



BOARD OF SUPERVISORS

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August 23, 2011

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Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000



Subject: Comment Letter – Phase II Small MS4 General Permit

Dear Ms. Townsend:

The County of San Luis Obispo appreciates the opportunity to provide comments on the draft General National Pollutant Discharge Elimination System Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems. As a predominantly rural County with an economy that depends on agriculture and tourism for our economic health, we are keenly interested in maintaining the quality of our water resources. As evidenced by our efforts to address long-standing water quality issues around the Morro Bay Estuary, our wholehearted adoption of the Integrated Regional Water Management Plan concepts promulgated by your Board, and our adoption and implementation of our Stormwater Management Program well in advance of regulatory deadlines, San Luis Obispo County supports efforts to ensure the health and vitality of our local streams, rivers, lakes, and ocean.

We note that the draft permit contains substantial changes and additions, many of which do not seem to have applicability to our County, or those counties that are similarly situated with respect to a distributed population. In essence, much of our covered population resides in communities that under any other perspective are, in fact, not urban at all. This is not to say that there are no human caused threats to water quality, but rather to point out that the determinative nature of the draft permit does not provide the means and approach to efficiently address stormwater quality in our area.

Of greatest concern is the apparent lack of any consideration for the efficient use of limited financial resources. The draft permit clearly exceeds the federal mandate in nearly every area of regulation, yet provides no funding source at all. Article XIII B, Section 6 of the California Constitution, requires the State to reimburse local

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governments for any new State-mandated programs or higher levels of service; no additional funding or comprehensive response to these important fiscal issues has been provided by the State. We understand that numerous local agencies have expressed this same concern throughout the draft permit process. We do not believe that moving clean water issues into the litigation arena is beneficial to the State or any of its citizens, and is certainly not beneficial to the clean water partnership that we have formed over the last several years.

We urge your Board to reconsider the draft permit in light of the current fiscal challenges faced by the State and local governments, and to consider the value in efficient State-local partnerships, as opposed to the unfunded centralized regulatory approach now evident in the proposal. Please consider these comments as our initial and preliminary response, as we, like many local jurisdictions, do not have sufficient resources to respond in a comprehensive manner in the time allotted for comments. We look forward to further iterations of the draft permit, with the hope that your Board can reconcile our mutual desires to continue to protect and enhance our water resources, yet with sufficient accommodation of the fiscal realities we all face.

Sincerely,



ADAM HILL, Chairperson
San Luis Obispo County Board of Supervisors

c: Charles R. Hoppin, Chair

**Draft Phase II MS4 General Permit
San Luis Obispo County
Initial Section-by-Section Comments**

Comment #	Identify Permit Element/ Issue/ Concern	Location in Draft Permit	Comment
67.1 → 1	Compliance Tiers In General	Throughout	<ul style="list-style-type: none"> Provide clarification on compliance tiers, such as in the glossary to define the various tiers and where to find information on them.
67.2 → 2	Program Compliance Dates In General	Throughout	<ul style="list-style-type: none"> Request the standing dates to refer to a time after permit issuance rather than a specific date. As an alternative, revise permit to incorporate target dates instead of mandatory dates.
67.3 → 3	Program Reporting In General	Throughout	<ul style="list-style-type: none"> Expand SMARTS to allow for different data submitters as draft permit will require many different County Departments and Divisions to submit information. Not practical for one LRP or designated signatory to accomplish. As an alternative, please incorporate our enclosed comment which proposes reductions in reporting requirements.
67.4 → 4	Headers	Throughout	<ul style="list-style-type: none"> Headers/Sections don't follow standard practice and is very confusing. Please revise the permit so all requirements are uniquely labeled.
67.5 → 5	Compliance Dates	Findings & Throughout	<ul style="list-style-type: none"> Compliance dates are confusing. Please clarify compliance dates including enrollment into SMARTS

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67.6	6	Unfunded mandates	Throughout	<ul style="list-style-type: none"> The draft permit is littered with unfunded mandates. Title 40 of the code of Federal Regulations (CFR 40 122.34e2 states “Guidance: EPA strongly recommends that until evaluation of the stormwater program, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality. To date, the State Board staff has failed to provide an analysis equivalent to an approved TMDL to support the draft permit requirements that go above and beyond the federal stormwater requirements contained in 40 CFR Section 122.34. 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. Please fund these mandates or remove from the permit. The County of San Luis Obispo will not adhere to any adopted permit language which exceeds federal regulations unless its funded or receives detailed analysis warranting the task is required within San Luis Obispo County.
67.7	7	Permit Coverage Fee	A.2.b	<ul style="list-style-type: none"> Please incorporate language that allows all Phase IIs to be pro-rated for fees already paid within 12 months of May 15, 2012.
67.8	8	Application Requirements	A.3	<ul style="list-style-type: none"> Certifications and waiver options and requirements are vague and may not apply to all Phase II. Please clarify.
67.9		Discharge Prohibitions	B.3	<ul style="list-style-type: none"> Non-stormwater discharges listed are less than allowed by Federal Register. This exceeds federal requirements. Please include landscape irrigation, irrigation water, lawn watering, individual residential car washing, and street wash water.
67.10		Discharge Prohibitions	B.4	<ul style="list-style-type: none"> Incidental runoff and non-incident runoff is vague. Please clarify difference.
67.11		Discharge Prohibitions	B.4.a	<ul style="list-style-type: none"> Remove 72 hours and require dischargers to repair leaks to MEP or add language such as “as required by agency” etc.
67.12		Legal Authority	E.4 Throughout	<ul style="list-style-type: none"> Timelines not practical. Please add a year to all time lines.

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67.13 →	Legal Authority	E.4.a.ii.b	<ul style="list-style-type: none"> Remove dischargers listed. Not feasible to monitor and enforce charity car washes, mobile cleaning and pressure wash operations. Rather address these issues through public education and outreach programs including workshops and trainings.
67.14 →	Legal Authority	E.4.a.ii.f	<ul style="list-style-type: none"> Unfunded State Mandate. Remove all retrofit requirements until the State can fully assess the cost impacts to the business community.
67.15 ↘	Legal Authority	E.4.a.ii.i	<ul style="list-style-type: none"> Not feasible to cleanup within 48 hours notification in all cases. To notify RWQCB on situations which exceed 48 hours or 30 days is a waste of time. If Agency's required to enforce its authority than it shall without duplicative effort of notify RWQCB. Please remove number #5 which requires keeping the RWQCB up-to-date. New tracking requirements will allow the RWQCB to review/audit enforcement cases if it so desires. Please exclude agriculture discharges. No ordinances will pass requiring regulations over the Agriculture Community. It's the RWQCB responsibility to enforce its AG Waiver Program.
67.16 ↘	Legal Authority	E.4.a.ii.g	<ul style="list-style-type: none"> Why does agency's need authority to request all materials related to a NPDES permit? Agency's shall only require they enroll providing proof via WDID#. Unfunded mandate to police and manage the State's Discharge Permit. Please remove this requirement from permit.
67.17 ↘	Legal Authority	E.4.a.ii.l	<ul style="list-style-type: none"> Not feasible or practical. This is a legal matter which may or may not be possible. Please remove from the permit. At a minimum this shall not be subject to the permits timeline schedule for implementation as timing depends on other party's not within County's control.
67.18 →	Enforcement Measures and Tracking	E.4.c.	<ul style="list-style-type: none"> Unfunded mandate. County already has a process in place. Please remove Enforcement Response Plan or allow local regional board to accept our current process.
67.19 →	Enforcement Measures and Tracking	E.4.c.ii.d	<ul style="list-style-type: none"> Unfunded mandate. Remove requirement or have permittees use the State's reporting form.
67.20 →	Enforcement Measures and Tracking	E.4.d	<ul style="list-style-type: none"> Unfunded mandate. Remove this requirement.

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67.21 →	Public Outreach & Education	E.5.a	<ul style="list-style-type: none"> Not feasible to obtain agreement within first permit year. To organize a regional approach, define scope of work, and draft agreements will take consider amount of time especially since many agreements are anticipated since countywide approaches will not be applicable to all parties. Please add an additional year.
67.22 →	Public Outreach & Education	E.5.b	<ul style="list-style-type: none"> Unfunded mandate. Not feasible to address in time allotted. Please incorporate a timeline as recommended by CASQA. Surveys are \$25,000 minimum. To date these surveys assisted the County in public attitudes but that's about it. Not worth the money. Please remove from permit. Too much wasted time is being requested to implement strategy. Please revise requirement to state County shall implement strategy acceptable to local RWQCB. Not feasible to implement CBSM strategies. Granted some strategies may be feasible, it should be up to the local regional board to accept our education program based on our own unique community goals and watershed concerns. Please revise levels to be targets and not necessarily listed as required actions. Remove all requirements related to stormwater education for school-age children. The County has expressed to the local board its difficulty in educating students. This task should be removed for Traditional PhII and given only to non-traditional (i.e. school districts). School Districts and the State Education Board should implement this requirement not County or City's who have no control over curriculums.
67.23 →	Public Outreach & Education	E.5.b.ii.h	<ul style="list-style-type: none"> Remove as this is a duplicative effort and may result in conflicts with water conservation elements via AB1881.
67.24 →	Public Outreach & Education	E.5.b.ii.i	<ul style="list-style-type: none"> Remove 'friendly landscaping' as this is required through water conservation program.
67.25 →	Public Outreach & Education	E.5.b.ii.m	<ul style="list-style-type: none"> AB1881 will address reductions in landscape irrigation. Please remove this discharge from this section.
67.26 →	Public Outreach & Education	E.5.b.iii	<ul style="list-style-type: none"> Remove requirement to report on the public education strategy as required in this section. Permittees should be allowed to report on the activities completed in individual Programs.

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67.27 ↘	Industrial/Commercial Outreach	E.5.c	<ul style="list-style-type: none"> • Unfunded mandate • Please remove from permit. These requirements should be covered under the Industrial Permit.
67.28 →	Industrial/Commercial Outreach	E.5.c.ii	<ul style="list-style-type: none"> • Permittees should not be required to develop a watershed-based inventory of high priority industrial and commercial facilities. Identifying 20 percent of the Permittee’s urbanized boundary is arbitrary. • Please remove from permit. These requirements should be covered under the Industrial Permit. • This requirement is duplicative and already being addressed in Section E.11.a. • Requested timeline is unrealistic. Such a request again confirms to the County how ‘out-of-touch’ those drafting the permit are with the REAL world. Please revise timeline to state target dates and MEP not necessarily tied to a set year.
67.29 ↘	Industrial/Commercial Outreach	E.5.c.ii.b	<ul style="list-style-type: none"> • No feasible to break down budgets for small projects. Public Education budget is fluid and ever evolving. Break down is unrealistic and unnecessary.
67.30 →	Industrial/Commercial Outreach	E.5.c.ii.c	<ul style="list-style-type: none"> • Remove the words ‘credible source’. This implies a consultant which should not be necessarily the case.
67.31 ↘	Industrial/Commercial Outreach	E.5.c.ii.d	<ul style="list-style-type: none"> • Please remove from the permit. This requirement should be covered under the Industrial Permit. Permittees should be responding to violations and educate these facilities on a case-by-case basis.
67.32 →	Industrial/Commercial Outreach	E.5.c.ii.e	<ul style="list-style-type: none"> • Please remove from the permit. This requirement should be covered under the Industrial Permit.
67.33 ↘	Industrial/Commercial Outreach	E.5.c.iii	<ul style="list-style-type: none"> • Remove from the permit. This requirement should be covered under the Industrial Permit.

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67.34 →	Construction Outreach	E.5.d	<ul style="list-style-type: none"> Remove from the permit. This requirement is too prescriptive. The vast majority of projects are under 1 acre in size and submitted by homeowners etc. The County already educates these individuals through materials at the time of permit processing. Please revise to state permittees should develop outreach materials and provide at time of permitting.
67.35 →	Public Involvement	E.6	<ul style="list-style-type: none"> The County is already responsible for Central Coast Partners for Water Quality. Our progress and results are well observed by the local board and been very successful on many fronts.
67.36 →	Public Involvement	E.6.d.ii.b	<ul style="list-style-type: none"> Remove requirement that non-traditional MS4 must comply or limit to those who occupy operated facilities and/or participate under a traditional phase ii advisory group.
67.37 →	Illicit Discharge	E.7	<ul style="list-style-type: none"> Unfunded mandate Please remove from the permit. Very expensive to implement and maintain. The permittee should not be required to use the Center of Watershed Protection's guide on Illicit discharge. The guide is 176 pages not including references and appendices. These requirements are too prescriptive. The permit should be a stand alone and not reference guides which are not necessarily applicable in all cases. Please allow for permittees to develop and implement a spill response plan or keep the plans already developed and approved by local water boards. Reporting under this program is redundant to the current monitoring and reporting programs regulated by County facilities. Please include provisions for current facilities which already have monitoring requirements approved by local regional boards.
67.38 →	Illicit Discharge	E.7.a.ii.a	<ul style="list-style-type: none"> Remove requirement that outfalls be photographed.
67.39 →	Illicit Discharge	E.7.b.ii	<ul style="list-style-type: none"> Please remove 20% identified as priority areas. This is arbitrary number that is not MEP. Please incorporate CASQA's recommendations.
67.40 →	Illicit Discharge	E.7.c.i	<ul style="list-style-type: none"> Please define analytical monitoring and dry weather monitoring. Revise permit to allow exemptions to annual monitoring. Annual monitoring may be redundant or unnecessary in certain situations.

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67.41 →	Illicit Discharge	E.7.d.ii	<ul style="list-style-type: none"> • 48 hours notification in some cases is not feasible. In many cases tracking down property owners is difficult as they live out of state or refuse to accept certified mail. Please note the County follows the State Streets and Highways code which outlines notification requirements and actions. Typically they have 10 days to respond. • I encourage the State to review section 1460 of the Streets and Highways Code • Perhaps revise the permit to state the permittee shall immediately notify the discharger of the problem and conduct all necessary corrective action within 72 hours of notification and/or specified by the permittee. • Another option is to allow the permittee to require 48 or 72 hours however, in some cases the discharger should be allowed to request extensions in writing.
67.42 →	Construction Site	E.8.	<ul style="list-style-type: none"> • The draft permit is suggesting the County implements, inspects, and enforces the Construction General Permit. Its not the responsibility to manage the states permit. Please remove all requirements except for agency’s making sure applicants obtain enrollment in the construction permit prior to construction. • Reporting requirements are excessive and do not directly result in stormwater quality. Much of our experience to date leads us to believe the regional board staff does not have the time or personnel to review these documents. Perhaps revise the permit to have these documents available for review by board staff upon request/audit. • Unfunded mandates within this section.
67.43 →	Construction Site	E.8.a	<ul style="list-style-type: none"> • Clarify if this section applies only to projects subject to the construction permit.
67.44 →	Construction Site	E.8.a.ii.c	<ul style="list-style-type: none"> • Clarify water bodies. Please revise this to state which water bodies the project is in or discharge to.
67.45 →	Construction Site	E.8.b.ii.b	<ul style="list-style-type: none"> • Not feasible or practical for projects not enrolled in the construction general permit. In addition, this is not necessary as those subject to the CGP will have a certified QSD and QSP in charge of the project. Its duplicative effort to police a QSD. Please remove this entire requirement from the permit.

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67.46	Construction Site	E.8.b.ii.c	<ul style="list-style-type: none"> Please revise to prior to commencing construction activities the applicant must provide evidence to the permittee that all permits required for the project have been obtained. Its reasonable to require proof of WDID; however to manage and verify enrollment in other permits is not practical or feasible. Please remove from the permit except for WDID verification as other environmental permits will be addressed through environmental review.
67.47	Construction Site	E.8.c	<ul style="list-style-type: none"> Table A for inspection frequencies is an unfunded mandate. The frequency is not feasible for the County of San Luis Obispo. You are already requiring a homeowner to pay a QSD/QSP to perform these inspections. For the homeowner to pay the County for the exact same inspection is clearly unacceptable. Please note San Luis Obispo County is very rural and expansive. Our coverage areas extend an up to an hour north or south. With very limited construction occurring a field inspector may need to travel great distances for one inspection and documentation. Its possible with heavy rain fall during one month may require a homeowner to be charged thousands of dollars just on inspections he's already paying a QSD/QSP to perform. Many alternatives are possible such as requesting QSP/QSD to self report to us instead of inspections. Perhaps inspect those who fail to notify us. Please take a close look at these requirements and revise accordingly.
67.48	Construction Site	E.8.c.ii.b	<ul style="list-style-type: none"> Please remove as this is responsibility of the QSD/QSP. Please see above comments.
67.49	Construction Site	E.8.c.ii.c	<ul style="list-style-type: none"> Please remove as its not the responsibility of the County to review, inspect, or enforce the SWPPP. Another unfunded mandate.
67.50	Construction Site	E.8.d.ii	<ul style="list-style-type: none"> Unfunded mandate requiring QSD/QSP certified. Not practical or feasible to have all permitting staff QSD/QSP certified. This language requires all staff to basically be licensed professionals. Litigation may arise from requiring job duties to be revised so as to require professional licenses and certifications. Please remove this requirement and rather state all plan checkers or inspectors be trained by a QSD/QSP or perhaps work under a certified QSD/QSP.

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67.51 →	Construction Site	E.8.e	<ul style="list-style-type: none"> • Unfunded mandate. Please remove construction site operator training, tracking, and reporting.
67.52 →	Pollution Prevention Good Housekeeping	E.9	<ul style="list-style-type: none"> • Unfunded mandates throughout these sections. • Define the term flood management facility. • Additional Staff would be required to comply.
67.53 →	Pollution Prevention Good Housekeeping	E.9.b.iii	<ul style="list-style-type: none"> • Revise timeline to allow mapping facility locations by 2014 and providing facility detailing by 2014. • The County may not have any flood management projects in the future. The County cannot comply with the (2) changes required per year. Please revise the permit to include a provision for those agency's who don't or have minimal flood management facilities.
67.54 →	Pollution Prevention Good Housekeeping	E.9.c.i	<ul style="list-style-type: none"> • Draft permit shall be stand alone and not reference separate documents. Allow provisions for County to work with local board on guidance manuals.
67.55 →	Pollution Prevention Good Housekeeping	E.9.d	<ul style="list-style-type: none"> • Health Agencies require Hazardous Material Business Plans, Fuel Stations require Spill Prevention Control and Countermeasure Plan, and Industrial facilities require industrial NPDES permits with SWPPPs. Please remove these facilities from the stated requirement.
67.56 ↘	Pollution Prevention Good Housekeeping	E.9.d	<ul style="list-style-type: none"> • Revise permit to allow SWPPP waivers per direction of permittee as some facilities do not require SWPPP.
67.57 →	Pollution Prevention Good Housekeeping	E.9.e.ii	<ul style="list-style-type: none"> • Weekly inspections, documentations, and reporting are not practical. Please revise to monthly inspections or as outlined in individual SWPPP.
67.58 →	Pollution Prevention Good Housekeeping	E.9.e.ii	<ul style="list-style-type: none"> • 3 days to remedy observed problems may not be practical or feasible. Please revise language to say immediately or to the MEP Standard as some 'fixes' may require retrofitting.
67.59 ↘	Pollution Prevention Good Housekeeping	E.9.f	<ul style="list-style-type: none"> • Not feasible for the County to assess and prioritize all catch basins. Please revise language to clarify catch basins only within the permit coverage area and only in urban reserves. Not within rural county culverts or inlets.

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67.60 →	Pollution Prevention Good Housekeeping	E.9.g	<ul style="list-style-type: none"> • Suggest revising language to require inspection of all applicable storm drains be inspected prior to the rainy season and additional inspections and cleaning for those of high priority or historical issues. • The visual monitoring of all open channels is not feasible or practical in San Luis Obispo County. The County has thousands of miles of road within in jurisdiction. Please revise permit to allow monitoring of those channels within its urban reserves and subject to permit coverage areas. Those channels outside the coverage area will likely be inspected if contributing to a TMDL concern at which time the intent of this task will be addressed.
67.61 ↘	Pollution Prevention Good Housekeeping	E.9.H.i	<ul style="list-style-type: none"> • Change quarterly assessment to an annual assessment.
67.62 →	Pollution Prevention Good Housekeeping	E.9.i.ii	<ul style="list-style-type: none"> • Please revise the permit to allow exemptions to those agency's who have none or few. • Timeline may not be possible given the outside controlling factors such as contracts, and third party agency's (i.e. F&G, Army Corp, etc.) • This unfunded mandate would require significant increase in staff time, materials, contracts and management and will require additional staff. • Cannot control projects that discharge to the MS4. Please remove this language from the permit.
67.63 →	Trash Reduction Program	E.10	<ul style="list-style-type: none"> • Unfunded mandate. • The County should be able to identify high priority areas without a minimum order of 20% or reference to commercial retail/wholesale sector. Too prescriptive and not efficient use of funds. Significant task based on no supporting data for San Luis Obispo County. • Please define trash capture structural controls. The County assumes this is trash enclosures with lids.
67.64 ↘	Industrial/Commercial Facility Runoff	E.11	<ul style="list-style-type: none"> • Unfunded mandate. • Place these proposed requirements under the State current Industrial General Permit. • We require additional time to review this program; however, at a glance we do support the comments made by CASQA regarding this entire program.

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67.65	Post Construction	E.12	<ul style="list-style-type: none"> The County is participating in Region 3 Hydromodification Joint Effort. Please clarify those who are participating in the program is exempt from all portions of the program. An Agreement was made with the local Regional Board to pursue this course of action. The County will not tolerate being subject to both requirements.
67.66	Receiving Water Monitoring	E.13	<ul style="list-style-type: none"> Unfunded Mandate We request the Board to allow the County to continue its assessment of program effectiveness by following CASQA's six level approach as described in the County SWMP. We require additional time to review this program; however, at a glance we do support the comments made by CASQA regarding this entire program.
67.67	Program Effectiveness Assessment and Improvement	E.14	<ul style="list-style-type: none"> Portions of this program are unfunded mandates. Surveys as mentioned before are very costly. Even if individuals are educated it does not mean they will take action. Science-based estimates of pollutant load removal is excessive and not warranted for BMPs. Initial studies have provided reasonable estimates and that should be sufficient enough. Too many factors to control over precise efficiency.
67.68	Program Effectiveness Assessment and Improvement	E.14.b	<ul style="list-style-type: none"> As previous requested the draft permit needs to be a stand alone permit and not subject to Lake Tahoe BMP Rapid Assessment Methodology or any other methodology's which are unproven, not always applicable, or subject to change by third party's which we would have no control over. Please revise permit to allow language which would allow the County to have a simple and repeatable field observation and tools that will help determine condition or status of post construction bmps. Revise language that post construction bmps should not be required to be inventoried and mapped until installed. Not practical or feasible for agency's to hire staff to back track previous improvements especially when authority and agreements will not be in place. No legal way to enforce the intent of this task. Therefore no need to document previous BMPs.
67.69	Program Effectiveness Assessment and Improvement	E.14.c	<ul style="list-style-type: none"> Unfunded mandate. Not a feasible or practical program for San Luis Obispo County unless funded Remove task including retrofitting requirements.

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67.70	→	Program Effectiveness Assessment and Improvement	E.14.d	<ul style="list-style-type: none"> This section should be removed. Not to the MEP to focus resources for this task which is duplicative and based on opinions from different parties including the local regional boards. Many controls already in place as required in the permit which will already assess BMPs.
67.71	→	TMDL	E.15	<ul style="list-style-type: none"> Unfunded mandate to expand the TMDL implementation actions beyond their referenced basin plans and/or specific study including possible litigation in doing so.
67.72	→	TMDL	E.15.b	<ul style="list-style-type: none"> Please remove retroactive compliance. The County must comply with our Discharge Permit not Board Basin Plans. Doing so is an unfunded mandate as it exceeds federal requirements