.1) of the Ventura MS4 Permit:</p> <p>"The area covered by this Order (R4-2010-0108 NPDES Permit No. CAS004002) includes all area within Ventura County boundaries and all area within each co-permittee's boundaries that drain into the MS4." As shown in Exhibit 2, the El Rio COP, Mira Monte COP and Oak Park COP are within unincorporated County of Ventura jurisdiction, and are currently subject to the Ventura MS4 permit. Attachment A of the Draft Phase II Permit (page 9) incorrectly notes the 2010 population of the El Rio COP is 113, 374, and includes water quality monitoring commensurate with this incorrect population reference. The 2010 U.S. Census population count for the El Rio COP is 7,198 (as shown in the 2010 U.S. Census fact sheet, Exhibit 3).</p>	<p>The permit has been revised to address this comment.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
64	1	Department of Defense	Fact Sheet-Section VIII & Permit Page 94, Section F.S.g Footnote 29	The permit requires Phase IIs within Phase I boundaries to report on Hydromodification Plan implementation the first year, presuming they are already subject to this Plan. However, the DoD Phase IIs which do not discharge to the Phase I have not, thus far, been subject to the Phase I requirements where there is no discharge to the Phase I. Phase II MS4s in a Phase I MS4 boundary, that don't discharge to a Phase I MS4, should not be required to follow Phase I hydromodification requirements.	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.
64	2	Department of Defense	Section F.5.g.2(ii)(2)	The objective of "achieving infiltration, evapotranspiration and/or harvesting/reuse of the 85th percentile rainfall event" does not always reflect the pre- project runoff condition due to differing soil types and climate and can have unintended impacts on baseline receiving water flow, volume and aquatic habitat. For this reason, post construction storm water management should allow projects to use either a rainfall event OR preproject conditions to determine design volume for runoff infiltration and retention.	In the case that a project site cannot infiltrate, evapotranspire and/or harvest/reuse the entire volume of the 85th percentile rainfall event, remaining runoff may be infiltrated, evapotranspired, and/or harvested/reused through the use of a biofiltration system as specified in Section E.12.e.ii.f.
64	3	Department of Defense	Section A	DoD Installations with existing individual NPDES permits, such as those in the San Diego Metro area, that address storm water should not be covered by the small MS4 permit. We recognize that the requirements may not currently be the same, but when the individual permits come up for renewal (they are all expired in San Diego), the Regional Boards can include the Phase II Small MS4 permit requirements. This will allow facilities to only need to comply with I permit reducing the administrative burden.	This permit provision has been revised to address the comment.
64	4	Department of Defense	Attachment B, Section F.S.g	The Attachment B list of non-traditional small MS4 permittees incorrectly names Vandenberg Air Force Base (AFB) as a new permittee. Vandenberg AFB should be listed as a renewal permittee because it already has an approved storm water management program under the existing Phase II general permit. Vandenberg AFB has already invested a large effort in developing post-construction storm water requirements in accordance with Central Coast Water Board guidance	This permit provision has been revised to address the comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
64	5	Department of Defense	Finding 17	In DoD's comments on the June 2011 draft, we recommended stating that the permit requirements apply only to DoD Cantonment, or industrial areas, where the activities and population density resemble that of a traditional small MS4. We also recommended clarifying military training ranges remain outside the scope of this permit.	This permit provision has been revised to address the comment.
64	6	Department of Defense	Section F.5.f.9	In accordance with DoD Instruction 4150.07, DoD has already used integrated pest management (IPM) techniques to reduce pesticide usage by 55% of the 1993 baseline amount. While DoD continues to look for further reduction opportunities, such opportunities may not currently exist.	Comment noted. The intent of the General Permit is to utilize existing resources and programs. Please See Section F.3., Maximize Efficiency, where Permittees may incorporate the required storm water provisions into already existing programs and leverage existing staff to implement BMPs during its day to day business and operations. If Permittees already implement IPM, take credit, but ensure the program includes the minimum program elements that the permit provision requires.
64	7	Department of Defense	Section F.4.a(iii)	Requiring small MS4s to obtain legal counsel to sign an annual report is an undue imposition of burden on the permittee and is not typical practice. The signature of an authorized representative is sufficient certification of the legal authority.	The permit has been revised to address this comment.
64	8	Department of Defense	Attachment F, Page 4, Paragraph II	Signatory requirements should be revised to correspond with the language approved by the SWRCB in Order No. 2010-0014-DWQ.	The permit has been revised to address this comment.
64	9	Department of Defense	Attachment B	Non-Traditional Small MS4 permittees with population less than 5,000 should not be included in Attachment B based on criteria discussed at public workshops, and Draft Phase II Small MS4 General Permit Designation Flow Chart dated May 18, 2012. Several DoD installations included in Attachment B have populations less than 5,000. None of these installations were designated by the applicable Regional Board.	The permit has been revised to address this comment.
64	10	Department of Defense	Attachment B	Camp Pendleton was mistakenly listed on Attachment A as well as Attachment B. It is not a Traditional Small MS4 permittee so it only should be listed on Attachment B.	The permit has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
64	11	Department of Defense	Section F.5.d.1.	This would require Illicit Discharge Detection and Elimination survey crews to be trained and equipped to collect samples. Permittee's compliance staff or contractors may not have the required cross-training. There may be more cost effective methods for determining the source of the discharge which could be implemented prior to sampling. Additionally, the reference to Section B.4.a appears to be incorrect; it should refer to the Outfall Mapping task description, Section F.5.d(i).	Please see the Center for Watershed Protection's Illicit Discharge Detection and Elimination Guidance Manual located at: www.cwp.org . The manual outlines practical, low cost, and effective techniques for Phase II Permittees seeking to establish Illicit Discharge Detection and Elimination (IDDE) programs and investigate non-stormwater entries into storm drainage systems. It details the types of testing used to detect illicit discharges, information on estimating program costs in terms of capital and personnel expenses, and timelines that estimate how long program implementation will take.
64	12	Department of Defense	Section B.4.a	Detecting and correcting leaks within 72 hours may be infeasible if the leak occurs during a weekend or holiday when personnel may not be able to correct it, or the problem is extensive requiring more time. Also, what if the leak cannot be corrected within the 72 hours due to problems determining the source of the leak, or obtaining parts/contractors? It can take time to accurately identify the source of some leaks, particularly when sample collection and analysis are necessary for source identification. Setting a time constraint on this requirement is infeasible and impractical unless there is a provision allowing additional time under the circumstances described above.	Staff disagrees. 72 hours is sufficient time to identify source. Permittees should make a good faith effort to document identification efforts for sources that are too difficult to identify.
64	13	Department of Defense	Section F.5.d.2. (ii)	This section could be interpreted to mean that the investigation and source detection must be conducted (completed) within 72 hours which may not be feasible, especially if waiting for sampling results.	Comment noted. Staff does not agree. Initiate is unclear and unenforceable permit language.
64	14	Department of Defense	Section F.5.a.1 (f)(l)	Clean up timeframe should match requirement for Traditional MS4s.	The permit has been revised to address this comment.
64	15	Department of Defense	Section F.5.f.8	The O&M requirements of this section are redundant with those in Sections F.5.f.1-F.5.f.5. For example, Section F.5.f.8(1) states that "the Permittee shall assess their O&M activities for potential to discharge pollutants in storm water and inspect all BMPs on a quarterly basis." This requirement is already covered under Section F.5.f.5 (ii)(a) which requires the permittees to "perform quarterly visual inspections in accordance with the developed standing operation procedures of all hotspot Permittee- owned or operated facilities to ensure materials and equipment are clean and orderly to minimize the potential for pollutant discharge, and to ensure implementation of BMPs."	Staff does not agree. Permit provision remains.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
64	16	Department of Defense	Page 84, Section F.5.d(iii) and Page 88, Section F.5.f.2	These sections provide two years to complete detailed maps of drainage facilities. Creation of a Geographic Information Systems (GIS) database and maps is a time consuming endeavor and additional time will be required in order to complete this requirement due to funding and contracting considerations.	Staff does not agree. Two years is sufficient time.
64	17	Department of Defense	Page 102, Section F.5.g.4(ii)(b) and Page 103, Section F.5.g.4(iii)(b)	Section F.5.g.4(ii)(b) requires coordination with the appropriate mosquito and vector control agency to establish notification protocols for newly installed treatment systems and hydromodification management controls. Requiring an additional report under Section F.5.g.4(iii)(b) is overly prescriptive and not needed given the coordination requirement above and the annual reporting requirement under Section F.5.g.4(iii)(a).	Comment noted. Certain BMPs implemented or required by Permittees for urban runoff management may create a habitat for vectors (e.g., mosquitoes and rodents) if not properly designed or maintained. Close collaboration and cooperation among the Permittees, local vector control agencies, Regional Water Board staff, and the California Department of Public Health is necessary to identify and implement appropriate vector control measures that minimize potential nuisances and public health impacts resulting from vector breeding.
64	18	Department of Defense		US Constitutional law and federal jurisprudence only allow federal agencies to pay state imposed charges in certain limited circumstances.	As part of Phase 2 of a Workplan adopted by the State Board to assess and align priorities, resources and performance targets, staff has initiated an assessment of the costs of compliance for dischargers subject to Water Board regulation and oversight in the following four programs: 1) NPDES wastewater 2) NPDES stormwater 3) Irrigated lands, and 4) Waste discharge requirements (WDR).
65	1	El Dorado County Office of Education		While we believe it was a technical oversight, please also grant County Offices of Education the same exclusion from automatic designation that K-12s and community colleges were granted.	County Offices of Education are not automatically designated in the draft permit. This permit provision has been revised to address the comment.
66	1	Fresno County Office of Education		While we believe it was a technical oversight, please also grant County Offices of Education the same exclusion from automatic designation that K-12s and community colleges were granted.	County Offices of Education are not automatically designated in the draft permit. This permit provision has been revised to address the comment.
67	1	Friends of Corte Madera Creek Watershed		Unfortunately, the revised permit appears to be written to in such a way as to have the effect of discouraging compliance and creating ill will from a public that already views state government as too high-handed. Imposing unfunded mandates when all local jurisdictions are suffering from a shortfall of revenue will force jurisdictions to take resources from other programs to cover new requirements. The worst effect would be to severely reduce the ability of local agencies to conduct monitoring that is relevant to the specific characteristics of particular watersheds.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program "designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act," (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
67	2	Friends of Corte Madera Creek Watershed		Furthermore, the public outreach provisions appear to be useless. This is an area where MCSTOPPP has excelled, providing outreach to businesses, schools, and homeowners. Our volunteer group relies on guidance from stormwater personnel. This very effective outreach probably cannot continue if MCSTOPPP must switch to conducting surveys	Comment noted.
67	3	Friends of Corte Madera Creek Watershed		A statewide plan cannot fit everyone's needs and if not reconciled with local needs could simply result in higher costs and unnecessary work.	Please see Section II, Permitting Approach of the Fact Sheet.
67	4	Friends of Corte Madera Creek Watershed		Revise the Phase 2 permit to require monitoring that can be used to inform watershed management in a meaningful way. For example, measuring temperature is an inexpensive and effective way to identify areas where riparian vegetation could be enhanced, benefiting water quality and aquatic habitat.	Comment noted.
67	5	Friends of Corte Madera Creek Watershed		Personnel are not available around the clock to monitor private landscape irrigation systems, car washes held by schools and youth sports teams, and other miscellaneous point sources, many of which do not require permits and are not widely enough advertised to be known to permittees.	This permit provision has been revised to address this comment.
67	6	Friends of Corte Madera Creek Watershed		Marin County has more than one thousand outfalls and these may already be mapped. Photographing each one would be an unproductive use of permittees' limited time and provide limited information about water quality discharges. Alternatively, this might be an interesting educational exercise for an intern or volunteer if one were available, and could be suggested for such. Another measure likely to be both difficult to implement and of limited value is measure E.9.c(i) which would require permittees to locate all outfalls 72 hours after a rain event in order to verify if water is still flowing and then sample the water if it is flowing . This would not only be impractical, but would be made more difficult by the variability and unpredictability of rainfall in Marin County, an area noted for its microclimates.	U.S.EPA MS4 Permit Improvement Guide requires the development of a dry weather field screening and analytical monitoring program for Phase II Permittees. An effective IDDE program is more than just a program to respond to complaints about illicit discharges or spills. Permittees must proactively seek out illicit discharges, or activities that could result in discharges, such as illegal connections to the storm sewer system, improper disposal of wastes, or dumping of used motor oil or other chemicals. Mapping is key to any successful IDDE program. U.S. EPA recommends that permittees refer to the Center for Watershed Protection's guide on Illicit Discharge Detection and Elimination (IDDE): A Guidance Manual for Program Development and Technical Assistance (IDDE Manual, available at www.cwp.org) when developing an IDDE program.
67	7	Friends of Corte Madera Creek Watershed		The revised permit expands on inspecting and reporting requirements in numerous ways, with a strict reporting schedule. Phase 2 permittees, which include many very small communities, should be allowed some freedom to defer or consolidate reports when rescheduling would free time for the more important field work and outreach.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
68	1	General Public	E.12.d.2	Requiring each Permittee to develop and adopt specific source controls provides the necessary flexibility to adapt to local conditions while also providing accountability.	Comment noted.
68	2	General Public		The conditional language is appropriate because these measures, while very effective, are applicable to some but not all development sites. A requirement to document infeasibility of each measure would be cumbersome and ultimately ineffective, as decisions about pavement design, whether to use a green roof, etc., require project-specific application of engineering and aesthetic judgment.	Comment noted.
68	3	General Public		Based on my experience designing, or reviewing the design of, such facilities on over a hundred development sites, I emphasize the following to the Board: Facilities with the stated design parameters can be incorporated into nearly all development sites with minor effects (if any) on site layout and uses; The relative cost of such facilities is small (less than 1% of construction costs); The design is constructible, implementable, and does not create mosquito or geotechnical hazards when properly executed; The facilities are effective at removing trash, heavy metals, and other pollutants that tend to associate with sediments; The facilities are effective at preventing spills and slug loadings from reaching storm drains; The facilities have relatively low maintenance costs—little more than for ordinary landscape maintenance—and are attractive amenities when properly designed and maintained.	Comment noted.
69	1	General Public		First, the proposed General Permit is a vast improvement over existing permits which will provide needed clarity, uniformity in program implementation and greater oversight by all levels of regulators. Staff at the Water Board should be commended for this well thought out and developed Draft General Permit. To add to Water Board Staffs' well thought out work effort the following comments are made to not only enhance, but ensure program transparency and accountability at the local agency level.	Comment noted.
69	2	General Public		Currently, the regulations require individuals within the private sector that are engaged in the field of storm water / water quality management to have demonstrable skills, knowledge and abilities by securing a QSD which includes numerous prerequisites; such as, a bachelor's degree, a PE and / or various certifications (CPESC, CMS4S, etcetera). However, those responsible for providing program oversight, administration, direction and enforcement within the public sector are not required to have the same demonstrable skills, knowledge and abilities by securing a QSD.	Comment noted.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
69	3	General Public		A formal education consisting of at least a minimum of a four (4) year degree in environmental sciences, engineering, geology or closely related field, plus: Minimum demonstrable and verifiable stormwater experience of at least three (3) years working directly under a QSD, and possession of a QSD themselves, or: A minimum of seven (7) years working under a QSD, plus possession of a QSD	Comment noted. Staff does not have the flexibility in modifying the Construction General Permit QSD/QSP certification and qualifications process.
69	4	General Public		The draft Plan requires that "Field Inspectors" possess either a QSD or QSP, however, no provision is spelled out that their supervisors also possess a QSD or QSP. The supervisor of a position requiring a QSD or QSP must at least have the same or equal certifications; otherwise a situation will exist wherein the staff member is receiving direction from a superior who may lack the requisite demonstrable knowledge, skills and experience to make informed decisions. The non-qualified supervisor risk nothing and can jeopardize the qualified staff members certifications and/or license by directing the QSD or QSP staff member to take action contrary to the regulations for a host of reasons.	This permit provision has been revised to address the comment.
69	5	General Public		If the state is serious about the success of the Statewide Stormwater Program, then a high standard of ethics and accountability must be achieved via stormwater practitioners and like any other field of endeavor; such as, investment services, legal services, engineering, the only people who can provide direction and/or oversight to those areas of endeavor are those that have the proven and demonstrable knowledge and skills via a license and/or certification.	Comment noted.
69	6	General Public		Further to ensure accountability and full transparency within storm water programs it is recommended that if a QSD or QSP is found to have violated a regulation; such as failing to disclose or report a spill and or intentional discharge of illicit materials that may harm the environment or people, then that individual shall be barred from certifying any storm water document for a minimum period of three (3) years and have all certifications and /or licenses related to such authority suspended for a minimum of five (5) years. In effect, this stipulation shall create an atmosphere wherein transparency is in the best interest of all involved in water quality management for the best interest of the public and environment.	Please see response to comment number 3.
69	7	General Public		Since, the draft new regulations require that all staff involved in the construction element of a storm water program possess either a QSD or QSP, then this requirement should also apply to the Post Construction, Municipal Operations (Good Housekeeping) and the other minimum control measures to ensure that knowledgeable, trained staff are performing said functions, not just a warm body as has become common place within regulatory agencies nationwide.	Commented noted. Staff is currently considering the requirement of a certification specific to municipal stormwater program management.
70	1	General Public		You fail to recognize Sea-Level Rise as part of the pollutant process and the potential result in flooding, which would result in widespread contamination.	Comment noted.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
70	2	General Public		You fail to address that non-profit corporations, not government agencies, are tasked with equivalent responsibilities, but no legal responsibility of accuracy or of legally elected representation from the voters.	Comment noted.
70	3	General Public		You fail to recognize the budget process in municipalities and the party responsible for allocations of operations and maintenance and the party responsible for accurate financial reporting.	Comment noted.
70	4	General Public		You fail to specifically state that you want information, scientific or otherwise, based on the area involved, not on any report available.	Comment noted.
70	5	General Public	E.8.	You do not present a realistic view of Watershed Planning. Why stipulate "the second year." Planning is planning and should originate on or even before the first day of the first year. Will the Watershed Planning be part of the General Plan and its Elements and have legal authority? CEQA is part of that planning process. You need to question if there is any real legal authority in the Watershed Planning you present. Who is the Lead in the Watershed Planning? Is it an agency that has oversight of the Permittee, or is it a wider group that included municipal Departments of Public Health? Will it include Departments of Parks and Recreation? Will it include the Planning Departments of the municipalities? Will it include the Sanitation Departments of the municipalities? Will it include the Building and Safety and/or Bureau of Contract Administration or other permit/enforcement agency? Is there a proprietary or enterprise agency that would have authority that would be part of the Watershed Planning?	Storm water program implementation is a step-wise process whereby compliance dates are staggered. The requirement to participate in a watershed planning effort does not imply that the Permittee must also be part of the planning process.
70	6	General Public	E.8.	Who analyzes sediment management? Is sediment management even considered in a Watershed Plan?	The specifics of sediment management are regulated in other sections of the permit. Namely, TMDL requirements in Attachment G.
70	7	General Public	E.8.	IRWMP Integrated Regional Water Management Plan is basically for two grant applications-Proposition 50 and Proposition 84. It is not a public process nor does it have the protections against Conflicts of Interest.	The reference to participation with IRWMP requires Permittees to participate in a watershed planning effort.
70	8	General Public	E.8.	IRWMP Integrated Regional Water Management Plan is not a Planning document for land use, development and any pollutant loads.	Comment noted.
70	9	General Public	E.8.	There is no such legal requirement.	The federal regulations state at 40 CFR 122.34(b)(2)(i) that an MS4 must "at a minimum, comply with State, Tribal and local public notice requirements when implementing a public involvement/participation program." Both the guidance in 40 CFR 122.34(b)(2)(ii) and the guidance provided in the USEPA MS4 Permit Improvement Guide recommend that the MS4 go beyond just compliance with public notice requirements to incorporate measures such as the citizen advisory groups, citizen participation, and availability of storm water management information to the public. Staff believes that the public involvement and participation program laid out in the permit constitutes MEP and no changes are being made in response to this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
70	10	General Public	E.8.	So, without any legal authority or enforcement action, Watershed Planning is an exercise of futility if not incorporated into Municipal General Plans and Metropolitan Planning Organizations MPO Plans.	Please see response to comment 9.
70	11	General Public	E.8.	Who has the legal authority to enforce BMP Best Management Practices including individual site inspection?	Please see response to comment 9.
70	12	General Public	E.8.	Without legislative action resulting in Brown Act implementation, no public needs be included. Selected public, or shills including unelected non-profit corporations, will be the "public" voice. Meetings can be held in buildings without public access. Membership need not be disclosed nor are Conflict of Interest Codes created and Forms 700 Economic Interests are not filed.	Comment noted.
70	13	General Public	E.8.	Who appoints the Advisory Group? Are politicians appointed selected representatives who may just be representatives of big money instead of a poorer polluted community?	The advisory group is not limited to elected or appointed government officials.
70	14	General Public	E.8.	What elected official does the public hold accountable in this process?	Comment noted.
70	15	General Public	E.9	Missing is the new approach to replace redevelopment via the use of affordable housing development disguised as "infrastructure" without the land use designations that reflect development. In other words, the "Public Facilities" land use designation might include private development. The use is camouflaged. You need to consider onsite use of rain water or storm water as possible pollutant sources into receiving waters. Illegal dumping can cover poorer communities. Illegal dumping (consistent and numerous) is also used as a harassment technique to discourage a newcomer to stay in the neighborhood.	Comment noted.
70	16	General Public	E.11.a	You fail to identify other regulating agencies that may have more authority or federal regulations that trump this process	Comment noted.
70	17	General Public	E.11.g	Storm drain systems can involve the permittee and a Phase I permittee. How are the two systems distinguished as to the responsible party? Where is your stance on the responsibility of Caltrans as to the pollutants from highways designated as their responsibility?	Comment noted. Staff recognizes the challenge in regulating storm water discharges from an unregulated area into a regulated area. However, the nature of water quality is a complex matrix of water systems that are not isolated. A regulated permittee must show good faith effort to protect water quality within their jurisdiction and document on-flow storm water discharges.
70	18	General Public	E.11.i	Habitat enhancement would have to include State and Federal agencies such as Fish and Game and Fish and Wildlife Service or, at least, a direction into real watershed planning and conservation management. Be specific as to the level of commitment to habitat enhancement as a dog park could be considered a habitant enhancement in this context.	Comment noted.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
70	19	General Public	E.12.d.2	You have just negated the CEQA process as to projects being replaced with ministerial actions that do not take into effect local conditions on the environment. Where are the technical documents that CEQA provides to determine an effect on the environment? Are the soils and geology analyzed and adaptable to a BMP? Have you addressed fracking? Have you addressed any oil seepage? Have you addressed hillside development? Will the BMP interfere with Public Safety as in a Safe School Route? Will the property owner be tasked with addressing public infrastructure failures or flaws on his dime? What agency will be responsible for determining that a BMP is the correct one and sign off on a building permit? You are crossing over into territory that is reserved for the functions of a municipality with agencies designated for the task of execution, inspection and enforcement. You are causing a Public Health and Safety problem by this ministerial action.	The action to adopt an NPDES permit is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code § 21100, et seq) in accordance with Water Code section 13389. (County of Los Angeles v. Cal. Water Boards, (2006), 143 Cal.App.4th 985.)
70	20	General Public	E.12.f	Again, the Watershed Management process is terribly flawed. You fail to recognize the coordination needed to address Watershed Management including many State and Federal agencies. You fail to even address weather agencies and their predictions, as an aspect of planning and management.	The watershed management process as described in this section is not related to interagency coordination.
70	21	General Public	E.12.f	Are the Regional Boards fully qualified for this type of analysis without outside consultation and many opportunities for the public to comment. Regional Boards are appointed positions, without the resume qualifications, for this type of decision.	Comment noted.
70	22	General Public	E.12.f	You have just set up Mitigation Banking and a ministerial open door for development to flourish, without consideration of the General Plan, Its Elements and Infrastructure. You have negated the State process as part of the PUBLIC HEALTH AND SAFETY procedures.	This permit provision has been revised to address this comment.
70	23	General Public	E.12.f	You have negated our Constitutional right to vote for our representatives to make decisions applicable to our districts.	Comment is unclear.
70	24	General Public	E.12.f	This is blind power given to the Regional Boards. This is pure manipulation. You are setting up Wetlands Mitigation Banking as a ministerial watershed process, when it has been used as a CEQA solution.	Comment is unclear.
70	25	General Public	E.13.a	Who's in charge?	Comment is unclear. Please contact State Board staff for response to comment.
70	26	General Public	E.14.a	Is one permittee really effective in a regional area or is the cumulative effect? If one permittee "improves" and the other not, are "beneficial uses" maintained under the intent of the Clean Water Act?	Comment noted.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
70	27	General Public	E.14.b	Subwatersheds pollutant loads are a level of planning that most permittees are not equipped to address. Most elected representatives we have seen approach watershed issues can only focus on their district and are clueless as to what a watershed, and certainly not a subwatershed is. So, what elected official is duly elected as to be responsible for this?:	Elected officials are not the responsible implementing individuals for storm water program management.
70	28	General Public	F.5.b.2.	Whose budget will be paying for this? Or are we to expect rate increases? This is not well thought out as to being effective when most elected representatives cannot even explain what an MS4 permit is and what regulations are involved.	Please see Section III, Economic Consideration of the Fact Sheet. We understand municipalities face unique fiscal impacts implementing provisions in this draft order. However, the first draft order has undergone substantial revisions to address cost implications, while still protecting storm water quality. This third draft reflects further modifications that aim to clarify requirements and make the connection to water quality nexus.
70	29	General Public	Throughout	The direction of this permitting process, at this time, should be identifying and mapping pollutants and factors, for each individual parcel, and not to expect compliance when there is no structure set up in the State law to incorporate the Watershed Management Planning process as part of the General Plan process. We do not feel that your intent is to protect the Public Health and Safety.	Comment noted.
71	1	Heal the Bay/NRDC		The U.S. EPA considers urban runoff to be “one of the most significant reasons that water quality standards are not being met nationwide. The State Board has acknowledged these issues. Pollution in stormwater runoff further contributes to impairment in a substantially greater percentage of California’s inland and coastal waters.	Comment noted.
71	2	Heal the Bay/NRDC		Consistent with the federal Clean Water Act, a fundamental goal of all municipal stormwater permits is to ensure that discharges from storm sewers do not cause or contribute to a violation of water quality standards. (33 U.S.C. § 1341.) Where the use of specific best management practices (“BMPs”) and performance standards in stormwater permits is widespread across the state or country, it provides ample evidence as to their “practicability.” Thus, as the MEP standard evolves, “general permits issued under Phase II will ordinarily contain numerous substantive requirements,” which themselves evolve with each subsequent permit issued. (Environmental Defense Center, Inc. v. EPA (9th Cir. 2003) 344 F.3d 832, 854.)	Comment noted.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
71	3	Heal the Bay/NRDC		We are pleased to see that the Draft Permit requires that "All Permittees must implement post construction and monitoring programs as specified in this Order." However, we are concerned that the Draft Permit elsewhere creates the potential for approval or implementation of such in-lieu programs in place of the permit's Post Construction controls, including the Permit's low impact development ("LID") and hydromodification requirements, and in several provisions lacks clarity that could allow for regulated projects to escape requirements to implement the Draft Permit's otherwise applicable terms.	Post-construction provisions have been revised to address this comment.
71	4	Heal the Bay/NRDC		The Draft Permit properly requires retention of the 85th Percentile, 24-hour storm event	Comment noted.
71	5	Heal the Bay/NRDC		The Draft Permit must ensure that all development is covered by its core performance criteria and provisions. While we fully support the Draft Permit's generally applicable standard requiring retention of the 85th percentile, 24-hour storm event, we are concerned that the Draft Permit's definitions for "Regulated Project Categories" under section E.12.d.1.a could be construed as unlawfully limiting the type of development that the permit's LID provisions are applied.	This permit provision has been revised to address the comment.
71	6	Heal the Bay/NRDC		The Draft Permit's Numeric Sizing Criteria for storm water retention and treatment should be referenced in the Permit's Site Design section. While the Permit appropriately requires retention of the 85th percentile, 24-hour storm event, the Draft Permit's LID based Site Design Measures mention that the methods employed under E.12.d.2(ii)(2) "are based on the objective of achieving infiltration, evapotranspiration and/or harvesting/reuse of the 85th percentile rainfall event."	This permit provision has been revised to address this comment.
71	7	Heal the Bay/NRDC		The Draft Permit's Alternative Designs provisions list 4 categories of "effectiveness" that may allow for use of an alternative design to the Permit's Stormwater Treatment Measures requirements. The Draft Permit should specify that all 4 criteria must be met in order for the Permit term to apply, and given the section's reference to biotreatment (i.e., filtration with discharge), must specify that BMPs resulting in discharge of runoff and/or pollutant loading are permitted only where on-site retention of the design volume is technically infeasible.	Comment noted.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
71	8	Heal the Bay/NRDC		The Draft Permit appears to establish a scheme for the Permittee to develop their own strategy for Watershed Process. However, the Draft Permit is unclear as far as what level of review will occur at the Regional Board. This raises significant concerns with respect to public process and agency review requirements.	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.
71	9	Heal the Bay/NRDC		As discussed above, requirements that a project meet pre-project conditions are not adequately protective of water quality, and will ensure that impervious surfaces that generate polluted runoff or high volumes of runoff persist in the built environment effectively indefinitely. This is of particular concern with regard to the effects of hydromodification.	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.
71	10	Heal the Bay/NRDC		The Board must incorporate discharge controls into the Draft Permit that eliminate Permittees' illegal discharges into ASBSs. Additionally, ASBS-specific monitoring requirements should be added to track the progress of waste discharge reductions into ASBSs.	Permittees that discharge to ASBS are required to comply with Attachment C: Ocean Plan Special Protections.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
71	11	Heal the Bay/NRDC		<p>Section E.15 of the Draft Permit appropriately states that Permittees comply with all applicable TMDL waste load allocations, load allocations, effluent limitations, implementation requirements and monitoring requirements in the regional water board Basin Plans.18 Further Attachment G of the Draft Permit outlines TMDL WLAs and specific implementation requirements. However, this Attachment is incomplete. For instance, there are no Region 4 TMDLs listed. The Draft Permit states that they are incorporated by reference and there will be a reopener. We support the inclusion of milestones that may be outside of the permit term, in the event that the General Permit is administratively extended which is frequent occurrence.</p>	<p>TMDL-specific permit requirements for TMDLs established in the Los Angeles Regional Water Quality Control Board's region have not been included in Attachment G. In the context of the Small MS4 permit, these TMDLs apply to non-traditional Small MS4s within the region. Staff determined that the lack of specificity of these TMDLs with regard to the obligations of the specific non-traditional dischargers necessitated the development of more specific permit requirements to provide clarity to the Permittees regarding their responsibilities for compliance. The Order currently requires the Permittees to comply with all applicable TMDLs; however, TMDL-specific permit requirements for these TMDLs will be developed and clarified during a one-year process of consultation among the Permittees, Regional Water Board staff, and State Water Board staff. Attachment G is expected to be reopened after the one-year development process for incorporation of the permit-specific requirements. As specified in the Order, such TMDL-specific permit requirements must be consistent with the assumptions and requirements of the applicable WLAs and with the goals of the TMDL. Staff recognizes the challenges posed by past-due compliance deadlines. However, the TMDL requirements in the Order are consistent with the implementation schedules laid out in the relevant resolutions and Basin Plan amendments that established the TMDLs. Staff may consider employing time schedules to address such deadlines, where appropriate, during the one-year review and development period for TMDL-specific permit requirements that will follow adoption of the Order.</p>
71	12	Heal the Bay/NRDC		<p>While we appreciate the addition of monitoring requirements for Areas of Special Biological Significance (ASBS), the Draft Permit's remaining monitoring requirements are completely insufficient and illegal. We are disappointed to see that numerous monitoring elements that were in the June 7, 2011 Draft Permit have been eliminated. What is the reasoning for the major steps backward?</p>	<p>Staff recognizes that monitoring and assessment represent a critical component in understanding the link between permit requirements, the benefits achieved due to those requirements and the condition of receiving water conditions. However, through careful consideration of input from stakeholders throughout the state, it is clear that a one-size-fits all monitoring approach is a challenge to implement. Further, some estimates have claimed monitoring constitutes 20 – 30% or permit cost. As such, staff revised monitoring requirements based on priority areas and increased flexibility. Monitoring requirements have been revised to include increased specificity in study design and reporting requirements.</p>
71	13	Heal the Bay/NRDC		<p>The Draft Permit limits monitoring requirements to Permittees falling under specific categories. This is completely inappropriate and should be removed. In a hypothetical situation, a Permittee could monitor for a single waterbody-pollutant impairment and have no additional monitoring requirements. ASBS, TMDL and 303(d) monitoring is not necessarily sufficient to assess the condition of the waterbody any impacts from the discharge. These types of monitoring all serve different purposes.</p>	<p>Please see response to comment 12.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
71	14	Heal the Bay/NRDC		<p>Receiving water monitoring is a critical component of any water quality monitoring program. We strongly support the bioassessment monitoring in the Draft Permit; however, we have some concerns with the program as proposed. The objectives of a receiving water program should be much more far-reaching. For instance a receiving water monitoring program will determine if receiving water limits are being achieved, assess trends in pollutant concentrations over time and determine whether designated beneficial uses are fully supportive. While assessing LID is a good goal, it is hard to imagine with the slow pace of new and redevelopment projects that specific benefits will be measurable within two years of adoption of the permit, especially given the limited nature of the proposed monitoring scheme. This list should be greatly expanded. Pollutants such as nutrients, metals such as copper and zinc, and conventional pollutants (TSS, TDS, specific conductance, pH, turbidity, total hardness) are notably absent. Total coliform, fecal coliform and enterococcus should be specified instead of "bacteria." Also pyrethroid monitoring should contain reporting limits that are sufficiently low to be under the toxic levels. This inadequacy is compounded by the fact that there is only one monitoring location per HUC 12 watershed. An HUC 12 is very large watershed (up to 63 square miles). Thus, there will be extremely limited monitoring data collected under this scheme.</p>	<p>Please see response to comment 12. Further, receiving water monitoring has been revised to address this comment.</p>
71	15	Heal the Bay/NRDC		<p>The Draft Permit does not include any monitoring at end-of-pipe outfalls. The State Board and regional boards must include this type of monitoring for compliance-assurance and source identification purposes. Drainages carrying stormwater from commercial, industrial, and high-use transportation should be prioritized for monitoring. In addition to outfall monitoring, there should be downstream receiving water monitoring for each outfall monitoring station to determine if MS4 discharges are causing or contributing to exceedances of water quality standards. Monitoring should occur at the first storm event of the wet season and two additional events. Ironically, the Program Effectiveness section of the permit states that the program assessment will be based in part of "MS4 discharge quality"²⁴ and requires municipal watershed pollutant load quantification of parameters such as nitrogen and metals²⁵. How will the Permittee accomplish these tasks with no outfall data?</p>	<p>Staff recognizes the importance of monitoring end-of-pipe outfalls, however, the cost of implementation for both receiving water monitoring and effluent is infeasible for most Phase II Permittees. In order to assess the condition of Beneficial Uses in receiving water, staff determined that receiving water monitoring was the most effective option for Permittees. However, the Special Studies section allows Permittees the flexibility to select effluent monitoring in their jurisdiction.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
71	16	Heal the Bay/NRDC		We support the inclusion of TMDL monitoring requirements and other TMDL implementation milestones in Attachment G of the Draft Permit. The Draft Permit requires that TMDL responsible parties consult with the regional boards within six months of adoption to create a monitoring plan for those TMDLs not specified in Attachment G. It is concerning that there are entire regions and associated TMDLs absent from Attachment G, especially given the lengthy stakeholder process for this Permit.	Comment noted. The Regional Water Boards are directed to review, within 1 year of the effective date of the permit, the TMDL-specific permit requirements contained in Attachment G and to propose to the State Water Board any appropriate revisions after consultation with the Permittees and State Water Board staff.
71	17	Heal the Bay/NRDC		Toxicity monitoring is the “safety net” of the NPDES monitoring program, as it may identify toxicity from pollutants that are not monitored or the synergistic impacts of pollutants. Again, we are disappointed that the proposed toxicity monitoring in the previous draft has been eliminated in the Draft Permit.	Staff recognizes the assessment and evaluation value in toxicity monitoring. However, in an attempt to create a monitoring program for Phase II Permittees that is economically viable, staff determined a list of constituents that are most commonly found in urban storm water. Toxicity monitoring will be revisited in the next permit cycle.
71	18	Heal the Bay/NRDC		Stormwater runoff is a major source of beach bacteria pollution. The Permittees must be on hand to undertake beach water quality monitoring at stormwater impacted sites should the Health Department discontinue weekly monitoring, as this program is crucial to a major public health issue. We are disappointed to see the elimination of beach monitoring requirements in this current Draft Permit from the previous draft. Why was this eliminated?	Staff recognizes the value of beach water quality monitoring. However, in an attempt to create a monitoring program for Phase II Permittees that is economically viable, staff decided to restrict ocean monitoring to what is required in the Ocean Plan.
71	19	Heal the Bay/NRDC		An effective way to ensure the success of stormwater programs and the attainment of water quality standards is to assess BMPs based on performance. Flow-based design criteria are simply not adequate to ensure that water quality standards are consistently met because flow, and corresponding BMP size, is but one factor determining BMP effectiveness.	Section E.12 requires Permittees to assess performance of post-construction structural BMPs.
71	20	Heal the Bay/NRDC		The Draft Permit contains an extremely limited focus on trash pollution. Staff improperly removed the Trash Reduction Program that was proposed in the June 7, 2011 draft permit. Further, it is inappropriate for Staff to rely on a Trash Policy to be adopted by mid-2013 as a reason for eliminating a Trash Reduction Program from the Draft Permit. Controversial State Water Board policies have been known to take years—even decades—to be enacted. For example, the Once-Through Cooling (OTC) Policy is stated to have begun in 2005, and was not adopted until 2010.	The permit has been revised to address this comment. A re-opener clause has been included in the General Permit.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
71	21	Heal the Bay/NRDC		For the aforementioned reasons, the Revised Draft Permit does not meet the legal standard of controlling pollutants to the MEP.	The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. It emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP is also the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. Consistent with Clean Water Act section 402(p)(3)(B)(iii), this Order requires controls to reduce pollutants from the MS4 to MEP.
72	1	Los Angeles County, Flood Control District		Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the Importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognizes current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
72	1	Los Angeles County, Flood Control District		LACFCD strongly believes that small traditional- and non-traditional MS4s must be held to the same standards as the large MS4s, including receiving water limitations, outfall monitoring, and TMDLs. It is also imperative that all potential pollutant sources, including K-12 schools and community colleges, be designated as Regulated Small MS4 Permittees under the Draft Permit. While the Draft Permit leaves the designation of K-12 schools and community colleges to the discretion of each Regional Board, this approach is unacceptable because it would result in more regulatory inconsistency, as it is highly unlikely that the Regional Boards will approach this uniformly.	Of the categories of Regulated Non-traditional Small MS4s, K-12 schools, County Offices of Education, and Charter schools, in many cases, are likely not to pose a significant threat to water quality. K-12 schools, County Offices of Education, and Charter schools are usually small single buildings in very discrete areas. Given this, and in order to avoid an over inclusive designation of such discrete facilities, the State Water Board determined that it is more appropriate for the Regional Water Boards to designate K-12 schools, County Offices of Education, and Charter schools on a case-by-case basis. Such designations would be based on the potential of the discharges from these schools to result in exceedances of water quality standards or cause other significant water quality impacts. The Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their designation discretion accordingly.
73	1	Los Angeles County, Office of Education		While we believe it was a technical oversight, please also grant County Offices of Education the same exclusion from automatic designation that K-12s and community colleges were granted.	The permit has been revised to address this comment.
74	1	Marin Conservation League		Although the revised permit has been improved from the fall 2011 version it continues to include tasks only marginally related to water quality and not critical to program goals. The cost and unnecessary detail of the expanded requirements risk discouraging compliance and further distancing a public that already views state government as burdensome and heavy-handed.	Please see Section III, Economic Consideration of the Fact Sheet. We understand municipalities face unique fiscal impacts implementing provisions in this draft order. However, the first draft order has undergone substantial revisions to address cost implications, while still protecting storm water quality. This third draft reflects further modifications that aim to clarify requirements and make the connection to water quality nexus.
74	2	Marin Conservation League		Specifically it would 1) impose unfunded mandates in a time of dire public revenue decline, forcing jurisdictions to take resources from other programs to cover new requirements; 2) limit local agencies' ability to adapt strategies to meet a community's unique needs; and 3) add a new emphasis on "teaching to the test" for public outreach that is unsuitable in this context.	Please see detailed responses to comments below.
74	2	Marin Conservation League		Faced with unfunded mandates jurisdictions will tighten the belt in other areas, resulting in many regulations barely met, but none met well. Programs most likely to suffer in Marin County are educational efforts where MCSTOPPP (Marin County Stormwater Pollution Prevention Program) has focused and excelled: for example, exhaustive outreach to homeowners and businesses promoting integrated pest management. In addition, Marin County has several watershed "Friends" groups that sponsor creek cleanups, conduct significant public education and related activities, working with, and relying on guidance from, stormwater personnel. This outreach would be threatened in order to fulfill tasks that will fall short of generating public support for Clean Water goals that enthusiastic volunteers create.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program "designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act," (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
74	3	Marin Conservation League		Eliminate requirements that are unfeasible or which do not clearly benefit water quality, for example: Incidental Runoff (B.4.a and E.6.a). Personnel are not available around the clock to monitor private landscape irrigation systems, Little League car washes and other miscellaneous point sources, many of which do not require permits and are not widely enough advertised to be known to permittees.	Section B.4.a has been revised to address this comment. Additionally, section E.6.a allows for community education through programs such as MCSTOPP. This permit does not inhibit or discourage programs such as MCSTOPP. Instead, this permit encourages strong storm water programs to continue their efforts to protect water quality.
74	4	Marin Conservation League		Eliminate requirements that are unfeasible or which do not clearly benefit water quality, for example: Outfall mapping and photography (E.9.a.). Photographing each of the County's more than one thousand public outfalls would be an unproductive use of permittees' limited time and yield little or no practical information about water quality discharges.	Photographing of outfalls as required in section E.9.a has been made optional. Staff does not agree that photographing outfalls provides little or no practical information about water quality discharges. Visual representations of outfalls are useful in identifying
74	5	Marin Conservation League		Eliminate requirements that are unfeasible or which do not clearly benefit water quality, for example: Field Sampling to Detect Discharges Following Rain Events (E.9.c.(i)). The impracticability of locating all outfalls 72 hours after a rain event in order to verify if water is still flowing and then sample the water if it is flowing, should be obvious. This could be aggravated by the fact that showers often persist in some areas of Marin County while the sun is shining in others due in part to the differences in coastal and inland climates.	The draft permit was written based on the U.S.EPA Improvement Guide, APRIL 2010 EPA 833-R-10-001 and the CWP IDDE Manual.
74	6	Marin Conservation League		Focus on Community Education, not "Market-Based" Surveys and Tests, for example: Surveys to Gauge Level of Awareness and Behavior Change (E.7.a). Accurately gauging changes in public awareness and knowledge of stormwater issues through surveys would be virtually impossible without costly professional polling, and a base assessment which should already have been done. Reporting and surveys also do not achieve the bottom line goal of better water quality.	Comment noted. The permit language in this provision is based on a U.S. EPA guidance document titled Getting in Step: A Guide to Effective Outreach in Your Watershed (www.epa.gov/watertrain/gettingstep/). Staff recommends that permittees utilize this document for public outreach guidance and support.
74	7	Marin Conservation League		Focus on Community Education, not "Market-Based" Surveys and Tests, for example: Assessing if/how BMPs Change Behavior through Interviews and Surveys (E.14.a.Implementation.e.2). Surface runoff takes place around the county, from public and private properties, from hills and floodplains. Thus, the "target audience" is the community at large and developing interview questions and surveys to assess if or how BMPs affect the behavior of an entire community would be a Herculean task and not necessarily mirror runoff quality. Time spent in the field or doing community-based outreach would be much better spent with greater payback.	Comment noted. The permit language in this provision is based on a U.S. EPA guidance document titled Getting in Step: A Guide to Effective Outreach in Your Watershed (www.epa.gov/watertrain/gettingstep/). Staff recommends that permittees utilize this document for public outreach guidance and support.
74	8	Marin Conservation League		The revised permit expands on inspecting and reporting requirements in numerous ways, with a rigid reporting schedule.	This permit provision has been revised to address the comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
74	9	Marin Conservation League		We recognize that uniform standards are necessary to accomplish Clean Water Act goals, and the state board cannot allow permittees complete freedom to design their own programs. But some ability to accommodate differences in terrain and land use is reasonable. Marin County is an agricultural and suburban environment overlain with a tapestry of small waterways, very different from the state's large cities and beach communities. Measures to maintain healthy aquatic life, and reduce impermeable surfaces and residential pesticide use are important here. A statewide plan cannot fit everyone's needs and if not reconciled with local needs could simply result in higher costs and unnecessary work.	Please see Section II, Permitting Approach of the Fact Sheet.
75	1	Marin County Office of Education		While we believe it was a technical oversight, please also grant County Offices of Education the same exclusion from automatic designation that K-12s and community colleges were granted.	County Offices of Education are not automatically designated in the draft permit. This permit provision has been revised to address the comment.
76	1	Marin County, Department of Public Works		Revise the Receiving Water Limitation Language to allow permittees to comply with the Phase II Permit by implementing an iterative process, in good faith and in cooperation with the Regional Water Quality Control Boards, if it is determined that a discharge "causes or contributes" to an exceedance of a water quality standard. This change would be consistent with longstanding State Water Board policy regarding stormwater permitting and would support the core of the Water Board's cooperative partnership with local governments relative to stormwater management and the achievement of water quality standards.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
76	2	Marin County, Department of Public Works		Only include new requirements that are evidence-based and that will result in appreciable improvements to water quality.	Comment noted. The General Permit was drafted based on the U.S. EPA's MS4 Improvement Guide and State Water Board priorities.
76	3	Marin County, Department of Public Works		Provide more flexibility in the permit language that will support implementation and prioritization by region or community based on local issues.	Comment noted. Please see Section II, Permitting Approach of the Fact Sheet.
76	4	Marin County, Department of Public Works		Provide a clear, documented, regulatory path to allow implementation of existing programs that are currently adaptively managed and are protective of water quality to the federal standard of "Maximum Extent Practicable".	Provision E.1.b allows for continued implementation of storm water programs that are equally or more effective at reducing pollutant discharges than the implementation of requirements in this permit. A clear path has been delineated in permit language. Please see the permit for specific language regarding this provision.
76	5	Marin County, Department of Public Works		Remove the burdensome reporting, analysis and assessment requirements with no significant water quality nexus.	This permit provision has been revised to address the comment.
76	6	Marin County, Department of Public Works		Remove numerous provisions that are technically infeasible or have vague information making permit compliance unattainable. For example, Section requires the permittee to "measurably increase the knowledge of targeted communities regarding the municipal storm drain system..." While the permittee can provide varied outreach and education opportunities (events, trainings, web sites, etc.), the permittee cannot control a community's knowledge.	This permit provision has been revised to address this comment. The intent of this language is aimed at providing effective storm water education for the public. Staff recognizes that it is not within the Permittee's capacity to control a community's knowledge. However, Permittees can provide effective storm water education for the public, which ultimately, will establish increased knowledge.
76	7	Marin County, Department of Public Works		Incidental Runoff Requirements (B.4): This requirement goes above and beyond what is required of Phase Is and as written could present a significant enforcement burden on Phase Is.	Comment noted. This provision was based on the State Water Board Recycled Water Policy and CA DWR Water Efficient Landscape Ordinance.
76	8	Marin County, Department of Public Works		Municipal Watershed Pollutant Load Quantification (E.14.b): As written, this section would require Phase Is to annually quantify subwatershed pollutant loads and estimate loads reduced by BMPs. This requirement could result in a large amount of work with very little value to stormwater programs. Remove the entire requirement.	This permit provision has been deleted.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
76	9	Marin County, Department of Public Works		Revise Attachment C (Special Conditions for Small MS4 Area of Special Biological Significance Discharges) to scale requirements, including monitoring requirements, based on population size and density and land use. Until the County of Marin obtains grant funding to implement the California Ocean Plan General Exception (ASBS Special Protections) requirements it will be difficult to comply. Attachment C will require the County of Marin to conduct monitoring and to develop and implement a Duxbury Reef Area of Special Biological Significance Compliance Plan to cover an area with a population of only 500-1000 people in the rural residential community of Bolinas. These specific requirements could cost the County of Marin more than \$2,000,000 over six years to comply. Competitive grant funding may be provided by the State Water Resources Control Board to cover some monitoring and implementation costs, but the planned funding amount does not match the statewide need.	The provision contested by commenter is dictated by SWRCB Resolution No. 2012-0012, approving exceptions to the California Ocean Plan for selected discharges into ASBS. Staff does not have flexibility to alter the provision
76	10	Marin County, Department of Public Works	A.1.a [page 13]	Permittees are required to submit their NOI and permit fee within six months of the effective date of the permit. For renewal MS4s that already pay fees, if the six months falls within the fiscal year where a permittee has already paid a fee, the fee should be prorated.	This permit provision has been revised to address the comment. Renewal Permittee's fees will be prorated accordingly.
76	11	Marin County, Department of Public Works	B.4 [page 16]	Incidental runoff is identified as a "Low Threat Discharge" by several Regional Boards. The permit requirement that municipalities control and enforce incidental runoff discharges within 72 hours is not in keeping with established Regional Board policies. Similarly, no other Phase I permittee has an equivalently stringent requirement. The vast majority of Phase I permittees allow landscape irrigation discharges so long as the permittee implements an education and outreach program that addresses water conservation.	Staff does not agree that permit requirement to control incidental runoff is above and beyond all Phase I permits. The San Diego Phase I MS4 permit completely prohibits the discharge of incidental runoff.
76	12	Marin County, Department of Public Works	E.6.a.(ii)(h) [page 20]	Authority to enter private property to inspect for active or potential stormwater discharges on various types of property such as commercial, industrial, and residential is required by this section. Entry to private property usually requires a property owner to grant consent. Without consent, an inspection warrant is necessary which cannot be granted by this ordinance.	This permit provision has been revised to address the comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
76	13	Marin County, Department of Public Works	E.6.B [page 21]	The certification is required within the first year of the online Annual Report. However, the certification requirements must include a description of enforcement actions such as administrative orders. This requirement is not consistent with the Enforcement Response Plan Report which is required by year 3. It may not be feasible for a new designee to certify that enforcement mechanisms are in place prior to finishing the Enforcement Response Plan.	Staff recognizes the inconsistency in the Program Management timelines and has adjusted to make consistent. Please see the permit for specific language revisions.
76	14	Marin County, Department of Public Works	E.6.c.(ii) d [page 22]	This section requires Permittees to refer Industrial General Permit and Construction General Permit non-filers to the appropriate Regional Board. Please include the State web address utilized to submit non-filer information. This section also requires the Permittee to follow a prescriptive progressive enforcement process in relationship to the violations at construction projects or industrial facility locations and to report very specific information to the Regional Boards regarding these sites. Permittees will not inspect industrial facilities. Permittees will only interface with industrial facilities on a complaint basis for illicit discharges and not routine inspection. This process will be very resource intensive for the Permittee and somewhat redundant with already existing State programs.	This permit provision has been revised to address this comment.
76	15	Marin County, Department of Public Works	E.7 [page 24] and Attachment E	The Regional Board will determine, on a case-by-case basis, whether a permittee will have to implement "Community-Based Social Marketing (CBSM)" requirements. These are complex requirements and would likely require a consultant to develop and help with implementing. The basis for making such a determination by the Regional Board is not clear and leaves us unable to anticipate whether or not these requirements will be applied to us.	The determination process for Regional Board appointment of CBSM requirements has been clarified.
76	16	Marin County, Department of Public Works	E.7.a.(ii)(d) [page 25] & F.5.b.2.(ii)(d) [page 81]	Permittees are required to "develop and disseminate appropriate educational materials in multiple languages when appropriate". This requirement may not be in accordance with State Law.	This permit provision has been revised and clarified to address this comment.
76	17	Marin County, Department of Public Works	E.7	There are many references to "changing behavior", "increasing awareness" or "increasing knowledge".	Comment noted. This provision was based on U.S. EPA guidance document titled Getting in Step: A Guide to Effective Outreach in Your Watershed (www.epa.gov/watertrain/gettingstep/). Staff recommends that permittees utilize this document for public outreach guidance and support.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
76	18	Marin County, Department of Public Works	E.7.a(ii)(k) [page 26]	Charity car washes, mobile cleaning and pressure washing operations and irrigation activities are not always known to the Permittee. This makes it very difficult for a Permittee to measure a reduction.	This permit provision has been revised to address this comment.
76	19	Marin County, Department of Public Works	E.7.b.2.a. (ii) [page 27]	The Permit requires Permittee staff to have training including Qualified SWPPP Developer (QSD) or Qualified SWPPP Practitioner (QSP) certifications for staff members involved in reviewing development Plans and/or inspecting sites. The cost and effort associated with having Permittee staff members obtain and maintain these certifications is not warranted.	This permit provision has been revised to address this comment.
76	20	Marin County, Department of Public Works	E.7.b.3 (i) and (ii) [pages 28-29] & F.5.b.4.(i) & (ii) [page 83]	This section is unclear as to the training frequencies required. The Task Description indicates training every two years (biennial) with evaluations in the alternate years, and the Implementation section indicates annual training with annual assessments of staff.	The "Implementation Level" has been revised to make consistent with the "Task Description". Training should be conducted every other year (biennial) with evaluations and subsequent interim training (as needed) when training is not conducted.
76	21	Marin County, Department of Public Works	E.7.a(ii)(k) [page 26]	Charity car washes, mobile cleaning and pressure washing operations and irrigation activities are not always known to the Permittee. This makes it very difficult for a Permittee to measure a reduction.	This permit provision has been revised to address this comment.
76	22	Marin County, Department of Public Works	E.8.(ii)(a) [page 29]	The requirement to submit information on "who" is responsible for specific tasks and goals appears redundant to what is already required under the Certification requirements E.6.b(ii)(a) that requires information on staff roles and responsibilities. It is unclear why the Permittee must establish a "budget" for this element.	The word "budget" has been deleted.
76	23	Marin County, Department of Public Works	E.9.a.(ii)(a) [page 30]	The language currently states that the outfall map show all outfalls that are operated by the Permittee. This section should be clarified to not include outfalls in rural unincorporated or open space areas. For the County of Marin, as written, we would be required to photograph 1000s of outfalls.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
76	24	Marin County, Department of Public Works	E.9.a(ii)(a) [page 30]	The language currently states that the outfall map show all outfalls that are operated by the Permittee. Is this meant to include smaller under road pipes with no significant drainage area, or only culverts of a larger size that have significant drainage areas?	Staff does not agree. Both EPA and CWP recommend mapping and sampling of all outfalls within the urbanized area (http://cfpub.epa.gov/npdes/stormwater/idde.cfm)
76	25	Marin County, Department of Public Works	E.9.a(ii)(b) [page 30]	The language currently states that every outfall on the outfall map be photographed. This task is time consuming both in the field, and from a data management standpoint.	Photographing of outfalls as required in section E.9.a has been made optional. Staff does not agree that photographing outfalls provides little or no practical information about water quality discharges. Visual representations of outfalls are extremely useful.
76	26	Marin County, Department of Public Works	E.9.c.(i) [page32]	Task states, "While conducting the outfall inventory under Section E.9.a, the Permittee shall sample any outfalls that are flowing more than 72 hours after the last rain event." This would require sampling occur during the initial outfall inventory, which for some municipalities will need to begin as soon as the permit is effective. This will not give the Permittees adequate time to obtain necessary test kits, and conduct proper trainings for staff on how to use them.	Comment noted. This provision is based on the U.S. EPA MS4 Improvement Guide and CWP IDDE manual.
76	27	Marin County, Department of Public Works	E.9.c.(ii)(a) [page32]	Task states, "Conduct monitoring for the following indicator parameters to help determine the source of the illicit discharge." Sampling requires more time and specialized staff training. Allow Permittees to continue using their limited staff resources to further educate the public on stormwater pollution prevention, and how to report illicit discharges they see, rather than increased outfall monitoring looking for episodic dry weather flows.	Comment noted. This provision is based on the U.S. EPA MS4 Improvement Guide and CWP IDDE manual.
76	28	Marin County, Department of Public Works	E.9.d.(ii)(d) [page 34]	Language states, "Determine and document through investigations the source of all non-storm water discharges." Due to the episodic nature of illicit discharges, not all sources can be found.	Comment noted. This provision is based on the U.S. EPA MS4 Improvement Guide and CWP IDDE manual.
76	29	Marin County, Department of Public Works	E.9.d.(ii)(e) [page 34]	This section is too prescriptive. We may need more time to find the responsible party and they may need more than 72 hours to implement corrective actions.	Comment noted. This provision is based on the U.S. EPA MS4 Improvement Guide and CWP IDDE manual.
76	30	Marin County, Department of Public Works	E.10	Define "all projects." Without a description of what constitutes a qualifying project, it is impossible for the County to evaluate the potential costs and logistics in implementing this section of the permit. It would not make sense to track, require and review erosion and sediment control plans, track inspections, and report on projects with interior remodels or minimal to no site disturbance.	All projects refers to those projects that are less than one acre in size.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
76	31	Marin County, Department of Public Works	E.10.a.ii (a)(h) [page 36]	The items required in the construction site inventory will require an added level of staff time for tracking and reporting. The current economic climate makes it difficult to increase permit fees and county and municipal governments are currently being asked to reduce our budgets across the board. Furthermore, Permittees cannot determine private construction schedules.	Staff does not agree that the information required for reporting in this section is not tied to a clear water quality nexus. The reporting requirements are basic construction site informational items. From a regulatory perspective, this information is necessary to assess permit compliance. In addition to site visits and inspections, staff needs to have this information on hand to evaluate program implementation. Documentation of program compliance is an essential component to program evaluation and assessment.
76	32	Marin County, Department of Public Works	E.10.b.(ii)(a) [page 36]	The Permittee should not be required to review and approve revisions to erosion and sediment control plan. Operators should be allowed to use adaptive management practices to assess and revise as necessary the minimum BMPs required to protect storm water quality. Through inspections conducted by the project proponent or the Permittee, municipal staff can verify that BMPs are in place and are preventing, to the Maximum Extent Practicable, the discharge of non-stormwater from the site.	While staff recognizes the importance of adaptive management for BMP revisions and assessments, there have been numerous documented instances of BMP selection based on cost-effectiveness solely. BMPs are not always selected for water quality protection effectiveness, and as such, it is essential to have erosion and sediment control plan revisions checked and approved.
76	33	Marin County, Department of Public Works	E.10.b.(ii)(b) [page 36]	Section E.10.b.(ii)(a) already outlines that the erosion and sediment control plan shall not be approved "unless it contains appropriate site-specific construction site BMPs that meet the minimum requirements..." This language is sufficient and there should be no need to include the burdensome requirement of having the plan include the rationale for selecting or rejecting each BMP.	This permit provision has been revised to address this comment.
76	34	Marin County, Department of Public Works	E.10.c.(ii) [page 37]	Inspection mandates at major project construction milestones would not be effective at reducing the discharge of pollutants from construction sites to the maximum extent practicable, even at minimum requirements.	This permit provision has been revised to address this comment.
76	35	Marin County, Department of Public Works	E.10.c.(iii) [page 37]	The requirements in this section are too prescriptive and time consuming for staff.	Staff does not agree that the information required for reporting in this section is overly prescriptive and time consuming. The reporting requirements are basic construction site informational items. From a regulatory perspective, this information is necessary to assess permit compliance. In addition to site visits and inspections, staff needs to have this information on hand to evaluate program implementation. Documentation of program compliance is an essential component to program evaluation and assessment.
76	36	Marin County, Department of Public Works	E.11.a.(ii)		Comment noted. Open Space is not required to be inventoried.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
76	37	Marin County, Department of Public Works	E.11.c. ii	Provision requires annual inspections of all facilities beginning in year 3.	This permit provision has been revised to address this comment. High prioritization criteria has been included to assist the Permittee in developing high priority categorizations for catch basins.
76	38	Marin County, Department of Public Works	E.11.d	The state already requires certain local government facilities to have Hazardous Material Business plans (CUPA). Fuel Stations require a Spill Prevention Control and Countermeasure Plan (SPCC plan). Municipally owned industrial facilities subject to the NPDES Industrial General Permit must maintain and implement facility SWPPPs. All of these regulations cover many of the items requested in the draft Phase II permit.	Under Section E.11.d.i, the permit states "If a Permittee has an existing document such as a Hazardous Materials Business Plan or Spill Prevention Plan, the Permittee is not required to develop a SWPPP if that document includes the necessary information required within a SWPPP". This language has been revised to address additional existing documents.
76	39	Marin County, Department of Public Works	E.11.d.(ii)(a)) [page 40] & F.5.f.4.(ii)(a)) [page 89]	Include identification of existing BMPs. BMPs may include existing infrastructure and/or management practices. Not all sites will need additional BMPs.	This permit provision has been revised to address this comment.
76	40	Marin County, Department of Public Works	E.11.e.(ii) [page 41]	Require the Permittee to implement the SWPPP for hot spots identified by the Permittee. The SWPPP will provide an inspection schedule, procedures and a checklist. With SWPPP implementation in place and required, quarterly and annual hot spot inspections and reporting are unnecessary.	This permit provision has been revised to address this comment.
76	41	Marin County, Department of Public Works	E.11.e.(ii)(a)) - © [page 41] & F.5.f.5.(ii)(a)) - © [page 90]	Permit language should allow records to be kept electronically as paper is inefficient and wasteful.	This revision was inadvertently omitted from the November 16, 2012 draft and will be made prior to adoption.
76	42	Marin County, Department of Public Works	E.11.f.(ii)(b)) Pg. 42	Citizen complaints/reports regarding specific storm drains often do not reflect an issue with ongoing accumulation of trash and/or debris. Requiring that all catch basins that receive citizen complaints/reports be assigned a high maintenance priority could divert finite resources and staff time that could be better spent in higher priority areas.	This permit provision has been revised to address this comment. High prioritization criteria has been included to assist the Permittee in developing high priority categorizations for catch basins.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
76	43	Marin County, Department of Public Works	E.11.h.(i-ii) [page 44] & F.5.f.8.(i) [page 92]	E.11.h.i states all O&M BMPs are to be inspected quarterly, while E.11.h.ii.d states annually.	This permit provision has been revised to address this comment.
76	44	Marin County, Department of Public Works	E11.j(ii)(b)(2) [pages 45-46]	The list of landscape management measures is extremely prescriptive and does not allow for a flexible, prioritized approach to reducing pesticide use and conserving water.	The requirements in Section E.11.j.(ii)(b)(2) are prescriptive to address an ongoing and pervasive issue regarding pesticide/herbicide and fertilizer application in municipalities. Generally, when a list of recommended measures are included, there is no 'hook' or ground for enforcement. Certain pesticides in particular, have been shown to be toxic to some zooplankton in receiving water bodies.
76	45	Marin County, Department of Public Works	E11.j(ii)(c) [page 46]	Provision requires Permittee to record the types and amounts of pesticides... This is a redundant requirement. Pesticide use is reported to the local Agricultural Commissioner.	It is important to document pesticide use in an urban runoff context and not only through the local Agricultural Commissioner. As such, this permit requirement will not be removed.
76	46	Marin County, Department of Public Works	E.11.j.(ii)(b)(2)(h) [page 46] & F.5.f.9.(ii)(b)(2)e [page 93]	This requirement prohibits the "application of pesticides, herbicides and fertilizers within five feet of pavement, 25 feet of a storm drain inlet, or 50 feet of a water body." This may not be feasible, beneficial or practical for several reasons: 1. Some turf areas have storm drain inlets in them or the turf area is adjacent to a sidewalk or pathway. Prohibiting fertilizer would decrease the health of the turf causing uneven footing that could cause a tripping hazard, or cause exposed soil areas that would be susceptible to erosion. 2. Proper fertilization (that incorporates water quality considerations) reduces the need for herbicides and is part of some IPM programs. 3. Municipalities with strong IPM programs should be allowed to prioritize their program as needed. A parks department may be able to reduce overall fertilizer and pesticide use by converting turf to native grasses/plants, however, some flexibility is needed for municipalities to properly manage some turf areas.	This permit provision has been revised to make consistent with the recently adopted Pesticide Policy by Department of Pesticide Regulation.
76	47	Marin County, Department of Public Works	E11.j(ii)(b)(2) a and b [page 45]	The requirement for agencies to create drought resistant soils and to create soil microbial communities through the use of compost will significantly increase on-going maintenance costs to ensure there are sufficient compost layers to be effective. The language does not indicate when this is to be done.	Traditional municipal landscapes are generally more maintenance intensive than landscapes created using healthy soils as a foundation. Further, landscapes built on drought resistant soils and healthy soil microbial communities require a significantly less amount of pesticides, fertilizers and water.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
76	48	Marin County, Department of Public Works	Throughout	We support the California Stormwater Quality Association's (CASQA's) Attachment C to their Comment Letter on the Draft Permit.	Please see response to comment letter number 11.
76	49	Marin County, Department of Public Works	E.12.c.(i) [page 47]	Site Design Measures should follow same schedule as LID and align with Planning and Building updates. Residential projects of any size greater than 2,500 square feet (sf) should follow Site Design Measures, whereas other projects > 5,000 sf will address Source Control and Site Design as defined in E.12.d.2.	This permit provision has been revised to address this comment.
76	50	Marin County, Department of Public Works	E.12.d.1.(ii)(c) Page 48	We assume "routine maintenance" also includes roof replacement/repair.	This permit provision has been revised to address this comment.
76	51	Marin County, Department of Public Works	E.12.c.(ii) [page 48]	This section states "The Permittee shall implement the following site design measures...". The Permittee does not implement site design measures except on public projects. The Permittee requires that project proponents implement the measures on private projects.	This permit provision has been revised to address this comment.
76	52	Marin County, Department of Public Works	E.12.d.1.(ii) [pages 48 - 49]	The current provision does not differentiate between projects that create or replace 5,000 sf impervious and those that are "Regulated Projects." Listing individual "Regulated Projects" types may imply that other types of projects are not be regulated.	This permit provision has been revised to address this comment.
76	53	Marin County, Department of Public Works	E.12.d.1(b) and (c) [page 49]	Delete "treatment" since these provisions refer to Site Design, Source Control, and LID. Include MEP to address conditions where measures cannot be applied at a redeveloped site.	This permit provision has been revised to address this comment.
76	54	Marin County, Department of Public Works	E.12.d.(1)(d) [pages 49 & 50]	The draft language proposed is unnecessary as planning laws set the requirements for when project's development rights become "vested" or "grandfathered." Excerpting portions of planning law can place this Draft Order in conflict with future planning law as it changes over time. The trigger for when standards are applied to development projects is well established in Subdivision Map Act and State Planning Laws, rendering the ministerial vs. discretionary discussion irrelevant.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
76	55	Marin County, Department of Public Works	E.12.d.(1)(d) [page 49]	Provide language to clarify the effective date.	This permit provision has been revised to address this comment.
76	56	Marin County, Department of Public Works	E.12.d.1.(e)(2) Page 50	The County currently has a policy to widen any repaving project where a bike lane can be added. This is part of a Countywide effort to encourage bike and pedestrian travel. If doing so will increase the cost of the projects by triggering LID requirements, then the County may be forced to discontinue this effort.	The permit includes specific exclusions for sidewalks and bicycle lanes.
76	57	Marin County, Department of Public Works	E.12.d.1.e. 2.(i & ii) [page 50]	This section states that an entire roadway project needs to be treated if the proposed improvements affect 50% of the impervious surface of the existing roadway, but allows no minimum amount of new roadway. A limit of 5,000 sf is recommended so that it is in the same category as “regulated projects” (see above). It is impractical to segregate street “sheds” being that they have constant cross slopes for driver safety and comfort. Requiring treatment for the entire roadway when < 50% impermeable surface is added is not practical. Suggest treating an equivalent volume generated from the additional “new” pavement, but that can come from another portion of the full section roadway.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
76	58	Marin County, Department of Public Works	E.12.d.2.(ii) (3)b. [page 53] & F.5.g.2.(ii)(3) b) [page 97]	<p>Modify language as follows: Allowed Adjustments-Variations for Special Site Conditions - The bioretention system design parameters in (2) may be adjusted for the following special site conditions as follows: (1) Facilities located within 10 feet of structures or other potential geotechnical hazards established by the geotechnical expert for the project may incorporate an impermeable cutoff wall between the bioretention facility and the structure. (2) Facilities in areas with documented high concentrations of pollutants in underlying soil or groundwater, facilities located where infiltration could contribute to a geotechnical hazard, and facilities located on elevated plazas or other structures may incorporate an impermeable liner and may locate the underdrain discharge at the bottom of the subsurface drainage/storage layer (this configuration is commonly known as a "flow through planter"). (3) Facilities located in areas of highly infiltrative soils groundwater, or where connection of an underdrain to a surface drain or to a subsurface storm drain are infeasible, may omit the underdrain. (4) Facilities serving high-risk areas such as fueling stations, truck stops, auto repairs, and heavy industrial sites may be required to provide additional treatment to address pollutants of concern unless these high-risk areas are isolated from stormwater runoff or bioretention areas with little chance of spill migration.</p>	This permit provision has been revised to address this comment.
76	59	Marin County, Department of Public Works	E.12.e.(i) [page 55]	<p>This section should require the Permittee to require regulated projects that create 1 acre or more of impervious surface or projects that replace 1 acre or more of impervious surface and increase impervious area over the pre-project condition to implement the baseline hydromodification management measures described in section E.12.d.2.ii (3) by the beginning of year 3. Once the State Board and Regional Boards have completed Section E.12.f., the permit may be reopened if it is determined that the requirements in E.12.d and E.12.e are not protective of the watershed processes. Because section E.12.d.ii (3) includes baseline hydromodification management measures for projects that add or replace 5000 square feet of impervious, we feel it is sufficient to require hydromodification management projects to comply with E.12.d.ii (3) only until the State and Regional Boards work with Permittees and other stakeholders to determine the best way to protect watershed processes in Phase II areas.</p>	<p>This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
76	60	Marin County, Department of Public Works	E.12.e.(ii) [page 56]	Exemptions should be provided for hydromodification criteria.	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.
76	61	Marin County, Department of Public Works	E.12.g. [page 58]	O&M only addresses Regulated Projects, not those less than 5,000 sf.	This title has been revised.
76	62	Marin County, Department of Public Works	E.12.g. [page 58]	O&M requirements are onerous. Allow Permittees to direct the project proponent – through the conditions of approval – to ensure ongoing O&M and to transfer responsibility for the O&M when the property is sold without requiring the Permittee to track, verify, inspect and enforce implementation.	Staff's experience has shown that tracking, verification, inspection and enforcement implemented by the Permittee are necessary to ensure ongoing operation and maintenance of post-construction BMPs. Staff does not agree that this section should be removed.
76	63	Marin County, Department of Public Works	E.12.h. [page 62]	This section appears to require the Permittee to inventory and assess stormwater treatment and control facilities installed per Attachment 4 requirements of the current Phase II Permit.	Post-construction requirements applicability will be clarified and detailed prior to adoption. This revision will be made to address this comment in the Fact Sheet.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
76	64	Marin County, Department of Public Works	E.12.j [pages 63 – 65]	Requiring Permittees, by Year 1, to “modify codes, regulations, standards, and/or specifications”, and by Year 4 to “revise general plans, specific plans, and zoning” is not feasible. Reviewing, identifying gaps and impediments, finding an appropriate correction, and possible approval required at Council/ Commission level cannot be achieved in one year. General Plans are long-term planning documents for growth and resource protection that are updated infrequently due to the overall work updates require. Permittees have Land Use and Conservation Elements that address protection of water resources from development. Further, communities in Coastal Zone would need Coastal Commission Approval of any changes.	This permit provision has been revised to address this comment.
76	65	Marin County, Department of Public Works	Throughout	MCSTOPPP would like to emphasize the importance of having monitoring options available to Phase IIs. A one-size-fits-all approach is not appropriate given that the Phase II permit is a statewide permit that applies to municipalities of varying sizes, geographies and MS4 implementation experience. Having options also has the benefit in allowing Permittees to select an option that will help them to obtain information useful to answering questions about their own stormwater program(s).	Comment noted.
76	66	Marin County, Department of Public Works	Throughout	MCSTOPPP supports CASQA’s comments throughout this section.	Please see response to comment letter number 11.
76	67	Marin County, Department of Public Works	E.13 & Monitoring Flow Chart [page 65]	The permit should clearly state that consultations with Regional Board for 303(d) list – related monitoring only need occur when “urban runoff” is listed as a source.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
76	68	Marin County, Department of Public Works	Monitoring Flow Chart & E.13.vi [page 66]	Further clarify in section E.13 and on the monitoring flow chart, that any Permittee performing ASBS, TMDL or 303d monitoring is not required to perform any additional monitoring from E.13.a, E.13.b, or E.13.c. Recommend adding the following language to E.13.iv: (iv). Traditional Small MS4 Permittees with a population greater than 50,000 listed in Attachment A that are not already conducting ASBS, TMDL or 303(d) monitoring efforts shall participate in one of the following monitoring programs, subject to Regional Water Board Executive Officer approval: a) E.14.a. Regional Monitoring b) E.14.b. Receiving Water Monitoring c) E.14.c. Special Studies <i>Traditional Small MS4 Permittees that are already conducting ASBS, TMDL, 303(d) monitoring efforts are not required to perform additional monitoring as specified in E.13.a, E.13.b, and E.13.c.</i>	This permit provision has been revised to address this comment.
76	69	Marin County, Department of Public Works	E.14.	All effectiveness assessment requirements should be incorporated in a cost-effective manner into each section of the permit. All requirements in the permit should be peer reviewed and determined to be effective methods of improving or protecting water quality.	The intent of establishing a separate section for Program Effectiveness and Assessment is to move from an element by element approach to a comprehensive approach. A comprehensive approach requires Permittees to take a holistic view of their storm water program and evaluate effectiveness accordingly. However, there are some elements throughout the permit where effectiveness is addressed within each element.
76	70	Marin County, Department of Public Works	TMDLs - Throughout	MCSTOPPP supports CASQA's comments throughout this section.	Please see response to comment letter number 11.
76	71	Marin County, Department of Public Works	Reporting - Throughout	MCSTOPPP supports CASQA's comments throughout this section.	Please see response to comment letter number 11.
76	72	Marin County, Department of Public Works	A.1.b.3.A [page 13]	For renewal counties it should be clear that the activities established in this permit are only for the urbanized areas. Current permit boundaries as established by the regional boards can be much larger areas than as defined by this permit. Having to complete permit tasks in the entire permit area will be overly burdensome and does not meet the intent of the MS4 permit.	Staff does not agree that permit boundaries for renewal permittees should be restricted to the urbanized area only. There are cases where Regional Boards have designated the entire county line as the permit boundary. As such, the State Board supports those determinations made by Regional Boards and does not agree that permit boundaries should retroactively be restricted to urbanized areas only.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
77	1	Mendocino County	Throughout	Our primary concern with the Permit is the fact that it constitutes yet another unfunded mandate being imposed by the State upon focal governments. This issue is exacerbated by the fact that the State would like to impose these unfunded requirements at a time when all levels of government are struggling with decreased revenues caused by an economic downturn of historic proportions.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program “designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.
77	2	Mendocino County	Throughout	While a precise estimate of the cost to achieve compliance with this new permit within Mendocino County cannot be generated at this time, it is clear that compliance will create significant new financial burdens throughout the County system.	The draft order has been revised to address comments received regarding costs of implementation as outlined in Section III, Economic Considerations, of the Fact Sheet.
77	3	Mendocino County	Throughout	A number of the required tasks do not provide a water quality improvement for small jurisdictions like Mendocino County. The reporting requirements are often unnecessarily onerous.	This permit provision has been revised to address the comment.
77	4	Mendocino County	Throughout	The reporting requirements should match what the State and Regional Boards will be able to accommodate in their annual reviews of programs so that local jurisdictions can receive productive feedback and respond in a timely manner rather than wait for an audit process.	Please see response to comment 3.
77	5	Mendocino County	Throughout	The permit term should be extended to ten years, or two permit terms, to achieve full compliance. This could allow everyone involved (municipal staff, land owners, engineers, architects, developers, etc.) to learn these new requirements (many of the requirements will be new to small communities) and learn how to properly implement stormwater management methods.	Staff does not agree that the permit term should be extended to ten years, or two permit terms to achieve full compliance. Urban storm water runoff is a major contributor to receiving water impairment. In California, urban storm water is listed as the primary source of impairment for ten percent of all rivers, ten percent of all lakes and reservoirs, and 17 percent of all estuaries (2010 Integrated Report). Although these numbers may seem low, urban areas cover just six percent of the land mass of California and so their influence is disproportionately large. Extending the implementation timeline for this permit term will only contribute to the water quality impairment that we face.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
77	6	Mendocino County	Throughout	Flexibility is imbedded in the definition of "MEP." One size does not fit all when it comes to Phase II permittees. A less prescriptive, more permittee-developed approach would result in better water quality outcomes. Phase II permittees should be allowed to identify what areas are high priority using pre-defined criteria provided within the provisions.	Provision E.1.b allows for continued implementation of storm water programs that are equally or more effective at reducing pollutant discharges than the implementation of requirements in this permit. Please see the permit for specific language regarding this provision. For new permittees, the permit has been drafted with specific requirements based on lessons learned over the last approximately 30 years of storm water regulation. U.S. EPA on-site audits of MS4s nationwide have repeatedly shown the necessity for clear, measurable requirements in MS4 permits to ensure an effective and enforceable program.
77	7	Mendocino County	Throughout	SWRCB is proposing to increase the specificity of the Permit from the requirements of the previous small MS4 permit, and in many areas the proposed requirements exceed what is required of Phase I permittees. Increased Permit requirements are particularly difficult for small jurisdictions with limited staff and resources. Regional consistency with the Phase I and Phase II permits should be developed, which would allow jurisdictions to create partnerships and share resources.	Staff support watershed-wide consistency, and as such, encourages the creation of partnerships and collaborations to share resources. Any Permittee designated under this Order may request to join the permit of a Phase I Permittee within six (6) months of the effective date.
77	8	Mendocino County	Throughout	With this in mind, the SWRCB and the Regional Boards should take responsibility to provide additional resources (reporting templates, educational handouts, free training opportunities, etc.) to the local governments. The state and local governments should work cooperatively to achieve Clean Water Act goals and build capacity, rather than simply passing requirements without proper implementation support. We recognize that budgets are tight at every government level, but the burden should not be placed solely on local governments to develop all of the information required in the Permit.	Staff agrees that State Board and Regional Boards should assist in implementation of this permit and work collaboratively with local governments and permittees. Upon adoption of the permit, staff will engage in the implementation process through workshops, development of guidance, reporting templates, etc.
77	9	Mendocino County	Throughout	Extending the length of the Permit would allow the tasks to be spread out over a longer period of time, so that not so many requirements would be required in the first two years- this would also allow costs of implementation to be spread out over time. As proposed, the Permit requires significant person-power in the first three years to assure full compliance. This is a significant cost for small jurisdictions that do not have the fiscal resources of larger jurisdictions.	Please see response to comment number 5. Additionally, staff carefully considered the implementation schedule and revised dates accordingly. The first portion of the permit term will naturally have more requirements than the latter portion as this is the period of time that the program is established.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
77	10	Mendocino County	Throughout	More time to achieve compliance would allow permittees to form partnerships to implement the Permit in an incremental and cost effective manner. There are a number of resources available on the local level- community groups, non-profits, special districts, even municipal departments, that could be leveraged to assist small jurisdictions with implementation of the Permit requirements. Providing more time is a simple solution to allow local government to work within their means. On the whole Mendocino County is an economically disadvantaged community, cash flow is limited but if we are allowed time to seek out and effectively use the resources available in our County this would create a more effective implementation program in the long-term. ☐	In the case that Permittees participate in a regional effort, a grace period of 1 year is allowed to account for partnership formation and resource allocation. Please see permit for specific revisions.
77	11	Mendocino County	Throughout	The permit requires approximately 22 plans and inventories to be completed by the end of the permit, 19 are to be completed by the end of the third year. Nearly every task (there are approximately 45 tasks, not including E.1S as this section does not apply to Mendocino County at this time) requires some amount of reporting. Many of the tasks require very detailed reporting procedures to capture pieces of information that may or may not actually help in determining that the method is improving water quality. As proposed, 40 tasks are required to be started and/or completed by the third year of the permit, leaving five additional tasks for year four and five. Therefore, we request that the tasks be more spread out over the Permit duration, the Permit duration be extended, and that the reporting requirements be reduced to those that actually provide a relationship between information tracking and water quality, and not just an exercise in paperwork.	Please see response to comment letter number 9.
77	12	Mendocino County	E.6	There appears to be a disconnect between E.6.a Legal Authority and E.6.b Certification. The Legal Authority section requires the Permittee to review and revise ordinances or other regulatory mechanisms to meet the requirements of this order within the second year. The Certification section requires the Permittee to cite each Stormwater related ordinance which implements the requirements of the Permit by the first year.	This permit provision has been revised to address this comment.
77	13	Mendocino County	E.6.c	This section should allow local jurisdictions to use their existing code enforcing procedures rather than create a duplicative process.	While staff does not intend to create duplicative processes throughout this permit, it is important to establish an Enforcement Response Plan. While some Permittees may have existing code procedures that effectively address enforcement measures, there are also those that have less sophisticated programs that are lacking code enforcing procedures altogether. Through establishment of such a plan, enforcement measures are

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
77	14	Mendocino County	E.6.c.ii(d)	This language inappropriately places the responsibility of verifying and tracking applicants for other State permits (State CGP or IGP) on the Phase II Permittee. These permits are appropriately the State's responsibility to track and enforce especially since the State receives permit fees. Phase II communities do not have the authority or sufficient resources to carry out this task. Please remove this language.	This permit provision does not require Permittees to actively seek out and refer NPDES permit non-filers. Instead, in the case that a project subject to an NPDES permit has not obtained coverage, the Permittee must refer them to the appropriate Regional Water Board to take action.
77	15	Mendocino County	E.7	The State should provide free training to local jurisdictions on Community- Based Social Marketing (CBSM). Although CBSM has not been mandated in the Permit, it has been left up to the Regional Board to determine if it will be required, in which case it may be required. In the very least, it has obviously been identified by the State as an effective tool and therefore the State should provide the resources and training necessary to implement CBSM effectively.	If it is determined by a Regional Water Board that CBSM is required, training will be provided to Permittees. However, State Board staff does not agree that CBSM training should be conducted at a statewide level for an optional provision.
77	16	Mendocino County	E.7.a.(ii)	Tasks are unclear and will be difficult, time-intensive, and costly to implement. To "measurably increase the knowledge of targeted communities" is not a reasonable expectation with the resources available in small jurisdictions. The level of required implementation would require additional staff to implement the section as written.	Staff does not agree with the request to eliminate the requirement to measure public knowledge. There are several methods to evaluate public knowledge. Such methods include: direct evaluations, surveys, interviews, review of media clippings, tracking the number of storm water related calls/emails/letters received. The U.S. Environmental Protection Agency has provided a guidance document titled Getting in Step: A Guide to Effective Outreach in Your Watershed (www.epa.gov/watertrain/gettingstep/). Staff recommends that permittees utilize this document for public outreach guidance and support.
77	17	Mendocino County	E.7.b.2.a) (ii) (a)	clarify if plan reviewers and permitting staff must be a certified QSD, or if (as allowed in the following sub-paragraph) that a designated person on staff may have the certification. To require municipal staff to be QSD/QSP certified is problematic as this certification requires the individual to have additional certifications such as EnviroCert International certifications, or the individual would need to be a hydrologist or professional engineer for example. Many, if not all, of the permitting staff and building inspectors do not hold the pre-requisite qualifications and although many of the staff would like to be certified QSD/QSP they would not qualify. Allowing for a designated person on staff to hold the certification is helpful, however it would be more effective if additional staff could be certified.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
77	18	Mendocino County	E.7.b.2.b)	This section is unclear. While the County would and does provide educational materials, outreach and educational opportunities to assist developers in complying with the rules and requirements of the Permit, the language of this section is unclear and the reporting requirements should be eliminated as they do not represent the implementation measures provided nor is there any clear connection between what is required to report and actual proper implementation of BMPs.	Staff carefully considered the reporting requirements throughout the permit to include only those requirements with a clear water quality nexus. Based on site visits, inspections and in-house audits, staff has determined that reporting on the number and percentage of attendees is useful in assessing permit compliance.
77	19	Mendocino County	E.9	While this is certainly helpful to the State and Regional Board, it shifts yet another burden to local government. The only way in which this new responsibility can be seen as reasonable is if the State ensures that IGP and CGP permit inventories are up to date, accessible, and searchable by zip code and/or address.	Staff does not agree that requiring Permittees to implement an Illicit Discharge Detection and Elimination program is shifting the burden to local government. It is the responsibility of the Permittee to implement a storm water program that effectively reduces or prevents the discharge of pollutants into receiving waters.
77	20	Mendocino County	E.9.b	it is burdensome to update the inventory annually, as this is unnecessarily too often to update an inventory of this type. In many cases, the inventory would not change year to year, and would take up needless staff time to accomplish. The inventory should be completed as proposed but updated only once in the fifth year	Comment noted. Staff does not agree. Facilities close/change ownership and inventory conditions change.
77	21	Mendocino County	E.9.c	This entire section is above and beyond what is required by the Phase I permit and would be extremely costly to implement. Many storm drain outfalls are not accessible due to overgrown vegetation and limited access. There would be no way to physically sample them all while they were producing flow. This is an impossible requirement to meet. The parameters listed are not all applicable to our region. The action level for Potassium is lower than for drinking water. The action level for turbidity is inconsistent with the Construction General Permit (1000 NTU vs. 250 NTU). This section should be removed as it is infeasible to implement.	Comment noted, U.S, EPA and CWP IDDE manual recommend inventory.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
77	22	Mendocino County	E.10	Please clarify the lower limit of disturbance for construction projects- many types of projects that disturb less than 1acre would not create a water quality impact, and may not even require a permit. The information gathering and reporting in this section is far too detailed and excessive. Many of the pieces of information that are required to be gathered in this section (E.IO.c) are required in Enforcement Measures and Tracking section (E.6). Therefore the reporting requirements of this section are duplicative,onerous,and not cost-effective. This is another example of where the reporting requirements can be eased and/or removed to allow focus on more effective and important aspects of the Permit that have a direct impact on water quality. It will be more effective to categorize any violation/correction by type, rather than have to piece out and report separately for this section.	This permit provision has been revised to address this comment.
77	23	Mendocino County	E.11	Some of the tasks in this section require detailed information to be gathered and the timeline provided is not reasonable or realistic. For example, section E.II.b. Map of Permittee-Owned or Operated Facilities requires that by the second year the Permittee shall submit a map that details the Stormwater drainage system of each facility as well as the receiving water body. This task will require extensive field work to accomplish.	Staff does not agree that the requirement to produce a map of permittee-owned or operated facilities by the second year annual report, October 2015. In order to effectively manage a storm drain system within a Permittee's jurisdiction, it is essential to know where potential discharges may originate, receiving water bodies that may be impacted and who is responsible at each facility.
77	24	Mendocino County	E.11.d	This section is duplicative of various other sections and should be removed from the Permit. All staff is required to be trained, and several other plans including an IDDE plan, spill response plan are required to be developed. This section makes all of these processes duplicative and burdensome to develop for each specific site.	Staff does not agree that the requirement to develop and implement SWPPPs for permit-owned facility pollutant hotspots is duplicative. The permit explicitly states that "If a Permittee has an existing document, such as Hazardous Materials Business Plan or Spill Prevention Plan, the Permittee is not required to develop a SWPPP if that document includes the necessary information required within a SWPPP".
77	25	Mendocino County	E.11.e	The reporting requirements of this section are excessive. Reporting requirements should be reduced to those listed as: a,b, f, g, h.	Staff does not agree that the information required for reporting in this section is excessive. The reporting requirements to summarize spills and corrective actions, results of inspections, deficiencies noted, and result of quarterly visual observations are important in assessing permit compliance. In addition to site visits and inspections, staff needs to have this information on hand to evaluate program implementation. Documentation of program compliance is an essential component to program evaluation and assessment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
77	26	Mendocino County	E.11.f and g	The County of Mendocino encompasses a huge geographical region, and portions of our MS4 system exist throughout the entirety of that area. The funds available to maintain this vast system are extremely limited, and forcing the County to prioritize that portion of our system which lies within the arbitrary boundaries of this permit would make it likely that funding wouldn't be available to address the highest priority needs of the County (with the largest impacts on water quality). These sections require extensive field work.	Comment noted.
77	27	Mendocino County	E.12.f	. If State and Regional Boards intend to create Watershed Management Zones and associate numeric criteria, please ensure that each region is given more than adequate opportunities to participate in the process and that those numeric criteria are appropriate at the local level- and complete with financial assistance.	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.
77	28	Mendocino County	E.12.j	The required items listed in these sections are land use planning issues are not under the authority of the State Board and should be removed in favor of water quality objectives. The Permittees shall maintain their authority to select land use policy that is appropriate for their communities that meet water quality requirements. The tasks are inappropriate and constitute a very large and infeasible work load.	This permit provision has been revised to address this comment.
77	29	Mendocino County	E.13	Water quality monitoring should not be required of every Permittee that discharges to a 303d listed water body, or this section should be more specific to a water body listed for a certain type of urban stormwater related pollutant, for example a water body is impaired by trash, or aluminum. In northern California many of the rivers are listed as impaired by sediment and temperature which is a largely a legacy of historic land uses. As the County does not issue water rights permits- which take cold water out of streams, nor does the Permit apply to all types of land uses- this section is not appropriate to apply to this region without waste load allocations or other similar analysis	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
77	30	Mendocino County	E.14	This section is excessive, overly detailed, burdensome and should be applied only to those jurisdictions required to implement section E.13 as a number of the implementation measures apply directly the information gained from water quality monitoring. The reporting requirements of this section are excessive. This section is also duplicative as the reporting requirements of each previous section provide the requested information in this section. In other words, each section is intended to document compliance with permit conditions- section E.14 duplicates these reporting requirements	The intent of establishing a section for Program Effectiveness and Assessment is to move from an element by element evaluation approach to a comprehensive evaluation approach. A comprehensive approach requires Permittees to take a holistic view of their storm water program and evaluate effectiveness accordingly. Section E.13 is a vehicle of assessment, however, it is not redundant with the requirements of Section E.14. Rather, E.14 requires Permittees to comprehensively evaluate all program elements within the context of program effectiveness as a whole.
77	31	Mendocino County	E.14.b	. It requires learning yet another tool to calculate annual runoff. This section is again burdensome, time-consuming and not appropriate for every jurisdiction statewide. <u>Delete this section or apply based on population size.</u>	This permit provision has been revised to address this comment.
77	32	Mendocino County	E.14.c	Is quite expensive and requires significant person-hours, and significant amount of follow-up time, above and beyond what is already required within the permit. This section should be removed from the permit requirements.	This permit provision has been revised to address this comment.
77	33	Mendocino County	E.14	The measures contained within this section are appropriate for reviewing this permit for the next permit round. Perhaps after five years of implementing the Permit, the State and Regional Boards could assist local jurisdictions in completing this section so the that the following permit incorporates lessons learned from this round of implementation. To require this level of review and analysis in combination with all the other requirements of this Permit will take away from effective implementation and will overly burden small governments like Mendocino County.	Staff does not agree the Program Effectiveness and Assessment section should be removed. This permit provision has been revised to address this comment, without deleting it entirely.
77	34	Mendocino County	Throughout	Some of the tasks provided in the Permit are onerous for small communities; and as a result there should be some distinction for communities with a population less than 20,000 within the urbanized area subject to the Permit. These small communities have limited staff and funding available to dedicate to the Permit. Spreading out the required tasks over the entire permit, rather than front loading all the tasks within the first three years would go a long way in making the permit requirements achievable.	Please see response to comment number 5. Additionally, staff carefully considered the implementation schedule and revised dates accordingly.
78	1	Mendocino County, Office of Education		While we believe it was a technical oversight, please also grant County Offices of Education the same exclusion from automatic designation that K-12s and community colleges were granted.	County Offices of Education have been included as an exception.
79	1	Mojave River Watershed Group	Throughout	In general, the MRWG supports CASQA's proposed changes to the Draft Permit.	Please see responses to comment letter number 11.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
79	2	Mojave River Watershed Group	Section D	<p>Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognize current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period.</p>	<p>The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.</p>
79	3	Mojave River Watershed Group	Throughout	<p>Several elements of the timeline remain unrealistic. Individually, the requirements and associated timeline may be feasible, but collectively, the comprehensive and ramped-up nature of the requirements makes compliance difficult, if not infeasible.</p>	<p>Staff carefully considered the implementation schedule and revised dates accordingly. The first portion of the permit term will naturally have more requirements than the latter portion as this is the period of time that the program is established.</p>
79	4	Mojave River Watershed Group		<p>One of the underlying concerns for Phase II communities is the estimated cost to comply with the Draft Permit. Phase II communities are also severely limited in the ability to raise revenues due to judiciary constraints, such as Proposition 218, which require voter approval on local taxes, assessments, and fees. While augmenting municipal staff, raising taxes, or increasing work schedules may be impossible, carefully reviewing the Draft Permit to prioritize permit goals can result in a feasible approach to attaining the State Board's objectives.</p>	<p>The draft order has been revised to address comments received regarding costs of implementation as outlined in Section III, Economic Considerations, of the Fact Sheet. The Public Resources Code requires that the Proposition 84 Storm water Grant Program funds be used to provide matching grants to local public agencies for the reduction and prevention of storm water contamination or rivers, lakes and streams. Please visit the following website for more information: http://waterboards.ca.gov/water_issues/program/grants_loans/prop84/index.shtml Additional financial assistance information including information on the Clean Water State Revolving Fund loans, is available at: http://www.waterboards.ca.gov/water_issues/programs/grants_loans/</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
79	5	Mojave River Watershed Group		Permittees and the geographic areas they cover vary greatly and the MRWG believes that one size does not fit all when it comes to Phase II communities, especially with the addition of so many non-traditional permittees and physical differences between coastal and desert regions and other inland and mountainous areas. A less prescriptive, Permittee-developed approach would result in better water quality outcomes.	Provision E.1.b allows for continued implementation of storm water programs that are equally or more effective at reducing pollutant discharges than the implementation of requirements in this permit. Please see the permit for specific language regarding this provision. For new permittees, the permit has been drafted with specific requirements based on lessons learned over the last approximately 30 years of storm water regulation. U.S. EPA on-site audits of MS4s nationwide have repeatedly shown the necessity for clear, measurable requirements in MS4 permits to ensure an effective and enforceable program.
79	6	Mojave River Watershed Group		The Draft Permit includes many new programs or higher levels of service that qualify as unfunded mandates.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program “designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.
80	1	Monterey County Water Resources Agency		Monterey County Water Resources Agency is currently listed in Attachment B of the General Permit.	Monterey County Water Resources Agency has been removed from Attachment B.
81	1	Monterey Regional Stormwater Permittee Participants Group	Findings 2 - 7	The findings describe pollutants that cause an impact to water quality; however, agricultural runoff has been determined to generate a high percentage of pollution that flows into MS4s and into the states’ waterways. While it is not known if receiving water quality near shore in urban areas is being influenced by agriculture runoff, the small Phase 2s are being held to expensive, onerous requirements when it is perceived that agriculture is not required to meet the same level of water quality protection measures. The regulatory burden must be shared proportionately with other contributors of pollutants.	Agricultural runoff is a non-point source discharge that is not subject to NPDES permitting. The Water Boards regulate agricultural return flows through waste discharge requirements and waivers of waste discharge requirements issued pursuant to their authority under the Porter-Cologne Water Quality Control Act. In doing so, the Water Boards take into consideration the potential impact of agricultural return flows on water quality and impose controls to address these impacts.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
81	2	Monterey Regional Stormwater Permittee Participants Group	Finding 30	<p>This finding states that the RWQCB has the discretion to require a Permittee to continue to implement BMPs of a Permittee's SWMP regulated under the current general permit if the RWQCB determines they are equally or more effective than the BMPs required under the new permit. This seems clearly to be discriminatory against current permittees, in that it appears to allow the RWQCB to hold current permittees to more stringent requirements than new permittees that enroll for the first time under the new General Permit. Since the new draft permit defines in great detail what actions must be taken to achieve MEP, it should not be necessary for ANY permittees to take actions above and beyond those specified.</p> <p>Additionally, clarification should be given indicating that any Phase II MS4 that currently has an outfall monitoring requirement in their program that differs from the new draft permit monitoring requirements may revise their program to comply with the new draft Phase II permit requirements only as they have been determined by the State to meet MEP.</p>	<p>Regional Water Boards are autonomous entities responsible for water quality protection within their boundaries. While this permit is intended to achieve stateside consistency, there are slight nuances regionally based upon the varying degrees to which receiving waters need to be protected. Accordingly, the Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their designation discretion accordingly, as specified in (Wat. Code §13377.)</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
81	3	Monterey Regional Stormwater Permittee Participants Group	Finding 30	The draft permit gives the RWQCB the discretion to decide whether the BMPs of an existing SWMP of a permittee that is regulated under the current General Permit are equally or more effective than the BMPs required under the new General Permit. If the RWQCB wishes to, it may then require that the permittee continue to implement its current BMPs rather than those contained in the new General Permit, even if some of the BMPs in the existing SWMP are more comprehensive than those required under the new General Permit. This is clearly discriminatory against current permittees, in that it would allow the RWQCB to hold current permittees (under the existing General Permit) to potentially more stringent requirements than new permittees that enroll for the first time under the new General Permit. As the "Fact Sheet" for the draft General Permit states "This Order specifies the actions necessary to reduce the discharge of pollutants in storm water to the Maximum Extent Practicable (MEP)..." thereby defining MEP. It goes on to say "This set of specific actions is equivalent to the requirements that were included in a separate SWMP for each Permittee in the existing General Permit," thereby confirming that the BMPs in the new General Permit fulfill the requirements of the current General Permit. Since the new draft General Permit defines in great detail what actions must be taken to achieve MEP, it should not be necessary for ANY permittee to take actions beyond those specified. The language in Finding No. 30 and in Section E.1.b of the Permit should be revised to read as follows: "If a Renewal Traditional MS4 Permittee believes that certain of the BMPs in its existing SWMP meet the MEP standard and are equally or more effective at reducing pollutant discharges than implementation of the requirements of this Section, the Permittee may request approval by its RWQCB to continue implementing its existing BMPs in lieu of implementation of the requirements of this Section."	Staff does not agree that continued implementation of program elements should be left to a Permittee's discretion. This permit specifies actions necessary to reduce discharges in storm water to MEP, however, this permit serves as a baseline for achieving MEP. As mentioned previously, Regional Water Boards are autonomous entities responsible for water quality protection within their boundaries. While this permit is intended to achieve stateside consistency, there are slight nuances regionally based upon the varying degrees to which receiving waters need to be protected. In the case that a Regional Board has established storm water management measures that effectively achieve MEP, they have the authority to require those requirements within their jurisdiction., as specified in (Wat. Code §13377.)
81	4	Monterey Regional Stormwater Permittee Participants Group	32	According to this finding, SWMPs are no longer required to be submitted to the regional water board for approval. How does an entity know if the revisions they make to their SWMPs are in compliance with this permit if it doesn't get reviewed by regional board staff until their review of Annual Reports?	This finding has been revised to address this comment.
81	5	Monterey Regional Stormwater Permittee Participants Group	33	It is unclear what information is required in the storm water program guidance document required for submittal during the application process.	Clarity has been provided for guidance document requirements.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
81	6	Monterey Regional Stormwater Permittee Participants Group	51	<p>This item states that the SWRCB has considered the costs of complying with this Order, and the Fact Sheet elaborates on this. However, the State must also consider the current economic situation of Cities and Counties throughout the State as well as the State itself. Additionally, Proposition 218 and Proposition 26 have made it virtually impossible to create a funding mechanism for stormwater compliance programs. It is recommended that the State Water Board take the lead in changing legislation to allow Permittees to recover costs associated with this Order.</p> <p>It is not clear from the cost analysis if the authors are looking at the difference between what MS4s are currently expending to comply with current permits and what they would expend if no stormwater permit existed. In order for an MS4 to comply with the permit, they must also have an adequately maintained and capitalized storm water utility. Are those costs being considered? In order to give the public a clear and accurate representation of the facts, all of these costs need to be included as one cannot exist without the other.</p>	<p>Staff is actively seeking additional funding resources available for Permittees. The following resource currently exist for Permittees: The Public Resources Code requires that the Proposition 84 Storm water Grant Program funds be used to provide matching grants to local public agencies for the reduction and prevention of storm water contamination or rivers, lakes and streams. Please visit the following website for more information: http://waterboards.ca.gov/water_issues/program/grants_loans/prop84/index.shtml Additional financial assistance information including information on the Clean Water State Revolving Fund loans, is available at: http://www.waterboards.ca.gov/water_issues/programs/grants_loans/</p>
81	7	Monterey Regional Stormwater Permittee Participants Group	A.1.b.4	<p>Further clarification is needed as to what information is required in the Storm Water Program Guidance Document. What is the purpose of this document if entities have to revise their SWMPs to be in compliance with this permit anyway?</p>	<p>The purpose of the guidance document is to provide some form of a storm water management document. It will assist Permittees in managing their storm water program. While this permit specifies actions for permit compliance, it does not delineate the responsible departments and individuals for each action. Through the development of a guidance document, the Permittee will map out the compliance process.</p>
81	8	Monterey Regional Stormwater Permittee Participants Group	A.3	<p>How would a regulated small MS4 certify that its discharges do not contribute or potentially contribute to water quality impairment? Also, none of the waiver options listed would allow a waiver to be given to an MS4 with over 20,000 in population, even if they do not contribute to water quality impairment. How is it justified that such an MS4 would be penalized for being proactive in this effort?</p>	<p>The waiver language included in the draft permit is based on federal regulations.</p>
81	9	Monterey Regional Stormwater Permittee Participants Group	B.3	<p>What is meant by the word "Provision? Should it perhaps be replaced with "General Permit"?</p> <p>What is meant when it says:"... provided any pollutant discharges are identified and appropriate control measures to minimize the impacts of such discharges, are developed and implemented under the Permittee's storm water program"? For example, if car washing is allowed, what are the Permittees' to do in term of implementing control measures?</p>	<p>Provision refers to Section B.3, not the entire General Permit. If for example, carwashing is allowed, the Permittee may implement control measures such as: use of biodegradable soap, washing cars on the lawn rather than a driveway, use of a hose fixed with a nozzle; for residential car washes.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
81	10	Monterey Regional Stormwater Permittee Participants Group	B.4	It is not stated that this section applies to just the jurisdiction's facilities. For example, if this is truly meant to apply to all "...parties responsible for incidental runoff" how can the MS4 correct leaks in a private property owner's sprinkler system? This permit requirement should only apply to Permittee activities.	Comment noted. This provision is based on the State Water Board Recycled Water Policy and the CA DWR Water Efficient Landscape Ordinance.
81	11	Monterey Regional Stormwater Permittee Participants Group	C.2	This provision should not include accidental spills.	Comment noted.
81	12	Monterey Regional Stormwater Permittee Participants Group	D	Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the Importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognizes current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
81	13	Monterey Regional Stormwater Permittee Participants Group	E.1.a	Renewal MS4s are required to continue implementing their existing SWMP activities for those Sections of the new General Permit for which the specified compliance date is past the effective date of the new General Permit. The intent of this language is not clear and should be clarified.	This permit provision has been revised to address this comment.
81	14	Monterey Regional Stormwater Permittee Participants Group	E.1.b	Same comment as for Finding 30 on page 9.	Please see response to comment number 2.
81	15	Monterey Regional Stormwater Permittee Participants Group	E.6.a(ii)(d)	Requiring parties responsible for incidental runoff to control it is a code enforcement nightmare and is not a major threat to water quality. It is recommended that MS4s be responsible for its own irrigation systems and education and outreach be provided to the public regarding minimizing sprinkler overspray. Local municipalities do not have the resources to monitor residential areas for incidental runoff violations.	This permit provision has been revised to address this comment.
81	16	Monterey Regional Stormwater Permittee Participants Group	E.6.a(ii)(f)	This section implies retrofitting of Industrial and Commercial facilities with stormwater BMPs will be required. This requirement should be removed until the State performs an evaluation as to the cost impacts to the business community within the Phase II jurisdictions.	This permit provision has been revised to address this comment.
81	17	Monterey Regional Stormwater Permittee Participants Group	E.6.a(ii)(h)	According to this section, MS4s must modify their ordinances to have the authority to: <input checked="" type="checkbox"/> Enter private property for inspections <input checked="" type="checkbox"/> Control the contribution of pollutants and flows from one portion of the MS4 to another through interagency agreements <input checked="" type="checkbox"/> Require documentation on BMP effectiveness of industrial and commercial facilities These requirements do not seem feasible. They would require both Construction and Industrial Permit oversight by Phase 2 MS4s (which is a State responsibility). Private property owners may not allow public entities onto their land.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
81	18	Monterey Regional Stormwater Permittee Participants Group	E.6.a(ii)(i)	This states that "...dischargers promptly cease and desist discharging and/or/cleanup..." Cease discharging and cleanup what? There are some adjectives missing from this sentence that would make this statement clearer. Please clarify when they need to cease and desist and what to cleanup.	This provision requires that Permittees: cease and desist discharge and/or; cleanup and abate the discharge. This permit provision has been modified to clarify this requirement.
81	19	Monterey Regional Stormwater Permittee Participants Group	E.6.c.ii (d)(1)	Once again, this section requires the MS4 to notify the RWQCB within 30 days of knowledge of an industrial facility not having the appropriate permit. Implicit in this is that the MS4 staff has to have the knowledge as to which facilities need what type of permit. This section also requires the MS4, not the RWQCB, to perform follow-up inspections, pursue enforcement actions and write demand letters if the industrial facility fails to comply. It also requires MS4s to "develop incentives or increase inspection frequency" to prevent chronic violations. This is an onerous requirement and a transfer of State permit oversight responsibilities to local municipalities who do not have the financial or staff resources to complete this task.	This permit provision has been revised to address this comment.
81	20	Monterey Regional Stormwater Permittee Participants Group	E.7	The RWQCB will determine, on a case-by-case basis, whether a permittee will have to implement "Community-Based Social Marketing" requirements. It is not clear what the basis for making such a determination by the RWQCB will be. The determination process should be described so permittees will be able to anticipate whether or not these requirements will be applied to them.	This permit provision has been revised to address this comment.
81	21	Monterey Regional Stormwater Permittee Participants Group	E.7.a	There are two subsection (ii) and (iii). In the first (ii), if there is an entity that refuses to participate with a regional outreach program, is the intention that the State will hold the individual entities accountable for performing their own individual PE/PO tasks even if they are redundant with the regional efforts? If so, it would be helpful to let all of the MS4's understand that this will happen.	The numbering in this section has been revised to address this comment. Further, the intent is to allow flexibility for Permittees to participate in a regional program for outreach and education implementation.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
81	22	Monterey Regional Stormwater Permittee Participants Group	E.7.a(ii) and the second (i) Format off in this section, there are two (i)s	The order requires the Permittee implement a “storm water Public Outreach and Education program” that SHALL measurably increase the knowledge and awareness of the target audiences. A Permittee also has to determine how to facilitate behavior changes. Firstly, this assumes the target audiences are not already educated which is not a safe assumption as Monterey Regional has been educating different sectors for over five years. Measuring the efficacy of education and outreach programs has been quite difficult and measuring an increase in improved behavior does not seem feasible. Additionally, how can the Permittee be responsible for changing the behavior of the public/commercial/ industrial/construction? How can the Permittee be in violation if they don’t listen? “Measured” changes in behavior is not realistically possible in that the public cannot be watched 24 hrs/7 days/wk to determine if the public has changed their behavior. Phase 2 MS4s do not have the staff for this type of enforcement. Behavioral changes take years (often 10 – 20) to occur. For example, recycling has taken over 20 years to get to where it is now. Should be rewritten to read: “Permittee will measure the effectiveness of the Public Outreach and Education program with the goal being increased knowledge and ultimately changed behavior.”	This permit provision has been revised to address this comment. The intent of this language is aimed at providing effective storm water education for the public. Staff recognizes that it is not within the Permittee's capacity to control a community's knowledge. However, Permittees can provide effective storm water education for the public, which ultimately, will establish increased knowledge.
81	23	Monterey Regional Stormwater Permittee Participants Group	E.7.a(ii)(h)	It doesn’t seem reasonable to require both 911 and a non-emergency number. The opposite might not be true, having a non-emergency number should probably also require an emergency number for hours outside of normal working hours.	Comment noted. This provision is based on the U.S. EPA MS4 Improvement Guide.
81	24	Monterey Regional Stormwater Permittee Participants Group	E.7.a(ii)(j)	The Permittee may use California’s Education Initiative Curriculum or equivalent. By equivalent do you mean the California Science Standards? California’s Education Initiative Curriculum has not been adopted by districts or teachers statewide and may not be implementable. CA Science Standards are currently being used; schools are reluctant to implement a new or additional program. Does this include private schools? What ages are considered “school-age” children? Additionally, none of the 85 modules of the CEIC program contain any information related to stormwater pollution prevention or urban runoff. The State may want to re-evaluate this option for stormwater education in schools. Local governments may not have any influence or control over their Boards of Education. This permit should not require local governments to take on responsibilities that are outside of their authority or purview. Implementation of stormwater education in schools should be the responsibility of the State Board of Education and the schools themselves.	This permit provision has been revised.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
81	25	Monterey Regional Stormwater Permittee Participants Group	E.7.a(ii)(k)	Charity car washes, mobile cleaning and pressure washing operations and irrigation activities, are not always known to the Permittee. How would an MS4 measure this reduction? B.3 says that only private/personal car washing is allowed. This provision seems to contradict that by allowing organized car wash events. Please clarify.	This permit provision has been revised to address this comment.
81	26	Monterey Regional Stormwater Permittee Participants Group	E.7.a(iii)	This section states to “annually report number of trainings....”. Who gets training and what training? What studies and results are being reported on? This section indicates education of “elementary” children; is this the same as “school-age”?	This permit provision has been revised to address this comment.
81	27	Monterey Regional Stormwater Permittee Participants Group	E.7.b.1(ii)(d)	Having an annual assessment of every employee’s knowledge of IDD is excessive. For a city with a staff of under 300, this will cost at least \$10,000 per year (assuming 200 people are initially trained, one hour each year at \$50 per hour). All police, fire, parking enforcement, public works and parks staff are important to an effective IDDE program. But with costs this high, there will be a great incentive to cut back on the number trained.	The draft order has been revised to address comments received regarding costs of implementation as outlined in Section III, Economic Considerations, of the Fact Sheet.
81	28	Monterey Regional Stormwater Permittee Participants Group	E.7.b.2(a)(ii)	The Permit requires Permittee staff to have training including Qualified SWPPP Developer (QSD) or Qualified SWPPP Practitioner (QSP) for staff members involved in reviewing development Plans and/or inspecting sites. This was not previously required unless the development projects were > one acre in size. The cost and effort associated with having Permittee staff members obtain and maintain these certifications is not warranted, if those staff members are only reviewing and/or inspecting small projects such as single family residential construction or remodeling,, or small additions or remodels of commercial establishments. These certification requirements should only be applicable to staff members involved in reviewing and/or inspecting projects that are > one acre in size. This section is unclear and needs further clarification of what exactly is required for the three categories. Add to the end of the last sentence the following: and only the staff responsible for the E.7 elements, not all review staff.	This permit provision has been revised to address this comment.
81	29	Monterey Regional Stormwater Permittee Participants Group	E.7.b.2(iii)	This section is unclear. Are Permittee’s required to submit a list of staff who are QSD/QSP trained and the dates of training? Item (d) does not fit into this section. What surveys does this item refer to?	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
81	30	Monterey Regional Stormwater Permittee Participants Group	E.7.b.2.b (ii) and (iii)	According to this section a Permittee can “provide information” on training opportunities. However, the reporting section seems to indicate the Permittee has to conduct the training. It should not be the responsibility of Permittees to educate the construction contractor community. Providing contractors with information regarding training that is being held in the area and providing information on a website should suffice. Getting training should be the responsibility of the contractor, not the Permittee.	This permit provision has been revised to address this comment.
81	31	Monterey Regional Stormwater Permittee Participants Group	E.7.b.3	This section is unclear as to the training frequencies required. The Task Description indicates training every two years (biennial) with evaluations in the alternate years, and the Implementation section indicates annual training with annual assessments of staff.	The "Implementation Level" has been revised to make consistent with the "Task Description". Training should be conducted every other year (biennial) with evaluations and subsequent interim training (as needed) when training is not conducted.
81	32	Monterey Regional Stormwater Permittee Participants Group	E.7.b.3	This section states that the annual report is to include “oversight procedures.” Please clarify the intent of this language.	Oversight procedures include, but are not limited to, the following: ensuring that contractor activities are implementing appropriate BMPs, good housekeeping practices are implemented and standard operating procedures are followed.
81	33	Monterey Regional Stormwater Permittee Participants Group	E.8(i)	How does IRWMP relate to the topic of Public Involvement and Participation? This item seems to be misplaced.	Involvement in IRWMP is related to Public Involvement and Participation in that it requires the Permittee to relate storm water program elements to the public through a watershed based approach.
81	34	Monterey Regional Stormwater Permittee Participants Group	E.9.a	Development of an outfall map was required with first permit term. Allow a database OR photographs of outfalls to reduce redundant work. Database is searchable and parameters used are measurable. Databases provide a better ‘base line’ than photos. The State Board staff indicated that an annual outfall walk was required. If an annual or permit term walk of all outfalls is intended, this is not stated in permit. If the State’s intent is for the Permittee to walk down all of their outfalls in year 1 and sample those that are flowing >72 hours after the last storm event then that needs to be clearly stated.	In the case that an outfall map has already been established and completed, the Permittee is only required to complete the once per permit term outfall walk to detect potential non-storm water flows. In the case that flow is detected for a priority area, annual follow up is required. This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
81	35	Monterey Regional Stormwater Permittee Participants Group	E.9.a(ii)(a)	Does the outfall map also include culverts?	The outfall map should include culverts that directly discharge to a receiving water body.
81	36	Monterey Regional Stormwater Permittee Participants Group	E.9.a(ii)(b)	Staff should consult with a licensed Land Surveyor on the use of terms. Requiring the use of "GPS" makes no sense. The state should only be interested in the coordinate system being used, however those coordinates are determined. Suggest that this be revised to state that CCS 83 coordinates must be given for all outfall pipes.	Staff is interested in the latitude and longitude of each outfall. We understand that individuals may use other non-State Plane Coordinate systems (e.g. NAD 83) and have allowed for this flexibility.
81	37	Monterey Regional Stormwater Permittee Participants Group	E.9.a.(ii)(d)	Recommend a minimum outfall size limit be utilized for field sampling stations. Recommend using only outfalls 18" or greater. Further clarification needed to define what a field sampling station is.....is it a permanent structure? Or simply a grab sampling location?	Staff does not agree that a minimum outfall size should be established for field sampling stations. Both EPA and CWP recommend mapping and sampling of all outfalls within the urbanized area (http://cfpub.epa.gov/npdes/stormwater/idde.cfm)
81	38	Monterey Regional Stormwater Permittee Participants Group	E.9.b(ii)(a)	The requirement for the inclusion of the physical location of a storm drain receiving discharge from an industrial or commercial facility is very onerous as there may be multiple locations where discharge from these facilities occurs. This information should be required of industrial permittees in their industrial permits. Why are decimal latitude-longitude now being used (see comment regarding E.9.a(ii)(b) above)?	Obtaining the physical location of a storm drain receiving discharge from an industrial or commercial facility can be determined through review of site plans and onsite inspection.
81	39	Monterey Regional Stormwater Permittee Participants Group	E.9.b(ii)(b)	More detail is needed regarding the types of facilities required to be included in the inventory. Is the intent for every aluminum can and recycling shed to be included under "Metal and other recycled materials collection facilities" or "Waste transfer facilities"? Recommend adding restaurants to the inventory list as they are often a priority polluter.	The intent is not for every aluminum can and recycling shed to be included under "Metal and other recycled materials collection facilities" or "Waste transfer facilities". Restaurants are not a priority during this permit term to regulate.
81	40	Monterey Regional Stormwater Permittee Participants Group	E.9.b(ii)©	Once again, this section requires the MS4 determine if an industrial or commercial facility requires a NPDES storm water permit. Implicit in this is that the MS4 staff has to have the knowledge as to which facilities need what type of permit. This section also requires the MS4, not the RWQCB, to inform the facilities they require a permit as well as the regional board. This is an onerous requirement and a transfer of State permit oversight responsibilities to local municipalities who do not have the financial or staff resources to complete this task.	As mentioned in a previous comment, the Permittee should notify the Regional Board of any facilities that has not obtained coverage under a NPDES storm water permit, when made aware. This permit does not require a Permittee to actively seek out each facility and determine if they have coverage or not.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
81	41	Monterey Regional Stormwater Permittee Participants Group	E.9.b(ii)(d)	This item requires a Permittee update the facility inventory annually through “collection of new information obtained during inspections”. During stakeholder meetings with the State, the State agreed to remove inspections of industrial and commercial facilities and yet this item implies those are still required. Please provide clarification on this.	In order to implement an effective IDDE program, Permittees must develop a facility inventory. Mandatory inspections are not required.
81	42	Monterey Regional Stormwater Permittee Participants Group	E.9.c.(i)	The Task Description indicates that priority area outfalls shall be sampled annually. When? During dry weather only? All outfalls or just outfalls 18” or greater? Please clarify.	This permit provision has been revised to address this comment. Please see Glossary.
81	43	Monterey Regional Stormwater Permittee Participants Group	E.9.c Table 1	The footnotes to this table state that a solidly filled circle indicates an 80% confidence that the corresponding source is the cause for this type of pollution. In the Monterey region, we do not agree. We find high ammonia and it is seldom associated with sewage; we find detergents and they are most likely associated with the washing of automobiles which is permissible.	This permit provision will be revised to address this comment. (This revision was inadvertently omitted in the November 16, 2012 and will be included prior to adoption).
81	44	Monterey Regional Stormwater Permittee Participants Group	E.9.c(ii)(a)	This sections states that the Permittee is required to conduct monitoring for source tracking. Are these the parameters that are required to be sampled for during the once/permit term outfall walk down? The Permittee should have flexibility around what parameters to sample for as it has knowledge of local pollutants of concern that may vary from those indicated in Table 1.	Please see the Center for Watershed Protection's Illicit Discharge Detection and Elimination Guidance Manual located at: www.cwp.org . The manual outlines practical, low cost, and effective techniques for Phase II Permittees seeking to establish Illicit Discharge Detection and Elimination (IDDE) programs and investigate non-stormwater entries into storm drainage systems. It details the types of testing used to detect illicit discharges, information on estimating program costs in terms of capital and personnel expenses, and timelines that estimate how long program implementation will take.
81	45	Monterey Regional Stormwater Permittee Participants Group	E.9.c(ii)(b) & ©	What happens if the exceedances of action levels on outfall monitoring are due to discharges coming into a Permittee’s jurisdiction (i.e. Ag)? The Permittee has no jurisdictional authority to resolve the exceedances. Where did the Table 2 Action Levels come from?	Agricultural runoff is a non-point source discharge that is not subject to NPDES permitting. The Water Boards regulate agricultural return flows through waste discharge requirements and waivers of waste discharge requirements issued pursuant to their authority under the Porter-Cologne Water Quality Control Act. In doing so, the Water Boards take into consideration the potential impact of agricultural return flows on water quality and impose controls to address these impacts. Table 2 Action Levels are based on Center for Watershed Protection's Illicit Discharge Detection and Elimination Guidance Manual located at: www.cwp.org .

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
81	46	Monterey Regional Stormwater Permittee Participants Group	E.9.d(i)	When are the written procedures required to be in place?	This permit provision has been revised to address this comment.
81	47	Monterey Regional Stormwater Permittee Participants Group	E.10 and E.6.a(1)	The requirements to be implemented in the Construction Site Stormwater Control Ordinance are confusing and not coherently presented. Requirements in this section are not included in the discussion of the local ordinances in section E.6.a(1).	This permit provision has been revised to address this comment.
81	48	Monterey Regional Stormwater Permittee Participants Group	E.10.a(i) and E.10.a(ii)	Continuously update an inventory of all construction sites subject to the local construction site stormwater ordinance. Update as projects are permitted and completed. What does "continuously" mean? Is monthly or quarterly sufficient? Recommend the inventory only include "permitted" construction projects.	"Continuously update" the inventory monthly is sufficient. Language has been clarified to reflect this revision. The inventory should only include permitted projects. Language has been clarified to reduce misinterpretation.
81	49	Monterey Regional Stormwater Permittee Participants Group	E.10.b(ii)(b)	Require that the Erosion Control plan include the rationale used for selecting or rejecting BMPs, including soil loss calculations, if necessary. Is this intended to be a note on the plans, or is a separate report required? Does "if necessary" apply to this entire requirement or only to the soil loss calculations? There is no project size threshold indicated that would trigger the requirement for a project to develop an erosion and sediment control plan. What is the minimum size project this would be applicable to? The applicability of this requirement should be left to the discretion of the local MS4.	The requirement to include BMP rejection rationale has been removed. Staff understands that this could create a significant work load for project proponents. "If necessary" refers to soil calculations only. The trigger for developing an erosion and sediment control plan is based on a Permittee's local ordinance. As such, the applicability of this requirement is left to the discretion of the local MS4.
81	50	Monterey Regional Stormwater Permittee Participants Group	E.7.b.2.a(ii)(a)	The requirement that a plans examiner be certified as a QSD should be reiterated or at least referenced in this section.	This permit provision has been revised to address this comment.
81	51	Monterey Regional Stormwater Permittee Participants Group	E.7.b.2.a(ii)(b)	The requirement that a construction inspector be certified as a QSP should be reiterated or at least referenced in this section.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
81	52	Monterey Regional Stormwater Permittee Participants Group	E.10.c(ii)	Is the legal authority referenced required to be included in the local Grading and/or Erosion and Sediment Control Ordinance or can this be appended to the Construction Site Stormwater Ordinance?	The legal authority referenced must be included within the ordinance the Permittee utilizes to satisfy Section E.10.
81	53	Monterey Regional Stormwater Permittee Participants Group	E.11.a	In the list of public facilities, schools and transportation hubs are mentioned. Since MST and MPUSD are the agencies who maintain these sites, are they required to submit the requirements of this section or does it rely on the City to coordinate this effort?	The requirement to maintain an inventory of Permittee-owned or operated facilities within their jurisdiction that are a threat to water quality is followed by 'if applicable'. In the case that MST and MPUSD agencies maintain certain sites, the inclusion of those sites in the inventory may not apply.
81	55	Monterey Regional Stormwater Permittee Participants Group	E.11.c	To conduct an assessment of each public facility, update each manager with the requirements of the permit and the CWP guide with the specific requirements for each site is a huge undertaking that Cities do not have the staff to coordinate let alone manage. The term "comprehensive" is loosely used throughout this section for unspecified requirements. The correct title of the CWP Manual is the "Unified Subwatershed and Site Reconnaissance" manual. The manual is not geared towards inspections of municipal facilities and seems more appropriate for use as a watershed assessment tool.	The intent of this language is for Permittees to assess facilities within their jurisdiction that may be a pollutant hotspot. By the second year of the permit term, Permittees will have developed a map of all permittee-owned/operated facilities that pose a threat to water quality, per Section E.14.b. During the following year, they should use this map to assess which facilities are pollutant hotspots based on the criteria established by the Center for Watershed Protection. The commenter correctly states that the manual is geared more towards assessment and not inspections. It is referenced as part of "Facility Assessment", not inspections.
81	56	Monterey Regional Stormwater Permittee Participants Group	E.11.c(ii)(a)	At the end of this paragraph, it states what are the typically "hotspots". If these are what will handle most situations, then why go through the assessment using the CWP manual?	The Task Description clearly states that a Permittee may use the CWP's guide or an equivalent document to establish hotspots. The CWP manual is provided as guidance for the Permittee to utilize to conduct the assessment. By providing an option to use a different manual, staff intended to allow flexibility for the Permittee.
81	57	Monterey Regional Stormwater Permittee Participants Group	E.11.d	A SWPPP for every public facilities building and site will require extensive research and resources that are not available for such a vast undertaking. The definition of the SWPPP is not like the state required SWPPP; will preparation of this require a QSD to complete?	The SWPPPs are required for each pollutant hotspot. Further, permit language states that if a Permittee has an existing document such as a Hazardous Materials Business Plan or Spill Prevention Plan, the Permittee not required to develop a SWPPP if it includes the necessary information required within a SWPPP. Preparation of the pollutant hotspot facility SWPPP does not require a QSD to complete.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
81	58	Monterey Regional Stormwater Permittee Participants Group	E.11.e	Are there certifications for the “visual inspectors” of hotspots and discharges? Can the management of these facilities provide these inspections? Will there be classes to do so? Will the “developed standard operating procedures” be the SWPPP BMP’s, the assessment checklist, or a separate document to be provided? The ambiguity of the inspection requirements leave room for various interpretations of locations to inspect and the level of the inspection. Management of all facility inspections will require a superintendent-like position for the amount of inspection reports required. Quarterly inspections of all “hotspots” (as defined in E.11.c(ii)(a)) is excessive. We suggest that a more risk-based criteria be used if this intense of an inspection schedule is going to be considered. Perhaps that risk analysis should include the types of hazardous materials being stored, proximity to water bodies, quantities of hazardous materials etc.	E.11.e requires Permittees to conduct inspections and remedial action of Permittee-owned and operated pollutant hotspot facilities. This permit provision has been clarified to address this comment. Inspections required by E.11.e(ii)(a) are based on pollutant hotspot facilities, in other words, facilities that pose a greater risk to water quality.
81	59	Monterey Regional Stormwater Permittee Participants Group	E.11.f	An assessment of each catch basin’s important/high-maintenance-priority is a major undertaking requiring a massive amount of resources from the City over a much longer storm period than the 2 years allowed. Will prioritizing per citizen request require public outreach for a monitoring program, or is this by regular complaint-form requests? Is this a living-list, one that can change in prioritization per improvements or site changes? How are the terms “high”, “medium” and “low” volumes of trash defined?	This permit provision has been revised to address this comment.
81	60	Monterey Regional Stormwater Permittee Participants Group	E.11.f (i) & (iii)	What is “flood conveyance maintenance”? Is the City required to maintain the facilities of other entities “flood conveyance maintenance”? If prioritization of maintenance for these entities are required by year 3 in section (i), what sort of “coordination” is required by year 1 in section (iii)?	"Flood conveyance maintenance" refers to maintenance activities that restore original design capacities of storm drain systems to provide public safety and protection of property. In the case that flood conveyance maintenance is undertaken by another entity, the City would be aware of such an agreement and would then have to coordinate efforts to assess and prioritize storm drain maintenance.
81	61	Monterey Regional Stormwater Permittee Participants Group	E.11.g(ii)	Why inspect catch basin and pipes annually, especially if they’ve already been inspected and no illicit/illegal connections were found and there isn’t any construction occurring in the area? Phase II communities by definition are small in size and generally have a very good idea of what is going on in their communities. How is “high foot traffic” defined in (c)?	Comment noted. This provision is based on U.S. EPA MS4 Improvement Guide. The definition for 'high foot traffic' was inadvertently omitted from the November 16, 2012 draft and will be made prior to adoption.
81	62	Monterey Regional Stormwater Permittee Participants Group	E.11.h	Will there be samples of assessment programs or are City’s required to develop their own? In section (iii)b,	Municipalities are required to develop their own based on the requirements in Section E.11.h.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
81	63	Monterey Regional Stormwater Permittee Participants Group	E.11.h (iii)b	Does each daily O&M activity require its own BMP evaluation log?	The log of BMPs applied during Permittee O &M activities is not specific to each daily activity.
81	64	Monterey Regional Stormwater Permittee Participants Group	E.11.h (iii)d	This list seems repetitive from E.11.c.	This permit provision has been deleted due to redundancy with Section E.11.c.
81	65	Monterey Regional Stormwater Permittee Participants Group	E.11.i	The title of this section limits the subject to new flood management facilities. Yet in (i), it seems to be expanded to include "rehabilitated" facilities. If the intention is to include the rehabilitation of existing systems, we would strongly object. This program should not hinder the ability of an agency to carry out its basic function of protecting public health, safety and private properties by burdening those agencies with conditions such as this.	This permit provision has been deleted.
81	66	Monterey Regional Stormwater Permittee Participants Group	E.11.j	Will the landscape design & maintenance program be detailed for the amount of reduction required for water, pesticides, herbicides and fertilizers, or is this by an overall evaluation?	Through the tasks required in the Implementation Level, the Permittee will generally reduce the amount of water, pesticides, herbicides, fertilizers used during Permittee operations and activities.
81	67	Monterey Regional Stormwater Permittee Participants Group	E.11.j (ii) d, h, i,	What is "grass cycling"? Prohibiting pesticide/herbicide/fertilizer application within 5 feet of pavement would include planter medians. Would the requirements of irrigation sensors based on the information set in this section require replacing the existing controllers?	"Grass cycling" refers to leaving grass clippings on the lawn when mowing. The requirement that prohibits application of pesticides/fertilizers/herbicides within prescribed distances has been revised to address this comment. This permit provision does not require the replacement of controllers, rather, it requires evapotranspiration-based irrigation scheduling.
81	68	Monterey Regional Stormwater Permittee Participants Group	E.11.j (iii)	How do we quantify/demonstrate a reduction in application measures?	Demonstration of application reduction measures can be accomplished through the summarization of Implementation Level requirements that have been implemented.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
81	69	Monterey Regional Stormwater Permittee Participants Group	E.13	It appears that if a Permittee discharges to an ASBS, and is therefore subject to complying with the ASBS Special Protections requirements, that doing so will comply with all of the requirements set forth in this Section. If this is correct then paragraph E.13(i) should clearly state this. If this is not correct, please explain what the additional requirements in this Section are that apply to ASBS dischargers.	This permit provision has been revised to address this comment.
81	70	Monterey Regional Stormwater Permittee Participants Group	E.13(i)	This should be expanded to all SWQPA that have water quality monitoring associated with the discharges.	ASBS are the only areas that have designated Phase II entities at this time. Therefore, Section E.13.i only applies to ASBS.
81	71	Monterey Regional Stormwater Permittee Participants Group	E.13.a	Add the word "Inland" before the words "Regional Monitoring".	This permit provision has been revised to address this comment.
81	72	Monterey Regional Stormwater Permittee Participants Group	E.13.b	The word "Inland" should be added before the words "Receiving Water Monitoring" to make it clear that these requirements do not apply to ocean receiving waters.	This permit provision has been revised to address this comment.
81	73	Monterey Regional Stormwater Permittee Participants Group	E.13.b.1	How does one identify an urban/rural interface? What if the MS4 does not have an urban/rural interface? (ii) a) What if there is no development planned in the "near future"? What is meant by "near future"? (ii) c) Are we being asked to gather flow data? What is meant by correlations to flow data? Are we being required to generate mass loading data? What is an "index period"? (ii) d) We question the legality of requiring an MS4 to develop a fund as directed. Even so, what is "all new development" (what would this include or not include)?	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
81	74	Monterey Regional Stormwater Permittee Participants Group	E.13.b.1(ii)	With very few new projects being built, the amount of monitoring required should be cut back to just what is needed to develop a baseline if this is the intention of this provision.	This permit provision has been revised to address this comment.
81	75	Monterey Regional Stormwater Permittee Participants Group	E.14.a	It appears that subsection E.14.a (ii).f , which pertains to Water Quality Monitoring Data, should not apply to ASBS dischargers who are subject to the ASBS Special Protections. If this is correct then paragraph E.14.a (ii).f should clearly state this. If this is not correct, please explain what the additional requirements in this Section are that apply to ASBS dischargers.	This permit provision has been revised to address this comment.
81	76	Monterey Regional Stormwater Permittee Participants Group		E-14 needs to be consistent with E-13	This permit provision has been revised to address this comment.
81	77	Monterey Regional Stormwater Permittee Participants Group	E-14.a.(i)	Monterey Regional is concerned with how the definition of "MEP" is getting morphed and no longer adequately considers implementation costs	A discussion of cost considerations in determining MEP has been added to Section III of the Fact Sheet, beginning at page 8. (The underline to show that this discussion has been added to the Fact Sheet was inadvertently left off.)
81	78	Monterey Regional Stormwater Permittee Participants Group	E-14.ii.a (ii)©	How are these defined?	The permit language clearly delineates identification of assessment methods.
81	79	Monterey Regional Stormwater Permittee Participants Group	E.14.a(ii)(e) (2)	We have already provided extensive staff and public training during the first six years of our current permit. We would expect little improvement in our staff's knowledge since they already should be very aware and perhaps just a slight increase in the general public's knowledge.	Staff acknowledges that some storm water programs are more sophisticated and may not expect a vast improvement in Permittee staff knowledge and public knowledge. However, effectiveness and assessment of such should not be unacknowledged. Through this assessment, the Permittee may identify this area (for example, Outreach and Education) as a strength in their program that does not need to be prioritized for the next permit term.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
81	80	Monterey Regional Stormwater Permittee Participants Group	E-14.b	Requirements for quantifying pollutant load reduction should be based on monitoring requirement. This section appears to be in addition to the E-13 requirements. If the requirements of E-13 will not result in the required data and information required in E-14, the E-14 requirements should be eliminated.	This permit provision has been revised to apply to Permittees with a population of 50,000 or more and reduced to one constituent to be analyzed the second and fifth year of the permit term. Additionally, pollutant load quantification is a desktop practice that does not replace water quality monitoring.
81	81	Monterey Regional Stormwater Permittee Participants Group	E-14.b	Not all receiving water bodies will be monitored under E-13, but this adds the requirement.	Please see response to comment number 81.
81	82	Monterey Regional Stormwater Permittee Participants Group	E-14	Many BMPs are qualitative, not quantitative. The PEA requirements may not yield the type of information desired, but will result in considerable work and effort for each permittee.	The PEA requirements are based on CASQA's Municipal Storm Water Program Effectiveness Assessment Guidance, or equivalent measure of program effectiveness.
81	83	Monterey Regional Stormwater Permittee Participants Group	E-14.b	Verify consistency with Section E-13 whether monitoring requirements will result in pollutant load data required by this section.	The requirements in section E.14.b are not in line with Section E.13 Monitoring.
81	84	Monterey Regional Stormwater Permittee Participants Group	E-14.b (ii)	Modeling assumptions or simplified spreadsheet methods may not result in accurate data for implementation. Expertise on these types of implementation activities and calculations not likely to be present among staff in Phase II jurisdictions and will result in significant program costs.	This permit provision has been revised to address this comment.
81	85	Monterey Regional Stormwater Permittee Participants Group	Attachment G, E15.1	The 12 provisions for implementing the TMDL are more detailed than the 7 provisions that were approved with the TMDL (on page 5). What is the legal precedence for imposing different provisions without the public approval process?	Please see Section XIII, TMDLs in Fact Sheet.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
81	86	Monterey Regional Stormwater Permittee Participants Group	Attachment G, E15.2	The 13 provisions for implementing the TMDL are more detailed than the 7 provisions that were approved with the TMDL (on page 173). What is the legal precedence for imposing different provisions without the public approval process?	Please see Section XIII, TMDLs in Fact Sheet.
81	87	Monterey Regional Stormwater Permittee Participants Group	E.16.b	It states that the new Permit years will be aligned with the fiscal year, July 1 to June 30. When are annual reports required to be submitted to the regional board staff? Who will determine this?	Annual Reports are required for submittal by October 15 of each year.
81	88	Monterey Regional Stormwater Permittee Participants Group	E.16.c	It is unclear throughout the permit what is actually required to be submitted with the Annual Reports and what information simply needs to be kept on file for CCWB review. Additionally, this item is not supportive of regional programs as the reporting requirements for individual programs are much less than those of a regional program (i.e. annual certification statements vs. "full reporting").	This permit provision has been revised to address this comment.
81	89	Monterey Regional Stormwater Permittee Participants Group	Fact Sheet © IV	There are several references in this Section of the Fact Sheet that deny that any of the requirements imposed by the MS4 Permit will be unfunded mandates. Specifically: 1. The statement is made that the requirements of the Order do not constitute a new program, and that new and advanced measures do not constitute a new program or higher level of service. These are erroneous statements. Clearly in order to comply with the new requirements the Permittees will have to expend considerably more time and effort than is currently required to comply with the existing General MS4 permit. This is clearly a "mandate" and it is not being funded by the State. 2. The statement is made that the Order implements federally mandated requirements and is therefore exempt from the unfunded mandates policy. Many of the specific requirements contained in the new Permit are not required by the Federal Clean Water Act, and thus are not exempt from the unfunded mandates policy.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program "designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act," (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
81	90	Monterey Regional Stormwater Permittee Participants Group	Fact Sheet © VII	This section states that an NOI must be filed within six months (100 days) from the effective date of the Permit. Six months does not equal 100 days.	Staff recognizes this typo and has made revisions to address this comment.
82	1	Napa Countywide Stormwater Pollution Prevention Program	Throughout	Most notable is the absence of any such consideration for the work associated with the federal Napa River/Napa Creek Flood Protection Project and numerous other local watershed enhancement projects undertaken by our member agencies in the past decade. These award winning projects, which have costs to date totaling in excess of \$600 million, are at the vanguard of environmentally responsible flood and watershed protection initiatives and represent our community's extraordinary commitment to the enhancement of water quality of the Napa River and its tributaries.	Provision E.1.b allows for continued implementation of storm water programs that are equally or more effective at reducing pollutant discharges than the implementation of requirements in this permit. Please see the permit for specific language regarding this provision. For new permittees, the permit has been drafted with specific requirements based on lessons learned over the last approximately 30 years of storm water regulation. U.S. EPA on-site audits of MS4s nationwide have repeatedly shown the necessity for clear, measurable requirements in MS4 permits to ensure an effective and enforceable program.
82	2	Napa Countywide Stormwater Pollution Prevention Program	Throughout	The draft Permit fails to consider its impacts on the land use policies of Napa County, specifically the zoning designations of Agricultural Resource and Agricultural Watershed, which for more than three decades have been paramount to preventing urban sprawl and thereby reducing stormwater runoff in the watershed. The overly prescriptive nature of Permit Element E.12 and the attendant requirement of volumetric hydromodification will be cost-prohibitive for private development and will result in a de facto prohibition of new infill development in our urban areas. This will be in direct conflict with the land-use policies of the Napa County General Plan and our local agencies' General Plans.	Listed under "Exceptions to Requirements for Bioretention Facilities" is Smart growth projects. Section E.12.ii(i)(3).
83	1	North Bay Watershed Association	Throughout	Only include requirements that an external scientific peer review confirms will result in appreciable improvements to water quality.	This permit is based on US EPA's MS4 Improvement Guide. Moreover, staff worked collaboratively with technical experts statewide.
83	2	North Bay Watershed Association	Throughout	Provide more flexibility in the permit language that will support implementation and prioritization by region or community based on local issues	Provision E.1.b allows for continued implementation of storm water programs that are equally or more effective at reducing pollutant discharges than the implementation of requirements in this permit. Please see the permit for specific language regarding this provision. For new permittees, the permit has been drafted with specific requirements based on lessons learned over the last approximately 30 years of storm water regulation. U.S. EPA on-site audits of MS4s nationwide have repeatedly shown the necessity for clear, measurable requirements in MS4 permits to ensure an effective and enforceable program.
83	3	North Bay Watershed Association	Throughout	Provide a clear, documented, regulatory path to allow implementation of existing programs that are currently adaptively managed and are protective of water quality to the federal standard of "Maximum Extent Practicable".	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
83	4	North Bay Watershed Association	Throughout	Modify the compliance timelines to provide more time to prepare for the new requirements.	Staff carefully considered the implementation schedule and revised dates accordingly. The first portion of the permit term will naturally have more requirements than the latter portion as this is the period of time that the program is established.
83	5	North Bay Watershed Association	Throughout	Only include requirements that can be implemented with existing municipal or county resources or provide an alternative funding mechanism to support implementation (state grant funds tend to go to "on the ground" projects, not implementation of programs).	The draft order has been revised to address comments received regarding costs of implementation as outlined in Section III, Economic Considerations, of the Fact Sheet.
83	6	North Bay Watershed Association	Throughout	In addition the NBWA Board asked that I emphasize that the new permit should be evidence based, pragmatic, cost effective, and doable.	Please see responses to comment numbers 2,5 and 6.
84	1	Placer County, Department of Public Works	Throughout	Placer County has a Phase I Permit and two Phase II Permits, making staffing and funding stretch to the limit.	The draft order has been revised to address comments received regarding costs of implementation as outlined in Section III, Economic Considerations, of the Fact Sheet.
84	2	Placer County, Department of Public Works	Throughout	Specificity of this Permit and its prescriptive nature complicate its application as a one size fits all general permit. Provisions of the Permit are written for the typical municipal urban environment; such conditions may not be appropriate for more rural areas such as those in Placer County.	Provision E.1.b allows for continued implementation of storm water programs that are equally or more effective at reducing pollutant discharges than the implementation of requirements in this permit. Please see the permit for specific language regarding this provision. For new permittees, the permit has been drafted with specific requirements based on lessons learned over the last approximately 30 years of storm water regulation. U.S. EPA on-site audits of MS4s nationwide have repeatedly shown the necessity for clear, measurable requirements in MS4 permits to ensure an effective and enforceable program.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	3	Placer County, Department of Public Works	Section D	<p>Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the Importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognizes current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period.</p>	<p>The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.</p>
84	4	Placer County, Department of Public Works	Throughout	<p>Placer County's water quality program is not funded by a stormwater utility or any other voter- approved fees; it is currently funded through a combination of General Funds and restricted-use Road Funds. Very few stormwater utilities or other fee mechanisms have been successfully implemented in California since passage of Proposition 218. Additionally, voter approval of Proposition 26 in 2010 may further limit the ability of the County to charge user fees in support of the County's stormwater program. Coupled with the current economic conditions and budget shortfalls impacting most jurisdictions, stormwater programs are not likely to receive additional funding to implement expanding programmatic requirements under this new permit.</p>	<p>The draft order has been revised to address comments received regarding costs of implementation as outlined in Section III, Economic Considerations, of the Fact Sheet.</p>
84	5	Placer County, Department of Public Works	Throughout	<p>We would like the SWRCB to address the question of how these permit requirements are based on sound science to improve water quality. Many of the requirements included in the draft MS4 permit require data collection, management, maintenance, analysis and reporting which will do nothing to directly improve water quality conditions. Proposed monitoring requirements will generate data that will not likely be aggregated and evaluated, with results not applied in any meaningful way to improving water quality.</p>	<p>This permit is based on US EPA's MS4 Improvement Guide. Moreover, staff worked collaboratively with technical experts statewide to develop permit requirements.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	6	Placer County, Department of Public Works	Throughout	Placer County recognizes and supports the comments on this draft permit provided by both the California Stormwater Quality Association (CASQA) and the Statewide Stormwater Coalition (SSC).	Please see response to comment letters 11 and , respectively.
84	7	Placer County, Department of Public Works	TOC	Incorrect attachment references (C-F)	Typos have been revised to address this comment.
84	8	Placer County, Department of Public Works	Findings, #5	Allows for future incorporation of state Trash Policy. Is this a necessary/appropriate finding?	Yes, it is appropriate to include a Finding that states State Board staff will re-open the permit to incorporate the California Trash Policy upon its adoption.
84	9	Placer County, Department of Public Works	Findings, #29	"...Permittee shall implement its (then?) existing program..."	The Permittee shall implement its existing program until that date. Staff is unclear of the intent of this comment.
84	10	Placer County, Department of Public Works	Findings, #38	States "receiving water limitations apply" to all; doesn't this conflict with the MEP standard?	The finding refers to the receiving water limitations at provision D of the permit that state that discharges shall not cause or contribute to an exceedance of water quality standards contained in a Statewide Water Quality Control Plan, the California Toxics Rule, or in the applicable Regional Water Board Basin Plan. The Fact Sheet contains an extensive discussion of receiving water limitation in municipal storm water permits at Section XI.
84	11	Placer County, Department of Public Works	Findings, #39	Why must Regional Boards review Attachment G requirements following permit adoption? Why is this necessary, and what changes would be expected?	WLA, Load Allocations (LA), effluent limitations, implementation requirements, and monitoring requirements are specified in the adopted and approved Regional Water Board Basin Plans and authorizing resolutions which are incorporated herein by reference as enforceable parts of the General Permit. Applicable Basin Plan amendments and resolutions are identified in Attachment G. Attachment G additionally contains a list of TMDL-specific permit requirements developed by the Regional Water Boards for compliance with the implementation requirements of the relevant TMDLs. The Regional Water Boards are directed to review, within 1 year of the effective date of the permit, the TMDL-specific permit requirements contained in Attachment G and to propose to the State Water Board any appropriate revisions after consultation with the Permittees and State Water Board staff.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	12	Placer County, Department of Public Works	Findings, #51	States that the Water Board "has considered" the costs of complying with this order. Such consideration, however, fails to consider the ability of the permittees to implement the requirements of the order.	Please see Section III, Economic Consideration of the Fact Sheet. We understand municipalities face unique fiscal impacts implementing provisions in this draft order. However, the draft order has undergone substantial revisions to address cost implications.
84	13	Placer County, Department of Public Works	A.1.b.3	Requires permit boundaries based on 2010 Census urbanized areas and Attachment A designated places. Our permit area already exceeds those limits; will the Regional Board be willing to reduce the permit area? It is not feasible to implement all the requirements in the non-urban areas (85% of our permit area as defined with the original permit). Suggest you limit county permit requirements to urban areas	Regional Water Boards are autonomous entities responsible for water quality protection within their boundaries. However, the local Regional Board may be willing to reduce the permit area if the Permittee proposes a valid justification for the reduction.
84	14	Placer County, Department of Public Works	Discharge Prohibitions, 3	States the "following non-stormwater discharges are not prohibited provided any pollutant discharges are identified and appropriate control measures...are implemented...". Isn't a non-stormwater discharge, by definition, a pollutant? Isn't the intent of listing these exceptions to recognize insignificant non-stormwater (pollutant) discharges? Doesn't this provision, as worded, essentially make these regulated discharges? Please clarify the definition.	Section 402(p)(3)(B)(ii) of the Clean Water Act requires that MS4 permits include a requirement to effectively prohibit non-storm water discharges into the storm sewers. Prohibition B.3 of the Order implements this requirement. The non-storm water discharges listed are prohibited given that if a pollutant discharge is identified, appropriate control measures to minimize impacts are developed and implemented under the storm water program.
84	15	Placer County, Department of Public Works	Discharge Prohibitions, 4	This provision is very confusing. Incidental runoff from landscaped areas is included as an exception in B.3, yet this provision requires that it be controlled. The last sentence of this provision, however, suggests that such runoff is "not considered incidental". This should be clarified or rewritten.	Comment noted. This provision is based on the State Water Board Recycled Water Policy and the CA DWR Water Efficient Landscape Ordinance.
84	16	Placer County, Department of Public Works	Discharge Prohibitions, 4	Requires "Parties responsible for controlling incidental runoff" to take specified actions; are these "parties" intended to be the violators (owners/operators) or the regulators (permittees)? Please clarify.	The Permittee is the responsible party.
84	17	Placer County, Department of Public Works	E.1.b	What is the process for determining equivalency, and what is the appeal process? Please clarify.	Provision E.1.b allows for continued implementation of storm water programs that are equally or more effective at reducing pollutant discharges than the implementation of requirements in this permit. Please see the permit for specific language regarding this provision.
84	18	Placer County, Department of Public Works	E.6.a (ii)(e)	There is no subsection (e)	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	19	Placer County, Department of Public Works	E.6.a (ii)(f)	Appears to require that all existing industrial and commercial facilities must implement BMPs; is that intended? Wasn't this industrial and commercial retrofitting requirement removed? Please remove statement.	This permit provision has been revised to address this comment.
84	20	Placer County, Department of Public Works	E.6.c.(ii)(d) (2)(e)(8), and (f)	Information regarding violation resolution and recidivism are unnecessary, as this section refers to reporting of non-filers. Please remove statement.	This section has been reformatted for clarity.
84	21	Placer County, Department of Public Works	E.6.c.(iii)	Reference to "complete and have available" in this (and several other) sections suggests that no submittal is required with the annual reporting; is this correct? If correct, then why is it presented under the "Reporting" heading? Please clarify the intention.	Reporting requirements have been revised to address this comment.
84	22	Placer County, Department of Public Works	E.7	Why has the Community-Based Social Marketing requirement been deferred to the Regional Board's discretion? When and how will such decisions be made? This is an unreasonable requirement. Please remove requirement.	The determination process for Regional Board appointment of CBSM requirements has been clarified.
84	23	Placer County, Department of Public Works	E.7.a, Reporting	Agreements for collaborative efforts may take considerable time and effort. It may not be possible to secure necessary commitments for submittal with the first Annual Report. When are Annual Reports due? Please clarify.	If the Permittee elects to participate in a regional effort and it takes considerable time, the Permittee should begin implementation of Section E.7 requirements during the interim.
84	24	Placer County, Department of Public Works	E.7.a(iii)	Requires annual reporting of "the study and results to date". What study? Also requires summary of changes in public awareness and knowledge annually. How is this to be assessed annually, if two surveys are required within the five year permit term? Please correct requirement to reflect permit requirements.	This permit provision has been revised to address this comment.
84	25	Placer County, Department of Public Works	E.7.b.1(ii)(e)	Training of new staff within six months of employment is an unreasonable expectation in a large and diverse organization. Annual training of staff should be sufficient. Please change requirement.	Staff does not agree that this requirement should be deleted. Training of new staff, who, as part of their normal job responsibilities may be notified of, or come into contact with, or observe an illicit discharge or connection is necessary to help ensure illicit discharges do not pollute receiving water bodies.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	26	Placer County, Department of Public Works	E.7.b.2.a)(ii)(a-c)	Requires all plan reviewers, permitting staff, and inspectors to be certified as QSPs/QSDs; this is an unrealistic expectation that places an unnecessary burden and expense on municipalities. Why is the standard lower for third-party individuals (that they are "trained", but not certified)? Many of the staff performing these tasks may not meet the prerequisite requirements for QSP and QSD certification. Please remove requirement	This permit provision has been revised to address this comment.
84	27	Placer County, Department of Public Works	E.7.b.3(i)	Requires that all new hires receive training within one year, but training is required on a biennial basis. Supplemental training for new staff is unreasonable. Please change the requirement.	This permit provision has been revised to address this comment.
84	28	Placer County, Department of Public Works	E.7.b.3(ii)(a) and (b)	Refers to annual training; preceding section requires biennial training. An "annual assessment of trained staff's knowledge" is required; this is inconsistent with biennial training. Please make consistent with other language	The "Implementation Level" has been revised to make consistent with the "Task Description". Training should be conducted every other year (biennial) with evaluations and subsequent interim training (as needed) when training is not conducted. In the case that new employee is hired during a year when training is not conducted, interim training can be conducted as part of employee training.
84	29	Placer County, Department of Public Works	E.7.b.3(ii) ©	Refers to "standard operating procedures described above"; these don't appear in this section. Please correct.	Comment noted.
84	30	Placer County, Department of Public Works	E.8.(ii)(e)	What is meant by "actively engage in the Permittee's IRWMP"? Please clarify.	Typos have been revised to address this comment.
84	31	Placer County, Department of Public Works	E.9.a.(ii)(a)	Mapping and assessment of outfalls in a large rural area is a difficult task, demanding substantial resources. Permitted areas within Placer County include over 340,000 acres and over 700 miles of streams. Information required by this permit is not currently available. Completing this task by the second permit year is unlikely. Mapping and assessment of outfalls should be limited to urban area. Please make correction to this requirement and extend the analysis to the end of the permit term.	Outfall mapping is limited to the urban area. Staff is unclear as to what analysis the commenter is referring to.
84	32	Placer County, Department of Public Works	E.9.b	Completing an inventory of commercial and industrial facilities, which includes all of the permit-required information is a substantial task, especially in a rural area. Information required by this permit is not currently available. Completing this task by the second permit year is unlikely. Please modify requirement to include only urban areas and have completed by 3rd permit year.	Outfall mapping is limited to the urban area. Staff does not agree that the inventory should be completed by the third year. A MS4 needs to be aware of potential illicit discharge sources and facilities within their urbanized area.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	33	Placer County, Department of Public Works	E.9.c.	Outfall sampling is required for any outfall with flows more than 72 hours after the last rain. In rural areas, there are many outfalls with flows relating to agricultural/landscaping irrigation, spring flows, snow melt etc. Sampling all locations meeting the permit criteria is impractical, if not infeasible. Please modify requirement to recognize that certain flows may be acceptable and do not need to be sampled.	Comment noted. This provision is based on the U.S. EPA Improvement Guide and the CWP IDDE manual.
84	34	Placer County, Department of Public Works	E.9.c.(ii)	Are the listed indicator parameters and action levels discernible without lab analysis? If such analysis is required, then this is an unreasonable requirement. Please modify to visible only parameters or easily sampled such as through a test strip.	Please see the Center for Watershed Protection's Illicit Discharge Detection and Elimination Guidance Manual located at: www.cwp.org . The manual outlines practical, low cost, and effective techniques for Phase II Permittees seeking to establish Illicit Discharge Detection and Elimination (IDDE) programs and investigate non-stormwater entries into storm drainage systems. It details the types of testing used to detect illicit discharges, information on estimating program costs in terms of capital and personnel expenses, and timelines that estimate how long program implementation will take.
84	35	Placer County, Department of Public Works	E.9.e.(iii)	Requirements for a Spill Response Plan are repeated in this section. Please remove redundancy.	Staff disagrees. Spills, leaks, sanitary sewer overflows, and illicit dumping or discharges can introduce a range of stormwater pollutants into the storm system. Prompt response to these occurrences is the best way to prevent or reduce negative impacts to waterbodies. The spill response plan includes an investigation procedure. Often, a different entity might be responsible for spill response in a community (i.e. fire department), therefore, it is imperative that adequate communication exists between stormwater and spill response staff to ensure that spills are documented and investigated in a timely manner.
84	36	Placer County, Department of Public Works	E.10.a	Requires inventory of all ground-disturbing activities, though local regulations may exclude certain activities; does this mean that ordinances will have to be amended to capture all such activity? Please clarify requirement.	This permit provision has been clarified to address this comment.
84	37	Placer County, Department of Public Works	E.10.a	Extensive information is required as part of this inventory. For activities with limited or no threat to water quality, this seems unnecessary and unreasonable. Please change requirement.	To effectively conduct inspections, the permittee must know where construction activity is occurring. A construction site inventory tracks information such as project size, disturbed area, distance to any waterbody or flow channel, when the erosion and sediment control/stormwater plan was approved by the Permittee, and whether the project is covered by the permitting authority's construction general permit. This inventory will allow the permittee to track and target its inspections.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	38	Placer County, Department of Public Works	E.10.b	Requires erosion and sediment control plans for all grading and building permits. This is excessive and unnecessary for activities with limited to no threat to water quality. Please change requirement.	Comment noted. USEPA Phase II stormwater regulations require permittees to develop a construction site program addressing "land disturbance of greater than or equal to one acre." Some Permittees local ordinance/policy have more stringent requirements that apply to construction projects 1 acre or less. For example, smaller, built-out cities may have many small redevelopment projects that fall below the one acre threshold. In such cases, controlling construction site stormwater entering the MS4 to the maximum extent practicable may require stormwater controls at smaller sites. At a minimum, the draft permit references the applicable local ordinance/policy.
84	39	Placer County, Department of Public Works	E.10.c.(iii)	Extensive enforcement efforts, tracking and reporting are required. Since these requirements apply to all land disturbing activities, this is an excessive burden for municipalities. It should be limited to those activities that pose greater water quality threat. Please change requirement	This permit provision has been clarified to address this comment.
84	40	Placer County, Department of Public Works	E.11.a(i)	Does the phrase "within their jurisdiction" refer to the permit area, urban area, or entire jurisdictional area? Please clarify.	This area is defined by the permit boundary map delineating permit jurisdiction: At a minimum the map includes the following: (a) Phase II MS4 permit boundary based on 2010 Census data. For cities, the permit area boundary is the city boundary. For Counties, permit boundaries must include urbanized areas and places identified in Attachment A located within their jurisdictions. The boundaries must be proposed in the permit boundary map and may be developed in conjunction with the applicable Regional Water Board (b) City/County Boundaries (c) Main Arterial Streets (d) Highways (e) Waterways (f) Phase I MS4 Permit Boundary (if applicable)
84	41	Placer County, Department of Public Works	E.11.b	States "... submit a map of the urban area..."; is this limited to that area, or the permit area? To what level must the permittee define the "drainage system corresponding to each of the facilities? Please clarify.	This area is defined by the permit boundary map delineating permit jurisdiction in Section A of the General Permit.
84	42	Placer County, Department of Public Works	E.11.c.(i)	Reference to CWP's guide on Urban Subwatershed and Site Reconnaissance : "Urban" should read "Unified" Please correct.	Comment noted.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	43	Placer County, Department of Public Works	E.11.f	Requires mapping and assessment of all stormwater conveyance facilities. Permitted areas within Placer County include over 340,000 acres; urbanized areas nearly 40,500 acres. The information required by this permit does not exist, and will take extensive effort and resources, not currently available. Completing this task by the second permit year is unlikely. Please limit this requirement to urban area not permit area	Outfall mapping is limited to the urban area. A MS4 needs to be aware of potential illicit discharge sources and facilities within their urbanized area.
84	44	Placer County, Department of Public Works	E.11.f.(ii)(b)	Why is it necessary to assign a high maintenance priority for catch basins that receive citizen complaints? What relevance does that have to protecting water quality? Please remove prioritization requirement.	Staff disagrees. The priority ranking approach for catch basins is required so that municipal resources are directed to the areas and structures that generate the most pollutants. A priority ranking system is required because some catch basins will accumulate pollutants faster than others based on the nature of the drainage area and whether controls are present upstream of the catch basin. Catch basins with the highest accumulations will need to be cleaned more often than those with low accumulations.
84	45	Placer County, Department of Public Works	E.11.h.(ii)(d)	Requires an annual evaluation of all BMPs implemented during O&M activities. What is intended here? BMP is a very broadly defined term; it is impractical to evaluate all BMPs applied to all O&M activities. Please clarify.	The Permittee should know all materials that could be discharged from each of their O&M activities. Every Permittees pollutants my be different, but typical pollutants associated with these activities include metals, chlorides, hydrocarbons (e.g. benzene, toluene, ethylbenzene, xylene), sediment, and trash. The permittee should then develop a set of pollution prevention measures that, when applied during municipal O&M activities, will reduce the discharge of pollutants in stormwater.
84	46	Placer County, Department of Public Works	E.11.h.(iii)(d)	Requires annual reporting on "high priority...facilities maintained". What does this mean? This seems to be out of place in this section. Please remove statement or clarify relevance to this section.	Comment is unclear. The response will be clarified in the next set of response to comments.
84	47	Placer County, Department of Public Works	E.11.i	If a permittee does not own or operate any flood management facilities, development of an implementation process should not be required. Please modify to make this statement clear.	Comment noted. If a Permittee does not own or operate any flood management facilities, development of an implementation process is not required.
84	48	Placer County, Department of Public Works	E.11.j.(ii)(b)(1)	Implementing educational activities for "distributors" is not practical. Please delete this requirement.	Comment noted. Permittees must meet MEP to outreach and educate storm water protection within their jurisdiction.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	49	Placer County, Department of Public Works	E.11.j.(ii)(b)(2)h	Prohibiting application of pesticides, herbicides and fertilizers as indicated in this provision is impractical. This should be handled at the state level and not by the local jurisdiction. Please remove requirement.	Permittees must implement source controls to reduce the amount of chemicals used in their jurisdiction and pesticides, herbicides and fertilizers are one of the leading causes of impaired waterbodies in the United States. Permittees must specify the use integrated pest management, selection of native vegetation that is naturally adapted to local conditions and therefore requires fewer chemical and water inputs, reducing exposure of the chemicals to water by scheduling application according to weather forecasts and plant needs, and ensuring that municipal employees who are responsible for storing and handling these materials are educated about their use, disposal, and possible impacts.
84	50	Placer County, Department of Public Works	E.11.j.(iii)	Requires measures to reduce use of pesticides, herbicides, and fertilizers; what if current practices are already minimizing such use? As written, this provision assumes existing inefficiencies. Also, this section should refer to "application rates", rather than "application". Total application may continue to grow as new facilities are constructed.	Comment noted. See response above.
84	51	Placer County, Department of Public Works	E.12.a	Requires "an inventory of projects subject to post-construction measures"; does this refer only to development which occurs after permit adoption? Placer County has been requiring post-construction BMPs for more than 25 years, but no inventory currently exists on anything prior to 2007. It would be infeasible to create an inventory retroactively. Please clarify.	This permit provision has been revised to address this comment.
84	52	Placer County, Department of Public Works	E.12.c.(ii)	Requires site design measures to reduce site runoff "to the maximum extent technically feasible". This is an unreasonably high standard to apply in such situations. Please change to MEP.	METF has been replaced with MEP.
84	53	Placer County, Department of Public Works	E.12.d.1	This applies to public and private projects that "fall under the planning and building authority of the Permittee". That concept is clear regarding private projects, but not public projects. How does this applies to public projects, and how "planning and building authority" is defined, needs further clarification. How are public projects defined? Please clarify.	This permit provision has been revised to address this comment.
84	54	Placer County, Department of Public Works	E.12.d.1(a)(vi)	"Residential housing subdivisions", as used here, includes Parcel Maps creating 1-4 lots. Shouldn't this be limited to major subdivisions creating 5, or more, lots? Please change to include only major subdivisions.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	55	Placer County, Department of Public Works	E.12.d.1(d)	Appears to make LID applicable to all applicable public projects, without mention of the previously stated qualification which read: "that fall under the planning and building authority of a Permittee". Please clarify.	This permit provision has been revised to address this comment.
84	56	Placer County, Department of Public Works	E.12.d.1(e)	What does "...shall follow USEPA guidance regarding green infrastructure to the maximum extent practicable" mean? What guidance is available, and how does the MEP standard apply? Please clarify.	Information regarding USEPA guidance regarding green infrastructure for roads can be found at: http://water.epa.gov/infrastructure/greeninfrastructure/upload/gi_munichandbook_green_streets.pdf The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. It emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff.
84	57	Placer County, Department of Public Works	E.12.d.2.(ii)(2)	Requires reduction in runoff, "to the extent technically feasible". This is an unreasonably high standard. Please change to MEP.	METF has been replaced with MEP.
84	58	Placer County, Department of Public Works	E.12.d.2.(ii)(3)(a)	Special Site Conditions should include areas of bedrock, clay soils or hardpan, not conducive to infiltration. Please add these areas.	In the case that site design measures are infeasible, the permit allows for the use of biotreatment facilities with engineered soils.
84	59	Placer County, Department of Public Works	E.12.d.2.(ii)(3)©	Why does this section include a specific date (May 15, 2014) for adoption of performance criteria for filters and biofilters? Please clarify what specific date is necessary or change to "permit year"	This permit provision has been revised to address the comment.
84	60	Placer County, Department of Public Works	E.12.d.2.(iii)	The amount of information to be collected, managed, and reported is unreasonable and unnecessary. Please modify to include the amount of information necessary for water quality performance.	This permit provision has been revised to address the comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	61	Placer County, Department of Public Works	E.12.f	Allows the State and Regional Boards to require new, and potentially extensive, requirements relating to watershed processes. Since these are unknown, and the impacts cannot be evaluated, these provisions should not be included in this permit. Please delete this requirement.	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.
84	62	Placer County, Department of Public Works	E.12.g.(ii)(2)	Municipalities are not involved in real property transactions, so would not be able to insure inclusion of maintenance responsibility language in sales/lease agreements and deeds. Please remove this requirement	Permittees are required to select one of four options to verify Operations and Maintenance.
84	63	Placer County, Department of Public Works	E.12.g.(ii)(d)	Define "Regional Project" and "regional controls", as used in this section.	Regional refers to off-site projects and controls.
84	64	Placer County, Department of Public Works	E.12.g.(iii)	Where are maintenance inspection requirements described? Who is responsible for inspections? Please clarify.	This permit provision will be revised to address this comment. (This revision was inadvertently omitted in the November 16, 2012 and will be included prior to adoption).
84	65	Placer County, Department of Public Works	E.12.g.(iii)(b)	Why is this list necessary? Why does the Regional Board need this information?	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	66	Placer County, Department of Public Works	E.12.g.(iii)(2)	"Permittee's O&M Program" should read "Permittee's O&M Verification Program". Please correct.	Comment noted.
84	67	Placer County, Department of Public Works	E.12.h	Requires an inventory and maintenance assessment of post-construction BMPs; does this refer only to those installed after permit adoption? Placer County has been requiring post- construction BMPs for more than 25 years, but no inventory currently exists prior to 2007. It would be infeasible to create an inventory retroactively, and to inspect all constructed in the past. Please modify to only include current post construction bmps.	As a Permittee subject to the requirements in Attachment 4, post-construction BMP condition assessment applies to post-construction BMPs implemented under the current permit.
84	68	Placer County, Department of Public Works	E.12.h(ii)	Self certification for BMP effectiveness will be difficult to implement and enforce. Owners may not be qualified to evaluate effectiveness. Compliance will be difficult to enforce, and will require extensive resources. Please clarify need for this level of enforcement and how private land owners can determine BMP effectiveness.	Staff believes that self-certification of BMP maintenance condition is an essential component of ensuring BMPs are performing as designed.
84	69	Placer County, Department of Public Works	E.12.j	Evaluation and modification of codes and standards will likely be a very complicated, difficult, and time consuming process involving multiple departments and external agencies, such as fire protection. Public involvement and governing body approvals are also necessary. It is unlikely that this can occur within the first permit year. Some of the specified "minimum" requirements may not be acceptable. Providing flexibility is good, providing it doesn't result in compromises to health and safety. Please provide longer time frame for completion of this task.	This permit provision has been revised to address this comment.
84	70	Placer County, Department of Public Works	E.13	How does the State intend to use the data collected through these monitoring efforts? Will this data be compiled, analyzed, and made available to the public? In what form, and when? Please clarify.	A key requirement in the stormwater Phase II rule is a report (40 CFR 122.34(g)(3)) that includes "the status of compliance with permit conditions, an assessment of the appropriateness of identified [control measures] and progress towards achieving identified measurable goals for each of the minimum control measures." This assessment is critical to the stormwater program framework which uses the iterative approach of implementing controls, conducting assessments, and designating refocused controls leading toward attainment of water quality standards. Monitoring data can be utilized to assess program effectiveness and prioritize program element implementation for the next permit cycle.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	71	Placer County, Department of Public Works	E.13(iii)	Why is consultation with the Regional Board necessary? Regional Boards know which water bodies are impaired, and could direct monitoring at any time. A specific requirement for such consultation in this permit is unnecessary, and seems to suggest an expectation that additional monitoring can/will be required. Please remove requirement.	In some cases, monitoring requirements for 303(d) impaired water bodies is not established. Therefore, it is important for Permittees and Regional Boards to coordinate and discuss specific monitoring requirements.
84	72	Placer County, Department of Public Works	E.13.b.1(ii) c)	Requires correlations to flow records "if they exist". Table 3 appears to require flow measurements, so wouldn't such records always exist? Please clarify.	This permit provision has been revised to address this comment.
84	73	Placer County, Department of Public Works	E.13.b.1(ii) d)	Requires establishment of a monitoring fund; does the State have the authority to require municipalities to establish such a fund?	This permit provision has been revised to address this comment.
84	74	Placer County, Department of Public Works	E.14.a	Requirements of this section are unreasonable. Efforts required to implement this element will be extensive, with no direct benefit to improving or protecting water quality. Please remove section.	The intent of establishing a section for Program Effectiveness and Assessment is to move from an element by element evaluation approach to a comprehensive evaluation approach. A comprehensive approach requires Permittees to take a holistic view of their storm water program and evaluate effectiveness accordingly.
84	75	Placer County, Department of Public Works	E.14.b.(i)	Requires an annual pollutant load quantification on a subwatershed basis. What is the need for this information? This is a great deal of effort, with limited value. Subwatershed is defined as an HUC 12 watershed; Placer County has approximately 40 such watersheds within our Phase 2 permit boundaries. Is this for urban areas only, or for permit areas? It isn't likely that annual load estimations would show significant changes, and the effort required to model loads is significant. Pollutant load quantification may be appropriate where TMDLs have been established, but does not serve any meaningful purpose as a general permit requirement. Please remove requirement or limit to one or two watersheds.	This permit provision has been revised to address this comment.
84	76	Placer County, Department of Public Works	E.14.b.(i)	Allows Regional Boards to identify other pollutants of concern that must also be quantified on an annual basis. Such deferred permit requirements create an unknown, and possibly significant, burden for permittees. Please remove requirement.	This requirement has been deleted.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	77	Placer County, Department of Public Works	E.14.c.(i)	Requires the permittee to consult with the Regional Board regarding BMP modifications. The expectations, and possible outcomes, of this requirement are not clear. How often is this consultation to occur? The uncertainties of possible Regional Board desired BMP changes during the permit term make it impossible to understand permit impacts and to effectively plan for resource needs. Please clarify the requirement.	This permit provision has been revised to address this comment.
84	78	Placer County, Department of Public Works	E.15	Established TMDLs with assigned Waste Load Allocations are already enforceable through Regional Boards; why is it necessary to include this provision in the General permit? Please modify requirement.	Attachment G additionally contains a list of TMDL-specific permit requirements that have been developed by the Regional Boards that do 'clarify, but do not expand upon the requirements in relevant BPAs'. However, it is important to include language that states that they are an 'enforceable component' of the Order so as to ensure Permittee awareness that Attachment G specific requirements are in fact enforceable. Instead of pointing to a separate document that states enforceable language, staff wants to ensure such language is included in Section E.15.b.
84	79	Placer County, Department of Public Works	E.15.c	Requires Regional Board review of TMDL specific requirements shown in Attachment G within six months of permit adoption. For what purpose? Does this suggest that the Regional Board is being given direction/authority to revise or expand existing TMDL requirements? Why is this provision necessary? Please clarify.	Please see Section XIII, TMDLs in Fact Sheet.
84	80	Placer County, Department of Public Works	E.15.d.	Why is reporting of TMDL implementation required with this permit? Existing TMDLs already have reporting requirements; this is a redundant and unnecessary requirement. Please remove requirement.	Please see response to comment number 78.
84	81	Placer County, Department of Public Works	E.16.b.	Refers to "Provisions E"; where is this found? Please clarify.	Provision E consists of the Program Elements described throughout the permit.
84	82	Placer County, Department of Public Works	E.16.c.	Requires that only a single annual report be submitted for regional efforts. Does this suggest that if there is a regional monitoring effort, or regional outreach/education effort, or any other coordination with other permittees, that only one report is to be prepared? This is not a practical or reasonable expectation. Please modify requirement.	Staff does not agree that this is an unreasonable requirement. In the case that a Permittee participates in a regional effort, collaboration is an essential and integral component. Coordinating efforts to submit an annual report is a reasonable requirement.
84	83	Placer County, Department of Public Works	Attachment A	Placer County is listed as having TMDL monitoring requirements for Region 5; this is incorrect. There are no adopted TMDLs applicable to unincorporated Placer County within Region 5. Please remove this requirement.	Staff disagrees. Placer County is named in the Middle Truckee River Watershed, Placer, Nevada and Sierra Counties for Sediment, Resolution R6T-2008-0019. Additionally, please see Section XIII, TMDLs in the Fact Sheet.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	84	Placer County, Department of Public Works	Attachment F	Mislabeled as Attachment F (Should be E). However, should be removed from permit; see comments above.	Attachment F is correctly labeled.
84	85	Placer County, Department of Public Works	Attachment K	Should be updated to reflect the content of this permit.	Attachment K does not exist.
84	86	Placer County, Department of Public Works	Attachment L	The definition of Design Storm begins with "For Purposes of these Special Protections...". What does this mean? Please clarify.	Attachment L does not exist.
84	87	Placer County, Department of Public Works	Attachment L	Correct formatting needed	Attachment L does not exist.
84	88	Placer County, Department of Public Works	Throughout	There are numerous references in the reporting requirements to "complete and have available" certain reports, etc. What does this mean? Are these to be submitted with the Annual Report, or kept for inspection if requested? Please clarify.	Documents that are required to be completed and made available are not required to be submitted electronically via SMARTS. This revision was made in response to comments regarding administrative burden of permit requirements.
84	89	Placer County, Department of Public Works	Throughout	Some portions of the draft permit refer to "permit area", some to "jurisdictional area", and some to "urban/urbanized area". For Placer County our urbanized area is approximately 12% of our permit area, and our permit area is approximately 38% of our jurisdictional area. Clarification of the intent is needed in the permit language.	The permit has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	90	Placer County, Department of Public Works	Throughout	The permit has been drafted with a "one-size-fits-all" approach. While the majority of Phase 2 permit areas are substantially urbanized areas, some permits, such as those covering Placer County, include substantial rural areas. Many of the expectations of this prescriptive permit are not practical or reasonable for application in rural areas. One basic example is a requirement to map the storm drain system. For Placer County, our system includes thousands of culverts and miles of roadside ditches, spread throughout 340,000 acres of permit area. Inventory, mapping and inspection will take years of effort. The permit requirements should be structured to allow for varying levels of implementation based on such differing conditions.	Provision E.1.b allows for continued implementation of storm water programs that are equally or more effective at reducing pollutant discharges than the implementation of requirements in this permit. Please see the permit for specific language regarding this provision. For new permittees, the permit has been drafted with specific requirements based on lessons learned over the last approximately 30 years of storm water regulation. U.S. EPA on-site audits of MS4s nationwide have repeatedly shown the necessity for clear, measurable requirements in MS4 permits to ensure an effective and enforceable program.
84	91	Placer County, Department of Public Works	Throughout	This permit is overly prescriptive and includes numerous requirements relating to data collection, management, and reporting that will have no direct effect on preserving or improving water quality. The resources needed to fully implement the permit are generally not available in smaller municipalities, especially in the current economic climate. Staffing and budget reductions continue as they have over the past several years. It is imperative that permittees' limited resources be directed to efforts that have the greatest, and most direct, benefit to water quality, rather than actions that generate only data and reports. Unless permit requirements are reasonable and achievable, compliance will be impossible, and the Water Board faced with a very difficult enforcement scenario.	See response to comment number 90.
84	92	Placer County, Department of Public Works	Throughout	There are many elements of this permit that exceed the minimum standards established by the Federal Clean Water Act. All provisions that do so should be removed from this permit.	In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program "designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act," (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)).
84	93	Placer County, Department of Public Works	Throughout	There are permit provisions that appear to overlap other State/Federal requirements, i.e., Water Efficient Landscape Ordinance. Requirements imposed through other State or Federal requirements should be removed from this permit to avoid duplication of efforts and possible conflicts in implementation. In many instances these requirements are implemented by different departments/agencies within the municipality, further increasing opportunities for redundant efforts or forcing unnecessary efforts to coordinate. Please remove redundant enforcement requirements.	Permit provisions have been revised to reduce redundancy and increase consistency.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	94	Placer County, Department of Public Works	Attachments - General	A number of attachments have a "confidential draft" note at the top that must be removed.	Comment noted.
84	95	Placer County, Department of Public Works	Throughout	Although the document seems formatted consistently, the content is very difficult to follow. It doesn't flow well from one section to the next and there is no connectivity or cohesiveness between sections, almost as though each section was written by a different author. The SWRCB should consider having this document reviewed and rewritten to address this.	This permit has been reviewed and reformatted for clarity.
84	96	Placer County, Department of Public Works	E.6.c.ii.f	Difficult to impose this requirement. Suggest changing the term, "recidivism," as this term is most frequently used in conjunction with criminal behavior and substance abuse (often synonymous with "relapse" - more commonly used in medicine and in the disease model of addiction). It has a negative connotation that doesn't seem appropriate in a stormwater compliance sense. Not sure how the County can pick on violators, or if we are supposed to single out by contractor, project owner, property owner, or all of the above?	This permit provision has been revised to address this comment.
84	97	Placer County, Department of Public Works	E.7.b.2.a)(ii)(a)	Vague/ambiguous language. Rewrite and clarify which inspectors must be certified.	This permit provision has been revised to address this comment.
84	98	Placer County, Department of Public Works	E.7.b.2.a.(ii)d.	"demonstrate...potential behavioral changes" -County engineers and technicians are to survey and document behavioral changes in staff? This should be deleted from the requirements. If it stays in, make it optional.	By setting up training for the permittee staff, the permittee can ensure that the erosion and sediment control requirements are understood and consistently applied since all staff will have been trained on the same information. Additionally, it important to conduct surveys to determine whether the training was effective.
84	99	Placer County, Department of Public Works	E.10	Requires various County offices to coordinate revisions to the existing Stormwater Quality Ordinance; this will take many working hours across departments. Please add more time for completion in permit.	The permit does not require revisions to the Stormwater Quality Ordinance.
84	100	Placer County, Department of Public Works	E.10.a.(ii)(d)	"Project threat to water quality" - subjective - how do you quantify? - suggest deleting this inventory item	Stormwater discharges from construction sites generally includes sediment and other pollutants such as phosphorus and nitrogen, turbidity, pesticides, petroleum derivatives, construction chemicals, and solid wastes that may become mobilized when land surfaces are disturbed. It is important to assess the project threat to water quality so that the Permittee may prioritize inspections of construction sites.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	101	Placer County, Department of Public Works	E.10.a.(ii)(e)	"Current construction phase, as described in this Section;" - where is current construction phase described in the Section? Please clarify.	This permit provision has been revised to address this comment.
84	101	Placer County, Department of Public Works	E.10.b.(ii)(a)	Prior to issuing ANY Grading or BUILDING permit? Residential building permits? Specify when this applies, as it can't mean every Bldg Permit. What about remodels? Decks? Patios? Etc? Requirement to prepare Erosion and Sediment Control Plan should only apply to larger projects (maybe 5,000 SF added impervious?) Please modify requirement.	The permit requires the review and prior approval of all local erosion and sediment control plans/stormwater plans to ensure that construction activities adhere to the permittee's minimum stormwater control requirements. Adequate review of erosion and sediment control/stormwater plans is necessary to verify compliance with all applicable requirements in the permittee's ordinance or other regulatory mechanism, as well as compliance with control measure standards and specifications.
84	102	Placer County, Department of Public Works	E.10.b.(ii)(b)	Is the Erosion and Sediment Control Plan really a SWPPP? It should just be a site plan showing erosion control BMPs - seems like too much detail at this stage for the construction plan review to include supporting soil loss calculations (is this already in the SMARTS system)? If so, why is the County charged with reviewing it? Please clarify requirement and do not have the local jurisdiction reviewing state requirements.	The General Permit requires the review and prior approval of all local erosion and sediment control plans/stormwater plans to ensure that construction activities adhere to the permittee's minimum stormwater control requirements. Adequate review of erosion and sediment control/stormwater plans is necessary to verify compliance with all applicable requirements in the permittee's ordinance or other regulatory mechanism, as well as compliance with control measure standards and specifications. A formalized review procedure ensures consistent review of plans by specifying the requirements for plans being submitted, the schedule for review, and general conditions for approval. The site plan review process also provides a way to track construction activities and enforce standards. A good site plan review process provides the permittee with the opportunity to comment – early and often – on a project's proposed number, type, location, and sizing of stormwater control measures that will be in place prior to, during, and at the conclusion of active construction. It is important to keep in mind that a site plan is a "living document" that may change during the life of the project; however, it is critical that the site plan be adequately reviewed and initially based on established policy, guidelines, and standards. The plan is the framework for stormwater control implementation, as well as the basis of any enforcement action on a project site.
84	103	Placer County, Department of Public Works	E.10.b.(ii)(c)	These permits are with other agencies - State and Federal - it is up to the applicant to get these permits. County can require evidence of these permits to be submitted to the County prior to grading activities. Adding this info to the Erosion and Sediment Control Plan seems late in the process. County should not be responsible for confirming whether applicant has complied with these permits. Please modify requirement.	Comment noted. Staff does not agree. U.S. EPA developed Phase I and Phase II regulations with the vision that municipalities who are in the field and understand the area better can easily verify environmental compliance.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	104	Placer County, Department of Public Works	E.10.b.(ii)(d)	Specifying how we conduct and document our review of each Erosion and Sediment Control Plan "using a checklist or similar process"; this requires more time and effort to create a checklist or form. Why not leave this up to each permittee? Please modify requirement.	Staff does not agree that the requirement to review each Erosion and Sediment Control Plan using a checklist or similar document will require more time and effort than some other process. Secondly, there is flexibility in this language that gives Permittee's the discretion to use a similar document.
84	105	Placer County, Department of Public Works	E.10.c.(i)	What does "use legal authority" mean? Do we need to write something into the revised Ordinance to give us more enforcement power? Please clarify.	Legal authority is referring to the legal authority established in Section E.6.a under the Program Management Element.
84	106	Placer County, Department of Public Works	E.10.c.(iii)	Too many reporting requirements. Suggest deleting item (i).	This permit provision has been revised to address this comment.
84	107	Placer County, Department of Public Works	E.12.c.(i)	typo - the word "date" is missing after the word "effective" in the first sentence (same error occurs in first sentence of E.12.d.1.(i))	This permit provision has been revised to address this comment.
84	108	Placer County, Department of Public Works	E.12.c.(i)	2,500 SF seems like much too low a threshold to require site design measures and it includes detached single family homes. Basically every residential Bldg Permit will be subject to this. Limit this requirement to urban area and project threat to water quality. Placer County has many rural homes within permit area where 2500 SF would not have any impact to a water body.	Staff does not agree. When viewed cumulatively, projects sized 2, 500 sf to 5,000 sf do impact water quality.
84	109	Placer County, Department of Public Works	E.12.(c)(ii)	"maximum extent technically feasible" is too high a standard for site design measure implementation. Change to "maximum extent practicable" otherwise, every single family residential projects will have to incorporate green roofs, porous pavement, vegetated swales, etc. because they are "technically feasible" - this would be very costly to each homeowner and very hard for County to require (perhaps it could be "encouraged" with some sort of future incentive program, but making it required will be very unpopular and difficult.) Please modify requirement.	METF has been replaced with MEP.
84	110	Placer County, Department of Public Works	E.12.d.1.	Suggest raising the impervious surface area to 10,000 SF (or alternatively 1/4 acre) for Regulated Projects, otherwise, far too many small projects are included.	Staff does not agree. When viewed cumulatively, projects sized under 10, 000 sf do impact water quality.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	111	Placer County, Department of Public Works	E.12.d.1.(ii)	Resolve double negative - confusing - "regulated projects as they are defined below do not include the following specific exclusions." Just list the exclusions.	This permit provision has been revised to address this comment.
84	112	Placer County, Department of Public Works	E.12.d.1.(ii)(d)(1)(i)	"If a project receives a vesting tentative map or development agreement..."; suggest modifying language. Development Agreement to Placer County is an agreement between CEO's office and a developer for certain defined public benefits in exchange for a longer permit term or other project benefit - Does SWQCB staff mean "discretionary permit"? Please clarify.	This permit provision has been revised to address this comment.
84	113	Placer County, Department of Public Works	E.12.d.1.(ii)(e)	It will be very difficult to implement LID on public new road and road widening projects in rural areas; the 5,000 SF impervious surface threshold is too low and should be raised so fewer "small" road projects are in the "regulated projects" category. Many of these roads do not have existing easements to accommodate LID features.	Road side ditches qualify as LID measures and can be implemented on smaller road projects.
84	114	Placer County, Department of Public Works	E.12.d.2(ii)(1)	Source control requirements- first sentence is unclear. Does the "following" list contain "BMPs" or "pollutant sources"? It appears to mainly contain pollutant sources but some of these are unclear, too, like "interior parking garages?" Please clarify.	This permit provision has been revised to address this comment.
84	115	Placer County, Department of Public Works	E.12.d.2(ii)	Drainage Management Areas appear to be the same as subwatershed areas commonly used in a drainage analysis that the County routinely reviews - this permit is very prescriptive and it seems like it could be scaled back to allow the Permittees to direct project applicants to prepare drainage reports in the manner we currently do according to our Stormwater Management Manual and related preliminary drainage analysis preparation documents we provide to applicants. Suggest rewrite such that municipalities which have sufficient drainage requirements in place continue to use them.	Drainage Management Areas established for flood control generally emphasize conveyance and are generally much larger than the Drainage Management Areas required for LID site design. Staff does not agree that Drainage Management Areas for flood control are adequate.
84	116	Placer County, Department of Public Works	E.12.d.2(ii)(2)	Site Design Measures for Regulated Projects are the same as the list under E.12.c. for 2,500 SF impervious surface projects so suggest deleting E.12.c. to simplify and shorten permit, or consolidate into one list.	This permit provision has been revised to address this comment.
84	117	Placer County, Department of Public Works	E.12.d.2(ii)(3)	For specified bioretention system design parameters, does this really belong in a Municipal Permit? Appears we are required to implement LID measures as specified - strict and little flexibility in complying with the permit. What if one of these parameters doesn't apply to the project, or can't be met? Are we then in violation of the Municipal permit? Please clarify.	The permit includes alternatives and exceptions for bioretention system design.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	118	Placer County, Department of Public Works	E.12.d.2(ii) (3)	Typo - delete the word "in" from the first sentence, "the amount of runoff specified in below."	This permit provision has been revised to address the comment.
84	119	Placer County, Department of Public Works	E.12.e	Permittee shall develop and implement Hydromodification management procedures ; Placer County is in the Sierra Nevada range (primarily). Can county lines be added to Figure 1? This section is unclear - what procedures are we to develop? Requirement that Regulated Hydromodification Projects evaluate the 2-year, 24-hour storm and design their site to not exceed this?	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.
84	120	Placer County, Department of Public Works	E.12.f(i)	typo - the word "date" is missing after the word "effective" in the first sentence of the second paragraph.	Comment noted.
84	121	Placer County, Department of Public Works	E.12.f(ii)	This requires a lot of work over multiple departments; major rewrites and modifications to existing codes, plans, regulations, specifications, standards, etc. to include LID and Hydromodification. Also requires BOS direction and approval. Please change permit to allow for more time on an update.	Please see response to comment number 119.
84	122	Placer County, Department of Public Works	E.12.f(iii)	Reporting requirement to have a strategy available for implementing numeric criteria for protecting watershed processes affected by storm water in new and redevelopment projects is not feasible. Please clarify how to complete this task.	Please see response to comment number 119.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
84	123	Placer County, Department of Public Works	E.12.g	Not sure the list of responsible maintenance conditions, deeds, statements, etc. are legally binding on project proponents. Database of installed treatment systems will take a huge effort, if including all built projects in the County. Please clarify that this is only for major project with threat to water quality and not for rural home sites.	This section applies to all new projects that create and/or replace 5,000 sf or more of impervious surface.
84	124	Placer County, Department of Public Works	E.12.g	Public agencies should not be physically, financially, or legally responsible for any O&M on private property.	This permit provision has been revised to address this comment.
84	125	Placer County, Department of Public Works	E.12.h	This seems so similar to E.12.g -why not group them so permittees would be assessing the condition of structural BMPs at the same time we are verifying O&M for projects?	Storm water program implementation planning is up to the Permittee. If it is feasible to implement Sections E.12.g and h concurrently a Permittee can do so.
84	126	Placer County, Department of Public Works	E.7.a(ii)(k)	Charity car washes, mobile cleaning and pressure washing operations and irrigation activities are not always known to the Permittee. This makes it very difficult for a Permittee to measure a reduction. Sentence should read: "Develop (or coordinate with existing programs) and convey outreach messages specific to reducing discharges from charity car washes..."	This permit provision has been revised to address this comment.
84	127	Placer County, Department of Public Works	E.9.b.(ii)©	This element requires "The Permittee shall determine if the facilities that are required to be covered under a NPDES storm water permit have done so." As simply interpreted this requires Permittees to actively contact all facilities within the inventory to make this determination. It is our understanding this is not the intent of this item. Rather if in the course of a municipal inspection or IDDE investigation staff are made aware that a facility should be but is not permitted then the Permittee is obligated to notify the Regional Board.	This permit provision does not require Permittees to actively seek out and refer NPDES permit non-filers. Instead, in the case that a project subject to an NPDES permit has not obtained coverage, the Permittee must refer them to the appropriate Regional Water Board to take action.
85	1	Port of Oakland	F.5.d.(ii)(b) and F.5.d.1	At Port of Oakland marine terminals and along the Oakland Estuary, storm drain outfalls typically drain into the Bay while fully submerged. Most outfalls are only visible at minus tides and many emerge under wharfs and piers, making access difficult and dangerous. In addition, tides can flow up the pipes for hundreds of yards and flow out again as the tide recedes.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
85	2	Port of Oakland		The Port is built on historic fill, which is subject to subsidence, and damaged areas, which could exceed 10,000 square feet, are regularly stripped of pavement, leveled, and repaved. Much of the paved surface at the Port is far removed from a point of discharge into a storm drain system. As written, we believe this activity would trigger various aspects of LID and post-construction treatment in locations where LID and treatment is infeasible or of de minimus water quality benefit.	This permit provision will be revised to address this comment. (This revision was inadvertently omitted in the November 16, 2012 and will be included prior to adoption).
85	3	Port of Oakland	F.5.g.3(ii)	Historically, the Port of Oakland has generally not been subject to stormwater hydromodification requirements because the majority of our outfalls flow directly into San Francisco Bay, typically under water. There is no danger of erosion or other damage to waterways. In addition, infiltration can mobilize stable subsurface contaminants that could eventually reach waterways. We propose that hydromodification requirements not apply to these situations since the requirements offer no water quality benefit.	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.
85	4	Port of Oakland	F.5.f.1. & F.5.f.5	The requirements for inspection of Permittee owned and operated facilities are redundant with the Industrial General permit.	This permit provision has been revised to address this comment.
85	5	Port of Oakland		Airport and seaports need to keep storm drain maps confidential for security reasons.	This permit provision has been revised to address this comment.
85	6	Port of Oakland		As part of their obligation to inspect industrial facilities, non-traditional MS4s should not be made responsible for identifying applicable SIC codes or ensuring IGP compliance, because disagreements about to which facilities the Permit applies are expected.	The commenter made comments on the incorrect provisions, and as such, the comments do not apply to the non-traditional provisions.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
85	7	Port of Oakland	E. 7.a. (p 24)	A feasibility exemption is needed for measuring and/or documenting changes in behavior or increases in awareness resulting from public education. For example, the large population traveling through airports is transient, and there is no way to ascertain whether educational efforts resulted in changed behavior or increased awareness. Under such circumstances, it is more appropriate to exempt transient populations from requirements to quantify the effectiveness of education, and to allow the MS4 to focus more productively on the non-transient population, in this case, airport workers.	Permit language in Section F.5.b (page 80) is aimed at addressing the concern raised by the commenter. The commenter referred to Traditional provisions.
85	8	Port of Oakland	E.11.i	The permit requires habitat enhancement features in the design of "all new & rehabilitated flood management projects".	This permit provision does not apply to non-traditional Permittees.
86	1	Port of Stockton	Provision D	The currently proposed Provision D of the Draft Phase II Permit ignores precedential case law and the long history of established State Water Board policies that would allow permittees to comply with standards over time through the implementation of increasingly more complex and effective Best Management Practices (BMPs) if exceedances of pollutants were seen in the receiving waters. Without an express recognition of the difficulties of stormwater regulation and control, and a corresponding regulatory program that takes into account these difficulties, a permit will be adopted that dooms regulated entities to failure and may force them into a consistent state of non-compliance.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.
87	1	Riverside County Transportation Department	Attachment A	Attachment A lists Temescal Valley CDP and French Valley CDP as inadvertent errors. They are both in unincorporated areas of Riverside County, which are Permittees under the Region's Phase I MS4 Permit. Therefore, these area will not be applying for coverage under the Tentative Order.	Temescal Valley CDP and French Valley CDP have been removed from Attachment A.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
88	1	Russian River Watershed Association	Fiscal Analysis	Please work with the legislature to create opportunities for public agencies to raise funds to carry out the permit requirements.	Staff is actively seeking funding opportunities for public agencies. The draft order has been revised to address comments received regarding costs of implementation as outlined in Section III, Economic Considerations, of the Fact Sheet.
88	2	Russian River Watershed Association	Section A & G	The authorities of Provision G should also be referenced in Provision A with clear direction as to how the permittee carries out the application process when the intent of the permittee is to be issued an individual permit. (in our case consistent with the Phase I Permit)	This permit provision has been revised to address this comment.
88	3	Russian River Watershed Association	Throughout	The Draft Permit requires the permittee to adopt authorities that are beyond the scope of the MS4 program, which create exposure to third party challenges and may not be legally viable.	The permit provisions have been revised to address the comment.
88	4	Russian River Watershed Association	Throughout	The Draft Permit requires excessive and burdensome reporting and documentation without an apparent water quality nexus. RRWA asks that we look carefully at the time consuming tasks with no water quality nexus and minimize or eliminate reporting provisions so resources can be focused on activities that have known water quality benefits	This permit provision has been revised to address the comment.
88	5	Russian River Watershed Association	E.9.c, E.11.f, E.14.b	The Draft Permit requires monitoring, inspection, assessment and other oversight functions at a level that is excessive and has no demonstrated water quality benefit.	Staff does not agree that these requirements do not have any demonstrated water quality benefit. Staff actively collaborated with storm water technical experts throughout the State to develop the requirements within this permit. Further, it was drafted based on the US EPA's MS4 Improvement Guide. Monitoring and assessment represent a critical component in understanding the link between permit requirements, the benefits achieved due to those requirements and the condition of receiving water conditions.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
88	6	Russian River Watershed Association	Section D.	Support CASQA's Receiving Water Limitations language> As currently written, Phase II permittees will not be able to comply with the RWL provision. Multiple constituents in stormwater runoff on occasion may be higher than receiving water quality standards before it is discharged into the receiving waters, and may create the potential for the runoff to cause or contribute to exceedances in the receiving water itself. We ask for modification of this provision to establish an iterative management approach as a basis for compliance	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.
88	7	Russian River Watershed Association	E.7.a (i)	While the permittee can provide varied outreach and education opportunities, the permittee can't control a community's knowledge.	The intent of this requirement is not to control a community's knowledge. Rather, the intent of this requirement is to provide varied outreach and education opportunities and evaluate public knowledge. There are several methods to evaluate public knowledge. Such methods include: direct evaluations, surveys, interviews, review of media clippings, tracking the number of storm water related calls/emails/letters received. The U.S. Environmental Protection Agency has provided a guidance document titled <i>Getting in Step: A Guide to Effective Outreach in Your Watershed</i> (www.epa.gov/watertrain/gettingstep/). Staff recommends that permittees utilize this document for public outreach guidance and support.
88	8	Russian River Watershed Association	E.7.a (ii) (j)	The permittee has no authority to enter schools to carry out this requirement. Permittees may provide information and try to get the curriculum into schools, but this requirement is not attainable as written	This permit provision has been revised to address this comment. Permittees have the authority to work with place-based environmental educators that can conduct effective storm water education to children.
88	9	Russian River Watershed Association	E.6.c (ii) (f)	The permittee can take many actions to attempt to reduce recidivism but actual reduction in rate I s not something that is in the permittee's control	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
88	10	Russian River Watershed Association	B.3 and B.4	To the extent that the State Board considers regulation of runoff in the Draft Permit necessary to protect beneficial uses, the water sources is not relevant and reference thereto should be deleted. In addition, the definition of incidental runoff in the Recycled Water Policy clarifies that the definition applies to runoff from landscape irrigation projects. Suggest removing "from potable and recycled water use areas" from sections B.4 and B.3	This permit provision has been revised to address this comment.
89	1	Sacramento County, Office of Education		While we believe it was a technical oversight, please also grant County Offices of Education the same exclusion from automatic designation that K-12s and community colleges were granted.	County Offices of Education have been included as an exception.
90	1	San Diego County Office of education		While we believe it was a technical oversight, please also grant County Offices of Education the same exclusion from automatic designation that K-12s and community colleges were granted.	County Offices of Education have been included as an exception.
91	1	San Francisco Bay Area Rapid Transit District	Attachment B	BART is so listed by "Regional Board Designation", but only because it is purportedly "within [an] urbanized area." Attachment B; Fact Sheet, p. 49. BART is a regional system consisting of 44 stations and approximately 104 miles of track, partly within but also outside urbanized areas. Three additional transportation agencies are listed, but many others, some located entirely in urbanized areas and operating diesel buses that pose a greater risk to water quality than electric BART trains, are not.	Comment noted. The Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their authority as specified in (Wat. Code §13377.) In the event of a disagreement between a Permittee and the Regional Water Board, a Dispute Resolution process is identified in Section H of the General Permit.
91	2	San Francisco Bay Area Rapid Transit District	Throughout	Clean Water Act section 402(p)(3)(iii) requires MS4 permittees to reduce stormwater pollutant discharges to the "maximum extent practicable" (MEP) and the Fact Sheet, p. 7, notes that the cost of compliance is a factor in determining MEP. Much of the BART system was constructed over 40 years ago. Yet the Fact Sheet discusses cost considerations only for traditional small MS4s on pp. 7-12, providing no evaluation of costs for BART or other transit agencies. Until relevant compliance costs are evaluated, again, BART should not be listed as designated in the permit itself.	Please see Section III, Economic Consideration of the Fact Sheet. We understand municipalities face unique fiscal impacts implementing provisions in this draft order. However, the draft order has undergone substantial revisions to address cost implication

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
91	3	San Francisco Bay Area Rapid Transit District	Throughout	BART is currently subject to the State Board's Construction General Permit, which applies to all storm water discharges from BART construction, and the Industrial General Permit, which applies to storm water discharges from BART's five maintenance shops. The Second Draft Permit, pp. 77-78, states that permittees "may incorporate the required storm water provisions into already existing programs" and may submit equivalent or existing documents under existing programs.	Comment noted. This is not a redundancy issue. Permittees enforce their own storm water policies and ordinances, not the State CGP or IGP.
91	4	San Francisco Bay Area Rapid Transit District	Section F	The educational and outreach program (which in this case would apply to BART riders), staff training, good housekeeping and Best Management Practices (BMPs), stormwater drainage system assessment and maintenance, post-construction requirements and program effectiveness assessment are all generally reasonable actions in the abstract. However, implementing these extensive requirements will take time, effort, staff and funding that BART and many other public agencies cannot easily provide with limited resources. In particular, new staff and funds will be needed for the initial, highly labor-intensive period in which permittees must identify responsibilities, map and evaluate facilities, propose BMPs and evaluate their effectiveness. New programs for staff training and public participation and outreach must also be created	Staff carefully considered the implementation schedule and revised dates accordingly. The first portion of the permit term will naturally have more requirements than the latter portion as this is the period of time that the program is established. Further, urban storm water runoff is a major contributor to receiving water impairment. In California, urban storm water is listed as the primary source of impairment for ten percent of all rivers, ten percent of all lakes and reservoirs, and 17 percent of all estuaries (2010 Integrated Report). Although these numbers may seem low, urban areas cover just six percent of the land mass of California and so their influence is disproportionately large. Extending the implementation timeline for this permit term will only contribute to the water quality impairment that we face.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
91	5	San Francisco Bay Area Rapid Transit District	Provision D	Throughout its various stormwater permits, the State Board has consistently utilized the "iterative process"- in which, if the permittee's BMPs prove insufficient to achieve compliance, the permittee must improve its BMPs - as a means of compliance with the MEP standard. Since the court's problem was with the permit text, BART and other commenters asked the State Board to modify the permit text, supplying the safe harbor that was lacking in NRDC v. LA. In response, staff suggests that the State Board lacks discretion to include safe harbor language in the permit. Response to Comments, p. 59. However, NRDC v. LA held that the Clean Water Act allows the State Board discretion over whether or not to include safe harbor language in a permit.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.
91	6	San Francisco Bay Area Rapid Transit District	F.S.a(ii)	The Second Draft Permit (pp. 78-79) requires non-traditional small MS4s to certify that they have legal authority to prohibit activities by others that result in pollution discharges to the MS4. However, in general, traditional MS4s such as municipalities have plenary police power over residents and businesses within their jurisdictions. This requirement is inapplicable to BART and similarly-situated non-traditional MS4s.	The permit language in Section F.5.a.1. was developed in conjunction with several categories of non-traditional Permittees, and as such, is written to apply to unique non-traditional conditions.
91	7	San Francisco Bay Area Rapid Transit District		Second Draft Permit, pp. 79-82. BART acknowledges that its riders throw trash on the tracks in stations, or on the ground in parking lots or garages, where it can be washed into the storm drainage system. An outreach and education program tailored to address this behavior could include, for example, providing posters or brochures in stations, seeking to educate patrons and change their behavior. Outside stations and associated parking, however, the public does not have access to BART's storm drainage facilities. BART cars are closed and BART facilities outside the stations are not open to the public. Members of the public cannot connect, legally or illicitly, to BART's storm drainage.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
91	8	San Francisco Bay Area Rapid Transit District		As noted above, the public has no access to and does not connect to BART storm drainage facilities. While illegal dumping into storm drains at station parking lots is a theoretical possibility, BART is not aware of any such incidents and the remote prospect is not sufficient to justify the burden of the elaborate investigations required by the Second Draft Permit. In particular, the outfall mapping and field sampling program appears to be directed at identifying illicit discharges. In the absence of any evidence of illicit discharges, the mapping and sampling program seems excessive and inappropriate, and the permit language should allow greater flexibility.	Staff disagrees. BART is accessed by the public and therefore illegal and/or illicit discharge can be possible. Please see the Center for Watershed Protection's Illicit Discharge Detection and Elimination Guidance Manual located at: www.cwp.org . The manual outlines practical, low cost, and effective techniques for Phase II Permittees seeking to establish Illicit Discharge Detection and Elimination (IDDE) programs and investigate non-stormwater entries into storm drainage systems. It details the types of testing used to detect illicit discharges, information on estimating program costs in terms of capital and personnel expenses, and timelines that estimate how long program implementation will take.
91	9	San Francisco Bay Area Rapid Transit District		The Second Draft Permit, p. 77, provides that "Department of Defense and Department of Corrections and Rehabilitation Permittees are exempt from Annual Reporting of any provision in this section that could pose a security risk and/or compromise facility security." This exemption should be extended to transportation infrastructure which, since the September 11, 2001 attacks and the 2004 Madrid subway bombing, has been widely recognized as a potential terrorism target.	This permit provision has been revised to address this comment.
91	10	San Francisco Bay Area Rapid Transit District		The Program Effectiveness Assessment and Improvement Plan and the online annual reporting requirements are applicable to BART. Indeed, monitoring effectiveness is appropriate and essential to implement the iterative BMP process. Nevertheless, the Program Effectiveness and reporting requirements impose an administratively burdensome new program which must be tailored to the specific circumstances of the permittee.	The California Stormwater Quality Association's (CASQA) Municipal Stormwater Program Effectiveness Guidance describes strategies and methods for assessing effectiveness, including examples of effectiveness assessment for each SWMP program component. The CASQA Effectiveness Guidance is available at www.casqa.org . A key requirement in the stormwater Phase II rule is a report (40 CFR 122.34(g)(3)) that includes "the status of compliance with permit conditions, an assessment of the appropriateness of identified [control measures] and progress towards achieving identified measurable goals for each of the minimum control measures." This assessment is critical to the stormwater program framework which uses the iterative approach of implementing controls, conducting assessments, and designating refocused controls leading toward attainment of water quality standards.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
92	1	Santa Clara Valley Urban Runoff Pollution Prevention Program		The third paragraph of Section XI of the Fact Sheet contains unnecessary and potentially misleading language that is inaccurate and inconsistent with prior Water Board policy concerning compliance with water quality standards and how and over what time period that is to be achieved. It has never before appeared with respect to other State Water Board-issued MS4 permits, including the current draft Caltrans permit and its fact sheet.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
92	2	Santa Clara Valley Urban Runoff Pollution Prevention Program		In addition to dropping this paragraph from the Fact Sheet, the State Water Board should revise the proposed Small MS4 Permit to fully integrate the iterative process language within the Receiving Water Limitation on causing or contributing to water quality standard exceedances in the same paragraph rather than in two different ones. It should also require this integrated approach in all future MS4 permits.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.
93	1	Shasta County, Department of Public Works	E.12	The draft changes in the "Revised Draft NPDES General Permit for Storm Water Discharges from Small MS4s" and in the "Construction General Permit" change whether many rural area road projects are permitted under the Construction General Permit or both permits, but the changes do not appear to address our concerns. The post construction water balance requirements in the new permits for rural area roads are confusing, hinder good road improvements, are inappropriately costly, and unresponsive to local agencies. They will result in inefficient use of the resources directed to stewarding water quality while decreasing road safety for the traveling public.	Comment noted.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
94	1	Siskiyou Gardens Parks and Greenway Association	Throughout	We are concerned that the proposed Permit requirements as stated would inappropriately subject the Yreka community's very few committed city staff and citizens to numerous disproportional and counterproductive administrative requirements. Human capacity is always a critical limiting factor; this is especially so in small and economically disadvantaged communities such as Yreka. Additional requirements upon our community's limited human and financial capacity could easily prevent rather than support significant ongoing stream conservation progress.	The draft order has been revised to address comments received regarding costs of implementation as outlined in Section III, Economic Considerations, of the Fact Sheet. The Public Resources Code requires that the Proposition 84 Storm water Grant Program funds be used to provide matching grants to local public agencies for the reduction and prevention of storm water contamination or rivers, lakes and streams. Please visit the following website for more information: http://waterboards.ca.gov/water_issues/program/grants_loans/prop84/index.shtml Additional financial assistance information including information on the Clean Water State Revolving Fund loans, is available at: http://www.waterboards.ca.gov/water_issues/programs/grants_loans/
94	2	Siskiyou Gardens Parks and Greenway Association	Throughout	We believe that the SWRCB shares our concern and urgency to achieve effective habitat restoration for declining anadromous fish populations. Within the Shasta River system, of which Yreka Creek is a part, two of the three brood years of Coho Salmon no longer exist, leaving one brood year left to potentially recover the species. For this reason alone, we are hopeful that immediate and effective accommodations will be made in the Permit requirements so that habitat restoration will occur in the waters of rivers and streams rather than in documents prepared to meet the requirements. Without these accommodations, it will be difficult if not impossible to continue essential aquatic habitat restorations within small, limited-capacity communities such as ours.	While the permit outlines specific actions to be implemented for water quality protection, there is flexibility for the Permittee to focus the requirements on specific goals. For example, through education and outreach the Permittee can focus education on Shasta River system, particularly, on the remaining Coho brood.
95	1	Siskiyou Land Conservancy		Comment does not apply.	The commenter made comments on the incorrect document, and as such, the comments do not apply to the second draft Phase II General Permit.
96	1	Sonoma County Office of Education		While we believe it was a technical oversight, please also grant County Offices of Education the same exclusion from automatic designation that K-12s and community colleges were granted.	County Offices of Education have been included as an exception.
97	1	Stanislaus County	Throughout	While the latest revisions have resulted in a more practical permit, several significant challenges for the County still remain. The major challenge, of course, deals with the dramatic increase in cost necessary to implement the permit requirements. Stanislaus County lacks adequate fee authority to pay for the new State mandated NPDES programs and higher levels of service. Under the current interpretation of Proposition 218, our local agency does not have the authority to impose a fee without the consent of the voters or property owners.	The draft order has been revised to address comments received regarding costs of implementation as outlined in Section III, Economic Considerations, of the Fact Sheet. The Public Resources Code requires that the Proposition 84 Storm water Grant Program funds be used to provide matching grants to local public agencies for the reduction and prevention of storm water contamination or rivers, lakes and streams. Please visit the following website for more information: http://waterboards.ca.gov/water_issues/program/grants_loans/prop84/index.shtml Additional financial assistance information including information on the Clean Water State Revolving Fund loans, is available at: http://www.waterboards.ca.gov/water_issues/programs/grants_loans/

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
97	2	Stanislaus County	Throughout	To the extent the requirements of the Draft Permit exceed the six Minimum Control Measures; they represent State mandates, not federal mandates. The new programs identified in the Draft Permit exceed the federal mandates because they were not one of the original six Minimum Control Measures. The higher levels of service identified in the Draft Permit also exceed the federal mandates because they go beyond the requirements of the six Minimum Control Measures as set forth in the Phase II regulations. Together the new programs and higher levels of service exceed the federal requirements.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program “designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.
97	3	Stanislaus County	E.12.f, Section D, E.13.b.1.(ii) (d), E.6.c., E.6.a., Ministerial Projects	The County has identified several areas of concern pertaining to the legal authority of the State Board or general legal issues that may be created with the language as currently drafted.	Comment noted.
97	4	Stanislaus County	Throughout	Several elements of the timeline remain unrealistic. Individually, the requirements and associated timelines may be feasible, but collectively, the comprehensive and ramped-up nature of the requirements makes compliance difficult, if not infeasible altogether for Stanislaus County. The Draft Permit includes approximately 45 major task elements and over 125 tasks for traditional MS4s. Of these 125+ tasks, about 115 (or approximately 92%) are required to be implemented by the end of the third year of the permit term.	Staff carefully considered the implementation schedule and revised dates accordingly. The first portion of the permit term will naturally have more requirements than the latter portion as this is the period of time that the program is established.
97	5	Stanislaus County	E.7	Section E.7 of the Draft Permit contains a host of very specific and enhanced education and outreach requirements that must be targeted to many different groups, including, subject to Regional Board discretion, the use of very involved Community-Based Social Marketing (“CBSM”) strategies or a CBSM equivalent.	The permit requires permittees to have an established, escalating enforcement policy that clearly describes the action to be taken for common violations. The policy must describe the procedures to ensure compliance with local ordinances and standards, including the sanctions and enforcement mechanisms that will be used to ensure compliance. (See 40 CFR 122.26(d)(2)(i)). It is critical that the MS4 have the authority to initiate a range of enforcement actions to address the variability and severity of noncompliance. Enforcement responses to individual violations must consider criteria such as magnitude and duration of the violation, effect of the violation on the receiving water, compliance history of the operator, and good faith of the operator in compliance efforts.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
97	6	Stanislaus County	E.8	Draft Permit requires very detailed programs that are not found in the Existing Permit. The Draft Permit mandates the development of a public involvement and participation strategy, a budget to implement that strategy, the establishment of a citizen's advisory group containing specified members, and the sponsoring of activities. The proposed involvement and participation program is not feasible for Stanislaus County.	Stormwater management programs can be greatly improved by involving the community throughout the entire process of developing and implementing the program. Involving the public benefits both the permittee itself as well as the community. By listening to the public's concerns and coming up with solutions together, the permittee will gain the public's support and the community will become invested in the program. The permittees will likewise gain even more insight into the most effective ways to communicate their messages.
97	7	Stanislaus County	E.9	The Draft Permit contains very specific and enhanced requirements (i.e. requiring field observations, field screening, analytical monitoring at specified intervals, investigating illicit discharge within specified time frames, requiring corrective actions in a limited amount of time, developing a Spill Response Plan, filing detailed annual reports, and so forth). These proposed requirements are not feasible for Stanislaus County.	Please see the Center for Watershed Protection's Illicit Discharge Detection and Elimination Guidance Manual located at: www.cwp.org . The manual outlines practical, low cost, and effective techniques for Phase II Permittees seeking to establish Illicit Discharge Detection and Elimination (IDDE) programs and investigate non-stormwater entries into storm drainage systems. It details the types of testing used to detect illicit discharges, information on estimating program costs in terms of capital and personnel expenses, and timelines that estimate how long program implementation will take.
97	8	Stanislaus County	E.10	The Draft Permit mandates that all construction sites be inventoried and inspected at designated frequencies. The Draft Permit also requires training of staff, educating construction site operators, and requires staff to be certified as Qualified SWPPP Developers or Practitioners (QSD/QSP). These proposed requirements are not feasible for Stanislaus County.	Erosion Sediment Control/Storm Water Inspectors must be qualified individuals, knowledgeable in inspection procedures. The draft order requires one designated staff or an individual supervising inspectors to be certified pursuant to a State Water Board sponsored program as either a Qualified SWPPP Developer (QSD) or a Qualified SWPPP Practitioner (QSP) program. The designated staff or the individual supervising inspector can complete the QSP and QSD training. That is, require the completion of the QSP or QSD course and pass the exam, but do not require completion of the underlying certification (e.g. CPESC, CISEC, PE, PG).
97	9	Stanislaus County	E.11	All these requirements seem to be considered higher levels of service than the original six Minimum Control Measures outlined in the Existing Permit. These proposed requirements are not feasible for Stanislaus County and should also be removed from the Draft Permit.	In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program "designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act," (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)).

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
97	10	Stanislaus County	E.12	The Draft Permit contains enhanced and very detailed program requirements, such as implementing post-construction hydromodification measures, developing hydromodification management procedures, implementing strategies for watershed process-based storm water management, and implementing an operation and maintenance verification program of post-construction storm water management measures for new development projects. These proposed requirements are not feasible for Stanislaus County.	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.
97	11	Stanislaus County	E.12	Both the United States and California Constitutions limit the ability of permittees to enter private property for purpose of inspection. These fundamental Constitutional limitations must be honored and make compliance with this section, as written, impossible. Permittees may lack the legal authority to unilaterally enter private property or, absent consent, must obtain an inspection warrant.	This permit provision has been revised to address this comment.
97	12	Stanislaus County	E.7	This requirement is excessive and beyond the requirements of the existing Phase II regulations and therefore should be eliminated. Many smaller cities and county agencies may not have the specialized staff or resources to meet this provision. These proposed requirements are not feasible for Stanislaus County.	In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program “designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)). Additionally, Erosion Sediment Control/Storm Water Inspectors must be qualified individuals, knowledgeable in inspection procedures. The draft order requires one designated staff or an individual supervising inspectors to be certified pursuant to a State Water Board sponsored program as either a Qualified SWPPP Developer (QSD) or a Qualified SWPPP Practitioner (QSP) program. The designated staff or the individual supervising inspector can complete the QSP and QSD training. That is, require the completion of the QSP or QSD course and pass the exam, but do not require completion of the underlying certification (e.g. CPESC, CISEC, PE, PG).

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
97	13	Stanislaus County	E.12.h	Dischargers should not be held responsible for the conditions and assessment of structural post-construction BMPs that the State Board requires to be imposed on private development. At most, dischargers should be permitted to use their existing enforcement authorities to enforce their land use conditions, as appropriate.	This section applies to all new projects that create and/or replace 5,000 sf or more of impervious surface.
97	14	Stanislaus County	E.14.a.(ii)©	Section E.14.a.(ii).(c) provision requires dischargers to identify assessment methods for privately owned BMPs. Nothing in the Clean Water Act (CWA) requires such an assessment.	In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program “designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)).
97	15	Stanislaus County	E.14.b	The CWA does not require municipal dischargers to quantify municipal watershed pollutant loads.	Please see response to comment number 14.
97	16	Stanislaus County	Section B.4.	The requirement to regulate Incidental Runoff is not required by the Existing Permit (Section B.4)	Please see response to comment number 14.
97	17	Stanislaus County	E.6.c.	The development of an Enforcement Response Plan is not required in the Existing Permit (Section E.6.c)	Please see response to comment number 14.
97	18	Stanislaus County	E.13	The development of a Receiving Water Monitoring Program is not required in the Existing Permit	Please see response to comment number 14.
97	19	Stanislaus County	E.14	The development of an Effectiveness Assessment Program, including pollutant loading quantification is not required in the Existing Permit	Please see response to comment number 14.
97	20	Stanislaus County	E.6	A Program Management Element is not one of the original six Minimum Control Measures required by the Phase II regulations.	Please see response to comment number 14.
97	21	Stanislaus County	E.7	The County is required, at a minimum, to provide storm water education to school-age children, with a suggested curriculum named. This may not however be possible because the County does not have the legal authority to impose curriculum on schools.	This permit provision has been revised to address this comment. Permittees have the authority to work with place-based environmental educators that can conduct effective storm water education to children.
97	22	Stanislaus County	E.12.j	Section E.12.j, which requires the County to update their general plan and specific plans, may not align with California local land use authorities. Unless State law is amended to require the inclusion of certain considerations in planning, zoning and building laws, the State Board lacks legal authority to compel dischargers to amend their general plan or other planning documents in any particular way.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
97	23	Stanislaus County		The reference to “industrial and commercial facilities” should be deleted because the Draft Permit no longer covers such facilities. Please clarify that this provision will not create an obligation to the County to require retrofits of existing industrial and commercial facilities. Such retrofits are not a current requirement of the Phase II program and would be cost prohibitive. Until the EPA completes the rulemaking decision regarding retrofitting requirements, the retrofit should not be required and the language in the Draft Permit should be removed accordingly.	This permit provision has been revised to address this comment.
97	24	Stanislaus County	Throughout	The State Board has created a permit that goes above and beyond the national approach for smaller entities that established six Minimum Control Measures. Like other Phase II agencies, Stanislaus County takes considerable exception to this approach.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program “designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.
97	25	Stanislaus County	Throughout	We believe that the Draft Permit will pose significant challenges to Stanislaus County and other Phase II permittees. The comprehensive and overreaching approach taken in the Draft Permit is of such concern that we respectfully request that new programs and higher levels of services be removed from the Draft Permit and allow our agency to continue implementing, monitoring, and reporting on our current Storm Water Management Program.	Please see response to comment number 24.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
98	1	Statewide Stormwater Coalition	Section D.	<p>Language in the permit does not clearly allow permittees to comply with water quality standards over time by using best management practices supplemented by the iterative process. To correct this problem, the State Board should substitute receiving water limitations language proposed by CASQA, as emphasized in their attached letter from Best, Best & Krieger.</p>	<p>The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
98	2	Statewide Stormwater Coalition	CBSM, ASBS, TMDL	The draft permit allows Regional Board discretion in permit requirements creating uncertainty for permittees regulated by the Order.	Under the Water Code, either the State Water Board or the Regional Water Boards have authority to issue NPDES permits (Wat. Code, §13377.) The State Water Board is issuing this Order; however Regional Water Board staff will continue to have the authority to evaluate compliance with permit conditions. The Regional Water Board Executive Officers also have discretion to designate entities under the Order, as well as to require renewal Permittees to continue to implement their existing programs. In response to comments and recognizing the need for some level of statewide consistency in interpretation of Order provisions, the revised Order includes a dispute resolution process where there is disagreement between a Permittee and a Regional Water Board over the interpretation of any provision of the Order. Under the dispute resolution process, the Permittee should first attempt to resolve the issue with the Executive Officer of the Regional Water Board. If a satisfactory resolution is not obtained at the Regional Water Board level, the Permittee may submit the issue in writing to the Executive Director of the State Water Board or his designee for resolution, with a copy to the Executive Officer of the Regional Water Board. The issue must be submitted to the Executive Director within ten days of any final determination by the Executive Officer of the Regional Water Board. The Executive Officer of the Regional Water Board will be provided an opportunity to respond. The determination of the Executive Director or his designee will be considered a final decision of the State Water Board subject to judicial review under Water Code section 13330.
98	3	Statewide Stormwater Coalition	E.12	The Central Coast "carve-out" is inappropriate given the nature of a general permit which is to be one permit of general application. The requirements are unreasonable, infeasible for many projects, have no demonstrated additional environmental benefit and are not cost-effective. Even more importantly, the more restrictive numeric standards have not been shown to have a water quality benefit	Staff does not agree that this provision should be deleted. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures. In relation to the Central Coast Joint Effort, a watershed process-based approach is already being used for Phase II MS4s that participated in the Central Coast Joint Effort for developing hydromodification control criteria.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
98	4	Statewide Stormwater Coalition	Findings 3033 and Section E.1.b	What is the nature and legal status of a "Guidance Document"? What is the RBEO's authority regarding review and modification of these documents? What process would a permittee use to question a RBEO's determination in the event of a disagreement?	The purpose of the guidance document is to provide some form of a storm water management document. It will assist Permittees in managing their storm water program. While this permit specifies actions for permit compliance, it does not delineate the responsible departments and individuals for each action. Through the development of a guidance document, the Permittee will map out the compliance process.
98	5	Statewide Stormwater Coalition	Program Management	Requires that permittees have available all of a large menu of enforcement tools. These tools must be used and their use documented in a specified manner - without regard to whether it is effective to do so in the particular jurisdiction or circumstance	Staff does not agree. Permittees are required to develop and implement an enforcement response plan (ERP), which clearly describes the action to be taken for common violations associated with the construction program, industrial and commercial program, or other storm water programs. A well-written ERP provides guidance to inspectors on the different enforcement responses available, actions to address general permit non-filers, when and how to refer violators to the State, and how to track enforcement actions.
98	6	Statewide Stormwater Coalition	E.6.c.	Because task E.6.a is likely to require permittees to update their ordinances or other regulatory mechanisms, it seems redundant to require an Enforcement Response Plan to reiterate the regulatory mechanisms developed in E.6.a. Further, the purpose of the ERP is unclear given that it is never required as a submittal in the annual report.	The permit requires permittees to have an established, escalating enforcement policy that clearly describes the action to be taken for common violations. The policy must describe the procedures to ensure compliance with local ordinances and standards, including the sanctions and enforcement mechanisms that will be used to ensure compliance. (See 40 CFR 122.26(d)(2)(i)).
98	7	Statewide Stormwater Coalition	CBSM	It is unclear the basis on which a RBEO will make determination if a permittee will be required to implement CBSM and there is no regard to whether these strategies work in the particular community	The determination process for Regional Board appointment of CBSM requirements has been clarified.
98	8	Statewide Stormwater Coalition	E.7.a	Permittees have no legal authority to impose curriculum on schools. Further, the curriculum suggested has limited if any direct stormwater quality educational pieces.	This permit provision has been revised to address this comment. Permittees have the authority to work with place-based environmental educators that can conduct effective storm water education to children.
98	9	Statewide Stormwater Coalition	E.7.b	The staff of all permittees must be repeatedly trained and certified to detailed standards; interestingly, third-party plan reviewers need only be "trained". Specifically, requiring all plan reviewers and inspectors to be QSD/QSP qualified is excessive.	Erosion Sediment Control/Storm Water Inspectors must be qualified individuals, knowledgeable in inspection procedures. The draft order requires one designated staff or an individual supervising inspectors to be certified pursuant to a State Water Board sponsored program as either a Qualified SWPPP Developer (QSD) or a Qualified SWPPP Practitioner (QSP) program. The designated staff or the individual supervising inspector can complete the QSP and QSD training. That is, require the completion of the QSP or QSD course and pass the exam, but do not require completion of the underlying certification (e.g. CPESC, CISEC, PE, PG).
98	10	Statewide Stormwater Coalition	E.12.j	Unless State law is amended to require the inclusion of certain considerations in planning, zoning and building laws, the State Board lacks legal authority to compel dischargers to amend their general plan or other planning documents in a particular way	The permit provision has been revised to address the comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
98	11	Statewide Stormwater Coalition	Finding 10	This finding should be revised to acknowledge that MS4 dischargers do not have control over the sources of many of the pollutants in urban storm water. Many of the pollutants of concern in urban storm water come from sources that can only be regulated at the federal or state level, such as copper in break pads or legally available pesticides or fertilizers. Further, many contributors to urban storm water pollution - such as agricultural and federal or state facilities - are not, in many cases, subject to direct control by MS4 dischargers.	Staff recognizes the challenges faced by the Phase II dischargers in regulating the wide range of pollutants that enter their MS4s. However, dischargers are responsible for all discharges from the MS4 they operate. (See NRDC v. County of Los Angeles (2011) 673 F.3d 880, 900).
98	12	Statewide Stormwater Coalition	Finding 28	To the extent that flexibility is provided in the Draft Permit, it is generally provided to the Regional Board, rather than to the dischargers. This is not flexibility; it is additional regulation.	Finding 28 has been revised in response to this comment.
98	13	Statewide Stormwater Coalition	Finding 29	40 C.P.R. § 122.46 provides that MS4 permits "shall be effective for a fixed term not to exceed 5 years." The State Board lacks legal authority to include compliance requirements that exceed the fixed term of the Draft Permit.	Section I. Permit Expiration of the proposed permit states that "If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with 40 Code of Federal Regulations section 122.6 and remain in full force and effect." If the permit is administratively continued consistent with this provision, compliance requirements that are beyond the five-year term of the permit will be enforceable.
98	14	Statewide Stormwater Coalition	Finding 30	This finding merely repeats the requirements of Section E.1.b of the Draft Permit.	Although revisions have been made to provision E.1.b, the finding is still consistent with the provision and no changes have been made to the finding.
98	15	Statewide Stormwater Coalition	Finding 37	The finding misstates the requirements of CWA section 402(p)(3)(B)(iii) and fails to provide evidentiary support for the assertion that the Draft Permit is consistent with the MEP standard. Due to the variable nature of stormwater discharges through the MS4 system, Congress imposed on MS4s a less stringent, control-based standard that is lower than the standards applicable to industrial discharges. This finding should be revised to reflect the unique nature of the MEP standard applicable to MS4s. This finding also lacks factual support. The State Board, as the permit authority, must, in the first instance, provide factual support for the assertion that the controls required by the Draft Permit are necessary to reduce the discharge of pollutants to the MEP.	The finding has been revised in response to this comment. Factual support for the finding that the controls required by the proposed permit are necessary for the reduction of discharge of pollutants to the MEP is laid out in the Fact Sheet.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
98	16	Statewide Stormwater Coalition	Finding 38	<p>Unless reversed by the United States Supreme Court, which just recently decided to review the case, the decision of the Ninth Circuit in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (9th Cir. 2011) 673 F.3d 880 stands for the proposition that the Draft Permit's receiving water limitations language is no longer consistent with the purpose and intent of the State Board's prior precedential orders.</p>	<p>The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Staff accordingly has not revised the third paragraph of the discussion under Section XI (Receiving Water Limitations) of the Fact Sheet because it accurately reflects the existing position of the State Water Board. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.</p>
98	17	Statewide Stormwater Coalition	Finding 39	<p>Rather than include requirements in the Draft Permit that are "consistent with the assumptions and requirements" of applicable WLAs, the Draft Permit expands TMDL requirements. Although the applicable legal authority provides the State Board with some flexibility to incorporate WLAs into permits in ways that recognize fact-specific conditions such as load trading or offset programs, it does not give authority for the wholesale expansion or amendment of WLAs.</p>	<p>The TMDL-specific permitting requirements contained in Attachment G do not constitute an expansion of the WLAs. Under federal regulations, any effluent limits in NPDES permits must be consistent with the assumptions and requirements of any available wasteload allocation for the discharge. (40 CFR 122.44(d)(1)(vii)(B).) However, many TMDLs are not written in a manner that clearly spell out the actions and deliverables required of individual dischargers to achieve the TMDL requirements. In order to express the TMDL requirements as clear and enforceable permit terms, the permit writers must develop the permitting language that will achieve the goals of the TMDL. In Attachment G, the Regional Water Boards have provided such specific and clear permitting language. Nevertheless, recognizing that the dischargers had a limited role in engaging in the process of developing the permitting language for TMDLs, the proposed permit provides for a six month period of review for the dischargers and the Regional Water Boards to consult and propose any revisions to the State Water Board. Such revisions will be incorporated into the permit through a reopener.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
98	18	Statewide Stormwater Coalition	Finding 51	The finding is not supported by evidence and the State Board must provide such evidence to support the finding. In addition, from an unfunded state mandates perspective, the Commission on State Mandates, not the State Board, will have the final say on whether the BMPs in the Draft Permit are consistent with the MEP standard or exceed that standard.	Finding 51 is supported by the discussion of costs under Section III of the Fact Sheet. Additionally, the Fact Sheet contains an extensive discussion of the Board's position on unfunded mandates.
98	19	Statewide Stormwater Coalition	Section B.1	Since the Draft Permit is a point- source discharge permit, the phrase "from the MS4 for which a Permittee is responsible" should be inserted after the word "waste." Dischargers may only be held accountable for discharges "from the MS4." (40 C.F.R. § 122.26(a)(3)(vi) (stating that dischargers "need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they operate.").)	Finding 51 is supported by the discussion of costs under Section III of the Fact Sheet. Additionally, the Fact Sheet contains an extensive discussion of the Board's position on unfunded mandates.
98	20	Statewide Stormwater Coalition	Section B.2	See comment to Section B.1 above.	See response to comment number 19.
98	21	Statewide Stormwater Coalition	Section B.3	See comment to Section B.1 above. Also, please delete the phrase "or another permitted MS4" or explain the legal authority for including this provision. Specifically, what legal authority allows the State Board to regulate through an NPDES permit the movement of water within an interconnected MS4 system? . Please explain the legal basis for the State Board - rather than the dischargers - to make this decision unilaterally for all dischargers subject to this statewide permit. 40 C.P.R. § 122.26(d)(2) contemplates a more local, fact-specific determination made by the discharger.	Section 402(p)(3)(B)(ii) of the Clean Water Act requires that MS4 permits include a requirement to effectively prohibit non-storm water discharges into the storm sewers. Prohibition B.3 of the Order implements this requirement. Although the Clean Water Act phrases the non-storm water discharge prohibition as a prohibition of discharges "into the storm sewers," provision B.3 has been revised to state that "discharges through the MS4 of material other than storm water to waters of the U.S. shall be effectively prohibited." There is no meaningful distinction between the two language iterations as both prohibit discharges from reaching receiving waters and are consistent with the intent of the Clean Water Act. When discussing the effective prohibition of non-storm water discharger, USEPA's preamble to its Phase I regulations uses the term "through" interchangeably with the term "into." (55 Fed. Reg. 47995.) Staff believes that the use of the phrasing "through the MS4 . . . to waters of the U.S." allows the Permittees greater flexibility with regard to utilizing dry weather diversions. Staff has, however, removed the phrase "or another permitted MS4" in response to this comment. The provision has additionally been revised to clarify that a "discharger" may be the party to determine that a conditionally exempt discharge is a significant source of pollutants to the waters of the US. However, staff believes that the Regional Water Board also has the authority to make such a determination. Although the regulations specify that these discharges must be addressed if the discharger identifies them as significant contributors of pollutants to the MS4, the Regional Water Boards also have authority to require a discharger to monitor and report on discharges of pollutants under Water Code sections 13383 and control such pollutants under the authority of Water Code section 13376 and 13377.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
98	22	Statewide Stormwater Coalition	Section C.I.	As currently written, the State Board has jumbled together the unique concept of MEP, the TMDL/water quality based concept of WLAs and a unique discharge prohibition. Combining such different concepts into one effluent limitation is not appropriate. This is a good example of the type of vague language that must be eliminated from the Draft Permit.	This provision has been revised to address this comment.
98	23	Statewide Stormwater Coalition	Section D	"The Cause or Contribute" Paragraph. In light of the Ninth Circuit's decision in NRDC v. County of LA, the State Board should revisit the receiving water limitations language of the Draft Permit. Although the United States Supreme Court has decided to review this decision, the result reached by the Ninth Circuit should compel the State Board to align the language in the Draft Permit with the State Board's previous policy statements regarding the manner in which compliance with water quality standards is to be achieved. This comment is written with the assumption that the State Board has not, without public notice and an opportunity to comment, somehow changed the policy position expressed in State Water Board Order WQ 2001-15. It is well documented that immediate compliance with many water quality standards like copper and zinc are impossible for dischargers to achieve at this time. That is why the policy to achieve compliance over time through improved BMPs is appropriate. If the State Board has changed its policy and now requires strict compliance with numeric water quality standards, the State Board should expressly reverse its prior policy statements in an open and public way so that there can be a full policy discussion of the wisdom and costs of such a policy change. Staff has suggested in the Draft Fact Sheet that the result in NRDC v. County of LA reflects the current policy position of the State Board.	The Ninth Circuit held in Natural Resources Defense Council, Inc. v. County of Los Angeles (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Staff accordingly has not revised the third paragraph of the discussion under Section XI (Receiving Water Limitations) of the Fact Sheet because it accurately reflects the existing position of the State Water Board. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
98	24	Statewide Stormwater Coalition	Section D	<p>The State Board should also clarify the iterative process and its relationship to achieving water quality standards over time. The California Stormwater Quality Association ("CASQA") has prepared the enclosed proposed language to strengthen the iterative process which the State Board should consider in connection with the Draft Permit.</p>	<p>The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Staff accordingly has not revised the third paragraph of the discussion under Section XI (Receiving Water Limitations) of the Fact Sheet because it accurately reflects the existing position of the State Water Board. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.</p>
98	25	Statewide Stormwater Coalition	Section E.I.a	<p>40 C.F.R. § 122.46 provides that MS4 permits "shall be effective for a fixed term not to exceed 5 years."</p>	<p>See response to comment on finding 29.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
98	26	Statewide Stormwater Coalition	Section E.1.b	This provision also allows a Permittee to submit a request to the State Board EO to review the Regional Board EO's decision.	Staff expects this provision to be invoked in only a limited number of cases where the existing program is clearly equivalent to the requirements of the Order in reducing pollutant discharges. In general, staff believes that the permit requirements are more effective than existing programs. Allowing dischargers to initiate the request would likely to lead to multiple requests that the Regional Water Boards will have limited resources to process and address. Accordingly, no changes have been made to this provision. However, a dispute resolution procedure has been added to the Order at Provision H in order to address disputes over the interpretation and implementation of provisions such as the one at issue in this comment where the Regional Water Boards exercise discretion. Staff believes that the dispute resolution procedure will provide more expeditious review of disagreements between dischargers and Regional Water Board staff than directing dischargers to the petition process. The determination of the Executive Director or his designee will be considered a final decision of the State Water Board subject to judicial review under Water Code section 13330.
98	27	Statewide Stormwater Coalition	Section E.6	A program management element is not one of the six minimum control measures required by the Phase II regulations. The requirements of this element therefore exceed the mandate of the CWA and implementing regulations	See discussion of State Mandates in the Fact Sheet and see the discussion of the legal authority and guidance in support of the program management element under Section XII of the Fact Sheet. USEPA's MS4 Improvement Guide recommends a program management element as one of the elements of an effective MS4 permit.
98	28	Statewide Stormwater Coalition	Section E.6.a.(i)	CWA sections 402(p)(3)(B)(ii) and (iii) create two separate legal requirements. Section 402(p)(3)(8)(ii) requires that permits for discharges from MS4s must include a "requirement to effectively prohibit non-stormwater discharges into the storm sewer." To comply with such a condition, dischargers need to establish legal authority - through ordinance or other methods - to "effectively prohibit" discharges "into" the MS4. (See 40 C.P.R. § 122.26(d)(2)(i).) In contrast, Section 402(p)(3)(B)(iii) requires that MS4 permits must "require controls to reduce the discharge of pollutants to the maximum extent practicable" To comply with such a condition, dischargers need to implement the required controls to reduce discharges "from" the MS4 to the MEP. The Draft Permit inappropriately combines these two separate and distinct standards for discharges "into" and for discharges "from" the MS4 into one "into and from" standard. The State Board has previously recognized that such a combined "into and from" standard is not appropriate. (State Board Order WQ 2001-15.)	In response to the comment, the phrase "as applicable" has been added to this provision to clarify that the discharger must obtain adequate legal authority to control pollutant discharges into or from its MS4 only to the extent those standards apply to the relevant pollutant discharge.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
98	29	Statewide Stormwater Coalition	Section E.6.a.(ii)	CWA section 402(p)(3)(B)(ii) requires MS4 permits to contain a requirement to "effectively prohibit" non-stormwater discharges into the MS4. The CWA requirement is not to "prohibit and eliminate."	While staff recognizes that CWA section 402(p)(3)(B)(ii) requires MS4 permits to contain a requirement to "effectively prohibit" non-stormwater discharges, the federal regulations direct the MS4 to "develop, implement and enforce a program to detect and eliminate illicit discharges." (40 CFR 122.34(b)(3).) Therefore, it is appropriate to use the term "eliminate" in the context of laying out legal authority and program requirements for illicit discharges. The term non-storm water is not defined in the CWA or the regulations, but the term illicit discharge is (40 C.F.R. § 122.26(b)(2)), and the terms are often used interchangeably. The preamble to the Phase II regulations explains that inclusion of the illicit discharge detection and elimination program for regulated small MS4s "is consistent with the "effective prohibition" requirement for large and medium MS4s." (64 FR 68722, 68756.) Because the term non-storm water discharges is used in E.6.a.(ii)(a), that provision has nevertheless been revised in response to the comment to state: "Effectively prohibit non-storm water discharges through the MS4." (Please note that the word "effectively" was inadvertently left off in the draft circulated on November 16, 2012, but will be inserted prior to adoption.) However, the word "eliminate" has been retained in E.6.a.(ii)(b) where the reference is to "illicit discharges."
98	30	Statewide Stormwater Coalition	Section E.6.a.(ii)(f)	Such retrofits are not a current requirement of the Phase II program and would be cost prohibitive. In fact, EPA is currently undergoing a rulemaking to consider whether including a retrofit component in the storm water program is appropriate. Until EPA completes its process, retrofits should not be required, especially as they relate to private industrial and commercial facilities.	EPA's Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category (74 FR 62996, December 1, 2009) require construction site owners and operators to implement a range of erosion and sediment control measures and pollution prevention practices to control pollutants in discharges from construction sites. CASQA BMP Handbook is widely used in California and throughout the nation.
98	31	Statewide Stormwater Coalition	Section E.6.a.(ii).(h)	Both the United States and California Constitutions limit the ability of Permittees to enter private property for purposes of inspection. These fundamental Constitutional limitations must be honored and honoring them makes compliance with this section, as written, impossible. Permittees simply lack the legal authority to unilaterally enter private property. Rather, Permittees must obtain consent to enter private property or, absent consent, must obtain an inspection warrant.	The phrase "as consistent with any applicable state and federal laws" has been added to the section to address this comment.
98	32	Statewide Stormwater Coalition	Section E.6.b.(i) and (iii)	Please explain the need and legal basis for the duplicative certification requirements of both legal counsel and the authorized signatory. Such dual certification requirements are not mandated by the CWA or the implementing regulations	This provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
98	33	Statewide Stormwater Coalition	Section E.6.c.(i)	Please explain the need and legal basis for the requirement to develop and implement an Enforcement Response Plan. For municipal dischargers, enforcement options are already set forth in the enforcement provisions of their municipal codes.	Staff does not agree. Permittees are required to develop and implement an enforcement response plan (ERP), which clearly describes the action to be taken for common violations associated with the construction program, industrial and commercial program, or other storm water programs. A well-written ERP provides guidance to inspectors on the different enforcement responses available, actions to address general permit non-filers, when and how to refer violators to the State, and how to track enforcement actions.
98	34	Statewide Stormwater Coalition	Section E.6.c.(ii).(d).(2)	The State Board is responsible for enforcing the Industrial and Construction Permit. The State Board cannot shift this obligation to local dischargers without providing applicable funding.	Staff does not agree. Permittees are required to develop and implement an enforcement response plan (ERP), which clearly describes the action to be taken for common violations associated with the construction program, industrial and commercial program, or other storm water programs. A well-written ERP provides guidance to inspectors on the different enforcement responses available, actions to address general permit non-filers, when and how to refer violators to the State, and how to track enforcement actions. Legal Authority simply requires ordinance or other regulatory mechanisms are in place without clearly describing actions taken such as when to issues civil or criminal sanctions and escalate enforcement. In the case that an illicit discharge is detected, the Permittee must track the source which could potentially be a industrial or commercial facility. As such, the Permittee may be required to conduct an inspection.
98	35	Statewide Stormwater Coalition	Section E.6.c.(ii).f.	For municipal dischargers, existing municipal codes provide the necessary tools to address repeat offenders.	This provision has been revised to address the comment.
98	36	Statewide Stormwater Coalition	Section E.7	There is no legal requirement to use a particular type of public outreach, and the decision on how best to satisfy the requirement to develop an education and outreach program must be left to dischargers. Please set forth any legal authority for this requirement and explain the conditions under which the State Board believes that Regional Board EOs should use their discretion under this provision.	In response to this comment, a process has been added to establish the conditions under which the Regional Water Board Executive Officer can require Permittees to comply with CBSM requirements. An Executive Officer's determination may be challenged under the dispute resolution process that has now been incorporated into the Order.
98	37	Statewide Stormwater Coalition	Section E.7.b.2.a	The requirement that plan reviewers, permitting staff and inspectors be certified as QSDs or QSPs is excessive and beyond the requirements of the Phase II regulations.	This provision has been revised to address this comment.
98	38	Statewide Stormwater Coalition	Section E.7.b.3.(i)	As written, the sentence could be interpreted as requiring training of any new hire.	The requested change has been made in response to this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
98	39	Statewide Stormwater Coalition	Section E.8	The public involvement and participation program requirements exceed the mandates of the Phase II regulations. As the Phase II regulations state, the "public participation program must only comply with applicable state and local public notice requirements." The Draft Permit should only require such compliance.	The federal regulations state at 40 CFR 122.34(b)(2)(i) that an MS4 must "at a minimum, comply with State, Tribal and local public notice requirements when implementing a public involvement/participation program." Both the guidance in 40 CFR 122.34(b)(2)(ii) and the guidance provided in the USEPA MS4 Permit Improvement Guide recommend that the MS4 go beyond just compliance with public notice requirements to incorporate measures such as the citizen advisory groups, citizen participation, and availability of storm water management information to the public. Staff believes that the public involvement and participation program laid out in the permit constitutes MEP and no changes are being made in response to this comment.
98	40	Statewide Stormwater Coalition	Section E.8.(i) and (ii).(e)	The State Board lacks legal authority to require dischargers to "actively engage in the Permittee's IRWMP or other watershed- level planning effort." Such a requirement would compel dischargers to spend funds outside their jurisdictional boundaries, an action that the State Board cannot compel.	The permit requirement to actively engage in the IRWMP or other watershed level planning effort does not require dischargers to spend funds.
98	41	Statewide Stormwater Coalition	Section E.9	As the Phase II regulations make clear, this requires dischargers to, "to the extent allowable under state, tribal, or local law, effectively prohibit through ordinance, or other regulatory mechanism, illicit dischargers into the L MS4]" and to "develop and implement a plan to detect and address illicit discharges"	See response to the comment number 29 regarding use of the term "eliminate." The provision has been revised to add the phrase "to the extent allowable by law."
98	42	Statewide Stormwater Coalition	Section E.9.c.(ii).(b)	Nothing in the Draft Permit or Draft Fact Sheet appears to explain the derivation of these concentrations. Absent this information, it is impossible to determine whether the concentrations are factually or legally valid. To the extent these are intended to serve as numeric effluent limitations, they are legally deficient because they have not been developed in accordance with CWA requirements.	The action level concentrations are not numeric effluent limitations but rather triggers for conducting investigations under E.9.d.
98	43	Statewide Stormwater Coalition	Section E.9.d.(ii)	The requirement to "conduct an investigation(s) to identify and locate the source of any prohibited non-storm water discharge within 72 hours" is not feasible in most cases.	This provision has been revised to address this comment.
98	44	Statewide Stormwater Coalition	Section E.II.i.(i)	The requirements of Section E.II.i could have an adverse impact on flood control and thereby could exceed the authority of CWA section 101(g), which reserves to the states the authority to regulate the movement of water. At most, this provision should simply require dischargers to consider incorporating water quality and habitat enhancement features into new flood management facilities, where feasible. Federal regulations at 40 C.F.R. § 122.26 merely contemplate the creation of a plan to retrofit portions of the flood control system. As noted above, EPA is currently considering a rulemaking that will provide guidance on retrofitting requirements. The State Board should wait until EPA completes its rulemaking process before including retrofitting requirements in the Draft Permit.	Staff removed the requirement to implementing habitat water quality features into existing facilities. Instead, permittees are required to incorporate water quality habitat features into new facilities.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
98	45	Statewide Stormwater Coalition	Section E.12.d.1.(d). (l)(i).	The legal concept of vested rights is governed by California court cases and statutes. Whether a municipal discharger could legally impose a new condition on a project always involves a fact-specific legal determination. Dischargers should not be placed in a position where they may be exposed to litigation for imposing a condition on a discretionary project that may already be vested under California law. It is not for the State Board to define when vesting occurs.	The phrase "to the extent allowable by applicable law" will be added to this section in response to the comment. (The phrase was inadvertently left off in the draft circulated on November 16, 2012, but the revision will be made prior to adoption of the Order.)
98	46	Statewide Stormwater Coalition	Section E.12.d.1.Cd) .(l)(ii).	The ability of dischargers to impose low impact development runoff standards on ministerial projects may be subject to limits under California law. First, such standards could not in any case be imposed until municipal codes are updated through appropriate procedures to make such standards a regulatory requirement of all permits in question. Ministerial projects are exempt from processes such as the California Environmental Quality Act ("CEQA") that might otherwise provide a legal basis for imposing LID conditions. Second, even after municipal codes are updated, serious constitutional "nexus" and "rough proportionality" questions may exist regarding the application of LID standards to individual ministerial projects.	The phrase "to the extent allowable by applicable law" will be added to this section in response to the comment. (The phrase was inadvertently left off in the draft circulated on November 16, 2012, but the revision will be made prior to adoption of the Order.)
98	47	Statewide Stormwater Coalition	Section E.12.d.2.(i).	This paragraph uses the term "effectively reduce." This is not a legal standard in the CWA.	This permit provision has been revised to address this comment. Language has been revised to read: "The Permittee shall implement standards designed to reduce runoff..."(The phrase was inadvertently left off in the draft circulated on November 16, 2012, but the revision will be made prior to adoption of the Order.)
98	48	Statewide Stormwater Coalition	Section E.12.d.2.(ii)	This section uses a standard that is not found in the CWA as applicable to MS4 dischargers. This section purports to require Permittees to implement source controls and site design measures "to the extent technically feasible to reduce the amount of runoff" CWA section 402(p)(3)(B)(iii) requires controls to reduce discharges from the MS4 to the MEP.	This provision has been significantly revised and the phrase "to the extent technically feasible" is no longer used.
98	49	Statewide Stormwater Coalition	Section E.12.f	There is no requirement in federal law to develop and implement the watershed-based approach called for in this Section E.12.f. A watershed-based approach would require dischargers to expend resources across jurisdictions in a manner that will require contributions for discharges not attributable to each discharger. This exceeds the authority granted to the State and Regional Boards under CWA section 402(p) and Water Code section 13260. Both statutes hold dischargers responsible for only those pollutants that discharge from their point sources. The CWA is not a contribution statute; dischargers are not jointly and severally liable for any and all water quality conditions in a watershed. (See 40 C.F.R. § 122.26(a)(3).) Conditions that impose responsibility for discharges that do not originate from the point sources owned, operated or controlled by the discharger exceed the State Board's legal authority.	This section has been removed from the permit.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
98	50	Statewide Stormwater Coalition	Section E.12.h.	Dischargers should not be held responsible for the condition and assessment of structural post-construction BMPs that the State Board requires to be imposed on private development. At most, dischargers should be permitted to use their existing enforcement authorities to enforce their land use conditions, as appropriate.	Staff does not agree. Appropriate operation and maintenance are critical aspects to the function of any suite of controls. In many cases, controls may be located on private property, and it is necessary to establish some provision to assure responsibility and accountability for the operation and maintenance of these controls. This permit provision has been revised to address this comment.
98	51	Statewide Stormwater Coalition	Section E.12.j.	Local land use decisions are properly left within the discretion of local decision makers. Unless state law is amended to require the inclusion of certain considerations in general plans or other local zoning laws, the State Board lacks legal authority to compel dischargers to amend their general plan or other planning documents in any particular way. At most, the State Board may only require dischargers to consider water quality issues as they use their independent discretion, subject only to state law or local charter, to amend or revise their planning documents.	This provision has been revised to address this comment.
98	52	Statewide Stormwater Coalition	Section E.13.b.1.(ii).(d)	This provision requires dischargers to establish a monitoring fund into which all new development contributes on a proportional basis. The ability of dischargers to establish such a fund is governed by limitations under state law, including, without limitation, California Constitution Article XIII B. The State Board cannot compel dischargers to establish such a fund.	This provision has been deleted.
98	53	Statewide Stormwater Coalition	Section E.14.a.(ii).(c).	Dischargers should not be required to identify assessment methods for privately owned BMPs. Nothing in the CWA requires such an assessment.	Staff does not agree. Appropriate operation and maintenance are critical aspects to the function of any suite of controls. In many cases, controls may be located on private property, and it is necessary to establish some provision to assure responsibility and accountability for the operation and maintenance of these controls. This permit provision has been revised to address this comment.
98	54	Statewide Stormwater Coalition	Section E.14.b	Nothing in the CWA requires municipal dischargers to quantify municipal watershed pollutant loads. The water quality improvements to be gained by conducting such load quantifications are also unclear.	This section has been removed from the permit.
98	55	Statewide Stormwater Coalition	Section E.15.a. and b	40 C.F.R. § 122.44(d)(1)(vii)(B) provides that when developing water quality based effluent limits, the permitting authority shall ensure that effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available WLA for the discharge. Section E.15 exceeds this legal authority by including requirements that expand existing WLAs. Such an expansion may only occur through amendments to the applicable Basin Plans.	See response to comment on finding 39.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
98	56	Statewide Stormwater Coalition	Section G	<p>The Draft Permit should provide greater clarity regarding when a Regional Board may require modifications to storm water programs that are not required by the Draft Permit. The Draft Permit should establish the parameters under which the Regional Boards may exercise the discretion set forth in Section G. In addition, a mechanism by which dischargers initiate requests for Regional Board action should be included in the Draft Permit. That is, the dischargers should, in the first instance, have the flexibility to decide between implementing the conditions of the Draft Permit or requesting the authority to continue certain aspects of their existing programs</p>	<p>Under the Water Code, either the State Water Board or the regional boards have authority to issue NPDES permits (Wat. Code, §13377.) The State Water Board is issuing this Order; however Regional Water Board staff will continue to have the authority to evaluate each individual Permittee’s compliance . Regional Water Boards may also impose region-specific monitoring requirements, conduct inspections, take enforcement actions, and make additional designations of Regulated Small MS4s. The Regional Water Boards also have a role in approving water quality monitoring efforts and may also direct that dischargers carry out a particular type of education and outreach program. Several areas of the permit will be mandated at the discretion of the Regional Board Executive Officer after permit adoption and Regional Water Boards may require dischargers to continue implementation of elements of their existing programs. Recognizing the need for some level of statewide consistency in interpretation of Order provisions, as well as for reasonable parameters for departures from uniform permit conditions, the Order now includes a dispute resolution process where there is disagreement between a Permittee and a Regional Water Board. The Permittee should first attempt to resolve the issue with the Executive Officer of the Regional Water Board. If a satisfactory resolution is not obtained at the Regional Water Board level, the Permittee may submit the issue in writing to the Executive Director of the State Water Board or his designee for resolution, with a copy to the Executive Officer of the Regional Water Board. The issue must be submitted to the Executive Director within ten days of any final determination by the Executive Officer of the Regional Water Board. The Executive Officer of the Regional Water Board will be provided an opportunity to respond. The determination of the Executive Director or his designee will be considered a final decision of the State Water Board subject to judicial review under Water Code section 13330.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
98	57	Statewide Stormwater Coalition	Fact Sheet Section III	<p>The analysis of costs contained in the Draft Fact Sheet is deficient in three main ways. First, the approach to compliance costs is fundamentally deficient because it tells the public nothing at all about the relationship between the cost of any particular control and the pollution control benefits to be achieved by implementing that control. Under this "generalized" approach, extremely costly requirements that bear little or even no relationship (or even a negative relationship) to the pollution control benefits to be achieved could be "justified" as long as the "overall" program costs are within what the State Board deems to be an acceptable range. Second, the Draft Fact Sheet contains faulty assumptions and relies upon outdated or inapplicable data. Third, the Draft Fact Sheet fails to assess and provide a response to the data submitted by the dischargers in this process, including data submitted in connection with the comments on the Draft Permit.</p>	<p>While the precedential State Water Board Order WQ 2000-11 (In the Matter of the petitions of the Cities of Bellflower et al.), held that cost is a relevant factor in the determination of MEP, the Order also explicitly stated that a cost benefit analysis is not required: The State Water Board discussed costs as follows: While the standard of MEP is not defined in the storm water regulations or the Clean Water Act, the term has been defined in other federal rules. Probably the most comparable law that uses the term is the Superfund legislation, or CERCLA, at section 121(b). The legislative history of CERCLA indicates that the relevant factors, to determine whether MEP is met in choosing solutions and treatment technologies, include technical feasibility, cost, and state and public acceptance. Another example of a definition of MEP is found in a regulation adopted by the Department of Transportation for onshore oil pipelines. MEP is defined as to "the limits of available technology and the practical and technical limits on a pipeline operator" These definitions focus mostly on technical feasibility, but cost is also a relevant factor. There must be a serious attempt to comply, and practical solutions may not be lightly rejected. If, from the list of BMPs, a permittee chooses only a few of the least expensive methods, it is likely that MEP has not been met. On the other hand, if a permittee 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 to be derived, it would have met the standard. MEP requires permittees to choose effective BMPs, and to reject applicable BMPs only where other effective BMPs will serve the same purpose, the BMPs would not be technically feasible, or the cost would be prohibitive. Thus while cost is a factor, the Regional Water Board is not required to perform a cost-benefit analysis. Thus, the State Water Board was not required to engage in the type of individualized assessment of costs and benefits that the commenter proposes would have been appropriate. Further, the type of individualized data that would support such an analysis is not available at this point.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
98	58	Statewide Stormwater Coalition	Fact Sheet - Unfunded Mandates	<p>The Draft Fact Sheet's discussion of unfunded state mandates is not consistent with applicable legal authority or the Draft Permit, as discussed below.</p> <p>Article XIII B, Section 6(a) of the California Constitution ("Section 6") provides that whenever "any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service ." Section 6 applies to storm water permits issued by the State Board and the Regional Boards. (County of Los Angeles v. Commission on State Mandates (2007) 150 Cal.App.4th 898, 920.) Thus, Section 6 applies to the Draft Permit. (Please see Comment Letter for extensive and detailed discussion of Unfunded Mandates).</p>	<p>In response to this comment, minor revisions have been made to the discussion of unfunded mandates in the Fact Sheet. However, the State Water Board has not changed its position that the requirements of the Draft Tentative Order do not constitute unfunded mandates. The legal basis for the State Water Board's position is discussed extensively in the Fact Sheet at Section IV.</p>
98	59	Statewide Stormwater Coalition	Fact Sheet - Section V	<p>The Draft Fact Sheet does not cite to applicable legal authority regarding the role of the Regional Boards. Water Code section 13140 provides the State Board with ultimate control over state policy for water quality control. As relevant to NPDES permits, Water Code section 13160 designates the State Board as the state water pollution control agency for the CWA. Although Water Code sections 13225 et seq. provide the Regional Boards with an important role to play in day-to-day water quality regulations, Water Code section 13320(a) makes it clear that actions of the Regional Boards are subject to State Board review. The Draft Permit provides Regional Board EOs with significant discretion, but provides little guidance regarding how and when that discretion should be used. Consistent with the legal authority cited above, the State Board should provide parameters so that all parties know the conditions under which the Regional Boards may exercise their discretion. This will avoid future disputes and promote consistency and fairness across the Regions.</p>	<p>Under the Water Code, either the State Water Board or the Regional Water Boards have authority to issue NPDES permits (Wat. Code, §13377.) The State Water Board is issuing this Order; however Regional Water Board staff will continue to have the authority to evaluate compliance with permit conditions. The Regional Water Board Executive Officers also have discretion to designate entities under the Order, as well as to require renewal permittees to continue to implement their existing programs. In response to comments and recognizing the need for some level of statewide consistency in interpretation of Order provisions, the revised Order includes a dispute resolution process where there is disagreement between a Permittee and a Regional Water Board over the interpretation of any provision of the Order. Under the dispute resolution process, the Permittee should first attempt to resolve the issue with the Executive Officer of the Regional Water Board. If a satisfactory resolution is not obtained at the Regional Water Board level, the Permittee may submit the issue in writing to the Executive Director of the State Water Board or his designee for resolution, with a copy to the Executive Officer of the Regional Water Board. The issue must be submitted to the Executive Director within ten days of any final determination by the Executive Officer of the Regional Water Board. The Executive Officer of the Regional Water Board will be provided an opportunity to respond. The determination of the Executive Director or his designee will be considered a final decision of the State Water Board subject to judicial review under Water Code section 13330.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
98	60	Statewide Stormwater Coalition	Fact Sheet Section IX	The Fact Sheet discussion of the Discharge Prohibitions at Section IX has been significantly expanded to address this comment and to establish the legal basis for the non-storm water discharge prohibition as revised in the Draft Tentative Order released on November 16, 2012. See also response to comment 21 discussing the non-storm water discharge prohibition and the authority of the Regional Water Board EO to make determinations that a non-storm water discharge is a significant source of pollutants.	The Fact Sheet discussion has been revised in response to this comment.
98	61	Statewide Stormwater Coalition	Fact Sheet Section XI	The Draft Fact Sheet does not fully and accurately describe the legal authority related to the receiving water limitations language. There are three major deficiencies in the analysis. First, the Draft Fact Sheet does not explain the State Board's discretionary authority to require compliance with water quality standards as established by Defender of Wildlife v. Browner. 191 F.3d 1159. Second, the Draft Fact Sheet does not set forth the key components of the State Board's prior decisions, particularly State Board Order WQ 2001-15, which interprets the State Board's receiving water limitations language found in State Board Order WQ 99-05. Third, the Draft Fact Sheet does not address the relationship between NRDC v. County of LA, 673 F.3d 880 and State Board Order WQ 2001-15.	See response to comment 16. The Fact Sheet discussion has not been changed with regard to the Board's prior precedent as the Board continues to hold that the 9th Circuit holding in NRDC v. County of LA (2011) 673 F.3d 880 is consistent with the Board's prior position and policy. However, a brief discussion of Defenders of Wildlife v. Browner (1999) 191 F.3d 1159 has been added to the Fact sheet in response to the comment. Additionally, staff acknowledges that the NRDC v. County of LA case is before the Supreme Court for review; however, the Supreme Court will not be taking up the particular question regarding receiving water limitations and the iterative process at issue here.
98	62	Statewide Stormwater Coalition	Fact Sheet Section XII	The citations to the Phase I and Phase II regulations set forth a the justification for the Draft Permit's adequate legal authority do not supply the legal authority for the conditions imposed. The cited provision merely require dischargers to establish legal authority to meet the specified requirement (i.e. illicit discharges, erosion and sediment control, post-construction BMP). The cited provisions do not provide the legal authority to support the broad requirements of the Draft Permit. Further, the Phase II regulations contain an important caveat that must, at a minimum, be included in the final Permit. That is, any obligation to establish legal authority to perform a requirement must be subject to the phrase: "To the extent allowable under state or local law."	This section of the Fact Sheet has been significantly revised in response to this comment to clarify the Board's legal authority for imposition of the stormwater management program elements.
98	63	Statewide Stormwater Coalition	Fact Sheet Program Management/Enforcement Response Plan	The only legal authority cited for these provisions is the Phase I regulations at 40 C.F.R. § 122.26(d)(2)(i). This section does not require a program management element or an enforcement response plan. All that this section requires is for the Phase I applicant to demonstrate that it can operate pursuant to legal authority. Notably, nothing in the Phase II regulations - the applicable EPA regulations here - require a program management element and certainly not an enforcement response plan.	This section of the Fact Sheet has been significantly revised in response to this comment to clarify the Board's legal authority for imposition of the stormwater management program elements.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
98	64	Statewide Stormwater Coalition	Fact Sheet Education and Outreach	The only legal authority cited for these provisions are the Phase II regulations set forth at 40 C.F.R. § 122.34(b)(1) and (2). Section 122.34(b)(1) merely requires dischargers to implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater and ways to reduce those impacts. Section 122.34(b)(2) has no application here. Nothing in the cited authority supports the detailed conditions imposed in the Draft Permit.	This section of the Fact Sheet has been significantly revised in response to this comment to clarify the Board's legal authority for imposition of the stormwater management program elements.
98	65	Statewide Stormwater Coalition	Public Involvement/Participation	The only legal authority cited for these provisions are the Phase II regulations set forth at 40 C.F.R. § 122.34(b)(1) and (2). Section 122.34(b)(1) relates to public education and has no application here. Section 122.34(b)(2) simply requires that dischargers must comply with state and local public notice requirements when implementing a public involvement/participation program. This legal authority does not require the conditions imposed in the Draft Permit.	This section of the Fact Sheet has been significantly revised in response to this comment to clarify the Board's legal authority for imposition of the stormwater management program elements.
98	66	Statewide Stormwater Coalition	Fact Sheet Illicit Discharge Detection and Elimination	The only authority cited is to the Phase I regulations at 40 C.F.R. § 122.26(d)(2)(iv)(B). This section outlines the description of its illicit discharge program that a Phase I discharger must set forth in its permit application. This authority applies to Phase I programs and even this Phase 1 authority does not support the requirements of the Draft Permit. Notably, the Draft Fact Sheet fails to address the applicable Phase II regulations at 40 C.F.R. § 122.34(b)(i)-(iii). These provisions merely require that, to the extent allowable under state or local law, dischargers must develop a program to effectively prohibit non-stormwater discharges into the MS4. It does not require the specific conditions of the Draft Permit.	This section of the Fact Sheet has been significantly revised in response to this comment to clarify the Board's legal authority for imposition of the stormwater management program elements.
98	67	Statewide Stormwater Coalition	Fact Sheet-Construction Site Stormwater Runoff Control	The only authority cited for these provisions are the Phase II regulations found at 40 C.F.R. § 122.34(b)(4). This section requires the development, implementation and enforcement of a construction site runoff program that focuses on sites that disturb one acre or more. The required program must address erosion and sediment controls, waste, site plan review, public participation and inspection/enforcement. This authority does not support the broad requirements of the Draft Permit	This section of the Fact Sheet has been significantly revised in response to this comment to clarify the Board's legal authority for imposition of the stormwater management program elements.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
98	68	Statewide Stormwater Coalition	Fact Sheet Pollution Prevention /Good Housekeeping	The only legal authority cited for these provisions are the Phase II regulations found at 40 C.F.R. § 122.34(b)(4). This section merely requires dischargers to develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. These minimal requirements do not justify the broad conditions in the Draft Permit.	This section of the Fact Sheet has been significantly revised in response to this comment to clarify the Board's legal authority for imposition of the stormwater management program elements.
98	69	Statewide Stormwater Coalition	Fact Sheet Post Construction	The only legal authority cited for these provisions are the Phase II regulation found at 40 C.F.R. § 122.34(b)(5). This section requires the development, implementation and enforcement of a program to address new development and redevelopment projects that disturb greater than one acre. The program should include BMPs appropriate for the discharger's community and should include a regulatory mechanism to the extent allowable under state or local law. The conditions in the Draft Permit exceed these requirements.	This section of the Fact Sheet has been significantly revised in response to this comment to clarify the Board's legal authority for imposition of the stormwater management program elements.
98	70	Statewide Stormwater Coalition	Fact Sheet Monitoring	The Draft Fact Sheet does not cite any legal authority of the Draft Permit's monitoring requirements. Presumably, this is because the Phase II regulations do not require monitoring. Unless appropriate legal authority is provided, the Draft Fact Sheet and the related conditions are not supportable.	This section of the Fact Sheet has been significantly revised in response to this comment to clarify the Board's legal authority for imposition of the stormwater management program elements.
98	71	Statewide Stormwater Coalition	Fact Sheet Program Effectiveness Assessment	The only legal authority cited for these provisions are the Phase II regulations at 40 C.F.R. § 122.34(g). This section requires dischargers to evaluate program compliance, the appropriateness of BMPs and progress toward achieving measurable goals. This section does not provide legal authority for the broad conditions of the Draft Permit.	This section of the Fact Sheet has been significantly revised in response to this comment to clarify the Board's legal authority for imposition of the stormwater management program elements.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
98	72	Statewide Stormwater Coalition	Fact Sheet - Section XIII	<p>The Draft Fact Sheet does not cite or discuss the relevant legal authority regarding the incorporation of WLAs from TMDLs into NPDES permits. 40 C.F.R. § 122.44(d)(1)(vii) provides that when developing water quality based effluent limits, the permitting authority shall ensure that effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are "consistent with the assumptions and requirements of any available waste load allocation for the discharge prepared by the State and approved by the EPA pursuant to 40 C.F.R. 130.7." This legal authority gives the permitting authority some flexibility to tailor WLAs to the fact-specific circumstances of the discharger. Examples of such flexibility provided by the Office of Chief Counsel include load trading among dischargers or performance of an offset program. (See June 12, 2002 memo from Michael Levy to Ken Harris).</p> <p>This legal authority does not, however, provide the permitting authority with the power to amend or expand the WLAs beyond the scope of the TMDL as reflected in the Basin Plan. The approach taken in the Draft Permit appears to do just that in a manner inconsistent with applicable legal authority.</p>	See response to comment on Finding 39.
99	1	Town Of Truckee	Throughout	<p>The Town's assumption is that it was listed for regulation as a result of the special findings that were made by the Lahontan Regional Water Quality Control Board in 2006 under the existing permit. We do not believe that those special findings should be automatically assumed to continue to exist, and request that the SWRCB remove the Town from the list of entities intended to be regulated by this permit. This would not necessarily mean that the Town would not ultimately be regulated by this permit, but rather would provide an opportunity for the LRWQCB to consider within the context of the new permit requirements whether or not special designation is still necessary or appropriate for the Town of Truckee.</p>	Comment noted.
99	2	Town Of Truckee	E.9	<p>The Permit requires a more prescriptive Illicit Discharge Detection and Elimination Program (E.9) than what is required under the existing permit.</p>	<p>In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program "designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act," (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CRF 122.34(g)).</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
99	3	Town Of Truckee	E.9.a	Requires an outfall map be completed by the permittee.	Photographing of outfalls as required in section E.9.a has been made optional. Visual representations of outfalls are useful in establishing baseline information. However, if the Permittee identifies an alternative method, such as a database, for baseline information they may utilize it.
99	4	Town Of Truckee	E.9.a	Since the release of the draft permit, State Board staff have indicated their intention is that an Outfall Survey is conducted once per permit term. Although the FAQ sheet states this intention, the Order does not. SWRCB Staff have indicated this was intended within the mapping. However, if a permittee already has a current map, completing a map again would not be necessary.	This permit provision has been revised to address this comment.
99	5	Town Of Truckee	E.9.a and E.9.c	Characterization of all the flowing outfalls within the permittees area is above and beyond the Code of Federal Regulations (40 CFR 122.34) for small municipalities. Task E.9.c Field Sampling to Detect Illicit Discharges should be focused on likely sources of pollutants based on the list provided in E.9.a, or other priority areas defined by the permittee.	This permit provision has been revised to address this comment, and as a result, no longer applies. Please see the Center for Watershed Protection's Illicit Discharge Detection and Elimination Guidance Manual located at: www.cwp.org . The manual outlines practical, low cost, and effective techniques for Phase II Permittees seeking to establish Illicit Discharge Detection and Elimination (IDDE) programs and investigate non-stormwater entries into storm drainage systems. It details the types of testing used to detect illicit discharges, information on estimating program costs in terms of capital and personnel expenses, and timelines that estimate how long program implementation will take.
99	6	Town Of Truckee	E.9.c	It is helpful for E.9.c to provide indicator parameters that can be used and the action levels, but the section should allow the permittee to determine if all tests are necessary for each outfall tested. As an example, it is unlikely industrial waste will be present in outfalls in rural residential areas. Performing tests to indicate these pollutants would be wasteful.	This permit provision has been revised to address this comment.
99	7	Town Of Truckee	E.9	The CFR in no way suggest monitoring to the extent of E.9.c in the draft permit, both in the permit requirement to sample/characterize all flowing outfalls and the constituents tested. The requirements in the draft permit go above and beyond the Federal requirements as well as the Federal guidance and would therefore constitute an unfunded mandate.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program "designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act," (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CRF 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
99	8	Town Of Truckee	E.13.(ii)	Per finding 39, page 11, any such revisions to the TMDL monitoring schedule and Attachment G will be incorporated into the permit through a re-opener. This is inconsistent with E.13 which states that the Permittees shall implement TMDL monitoring as specified by the Regional Water Board Executive Officer.	Comment noted. The Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their authority to require CBSM as specified in (Wat. Code §13377.) Additionally, please see Section XIII, TMDLs in the Fact Sheet.
99	9	Town Of Truckee	Throughout	Depending on the decisions the Regional Boards make, there may be significant cost implications to permittees. Our understanding is that the State Board is interested in making the Permit requirements more uniform across the State. Providing a public review process for the future decisions that are not defined clearly for the current Permit would assist in making the Permit more consistent and allow stakeholders to be part of future decisions.	Regional Water Boards are autonomous entities responsible for water quality protection within their boundaries. While this permit is intended to achieve stateside consistency, there are slight nuances regionally based upon the varying degrees to which receiving waters need to be protected. Accordingly, the Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their designation discretion accordingly as specified in (Wat. Code §13377.).
99	10	Town Of Truckee	Glossary	Our understanding, based on the EPA definition is that an outfall is a point source per 40 CFR 122.2 at a point where the municipal storm sewer discharges to waters of the United States. Based on this definition and SWRCB staff responses, we understand an outfall to be a direct discharge to waters of the United States via a pipe.	<p>EPA regulations define ‘outfall’ and ‘point source’ at 40 CFR 122.26(b)(9), and 40 CFR 122.2, respectively as follows:</p> <p>“Outfall means a point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States”</p> <p>“Point source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (See § 122.3).”</p> <p>The aforementioned definitions have been added to the Glossary.</p>
99	11	Town Of Truckee	Throughout	Performing monitoring or illicit discharge detection activities with the same intensity in the commercial core vs. the rural areas appears to be beyond the intent of the permit and Federal regulation. By using the prescriptive nature of the new permit, the permittee is now forced to use valuable resources that may better be used more effectively in reducing pollutants to stormwater for the specific needs of the jurisdiction.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
99	12	Town Of Truckee	Throughout	The Town is in no position to take on more permit costs or staff time commitments without additional funding. We are continuing to try to maintain our level of service with the resources we have available. The Town recognizes the importance of clean water as a resource for our community, tourism, economy and health. We request that the permit revert to the principal of using "To the Maximum Extent Practicable" (MEP) as this takes into account each municipality's financial situation as well as specific pollutants of concern, location, and circumstances.	Staff is actively seeking funding opportunities for public agencies. The draft order has been revised to address comments received regarding costs of implementation as outlined in Section III, Economic Considerations, of the Fact Sheet.
100	1	Town of Windsor	Throughout	Imposing these Permit requirements, especially under the time frame stipulated in the Draft Permit, would put the Town in the position of having to choose between more public services being cut or face stiff fines and penalties for our inability to comply with the Permit. This State mandate is being imposed at the same time the State eliminates potential funding options for municipalities, such as redevelopment agency funds.	Staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or constitute unfunded mandates. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program "designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act," (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CFR 122.34(g)). A more extensive discussion of unfunded mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates.
100	2	Town of Windsor	Throughout	We believe the Draft Permit over-reaches and unfairly transfers responsibilities for water quality of the waters of the State onto the shoulders of local agencies and communities and in a timeframe that is unreasonable and unrealistic, given the current state of our economy.	Staff does not agree that the permit term should be extended to ten years, or two permit terms to achieve full compliance. Urban storm water runoff is a major contributor to receiving water impairment. In California, urban storm water is listed as the primary source of impairment for ten percent of all rivers, ten percent of all lakes and reservoirs, and 17 percent of all estuaries (2010 Integrated Report). Although these numbers may seem low, urban areas cover just six percent of the land mass of California and so their influence is disproportionately large. Extending the implementation timeline for this permit term will only contribute to the water quality impairment that we face.
100	3	Town of Windsor	E.7	Allow current practitioners who can demonstrate at least 5 years of direct experience in erosion control and storm water quality inspections to count towards the pre-requisites for QSP certification ("grandfather clause").	Comment noted.
100	4	Town of Windsor	E.9	Delete or soften requirement to perform outfall monitoring due to access constraints (for example, access through private property needed or safety issues).	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
100	5	Town of Windsor	Throughout	Do not adopt draft permit until a sufficient fiscal impact analysis is performed by a third party and presented to the Board and the public for consideration. This analysis should also identify a plan for providing sources of funding through the State (or State legislation process) that can be made available to municipalities.	The draft order has been revised to address comments received regarding costs of implementation as outlined in Section III, Economic Considerations, of the Fact Sheet. The Public Resources Code requires that the Proposition 84 Storm water Grant Program funds be used to provide matching grants to local public agencies for the reduction and prevention of storm water contamination or rivers, lakes and streams. Please visit the following website for more information: http://waterboards.ca.gov/water_issues/program/grants_loans/prop84/index.shtml Additional financial assistance information including information on the Clean Water State Revolving Fund loans, is available at: http://www.waterboards.ca.gov/water_issues/programs/grants_loans/
100	6	Town of Windsor	Throughout	We also urge you to support the comments submitted by CASQA and RRWA as these groups represent the concerns of the Town of Windsor	Please see response to comment letter numbers 11 and , respectively.
101	1	U.S. EPA Region 9	E.12.d.2	In the California Phase I MS4 permits, biotreatment with an underdrain is allowed only if the preferred LID management techniques are demonstrated to be infeasible. We recommend the Phase II permit mirror the phase I permits in this regard. The California Phase I permits also require offsite mitigation for any volume which cannot feasibly be managed onsite with LID. We recommend the Phase II general permit include similar provisions	This permit provision has been revised to address this comment.
101	2	U.S. EPA Region 9	E.12.d.2	We recommend that the fact sheet provide an explanation and justification for the criteria; presumably they were derived from a reputable design manual or appropriate source, but additional information concerning these criteria should be provided	Discussion of design criteria will be added to the Fact Sheet.
101	3	U.S. EPA Region 9	E.12.d.2	We found no further explanation of potential credits for smart growth in the permit or fact sheet, and we recommend the Board clarify its intent in the final fact sheet.	Discussion of smart growth credits will be added to the Fact Sheet.
101	4	U.S. EPA Region 9	E.12.d.2	There appears to be something missing in Section E.12.d.2.ii.(3) between the words "in" and "below" regarding the amount of runoff to be managed. The permit may be intending to refer to the criteria in Section E.12.d.2.ii.(3).d. Finally, in Sections E.12.d.2.ii.(3).a and b, there is a reference to "(2)" and it appears the permit intended to refer to "(3)".	This permit provision has been revised to address this comment. Staff reformatted and revised this entire section to add clarity.
101	5	U.S. EPA Region 9	Attachment G	We note that the draft permit does ask the RBs to propose any appropriate revisions to the TMDL requirements within six months of the permit effective date, and that such revisions would be incorporated into the permit via a reopener. However, it appears that most of the applicable requirements have already been identified by the board and included in the draft permit, and we would concur with the Board's procedures.	Comment noted. This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
101	6	U.S. EPA Region 9	F.5.1	In working with the Regional Boards on any appropriate revisions of the permit, we recommend the State Board specifically consider whether there are any additional non-traditional MS4s which are subject to WLAs and need to be listed in Attachment G	During State Board/Regional Board Storm Water Round Table meetings, staff asked Regional Boards to submit any additional non-traditional MS4s which are subject to WLAs and that need to be listed in Attachment G. At that time, Regional Boards did not have any additions.
101	7	U.S. EPA Region 9	Factsheet	Clarify Urbanized Areas an permitted areas	Urbanized area is identified in the permit boundary map as required in Section A, Application Requirements in the General Permit. The permit boundary map delineates the following: (a) Phase II MS4 permit boundary based on 2010 Census data. For cities, the permit area boundary is the city boundary. For Counties, permit boundaries must include urbanized areas and places identified in Attachment A located within their jurisdictions. The boundaries must be proposed in the permit boundary map and may be developed in conjunction with the applicable Regional Water Board (b) City/County Boundaries (c) Main Arterial Streets (d) Highways (e) Waterways (f) Phase I MS4 Permit Boundary (if applicable)
102	1	University of California, Environmental Managers Work Group	F.5.c.	Labeling each stormdrain in these areas does not enhance public awareness and would be very costly and time consuming. According to the EPA, "Municipalities should prioritize drains for marking because marking all drains within a municipality would be prohibitively expensive."	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
102	2	University of California, Environmental Managers Work Group	F.5.d	It needs to be clear exactly what is meant by the term "outfall" so MS4s are consistently interpreting and implementing this requirement. Some outfalls are not safely accessible.	<p>EPA regulations define 'outfall' and 'point source' at 40 CFR 122.26(b)(9), and 40 CFR 122.2, respectively as follows:</p> <p>"Outfall means a point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States"</p> <p>"Point source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (See § 122.3)."</p> <p>The aforementioned definitions have been added to the Glossary.</p>
102	3	University of California, Environmental Managers Work Group	F.5.d.1.	UC staff have oversight of the buildings and control over most activities on campus and therefore would have information about an illicit discharge, eliminating the need to sample to determine its origins.	Typos have been revised to address this comment.
102	4	University of California, Environmental Managers Work Group	F.5.d.2.	Please provide some allowance for investigations that require more than 72 hours to identify and locate the source of the non-storm water discharge.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
102	5	University of California, Environmental Managers Work Group	F.5.g.	Some non-traditionals do not fall under the legal authority of a Phase I municipality. The Constitution of the State of California, for example, charges the Regents of the University of California with the duty to administer the University as a public trust (Section 9 of Article IX).	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.
102	6	University of California, Environmental Managers Work Group	F.5.g.	The site design measures, as currently written, do not account for projects that have been designed and funded prior to adoption of these regulations.	This permit provision has been revised to address this comment. However, the requirements for site design measures are not exactly the same as the Phase I requirements.
102	7	University of California, Environmental Managers Work Group	F.5.g.	The post construction treatment measures, as currently written, do not account for projects that have been designed and funded prior to adoption of these regulations.	This permit provision has been revised to address this comment.
103	1	UCLA La Kretz Center	E.12	The permit is specifying event-based criteria, whereas current scientific understanding of hydromodification impacts is that a range of moderately frequent, “geomorphically significant” flows transport the majority of the sediment over the long term ^{2,3,4} and are the most influential in determining channel form. Rather than focusing on a single event, hydromodification control requirements should therefore address this critical range of flows. This scientific understanding has been reflected in other hydromodification regulations in the State of California by establishing flow-control criteria that require pre-project flow rates, volumes and durations to be matched across a range of flows	This permit provision has been revised to address this comment. The Water Boards have historically derived site design, runoff reduction and hydromodification control criteria without identifying the dominant watershed processes and the sensitivity of receiving waterbodies to degradation of those processes. In most MS4 permits, projects are subject to the same set of criteria regardless of the dominant watershed processes and sensitivity of receiving waters to degradation of those processes. In reality every location on the landscape does not require the same set of control criteria because of intrinsic differences in the dominant watershed processes at each location. In recognizing this, the State Water Board is developing criteria that is more protective of receiving water quality. Over the next two year period, staff will develop watershed process-based criteria statewide. The criteria will be utilized to inform runoff retention and hydromodification management requirements in the Phase II Permit. Upon completion of watershed management zone delineation, there will be a permit re-opener to incorporate runoff retention and hydromodification management measures.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
103	2	UCLA La Kretz Center	E.12	The literature has shown that the use of controls based on matching peak flow rates are not only ineffective at mitigating impacts of hydromodification, but may increase the frequency and duration with which channels are exposed to erosive effects ^{5,6} , resulting in an increase in downstream impacts.	Please see response to comment number 1.
103	3	UCLA La Kretz Center	E.12	I recommend that the Board modify the draft tentative order for the Phase II MS4 permit as follows: Specify the use of an Erosion Control metric or equivalent for larger projects. Specify the use of a range of flows for which post-project rates, volumes and durations must meet pre-project conditions for smaller projects.	Please see response to comment number 1.
104	1	Ventura County Office of Education		While we believe it was a technical oversight, please also grant County Offices of Education the same exclusion from automatic designation that K-12s and community colleges were granted.	County Offices of Education have been included as an exception.
105	1	WateReuse	Section B	The definition of incidental runoff in Section B.4 of the draft Phase II Small MS4 General Permit includes “runoff from potable and recycled water use areas”. Potable and recycled water are but two of many possible sources of irrigation supply with the potential to be a source of runoff. To the extent that the Board considers regulation of runoff in the draft Phase II Small MS4 General Permit necessary to protect beneficial uses, water source is not relevant and reference thereto should be deleted.	This permit provision has been revised to address this comment.
105	2	WateReuse	Section B	The definition of incidental runoff in the Policy is in a section entitled Landscape Irrigation Projects, (Section 7), which clarifies that the definition applies to runoff from landscape irrigation projects. The applicability of the definition in the draft Phase II Small MS4 General Permit should be similarly defined.	The definition of incidental runoff has been made consistent with the Policy.
105	3	WateReuse	B.4.d	Notification of a discharge prior to its occurrence is not possible since the discharge has not occurred. We recommend that notification be required after a discharge has occurred. We also recommend that 24 hours notification be allowed since some storage ponds are remote and may be difficult to access during storm events. Also, Section B.4.d is unclear as to whether notification should be provided for any storage pond discharge or for discharges that occur as a result of a storm event less severe than the 25-year, 24-hour event.	This permit provision has been revised to address this comment.
105	4	WateReuse	B.4.e	Section B.4.e would require “[a]ny other actions necessary to prevent the discharge of incidental runoff to the MS4 or waters of the U.S.” to prevent incidental runoff. This is overly restrictive and amounts to a prohibition of incidental runoff. It is also more restrictive than the Policy and no justification is provided in the Fact Sheet.	This permit provision has been revised to address this comment.
105	5	WateReuse	E.11.j	To avoid inconsistency between requirements, section E.11.j should refer to the requirements of the WELO for landscape and irrigation design and maintenance.	This permit provision has been revised to address this comment.

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
106	1	West Valley Clean Water Program	Fact Sheet Section XI	<p>The third paragraph of Section XI of the Fact Sheet contains unnecessary and potentially misleading language that is inaccurate and inconsistent with prior Water Board policy concerning compliance with water quality standards and how and over what time period that is to be achieved. It has never before appeared with respect to other State Water Board -issued MS4 permits, including the current draft Caltrans permit and its fact sheet.</p>	<p>The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.</p>

Letter #	Comment #	Agency	Section of Permit	Comment Summary	Response
106	2	West Valley Clean Water Program	Section D	Indeed, such a revised approach, or better yet the approach to this issue that has been suggested by CASQA, would better reflect the State Water Board's prior repeated policy pronouncements about how and over what time period compliance with water quality standards should be achieved by MS4 permittees (see precedential Orders WQ 91-03, 98-01, and 99-05). Conversely, If the current structure of the proposed Small MS4 Permit's Receiving Water Limitations and the third paragraph of Section XI of the Fact Sheet are left intact, it will represent a seismic shift in policy and undermine the core of the Water Boards' cooperative partnership with local governments - large and small- relative to storm water management and the achievement of water quality standards.	The Ninth Circuit held in <i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (2011) 673 F.3d 880 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. The language in this Order regarding receiving water limitations and the iterative process is based on prior Board precedent. Nevertheless, based on extensive comments received, the State Water Board has committed to revisiting its policy on the receiving water limitations and the iterative process in municipal storm water permits. In particular, as the Fact Sheet now explains, the State Water Board has held a workshop to consider and receive public input on the issue of the receiving water limitations language in municipal storm water permits. Rather than delay consideration of adoption of the tentative Order in anticipation of any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation, the Board has added a specific reopener clause at Section I. Revisions to the receiving water limitations language, if any, will be made through the reopener process.
107	1	Yuba County Office of Education	Throughout	While we believe it was a technical oversight, please also grant County Offices of Education the same exclusion from automatic designation that K-12s and community colleges were granted.	County Offices of Education have been included as an exception.