Staff Report for Order No. R3-2019-0073
ATTACHMENT 1

PUBLIC COMMENTS RECEIVED ON
JUNE 10, 2019 DRAFT ORDER NO. R3-2019-0073
AND CENTRAL COAST WATER BOARD STAFF RESPONSE

Central Coast Water Board staff received comments from:

- California Coastkeeper Alliance
- California Stormwater Quality Association (CASQA)
- California Water Service
- City of Salinas
- Fred Krieger

Central Coast Water Board staff responses to these comments are provided below. All comments are direct transcriptions from the letters containing them. Transcriptions do not include the entire content of the comment letter as some content is non-substantive (e.g., salutations, contact information) or is supplementary information (e.g., attachments to letters).[1]

California Coastkeeper Alliance – 1

California Coastkeeper Alliance (CCKA) is a network of California Waterkeeper organizations working to protect and enhance clean and abundant waters for the benefit of Californians and California ecosystems. CCKA engaged in the development of the State Water Resource Control Board's (State Water Board) Amendment to the Ocean Plan and Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (Trash Amendments) adopted in 2015, and we remain committed to the proper and timely implementation of the Trash Amendments.

The Trash Amendments were adopted in 2015 for the purpose of rectifying the pervasive problem of trash in California's surface waters. Studies leading up to the adoption of the Trash Amendments had shown that trash is predominately generated on land and then transported to a receiving water body, often by stormwater runoff. Alarmingly, the 2010 Integrated Report of Clean Water Act Section 303(d) and 205(b) conducted by the State Water Board identified seventy-three California waterways as impaired for trash. Subsequently, the Trash Amendments established the following narrative water quality objective: "Trash shall not be present in [ocean waters, along

[1] Contact Central Coast Water Board staff to request copies of the entire comment letters and letter attachments.

shorelines, inland surface waters, enclosed bays, estuaries] or adjacent areas in amounts that adversely affect beneficial uses or cause nuisance."

Water quality objectives for trash have historically varied between the nine Regional Water Quality Control Boards (Regional Water Boards). The Trash Amendments adopted by the State Water Board provide statewide consistency for the Water Boards' regulatory approach to protect aquatic life and public health beneficial uses by reducing the presence of trash in state waters. A central and core element of the Trash Amendments is a land-based compliance approach to prohibit the discharge of trash from permitted stormwater dischargers, including MS4 Phase I, MS4 Phase II, Caltrans, Industrial and Construction stormwater permit holders.

With Draft Order No. R3-2019-0073 (NPDES Permit), the Central Coast Regional Water Quality Control Board (Central Coast Water Board) is the first Regional Water Board in the state to incorporate the requirements of the Trash Amendments. We applaud the Central Coast Water Board's comprehensive and explicit integration of the Trash Amendments to achieve the goal of no trash present in California waterways by 2030. With the incorporation of key, clarifying changes to ensure the enforceability and efficacy of trash monitoring, this NPDES Permit will set a clear and strong precedent for stormwater permits statewide. These changes include:

1. *Compliance with the Trash Amendment's water quality objective must be independent of compliance with the trash prohibition.*
2. *Visual Assessment Monitoring must include strict liability.*
3. *Minimum monitoring frequency must be included in the Trash Monitoring Plan.*

Staff Response to Comment California Coastkeeper Alliance – 1
Comment noted.

Change made: None.

California Coastkeeper Alliance – 2

I. THE PERMITTEE MUST DEMONSTRATE COMPLIANCE WITH THE TRASH AMENDMENTS' WATER QUALITY OBJECTIVE INDEPENDENT OF COMPLIANCE WITH THE TRASH PROHIBITION.

The permittee should not be deemed in compliance with the Trash Amendments' Water Quality Objective through compliance achieved as specified in Provision L. The Trash Amendments set forth a Water Quality Objective for trash in Chapter III of the ISWEBE Plan. That Objective states that:

> *TRASH shall not be present in inland surface waters, enclosed bays, estuaries, and along shorelines or adjacent areas in amounts that adversely affect beneficial uses or cause nuisance.*

The Trash Amendments also set forth a Trash Prohibition. The Trash Prohibition is set forth in a separate chapter of the ISWEBE Plan, Chapter IV. In Chapter IV, the Trash Prohibition states that:

> *The discharge of TRASH to surface waters of the State or the deposition of TRASH where it may be discharged into surface waters of the State is prohibited. Compliance with this prohibition of discharge shall be achieved as follows:*
>
> *a. Dischargers with NPDES permits that contain specific requirements for the control of TRASH that are consistent with these TRASH PROVISIONS shall be determined to be in compliance with this prohibition if the dischargers are in full compliance with such requirements…*

We agree with the Central Coast Water Board's assertion on page 17 of the Draft NPDES Permit that compliance with the prohibition shall be achieved as specified in Provision L (Trash Management). However, we strongly disagree that achieving Provision L also means compliance with the Water Quality Objective.

The Trash Water Quality Objective and the Trash Prohibition are two separate things. The Objective and Prohibition are set forth in two separate chapters of the ISWEBE. Nowhere in Chapter IV does it state that compliance with the Trash Provisions or the Trash Prohibition means a Permittee is in compliance with the Trash Water Quality Objective set forth in Chapter III.

The Regional Board should not allow Provision L achievement to equal compliance with the Trash Water Quality Objective. On page 20 of the Draft NPDES Permit, the Regional Board states that:

> *Trash Water Quality Objective – Trash shall not be present in inland surface waters,24 enclosed bays, estuaries, and along shorelines or adjacent areas in amounts that adversely affect beneficial uses or cause nuisance. Compliance with the objective shall be achieved as specified in Provision L (Trash Management).*

As discussed above, nowhere in the Trash Amendments or the ISWEBE, does it state that compliance with the Trash Provisions means compliance with the Trash Water Quality Objective. Compliance with the Trash Water Quality Objective must be met in the receiving water by demonstrating that the permittee is achieving "no trash present" in the waterway. We request the Regional Board strike the statement that achievement with Provision L is compliance with the Trash Water Quality Objective.

Requested Language (new language indicated in red [Central Coast Water Board staff used underline and strikeout for this document.]):
C. Receiving Water Limitations (p. 19-20)

1) Discharges from the MS4 shall not cause or contribute to exceedances of water

quality standards in any receiving waters (hereinafter "receiving water limitations"), including but not limited to all applicable provisions contained in:

a) The Central Coast Water Board's Basin Plan;
b) State Water Board policies and plans for water quality control, including specifically:
   i) Trash Water Quality Objective22 – Trash*23 shall not be present in inland surface waters,24 enclosed bays, estuaries, and along shorelines or adjacent areas in amounts that adversely affect beneficial uses or cause nuisance. ~~Compliance with the objective shall be achieved as specified in Provision L (Trash Management).~~
c) Priority pollutant criteria promulgated by the USEPA through the following:
   i) National Toxics Rule; and
   ii) California Toxics Rule

Staff Response to Comment California Coastkeeper Alliance – 2
Central Coast Water Board staff made the revisions suggested by the commenter.

Change made: Revisions to Provision C.1.b.i and Provision L.1.

California Coastkeeper Alliance – 3

II. VISUAL ASSESSMENT MONITORING MUST INCLUDE STRICT LIABILITY.

> The Clean Water Act requires every NPDES permittee to monitor its discharges into the navigable waters of the United States in a manner sufficient to determine whether it is in compliance with the relevant NPDES permit[2]. "[E]ach NPDES permit shall include conditions meeting the following . . . monitoring requirements . . . to assure compliance with permit limitations."[3] That is, an NPDES permit is unlawful if a permittee is not required to effectively monitor its permit compliance. [4] The Trash Amendments states that compliance monitoring must be able to "demonstrate…compliance with full capture system equivalency."[5]

The permittee must assure compliance with full capture system equivalency, and where the permittee does not reach the interim milestones of this permit, the permittee must be held strictly liable. On its own, the Visual Assessment Method is unenforceable and not sufficient to determine whether the permittee is in compliance with the NPDES Permit. Trash accumulating upstream of an MS4 may help indicate the quantity of trash entering the MS4 and ultimately discharges into the waterway. However, it is likely that the Water Boards' enforcement staff will be unable to prove causation between trash generated on the street and sidewalks result in the actual discharge of trash into a waterway. To ensure the Visual Assessment Method is enforceable and complies with

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[2] 33 U.S.C. § 1342(a)(2); 40 C.F.R. § 122.44(i)(1).
[3] *Id.*
[4] See 40 C.F.R. § 122.26(d)(2)(i)(F) ("Permit applications for discharges from large and medium municipal storm sewers . . . shall include ...monitoring procedures necessary to determine compliance and noncompliance with permit conditions . . . .").
[5] State Water Resources Control Board, FINAL AMENDMENT TO WATER QUALITY CONTROL PLAN FOR OCEAN WATERS OF CALIFORNIA TO CONTROL TRASH, D-8 (April 7, 2015).

the Clean Water Act, the permittee must assume strict liability for visual assessments that demonstrate non-compliance with the requirements of the Trash Amendments and the interim milestones within the NPDES Permit. If the permittee self-selects the Visual Assessment Method for monitoring Track 2 compliance – and the permittee's own visual assessments demonstrate the permittee is out of compliance – then the permittee should be deemed out of compliance without the State or Regional Water Board proving causation and/or the actual discharge of trash into a waterway.

Requested Language (new language indicated in red [Central Coast Water Board staff used underline and strikeout for this document.]):

L. Trash Management

1) Trash Management Implementation Plan and Jurisdictional Map – The Permittee shall attain full compliance with Provision A.1.b.i (Trash Discharge Prohibition) and Provision C.1.b.i (Trash Water Quality Objective) by October 1, 2029, by installing, operating, and maintaining any combination of Full Capture Systems*, Multi-Benefit Projects*, other Treatment Controls*, and/or Institutional Controls* within the Permittee's jurisdiction. The Permittee may determine the locations or land uses within its jurisdiction to implement any combination of controls. The Permittee shall demonstrate that such combination achieves Full Capture System Equivalency* by completing the following measures:
   a) Trash Management Implementation Plan – The Permittee shall maintain and implement a Trash Management Implementation Plan that includes the following:
      i) Locations of proposed and existing certified Full Capture Systems, the drainage area served, design specifications and treatment capacity treated by each Full Capture System, and rationale for each selected Full Capture System;
      ii) In drainage areas without certified Full Capture Systems, the combination of controls selected by the Permittee that will achieve Full Capture System Equivalency, rationale for selected combination of controls, how the combination of controls is designed to achieve Full Capture System Equivalency, and how Full Capture System Equivalency will be demonstrated. The Permittee shall determine Trash generation rates/loads using the Visual Trash Assessment Approach or equivalent spatially explicit approach based on location-specific data and technically acceptable and defensible assumptions and methods. <u>Where the Permittee fails to attain compliance with Provision A.1.b.i (Trash Discharge Prohibition), Provision C.1.b.i (Trash Water Quality Objective), and the interim milestones herein, the Permittee is strictly liable for the discharge of trash into a receiving water.</u>

Staff Response to Comment California Coastkeeper Alliance – 3
The Trash Amendments[6] provide responsible parties the option to comply with Track 1 or Track 2. The Permittee has opted for Track 2, which provides the Permittee the option to use a combination of Full Capture Systems and other controls to achieve Full Capture System Equivalency. Central Coast Water Board staff referenced the Trash Assessment Approach[7] as a benchmark method for determining Trash generation rates/loads. The State Water Board has vetted and supports this approach. Central Coast Water Board staff would deviate from this statewide approach if it did not provide this assessment option as a qualifying method for demonstrating compliance. Pursuant to Provision A.1.b.i (Trash Discharge Prohibition) and Provision C.1.b.i (Trash Water Quality Objective) the Permittee is required to achieve the Trash Discharge Prohibition and Trash Water Quality Objective. The enforceability of these requirements is not predicated simply on the results of the visual assessments, but on the Permittee's installation, operation, and maintenance of effective Full Capture Systems, multi-benefit projects, other treatment controls, and/or institutional controls. Additionally, Provision L.1.a.iv requires the Permittee to adhere to compliance time schedules. If the Permittee does not meet these time schedules, it will be out of compliance with the Order.

Change made: None.

California Coastkeeper Alliance – 4
III. MINIMUM MONITORING FREQUENCY MUST BE INCLUDED IN THE TRASH MONITORING PLAN.

Under the Trash Amendments, MS4 permittees complying under Track 2 must develop and implement annual monitoring plans to demonstrate effectiveness of the controls and compliance with full capture system equivalency.

While the Trash Monitoring Plan proposed in Provision L, section 4 of the NPDES Permit requires the permittee to develop and implement a monitoring plan to demonstrate its progress toward attaining interim milestones, Provision L, section 4 does not require the permittee to determine the minimum frequency of trash assessment or monitoring. Visual trash assessments should be conducted at a

[6] At this time, the Trash Provisions, establishing a prohibition of discharge of Trash, for the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California Plan (ISWEBE Plan) are found in the Trash Amendments, adopted by the State Water Board on April 7, 2015, at Appendix E of the Final Staff Report to the Amendment to the Water Quality Control Plan for the Ocean Waters of California to Control Trash and Part 1 Trash Provisions of the Water Quality Control Plan for the ISWEBE Plan. The State Water Board plans to incorporate the Part 1 Trash Provisions to the ISWEBE Plan, once it is adopted.
[7] The Visual Trash Assessment Approach was evaluated as part of the Tracking California's Trash project conducted by the Bay Area Stormwater Management Agencies Association (BASMAA). The evaluation concluded that if visual assessments were conducted consistent with the protocol, the method could reliably establish baseline trash levels and detect progress in reducing trash in MS4 discharges over time. The State Water Board, in partnership with the California Stormwater Quality Association (CASQA), has provided training on the Visual Trash Assessment Approach.

frequency that is high enough to determine compliance with the interim milestones and water quality objectives contained within the NPDES permit. Annual sampling frequency should be determined by using power analysis conducted at each site. In the absence of sufficient data to conduct the power analysis on individual sites, studies or a literature review should be conducted to determine minimum sampling frequencies. For example, BASMA 2016 [8] identified 6 sampling events are needed to identify a 0.5 change in grade levels with a 90% confidence level. The timing of assessments should also be carefully considered. Assessments should be conducted either immediately before rain events, or at times that are most representative of the effectiveness of management actions.

In accordance with California Water Code section 13242, implementation programs to achieve water quality objectives must include a description of necessary actions, a time schedule for actions to be taken, and a description of surveillance to be undertaken to determine compliance with the water quality objectives. Monitoring frequency must be an element of the Trash Monitoring Plan to ensure the efficacy of the implementation program. We request that Provision L, section 4 be updated to require the permittee to determine the initial minimum frequency of trash assessment and monitoring based on storm size, seasonal use of permittee owned or operated public venues, after major public events in certain locations, or other times that demonstrate the effectiveness of the management actions taken by the permittee.

Requested Language (new language indicated in red [Central Coast Water Board staff used underline and strikeout for this document.]):
L. Trash Management (p. 41)

4) Trash Monitoring Plan – The Permittee shall develop and implement a monitoring plan to demonstrate its progress toward attaining interim milestones; the effectiveness of the Full Capture Systems, Multi-Benefit Projects, other Treatment Controls, and/or Institutional Controls; and compliance with the 30 percent and 50 percent targets for meeting Full Capture or Full Capture System Equivalency in Priority Land Use and Designated Land Use areas. The Permittee shall use SIMS to track and demonstrate results.
   a) In developing the monitoring approach, the Permittee shall answer the following questions:
      i) What type of and how many Treatment Controls, Institutional Controls, and/or MultiBenefit Projects have been used and in what locations?
      ii) How many Full Capture Systems have been installed (if any), in what locations have they been installed, and what is the individual and cumulative area served by them?
      iii) What is the effectiveness of the total combination of Treatment Controls, Institutional Controls, and Multi-Benefit Projects employed by the Permittee?

[8] Bay Area Stormwater Management Agencies Association. Evaluation of the on-land Visual Assessment Protocol as a method to establish baseline levels of Trash and Detect Improvements in Stormwater Quality, 2016

iv) Has the amount of Trash discharged from the Permittee decreased from the previous year? If so, by how much? If not, explain why.
v) Has the amount of Trash in the Permittee's receiving water(s) decreased from the previous year? If so, by how much? If not, explain why.

b) Determine the minimum frequency of monitoring to achieve a 90 percent confidence level, considering storm size, seasonal use of Permittee owned or operated public venues, after major public events, or other times that are representative of the effectiveness of the management actions.
c) Report the results of the monitoring plan annually.

Due to the seasonal variability of weather throughout California, and as experienced in the Salinas Valley, the efficacy of monitoring is entirely dependent on its timing. The timing of monitoring must be considered in the Trash Monitoring Plans, as well as the surface drain inspections. The NPDES Permit currently requires surface drain inspections to occur annually, however, these inspections would be most effective if taken within a certain period after a rain event. For example, surface drain inspections conducted within 48 hours of a 0.2 or 0.5 inch rain event would be more effective than a dry inspection in the middle of the summer season.

Requested Language (new language indicated in red [Central Coast Water Board staff used underline and strikeout for this document.]):
L. Trash Management

3) Interim Trash Reduction BMPs – For portions of the Permittee's coverage area that have not achieved full compliance with the Prohibition of Discharge of Trash*, the Permittee shall implement the following interim trash reduction BMPs:
…
b) Inspection and Cleaning of Surface Drainage Structures
i) The Permittee shall visually inspect annually all open channels and other surface drainage structures, which are part of the Permittee's MS4 or part of receiving waters within the Order coverage area that are not owned and operated by MCWRA, for trash and other debris within 48 hours of 0.2 rain event.
ii) The Permittee shall prioritize and inspect the problem areas, such as those with recurrent illegal dumping, at least three times per year.
iii) The Permittee shall remove, within 14 working days, trash and other debris found during visual inspections. The Permittee shall document surface drainage structure maintenance in SIMS.

Staff Response to Comment California Coastkeeper Alliance – 4
The Trash Amendments do not specify a confidence level for trash monitoring results. Central Coast Water Board staff finds the commenter's suggestion to require the Permittee to determine an appropriate confidence level seems reasonable. However, Central Coast Water Board staff does not recommend specifying the numeric confidence level. The City has already established confidence levels for its trash monitoring and is tracking attainment of these confidence levels. Central Coast Water Board staff does not recommend specifying confidence level details that might misalign

with the City's current trash monitoring efforts. Central Coast Water Board staff revised Provision L.4.b in the draft Order to require the City to identify and incorporate confidence levels into the monitoring plan to ensure accurate monitoring. Central Coast Water Board staff revised Section IV.L (Trash Management) in the draft Fact Sheet to briefly discuss this additional requirement.

The requirements in Provision L.3 (Interim Trash Reduction BMPs) are a continuation of BMPs from Order No. R3-2012-0005, which does not specify the timing of visual trash inspections relative to rain events, but does require inspections annually, and cleaning in response to those annual inspections. The Draft Order requires several stormwater management-related inspections and other activities prior to, during, and after rain events. Given the Permittee's existing and developing trash reduction strategies per the draft Order, Central Coast Water Board staff finds that adding a requirement to conduct inspections of all open channels and other surface drainage structure within 48 hours of a 0.2-inch rain would increase the burden on the Permittee without significantly increasing the benefit over a once-per-year occurrence.

Change made: Revisions to Provision L.4.b and Section IV.L of Attachment H (Fact Sheet).

California Coastkeeper Alliance – 5

To achieve and demonstrate actual compliance with the Trash Amendments' provisions and the interim milestones set in this NPDES Permit, any monitoring scheme implemented by the permittee must be enforceable. Further, monitoring frequency and timing must be explicitly determined by the permittee to monitor the effectiveness of specific management actions. We applaud the Central Coast Water Board's work thus far to incorporate the requirements of the Trash Amendments and we appreciate your incorporation of our comments to ensure waters throughout the Central Coast are free from trash by 2030.

Staff Response to Comment California Coastkeeper Alliance – 5
Comment noted.

Change made: None.

California Stormwater Quality Association (CASQA) – 1

On behalf of the California Stormwater Quality Association (CASQA), thank you for the opportunity to provide comments on the Draft National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements (WDR) for the City of Salinas (Draft Order No. R3-2019-0073 or Draft Order)[9]. CASQA

[9] CASQA is a nonprofit corporation with approximately 2,000 members throughout California that advances sustainable stormwater management protective of California water resources. Our membership

recognizes that the Draft Order pertains specifically to the City of Salinas (City) and that the City has been working with Central Coast Regional Water Quality Control Board (Regional Water Board) staff during the development of the Draft Order. The City will be submitting separate comments regarding the direct impacts that the Draft Order may have on its stormwater program.

CASQA is providing this comment letter because of our interest in supporting the development and implementation of sustainable stormwater programs that are protective of California water resources. CASQA's comments provided herein pertain to key permit provisions in the Draft Order that cause concern because of their inconsistency with applicable laws and regulations, and/or because they are novel new requirements that may potentially impact other Phase I and Phase II permits within the State. To the extent that it is helpful, we are also willing to work directly with the Regional Water Board to explore ways in which the intent of the permit requirements could be met. The specific areas of concern for CASQA include the new requirements for Asset Management Plans, inconsistencies with the Statewide Trash Amendments, the targeting of transient camps and/or socio-economically stressed areas, the fiscal reporting requirements, and the investigations of pesticide, herbicide, and fertilizer application areas. Our detailed comments are below.

Staff Response to Comment CASQA – 1
Central Coast Water Board staff tailored the draft Order to the Permittee's municipal stormwater program. Therefore, there are aspects of the draft Order that may not apply in other parts of the State of California. Similarly, other Phase I municipal stormwater permits include requirements that are not in the draft Order. As the commenter mentions, Central Coast Water Board staff worked closely with the Permittee staff during this Order reissuance process. See Staff Report for Item No. 11 for a discussion about the public process and engagement with Permittee staff.

See Staff Responses to Comments CASQA – 2 through CASQA – 6 regarding the specific issues raised by CASQA.

Change made: None.

CASQA – 2
COMMENT #1: The Draft Order Should Encourage, Not Require, Asset Management and Improvement Plans, Which are Beyond the Clean Water Act Requirements.

The Draft Order requires, for the first time in the State of California, the development and submittal of a "Watershed Asset Management Program" and "Asset Improvement Plan" (See Provision I). The Draft Order requires that this plan include, in part, the following: an asset inventory of hard, soft, and natural assets: identification of performance level to comply with the Draft Order; valuation of the

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is comprised of a diverse range of stormwater quality management organizations and individuals, including cities, counties, special districts, industries, and consulting firms.

assets including principal and life cycle costs; and, an improvement plan to identify a 20-year schedule for the maintenance, rehabilitation, and installation of new assets as well as the forecasted costs and financial strategy for funding the asset management program.

The Fact Sheet cites the following as justification for the inclusion of these new permit provisions:

- 40 Code of Federal Regulations (CFR) section 122.41 (e), which states in part: "Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit."
- 40 CFR 122.26(d)(2)(vi) – Fiscal Analysis – "For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under paragraphs (d)(2) (iii) and (iv) of this section."
- USEPA issued NPDES Permit No. GUS040001, authorizing the Guam Department of Public Works to discharge under the National Pollutant Discharge Elimination System, issuance date: December 20, 2018 (pg. 38).
- Voluntary efforts undertaken by the City of San Diego.

The justifications provided here do not support the Draft Order requirement for an Asset Management Program and an Asset Improvement Plan. First, 40 CFR 122.41(e) requires permittees to properly operate and maintain facilities. It does not require the permittee to show or prove to the Regional Water Board how proper operation and maintenance will occur. Similarly, 40 CFR 122.26(d)(2)(vi) requires a Fiscal Analysis to be provided at the time of permit application to show how program activities will be accomplished, which is not the same or equivalent to an Asset Management Program or Asset Improvement Plan as described and required by the Draft Order. Further, an EPA adopted permit for a United States territory and voluntary efforts by a single city do not provide proper legal justification for the requirement that would be imposed. Accordingly, the Draft Order does not provide proper legal justification for the new requirements related to an Asset Management Program and Asset Improvement Plan. While CASQA fundamentally agrees that asset management planning is appropriate for municipal agencies and may provide ancillary benefit to the stormwater program, such provisions should not be incorporated into the MS4 permit as a permit requirement.

CASQA Recommendation:

- *Delete the Asset Management Plan-related provisions; OR*
- *Modify the Asset Management Plan-related provisions such that they are encouraged for effective management of the stormwater program, but not required.*

Staff Response to Comment CASQA – 2
Federal regulations support asset management planning. Central Coast Water Board staff revised Section IV.I of the draft Fact Sheet to more clearly connect the Code of Federal Regulations to the specific requirements in Provision I (Asset Management Program).

40 Code of Federal Regulations section 122.41(e) requires NPDES permittees to "properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit." An MS4 permittee must establish appropriate quality assurance procedures to ensure that its discharge meets the maximum extent practicable standard and water-quality based requirements. Asset management plans provide a framework for setting and operating these quality assurance procedures and ensures that the MS4 permittee has sufficient financial and technical resources to continually maintain a targeted level of service in compliance with 40 Code of Federal Regulations section 122.41(e).

40 Code of Federal Regulations sections 122.26(d)(2)(iv) and 122.26(d)(2)(iv)(A)(2) require large and medium MS4 dischargers to include comprehensive plans to reduce the discharge of pollutants in their permit applications. Under previous Orders, the City developed and implemented stormwater management plans consistent with these application requirements. Because the draft Order does not include a stormwater management plan requirement, the Central Coast Water Board must integrate requirements to maintain and update planning programs where applicable throughout the Order. The draft Order includes specific requirements that meet 40 Code of Federal Regulations section 122.26 application requirements by requiring the City to update and maintain its stormwater management plan by replacing it with a Watershed Asset Management Program (Provision I). The Watershed Asset Management Program requirement includes many of the components required in a stormwater management plan to develop and maintain the capacity to characterize, organize, and prioritize its hard, soft, and natural assets to reduce pollutants in discharges from the MS4.

As mentioned in the Fact Sheet, USEPA Region IX, whose legal authority is limited to federal law, similarly implemented asset management planning provisions in an MS4 permit issued to the Guam Department of Public Works and supports asset management plan provisions in NPDES permits.[10]

Additionally, many of the requirements in Provision I are not new. See Section IV.I of the draft Fact Sheet for a discussion about steps the City has already taken to support

[10] USEPA Region 9. 2014. Asset Management, Incorporating Asset Management Planning Provisions into NPDES Permits, December 2014, Web. 12 Aug. 2019.

an asset management program and plan development. The Fact Sheet also discusses how the draft Order includes requirements in other provisions supporting components of the Watershed Asset Management Program.

Central Coast Water Board staff removed the requirements in Provisions I.1 and G.4 for inventorying non-water quality-based structural BMPs with flood control as the primary function, to clarify the inventories are focused on BMPs that provide water quality benefits.

See Staff Response to Comment City of Salinas – 14 for a summary of draft Order revisions to extend timeframes for completing components of the asset management program.

Change made: Revisions to Provisions I.1 and G.4; and to Section IV.I of Attachment H (Fact Sheet).

CASQA – 3

COMMENT #2: The Draft Order Should Ensure that Permit Requirements to Implement the Statewide Trash Amendments are Consistent with the Intent and Language of the Amendments to the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, And Estuaries (ISWEBE Plan).[11]

CASQA actively participated in the development and adoption of the Statewide Trash Amendments and subsequent to that, has worked closely with State Water Resources Control Board (State Water Board) staff to ensure that all guidance that has been developed to date is consistent with the Statewide Trash Amendment language. Although the Regional Water Board is required to incorporate Trash Amendment-related provisions into the Draft Order, such provisions need to be consistent with the adopted Trash Amendment language. CASQA has identified the following inconsistencies and recommends that these provisions be modified as described below.

- The Trash Amendments allow MS4 Permittees to comply by either implementing Track 1 or Track 2. Based on CASQA's conversations with State Water Board staff, Permittees are not precluded from switching tracks in the future as long as they meet the specific requirements of that Track. As such, the Draft Order should include language that recognizes the ability to modify tracks in the future.
- Provision L.1.b requires a Jurisdictional Map that designates trash generation rates corresponding to each mapped land use, open channels, and adjacent riparian areas. However, the Trash Amendments require GIS mapping only within the context of demonstrating compliance with full capture system

[11] Final Part 1 Trash Provisions proposed to Chapter III – Water Quality Objectives of the ISWEBE Plan. Web. 12 Aug. 2019.

equivalency (i.e., location and drainage areas served by specific BMPs). While the use of GIS mapping as a tool to support management of a Trash Implementation Plan may be beneficial to a Permittee, it should not be required.

- The Draft Order requires the identification of "Designated Land Use Areas" (Provision L.2, page 40) such as "schools, areas with High or Very High trash results during baseline visual assessments, and any other areas known to be susceptible to trash generation" and "transient camps". The term "Designated Land Use" is a new term and defined within the Draft Order as "specific land uses or locations outside of Priority Land Uses that the Central Coast Water Board determines generate substantial amounts of Trash." Essentially within the Draft Order, Designated Land Uses are Priority Land Uses and have the same requirements. Instead of creating a new term that is inconsistent with the Trash Amendments, it seems that high generating trash areas should be addressed within the construct of the Trash Amendments and as an "equivalent, alternative land use."
- The Draft Order includes "Interim Trash Reduction BMPs" (Provision L.3, page 40). Requiring interim trash reduction BMPs is inconsistent with the Trash Amendments and is duplicative of the municipal inspection program (Provision M of the Draft Order).
- The requirements in the "Trash Monitoring Plan" (Provision L.4, page 41) include statements specific to interim milestones (i.e., City of Salinas 30 percent and 50 percent targets for meeting Full Capture or Full Capture System Equivalency in Priority Land Use and Designated Land Use areas) and appear to incorporate the interim targets as compliance milestones, rather than milestones to demonstrate progress towards full implementation as required by the Trash Amendments under ISWEBE Plan Chapter IV.A.5.a.(3) and IV.A.5.a.(4). This distinction and difference are significant as failure to meet a compliance milestone may subject a permittee to an enforcement action or be considered a permit violation. While milestones for demonstrating progress are an important component of the Trash Amendments, they are intended to ensure progress – not to create additional liability before final compliance is required.

CASQA Recommendation:

- *Include the following language "The City may switch Tracks as long as any necessary information is submitted to the Regional Water Board pursuant to the June 1, 2017 13383 Order and/or any subsequent Orders or correspondence related to the Trash Amendments."*
- *Modify Provision L.1.b so that it is consistent with ISWEBE Plan Chapter IV.A.6.a and IV.A.6.b.*
- *Delete Provision L.2 or modify it to include an option to evaluate equivalent alternative land uses consistent with the Trash Amendments.*
- *Delete Provision L.3.*
- *Modify Provision L.4 to clarify that the milestones are not compliance dates or values.*

Staff Response to Comment CASQA – 3

The Permittee has selected Track 2 to comply with the Trash Amendments. The Trash Amendments do not include language related to switching from one track to another

once a track is selected. However, if the Permittee elects to implement Track 1 after initiating compliance under Track 2, the requirements laid out in the draft Order will still ensure the City meets Track 1. At this point, the Permittee can opt to exclusively implement, operate, and maintain Full Capture Systems for all storm drains that capture runoff from Priority Land Use and Designated Land Use areas and not use other management options offered in Track 2. In other words, the City can implement Track 1 for all or a portion of the Priority Land Uses and Designated Land Uses while remaining under Track 2; however, the City cannot implement Track 2 under the Track 1 designation.

Central Coast Water Board staff finds the combination of requirements of Provisions L.1.b and L.4 are consistent with the minimum requirements set forth in the Trash Amendments. To ensure the Permittee's mapping sufficiently demonstrates compliance with the draft Order's trash requirements, Central Coast Water Board staff included additional specificity in Provision L.1.b for mapping the corresponding stormwater conveyance system that collects and conveys discharges from Priority Land Use areas and Designated Land Use areas. On June 1, 2017, the Central Coast Water Board Executive Officer issued a Water Code Section 13383 Order requiring the Permittee to choose a compliance track for adhering to the Trash Amendments and to submit related documents (e.g., jurisdictional map(s), trash general map, implementation plan). The June 1, 2017 Order specified that the Permittee shall include the corresponding MS4 network that conveys discharges from Priority Land Use areas on the jurisdictional maps. Central Coast Water Board staff revised Provision L.1.b.ii of the draft Order to clarify these corresponding MS4 network components are the same mapped components required in Provision G.3 (MS4 System Map), so this requirement is not an additional workload.

Central Coast Water Board staff revised Provision L.1.b.iii, as suggested by the commenter, to remove the requirement to map the corresponding trash generation rates/loads from all mapped areas of the Order coverage area, and to specify this requirement only applies to Priority Land Use and Designated Land Use drainage areas not treated by certified Full Capture Systems. This mapping requirement aligns with Provision L.1.a.ii requirements for the Trash Management Implementation Plan.

The intent of Provision L.1.b.iii is to track the long-term effectiveness of trash management efforts in reducing trash loading to open channels and riparian areas. On January 1, 2019, the Permittee submitted the *Trash Reduction Implementation Plan, Phase I (2019-2022) for the City of Salinas* (Trash Reduction Implementation Plan). In the Trash Reduction Implementation Plan, the Permittee outlined it conducted visual trash assessment methods to document the trash condition within all 170 acres of open channels and their adjacent riparian areas within the Order coverage area.

Designated Land Use and Equivalent Alternative Land Use have different meanings in the draft Order. Central Coast Water Board staff edited the footnote defining the term Designated Land Use to explain staff created this term for the draft Order based on the option provided by the Trash Amendments to permitting authorities for designating

additional specific land uses or locations for trash control treatments (see Chapter IV.A.3.d of the Trash Provisions). The Glossary of the Trash Amendments defines Equivalent Alternative Land Use as follows: “An MS4 permittee with regulatory authority over PRIORITY LAND USES may issue a request to the applicable PERMITTING AUTHORITY that the MS4 permittee be allowed to substitute one or more land uses identified above with alternate land uses within the MS4 permittee’s jurisdiction that generates rates of TRASH that is equivalent to or greater than the PRIORITY LAND USE(S) being substituted.” In other words, equivalent alternative land use is used to swap areas (i.e., non-Priority land use for a Priority land use). Conversely, in the draft Order, Designated Land Use represents the situation when the Permitting Authority [Central Coast Water Board] requires the Permittee to address areas in addition to the Priority Land Use areas.

The Trash Amendments are minimum requirements for permitting authorities to integrate into permits. Provision L.3 (Interim Trash Reduction BMPs) carries over trash and litter control measures from Order No. R3-2012-0005. Until the Permittee implements and installs trash control measures pursuant to the Trash Amendments, the Permittee must continue implementing some general trash reduction BMPs within the Order coverage area.

The draft Order intends to set clear, enforceable requirements for the Permittee’s municipal stormwater management program. Central Coast Water Board staff finds it reasonable to hold the Permittee accountable for achieving measurable progress for implementing the Trash Amendments as opposed to waiting until October 1, 2029 to assess compliance. This phased approach is meant to support the Permittee in successfully achieving this final compliance date.

Change made: Revisions to footnote referenced in Provision L.1.a.iii; Provision L.1.b.ii; and Provision L.1.b.iii.

CASQA – 4

COMMENT #3: The Draft Order Should Only Include Provisions that Implement the Specific Mandate of the Stormwater Program and Not Target Transient Camps and / or Socio-Economically Stressed Areas.

The Draft Order includes multiple provisions requiring the tracking and maintenance of information related to homelessness (also referred to as transient camps) and socio-economically stressed areas. This information is to be used to inform watershed characterizations, illicit discharge programs, and trash management activities.

Finding 38 addresses the state’s Human Right to Water policies, affirming the Regional Water Board’s support for ensuring the goals and purposes of the policy. Finding 38 goes further to state that the “Order includes actions to improve conditions for socio-economically disadvantaged communities and persons experiencing homelessness. This Order develops new or enhances existing systems to collect the data needed to identify and track individuals and communities that do not have, or are

at risk of not having, safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes." (Finding 38, pg. x, Emphasis added.)

Several provisions in the Draft Order require the Permittee to address transient camps and socio-economically stressed areas including:

- G.2 (Information Management and Program Assessment, Watershed Characterization);
- L.2.b (Trash Management – Designated Land Use Areas); and
- N.1 (Illicit Discharge Detection and Elimination, Prioritization).

As presented in the Fact Sheet:

- "The Order requires the Permittee to prioritize illicit discharge detection and trash management efforts at designated socio-economically stressed areas and transient camps." (pg. H-8);
- "To help the Permittee conduct more focused efforts related to homelessness and disadvantaged communities, this Order requires the Permittee to map transient camp locations and socio-economically stressed areas." (pg. H-28)

Aside from the concerns about using the stormwater program to try to address these socially complex and multi- faceted issues, it is impractical to expect a Permittee to be able to effectively address issues related to homelessness/transient camps, and/or socio-economically stressed areas. Stormwater programs do not have legal authority or control over properties where transient encampments are common or have proper access to properties that would be necessary to conduct cleanups of transient encampments. Rather, land owners and agencies with the appropriate authority would need to be involved. There are also a host of legal, social, and political complications in managing/cleaning up areas with transient encampments that necessarily require the involvement of a number of other agencies (social services, police, health care, etc.).[12]

Although, for the reasons mentioned above, it is our position that requirements to address transient camps and socio- economically stressed areas should not be included within stormwater permits, CASQA recognizes that these social issues affect many programs and communities. Because of the importance of this issue, CASQA, at its last quarterly meeting, held a discussion dedicated to homelessness in general, and more specifically the role of stormwater management[13] in potentially addressing

[12] Trash associated with transient populations is usually considered private property. Notice must be provided prior to cleaning up trash and law enforcement is generally required to remove transients prior to cleaning up trash to ensure what is picked up is not personal property. Depending on the location, it may not be possible to require transients to leave the area, thereby preventing trash removal.
[13] CASQA Notice and Agenda for May 2019 Meeting/Webcast. Web. 12 Aug. 2019.

some of the unintended water quality impacts associated with homelessness. CASQA maintains committed to discussing the issue with the State Water Board and individual Regional Water Boards to explore potential options for moving forward.

CASQA Recommendation:

- *Delete all provisions related to homelessness, transient camps, and socio-economically stressed areas.*
- *Establish a dialogue or process for having continued discussions with respect to the role of stormwater management as it is related to homeless/transient camps and/or socio-economically stressed areas.*

Staff Response to Comment CASQA – 4

Homelessness, transient camps, and socio-economically stressed areas pose threats to water quality in urban areas throughout California. For example, the City of San Diego has experienced measurable water quality degradation in the San Diego River Watershed, resulting in the San Diego Regional Water Quality Control Board issuing a tentative investigative Order (No. R9-2018-0021) directing municipalities to identify and quantity the sources and transport pathways of human fecal material to the San Diego River. The tentative Order describes the conditions of illegal homeless encampments and transient populations and resulting discharge of human fecal material to waterbodies.[14]

The Permittee acknowledges the water quality challenges associated with transient camps within the Order coverage area. On January 1, 2019, the Permittee submitted the *Trash Reduction Implementation Plan, Phase I (2019-2022) for the City of Salinas* (Trash Reduction Implementation Plan), which states, “Transient encampments are a significant source of trash in Salinas and are a priority in order for the City to achieve substantial trash reduction progress.”

Broadly speaking, homeless encampments and socio-economically stressed areas are among other land uses and human activities that pose threats to stormwater quality and which the Permittee must prioritize and address to the maximum extent practicable. For example, residential pesticide and fertilizer application may be higher in more affluent residential neighborhoods, relative to socio-economically stressed areas; and commercial and industrial land uses pose threats to water quality that differ from residential areas or areas with transient camps. Because areas with homelessness, transient camps, and socio-economically stressed areas pose threats to water quality, the Permittee must address these areas to comprehensively address water quality issues within the Order coverage area.

[14] San Diego Regional Water Quality Control Board. Tentative Investigative Order No. R9-2018-0021. See finding 46. Web. 24 July 2019.

The draft Order requirements associated with homelessness, transient camps, and socio-economically stressed areas only apply to areas within the Order coverage area. Central Coast Water Board staff acknowledges that homelessness, transient camps, and socio-economically stressed areas also occur in areas within other entity's (e.g., Non-Traditional Small MS4s, State of California Department of Transportation, Monterey County Water Resources Agency, rail transport entities) jurisdictional areas adjacent to the Order coverage area. To effectively implement the requirements of the draft Order, the Permittee may need to revisit its legal authorities to ensure it has the authorities necessary to implement all Order requirements within the Order coverage area.

The draft Order requires the Permittee to map and characterize the water quality challenges associated with homelessness, transient camps, and socio-economically stressed areas. This is an essential step to prioritizing and focusing efforts and understanding the extent of this challenge. The Southern California Coastal Water Research Project outlines a process for quantifying direct inputs from homeless encampments in its conceptual workplan for quantifying sources of human fecal contamination to the San Diego River.[15]

Central Coast Water Board staff is aware that this is a complex issue. The draft Order does not require the Permittee to address the full suite of issues and challenges associated with homelessness, transient camps, and socio-economically stressed areas. However, because of the potentially significant impacts to water quality associated with these conditions, the draft Order requires the Permittee to identify those impacts that are within its authority to address.

Because homelessness is so prevalent among California urban areas, Central Coast Water Board staff commends CASQA for dedicating resources to work on this complex issue in the context of water quality.

Change made: None.

CASQA – 5

COMMENT #4: The Draft Order Should Only Include Fiscal Reporting Consistent with 40 CFR 122.26(d)(2)(vi).

The Draft Order includes new prescriptive requirements (Provision J) for Fiscal Analysis and Cost Reporting that are based on Draft Guidance that has been developed by the State Water Board's Office of Research, Planning and Performance (ORPP) including:

- Guidance for Future Total Maximum Daily Load (TMDL) Municipal Storm Water Cost Estimation (Cost Estimation Guidance); and

[15] Southern California Coastal Water Research Project. Quantifying Sources of Human Fecal Contamination Loading to the San Diego River. February 20, 2019. Web. 24 July 2019.

- Guidance for Obtaining Past Phase I Municipal Separate Storm Sewer System Permit Compliance Costs (Compliance Cost Reporting Guidance)

On June 20, 2019, CASQA submitted a comment letter to the State Water Board summarizing our overarching concerns related to these two documents (see Attachment A). Based on these concerns and conversations with ORPP and State Water Board staff, CASQA is recommending that these Draft Guidance documents not be used as the basis of new fiscal reporting permit requirements.

CASQA Recommendation:

- *Modify Provision J such that it is consistent with 40 CFR 122.26(d)(2)(vi).*

Staff Response to Comment CASQA – 5
Two comments included in the Attachment to CASQA's comment letter pertain to the draft Order's fiscal analysis and cost accounting requirements. Both comments reference the State Water Board Office of Research, Planning, and Performance's (ORPP's) guidance ("document") that Central Coast Water Board staff consulted in developing the draft Order provisions on fiscal analysis and cost reporting. Staff provides a response to each comment below:

1) "In general, the [ORPP] document goes beyond the federal mandate (40 CFR 122.26(d)(2)(vi)), is highly prescriptive, and includes requirements, assessments, and management questions that are onerous, and would take extraordinary amounts of time for a municipality to provide."

40 Code of Federal Regulations section 122.26(d)(2)(vi) provides that "[The Permittee must submit] for each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under paragraphs (d)(2)(iii) and (iv) of this Section. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds."

Central Coast Water Board staff finds the draft Order achieves this standard without being overly prescriptive or onerous. The draft Order modestly expands reportable cost categories over those included in Order R3-2012-0005. Central Coast Water Board staff found ORPP's guidance helpful in identifying the cost categories, but ultimately the specific categories included correspond principally with the draft Order's provisions for alternative compliance pathways for receiving water limitations and water quality-based effluent limitations. Central Coast Water Board staff acknowledges ORPP's guidance continues to evolve on the matter of fiscal analysis and cost reporting for municipal stormwater programs and staff did not interpret the guidance strictly.

2) "The [ORPP] document implies that municipal agencies would have to change internal accounting tools and practices in order to comply with reporting requirements 'The Water Boards are aware that the development and implementation of new standardized cost-reporting or information requests will likely result in short-term costs as local jurisdictions transition cost-accounting practices and data systems.' "

Central Coast Water Board staff does not anticipate the Permittee would need to significantly change its internal accounting practices to comply with the cost reporting requirements of the draft Order, which represent relatively modest increased specificity compared to requirements of the existing Order No. R3-2012-0005.

Change made: None

CASQA – 6

COMMENT #5: The Draft Order Should Refrain from Requesting the Permittee to Conduct Investigations of Pesticide, Herbicide, and Fertilizer Application Areas Because It Is Unlikely That the Permittee Will Have Access to Necessary Information.

On pages 47 and 48 of the Draft Order, the Permittee is required to identify areas of suspected high pesticide and fertilizer use, conduct investigations of such use, and provide a summary of its investigations to the Monterey County Agricultural Commissioner and the Central Coast Water Board staff. CASQA is concerned that this provision in the Draft Order exceeds an MS4's authorities with respect to its illicit discharge program. Moreover, from a practical standpoint, CASQA is uncertain as to how an MS4 would go about identifying such high use areas. In the urban environment, it would be difficult to determine why one area might have high pesticide use versus another, or what area might be prone to improper use. Such information is not readily available to MS4s. Moreover, outside of the Regional Water Board's irrigated agricultural program, there are no state reporting requirements for fertilizer use. At most, the sale of fertilizers is tracked by the California Department of Food and Agriculture, but application of homeowner fertilizer use is not tracked or documented by any state program. CASQA is concerned that the activity being required here is outside of a MS4s authority to address illicit discharges. Accordingly, the inclusion of these new requirements into the Illicit Discharge provisions is inappropriate and should be deleted. In the alternative, CASQA requests that the Regional Water Board explain or clarify the intent of this provision and how they would expect a permittee to comply with this requirement.

CASQA Recommendation:

- *Delete the pesticide and fertilizer related provisions from Provision N.*
- *In the alternative, provide further explanation or clarification regarding the intent of the requirement and how a permittee would comply.*

Staff Response to Comment CASQA – 6
The Permittee's monitoring of MS4 discharges from urban catchments indicates pesticides are present at levels exceeding the numeric targets set forth in the Sediment Toxicity and Pyrethroid Pesticides in Sediment Total Maximum Daily Load (TMDL). Two MS4 outfall samples from the January 3, 2018 first-flush runoff event contained the pyrethroid pesticide bifenthrin in concentrations at 130 ng/L and 48 ng/L, exceeding the 4 ng/L numeric target. The pyrethroid cypermethrin and the pesticide fipronil were also detected in the discharge from one of the outfalls, though the TMDL did not establish numeric targets for those parameters.

Because pesticide and fertilizer application poses a threat to water quality, Central Coast Water Board staff finds it reasonable that the Permittee improve its understanding of how these potential pollutants are applied within the Order coverage area. The draft Order intends for Permittee staff to develop a program to help reduce transport of pesticides into the MS4 and receiving waters. The pesticide and fertilizer requirements within Provision N (Illicit Discharge Detection and Elimination) intend to achieve the following: 1) help reduce transport of pesticides into the MS4 and receiving waters; and 2) fill a gap in identifying pesticide and fertilizer application that is not actively overseen by the California Department of Pesticide Regulation (DPR).

Because of the significant threat to water quality, Central Coast Water Board staff finds it appropriate for the Permittee to help reduce transport of pesticides into the MS4 and receiving waters, in addition to DPR regulation, by identifying pesticide misuse. As a parallel example, the State and Regional Water Quality Control Boards regulate the discharge of stormwater runoff from construction activities; however, the draft Order also requires the Permittee to provide oversight of stormwater management during construction activities because inadequate erosion and sediment controls during construction activities pose a threat to water quality.

DPR, along with the County Agricultural Commissioner (Monterey County Agricultural Commissioner for the Order coverage area), Structural Pest Control Board, and California Department of Public Health, regulate licensed pest control applicators. However, these entities do not actively oversee the application of pesticides and fertilizers by applicators that do not require licensing. For example, while federal and State laws prohibit users from using pesticides differently than what is specified on the label,[16] DPR does not provide direct oversight of renters and homeowners applying pesticides and fertilizers to their residences. Anyone can file a complaint to the County Department of Agriculture or DPR to report illegal pesticide application. Besides relying on this complaint system, DPR does not have an active program to oversee the application of pesticides by those not requiring licensure.

Just like the Permittee has responsibilities for regulating illicit discharges into the MS4 (e.g., prohibiting dumping of used motor oil into drain inlets), the Permittee has a role in

[16] "A Community Guide to Recognizing and Reporting Pesticide Problems," California Department of Pesticide Regulation, Web. 31 July 2019, page 9.

ensuring pesticides and fertilizers are not misused, discarded inappropriately, etc. in such ways that could potentially negatively impact water quality. The requirements in Provision N intend to improve the Permittee's understanding of where pesticides and fertilizers are heavily used. The draft Order does not require the Permittee to violate California Food and Agricultural Code Section 11501.1, which states, "Except as otherwise specifically provided in this code, no ordinance or regulation of local government, including, but not limited to, an action by a local governmental agency or department, a county board of supervisors or a city council, or a local regulation adopted by the use of an initiative measure, may prohibit or in any way attempt to regulate any matter relating to the registration, sale, transportation, or use of pesticides, and any of these ordinances, laws, or regulations are void and of no force or effect." However, the draft Order does implement 40 Code of Federal Regulations section 122.26(d)(2)(iv)(A)(6) requiring proposed stormwater management programs to reduce to the maximum extent practicable, pollutants in discharges from MS4s associated with the application of pesticides, herbicides, and fertilizer.

The Permittee has commenced activities to identify potential sources of urban pesticides in its stormwater runoff. These results may inform areas of heavy pesticide application. In addition to the current water quality monitoring activity, the Permittee has proposed an assessment of urban pyrethroid pesticide sources as an initial step in implementing its Wasteload Allocation Attainment Plan associated with the Sediment Toxicity and Pyrethroid Pesticides in Sediment TMDL. Central Coast Water Board staff is working with the Permittee to ensure the Permittee's efforts are consistent with the statewide coordinated monitoring program for urban pesticides and related control measures currently under development by the State Water Board, DPR, and MS4 permittees.

Additionally, the Permittee may inform prioritization of efforts and identification of areas more likely to experience heavy pesticide use based on empirical pesticide application trend information. For example, the University of California Integrated Pest Management (IPM) Program at University of Davis prepared a report of surveys of residential pesticide use in California.[17]

Change made: None.

California Water Service – 1

California Water Service (Cal Water) provides safe, reliable, and high-quality water utility service to more than 120,000 residents of the City of Salinas. As a provider of essential public service, we are concerned that the inclusion of Total Maximum Daily Loads (TMDLs) will negatively impact our customers in Salinas.

[17] Flint, Mary Louise, Ph.D. University of California Statewide IPM Program, University of California Davis. Residential Pesticide Use in California. Prepared for the California Department of Pesticide Regulation. March 15, 2003. Web. 29 July 2019.

It is well known that groundwater in the Salinas Valley Groundwater Basin is highly impacted by nitrates. Cal Water currently operates approximately 45 groundwater wells that supply drinking water to residents of Salinas Valley. Nitrate is present in almost every well and several wells are increasing in nitrates.

Cal Water is enrolled under the Statewide NPDES Permit for Drinking Water System Discharges to Waters of the U.S. (General Permit) to accommodate planned and unplanned discharges associated with operating the potable drinking water supply and distribution system in the City of Salinas. On occasion, the discharge of untreated groundwater is necessary to fulfill statutory requirements under the federal Safe Drinking Water Act or the California Health and Safety Code.

Nearly every water system discharge will contain a certain level of nitrates. Approximately 33 wells have the potential to exceed a nitrate TMDL, depending on the season and/or receiving water.

While Cal Water makes every effort to consider alternatives (beneficial reuse, sanitary sewer, etc.), discharge to the City of Salinas MS4 is sometimes inevitable. Should the MS4 owner prohibit these essential discharges, the unintended consequence would be to render the groundwater supply well inoperable. The loss of supply wells could potentially impact Cal Water's ability to provide safe drinking water and fire protection to the Salinas community.

In addition, any well rendered inoperable would need to be replaced. A replacement well currently costs upwards of $3 million, which would place undue burden on our customers not only in terms of rates but could impact short term supply because each replacement well would require several years to complete.

Since these types of water system discharges are de minimis in nature {discontinuous, temporary small volume discharges), Cal Water requests that the discharges from providers of essential public services be granted relief to ensure public health concerns.

Staff Response to Comment California Water Service – 1
The draft Order does not require the Permittee to prohibit drinking water system discharges permitted under State Water Board Order WQ 2014-0194-DWQ, Statewide NPDES Permit for Drinking Water System Discharges to Waters of the United States (Drinking Water System Permit), from entering the Permittee's MS4. For further details, see Staff Response to Comment City of Salinas – 1.

The Permittee is assigned water quality-based effluent limitations based on the Nutrients TMDL for the Lower Salinas River Watershed. In contrast, the Drinking Water System Permit does not currently incorporate the nutrients TMDL; therefore, through Drinking Water System Permit enrollment, California Water Service is not subject to the nutrient TMDL wasteload allocations. However, Provision V (Receiving Water Limitations) of the Drinking Water System Permit states, "Drinking water system discharges to the receiving water that are authorized to discharge under this Order shall

not cause or contribute to the exceedance of a water quality objective or standard in the receiving water, other than water quality objectives or standards for parameters that have been granted an exception under the State Water Board Resolution 2014-0067 and are not part of a TMDL…" So, California Water Service is not permitted to discharge water to waters of the United States that exceeds water quality objectives or standards in receiving waters, including parameters for nitrates.

Provision VI. (Multiple Uses or Beneficial Reuse) of the Drinking Water System Permit, "…strongly encourages all water purveyors to put all or part of the discharge water to multiple uses or a beneficial reuse prior to discharge into surface water." Additionally, if not reusing the water prior to surface water discharge or using the water for beneficial reuse, the Drinking Water System Permit requires applicants in the Notice of Intent to provide reasons that the discharge water cannot be utilized for multiple uses or beneficial reuse. It is unclear if California Water Service and the other water purveyors servicing the Order coverage area have exhausted all multiple uses or beneficial reuse options for discharge water. If multiple uses or beneficial reuse options are unavailable near the points of discharge, the water purveyors, possibly in coordination with the Permittee, could consider other options for routing discharge to the Permittee's Industrial Wastewater facility or the Monterey One Water regional wastewater and reclamation facility. Additionally, during the dry season, potentially there are options to discharge water to Permittee owned and managed retention-based structural control measures.

Although the draft Order does not require the Permittee to prohibit drinking water system discharges permitted under another NPDES permit, it is within the Permittee's prerogative to invoke its own authorities in conditioning discharges to its MS4, which the Permittee owns and operates.

Change made: None.

City of Salinas – 1
Finding B7

- This finding indicates that the "Permittee may not passively receive and discharge pollutants from third parties…"; however, there are situations where the local water purveyor discharges water to the City's MS4 that is high in nitrates. This is allowed under the water purveyor's NPDES permit. The City does not believe that it should be held accountable for potentially nuisance discharges that are outside of the City's control.
- "The Permittee is responsible for other agricultural related discharges into its MS4." The City cannot regulate irrigation discharges from agriculture outside its jurisdictional boundary.

Staff Response to Comment City of Salinas – 1
Provision A.2 states, "The Permittee shall effectively prohibit non-stormwater discharges to the Permittee's MS4 and receiving waters or another MS4, except as allowed under this Provision, or unless such discharges are authorized by a separate NPDES permit."

Discharges from drinking water systems to surface waters in California are subject to the State Water Board Order WQ 2014-0194-DWQ, Statewide NPDES Permit for Drinking Water System Discharges to Waters of the United States (Drinking Water System Permit). Any water purveyor within the Order coverage area, meeting the applicability criteria in the Drinking Water System Permit, is required to obtain coverage under the Drinking Water System Permit. The draft Order does not require the Permittee to prohibit drinking water system discharges permitted under the Drinking Water System Permit from entering the Permittee's MS4.

Although the Permittee is not required to prohibit discharges permitted by other NPDES permits, the Permittee is required to meet water quality-based effluent limitations established based on the Nutrients TMDL. The Permittee and one of the local water purveyors (see comment: California Water Service – 1) have identified that drinking water system discharges within the Order coverage area contain high nitrate concentrations. In order to determine the potential sources contributing to the nutrient concentrations in the Permittee's MS4 outfalls, the Permittee may need to better characterize, or work with the water purveyors to characterize, the nitrate loading from drinking water system discharges within the Order coverage area. If the Permittee determines water purveyors' discharges are preventing the Permittee from achieving effluent or receiving water limitations, the Permittee may need to condition discharges to its MS4.

Finding 6 (Note: Central Coast Water Board staff moved text from Finding 7 to Finding 6) specifically states, "…discharges from agricultural lands that are comprised solely of return flows and/or stormwater are exempt from NPDES permitting. As such, the Permittee is not responsible for these discharges that enter its MS4." Return flow is surface and subsurface water that leaves the field following application of irrigation water. As such, the draft Order states the Permittee is not responsible for agricultural irrigation discharges, originating outside or within the Order coverage area. Central Coast Water Board staff revised Findings 6 and 7 in the draft Order to clarify that irrigation runoff and tailwater from agricultural lands are exempt from NPDES permitting.

Change made: Revisions to Finding 6 and 7.

City of Salinas – 2
Finding C10
According to the Clean Water Act 303(d) List mapping of Alisal Slough, on the State Water Board's website, the section of Alisal Slough that is impaired is not located within the jurisdictional boundaries of Salinas.

Staff Response to Comment City of Salinas – 2
Central Coast Water Board staff corrected Finding 10 (Pollutants in Runoff) by moving Alisal Slough from the table of impairments for receiving waters in the Order coverage area to the list of impairments for receiving waters downstream of the Order coverage area.

Change made: Revision to Finding 10.

City of Salinas – 3
Finding F33
It states in this finding "Incorporation of water quality based effluent limitations to achieve receiving water limitations does not exceed the Clean Water Act (CWA) authority….." and "therefore, a Water Code section 13241 analysis is not required". In a recent court ruling by the Orange County Superior Court, it was determined that "numeric WQBEL compliance is more stringent than the applicable CWA requirements" and therefore the factors listed in CWC §13241 have to be considered. Although an economic analysis is included in the "Economic Considerations" attachment, the statement that a CWC §13241 analysis is not required is incorrect.

Staff Response to Comment City of Salinas – 3
The commenter refers to the Orange County Superior Court's April 19, 2019 ruling in *The Cities of Duarte and Huntington Park v. State Water Resources Control Board, et al.* The Central Coast Water Board is not relying on that ruling because a superior court's interpretation of whether the inclusion of water quality-based effluent limitations (WQBELs) in an MS4 permit requires consideration of the Water Code section 13241 factors is not binding on the Central Coast Water Board.

When a permitting authority issues an NPDES permit, whether the Water Code section 13241 factors must be considered hinges on whether "the numeric pollutant restrictions set out in the permit[] . . . meet or exceed the requirements of the federal Clean Water Act." *City of Burbank v. State Water Resources Control Board* (2005) 35 Cal. 4th 613, 627. "Restrictions" that exceed, or are more stringent than, the Clean Water Act requirements must undergo Water Code section 13241 consideration. The numeric WQBELs in the draft Order do not exceed the Clean Water Act requirements because the water quality-based effluent limitations constitute federal requirements.

Clean Water Act section 402(p)(3)(B)(iii) allows a permitting authority the discretion to require less than strict compliance with state water quality standards as well as the "authority to determine that ensuring strict compliance with state water quality standards is necessary to control pollutants." *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, 1166. Whereas the NPDES permitting authority must include provisions that reduce the MS4's discharge of pollutants to the maximum extent practicable, the federal law also provides permitting authorities the option to include additional provisions that ensure compliance with state water quality standards where necessary to control pollutants, such as WQBELs. *Id*. at 1166-67. The exercise of that option in compliance with Clean Water Act section 402(p)(3)(B)(iii) does not render the option more stringent than the federal law that authorizes it.

USEPA itself has implemented Clean Water Act section 402(p)(3)(B)(iii) when issuing MS4 permits that include WQBELs.[18] In so doing, USEPA, like the Central Coast Water Board here, determined that it was necessary to include WQBELs in the permits to ensure that discharges from the permitted MS4s did not cause or contribute to exceedances of state water quality standards. Because USEPA's authority when issuing MS4 permits is cabined by federal law, USEPA-issued permits reflect and are not more stringent than Clean Water Act requirements. Accordingly, the inclusion of WQBELs in the draft permit is not more stringent than federal law, and consideration of the factors in Water Code section 13241 is not required. Further, federal law and guidance supports the inclusion of numeric WQBELs into the permit. The limitations in question here are based on TMDL waste load allocations (WLA). NPDES permits must contain effluent limits and conditions consistent with the assumptions and requirements of the WLAs in applicable TMDLs (40 CFR § 122.44(d)(1)(vii)(B).) Federal guidance states that, "where the TMDL includes WLAs for stormwater sources that provide numeric pollutant loads, the WLA should, where feasible, be translated into effective, measurable WQBELs that will achieve this objective", including numeric WQBELs where appropriate. See *Revisions to the November 22, 2010 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs"* (November 26, 2014), page 6 (USEPA, 2014).

Change made: None.

City of Salinas – 4
Section E – General Provision 1(a)
Recommend additional verbiage be added to clarify the Order will be implemented according to the implementation schedule listed in Attachment F. "Unless otherwise specified, within one year of the Order effective date, comply with all plans, reports, and other documents required by the Order as per Attachment F, and any other……".

Staff Response to Comment City of Salinas – 4
Central Coast Water Board staff revised Provision E.1 to make this clarifying edit.

Change made: Revision to Provision E.1.

City of Salinas – 5
Section E – General Provision 9 - Recordkeeping
Request the required record retention time be changed to three (3) years in accordance with other State Permits (i.e. CGP or IGP).

[18] See NPDES General Permits for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in New Hampshire, NPDES Permit Nos. NHR041000, NHR042000, and NHR043000 (issued January 18, 2017), Web. 12 Aug. 2019; NPDES General Permits for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts, NPDES Permit No. MAR041000, MAR043000, and MAR043000 (issued April 4, 2016), Web.12 Aug. 2019.

Staff Response to Comment City of Salinas – 5
To effectively provide compliance oversight, Central Coast Water Board staff finds it necessary for the Permittee to retain records for a minimum of five years, commensurate with the term of NPDES permits. For example, if Central Coast Water Board staff conducts an inspection of the Permittee during Year 5 of the Order in preparation of generating the next version of the order, staff must be able to access records from Year 1 of the Order to adequately assess the Permittee's compliance with the Order. 40 Code of Federal Regulations section 122.41(j)(2) specifies the Director (i.e., Central Coast Water Board) can extend the three-year records retention requirement for monitoring information at any time, and 40 Code of Federal Regulations section 122.21(p) authorizes the Central Coast Water Board to require retention of records submitted in connection with permit applications for at least three years after the application is signed.

Central Coast Water Board staff anticipates records retention will become easier for the Permittee once more items are tracked and organized using the electronic information management system.

Change made: None.

City of Salinas – 6
Section E – General Provision 11 – Requirements of Order No. R3-2012-0005
The new Order rescinds the City's current permit and yet this provision stipulates that the City is required to continue to implement its current permit AND implement the items in the new draft permit. The City questions the legality of requiring a Permittee to comply with two MS4 permits. Additionally, the City finds the requirements would be confusing as both permits have differing requirements.

For example, the 2012 Permit has requirements for a retrofit program; the new draft permit does not. Is the City required to continue implementation of the old 2012 Permit retrofit program requirements and report on this annually even though this is not a requirement of the new draft Permit? What if the City wants to develop its own retrofit program that differs from the one required in the 2012 Permit? Does the City have to abide by the project criteria in Attachment H of 2012 Permit? If the new Order rescinds the City's 2012 permit, then it no longer has legal status as the legal mandate for compliance. The City needs more clarification around this provision and the old vs. new permit requirements.

Staff Response to Comment City of Salinas – 6
Provision E.11 intends to require the Permittee to continue implementing components of its current stormwater management program that are required, sometimes with modifications, by the draft Order. Central Coast Water Board staff found it unreasonable to require the Permittee to make program modifications immediately upon the Order effective date. To cease implementation of all stormwater program management activities, until the new program is updated, is not consistent with the MEP standard.

Central Coast Water Board staff deleted Provision E.11 to clarify the City is no longer subject to Order No. R3-2012-0005 once the draft Order becomes effective.

Central Coast Water Board staff revised Provision E.1 to clarify the City must continue implementing its existing stormwater management program, consistent with 40 Code of Federal Regulations section 122.26(d)(2)(iv), until the City implements the corresponding components in the draft Order – within six (6) months of the Order effective date for most provisions. For example, the Permittee must continue implementing its stormwater management municipal maintenance activities pursuant to its existing stormwater management program. However, once the Permittee updates the municipal maintenance components of its stormwater program, even if prior to 6 months after the Order effective date, the Permittee may cease implementation of the corresponding municipal maintenance activities from its existing stormwater management program.

Additionally, Central Coast Water Board staff revised the draft Order to clarify that, upon this Order's effective date, the City can cease implementation of existing stormwater management program components with no corresponding component in this Order. Differing from the City's existing stormwater management program, the draft Order does not have a separate retrofit component. Some other components of the draft Order include requirements that may result in retrofits. For example, the Permittee may identify retrofits as a compliance approach in its Pollutant Load Reduction Plan; the Permittee may identify retrofit opportunities to comply with trash management requirements. However, these are examples of requirements that may result in retrofits, not explicitly required retrofitting; therefore, the Permittee does not need to continue implementing its retrofit program after this Order's effective date.

Central Coast Water Board staff revised Provision E.1 to require the City to implement the requirements in the draft Order, that don't specify an implementation date, within six (6) months after the effective date of the draft Order instead of one year. Central Coast Water Board staff finds six (6) months is appropriate, because most of the initial requirements are a continuation of the City's current stormwater management program, with slight modifications and updates. Additionally, the Order provides the option for the City to request, from the Central Coast Water Board Executive Officer, up to one year to implement activities it finds will take longer than six (6) months to complete. Central Coast Water Board staff revised the following draft Order provisions to specify the City has until the end of Year 1 to implement, such that the City does not have to request an extension for implementing these activities: G.2.g, G.2.h, G.2.k, L.4, O.4, R.4, R.5, R.6, R.8, R.10.

Central Coast Water Board staff edited the following provisions to provide further clarity about the transition process from the existing stormwater management program to the draft Order: G.5, M.1, M.5, M.6.

Change made: Revisions to Provisions E.1, E.11, G.2.g, G.2.h, G.2.k, G.5, L.4, M.1, M.5, M.6, O.4, R.4, R.5, R.6, R.8, R.10, and Attachment F.

City of Salinas – 7
Section E – General Provision 14 (d)
To better align report submittals and allow adequate time for annual report preparation, the City requests the Annual Report submittal date be January 31st of the following year. This aligns annual reporting with submittal of the annual water quality monitoring report as per the CCWB approved MRP QAPP and allows the same annual report preparation time as that of the Phase 2 permit.

Staff Response to Comment City of Salinas – 7
Central Coast Water Board staff made this requested change.

Change made: Revisions to Provisions E.13 and S.1; Attachment E, Section 7; Attachment F.

City of Salinas – 8
Section F – Footnote 30
Currently the State is developing a state-wide collaborative monitoring program to address monitoring requirements for the Sediment Toxicity and Pyrethroid Pesticides TMDL. The State has indicated that participation in the effort via "buy-in" will meet the TMDL monitoring requirements for MS4s. The City recommends that the verbiage in Note 30, "..so long as these efforts align with this Order" be deleted as the State has determined participation in a statewide collaborative monitoring program meets TMDL compliance monitoring requirements.

Staff Response to Comment City of Salinas – 8
The State Water Board-led collaborative monitoring program for urban pesticides is not yet finalized. Because Central Coast Water Board staff does not know the final structure, effectiveness, and value of this statewide approach for the Permittee, the Order must include language to hold the Permittee accountable to implementing a sufficient monitoring approach for the Sediment Toxicity and Pyrethroid Pesticides in Sediment TMDL that will yield helpful and productive information for the Permittee. See Staff Response to Comment CASQA – 6.

Change made: None.

City of Salinas – 9
Section G.1.d
The City is excited to see language supporting a spatially based information management system that provides remote viewer access to the Regional Board. This is a good indication of the Board's support for the steps the City has taken to transform the data management of its stormwater program.

Staff Response to Comment City of Salinas – 9
Comment noted. Central Coast Water Board staff commends the Permittee for its efforts to date developing and utilizing spatially based information management systems to support its stormwater management program.

Change made: None.

City of Salinas – 10
Section G.2.j – Stream Condition
The requirements for the rapid assessment apply to all 2nd and higher order "streams" within the Order coverage area. Does this include the Reclamation Ditch?

Staff Response to Comment City of Salinas – 10
The Center for Watershed Protection's manual for the Unified Stream Assessment references the Strahler stream order system for labeling survey reaches based on stream order. The Shreve method is an alternate method available for ordering streams. Because there are tributary streams that flow into the Reclamation Ditch, using either method, this waterway would be a second or higher order stream.

The draft Order does not require the Permittee to conduct this assessment on the Reclamation Ditch. However, the Permittee could consider pursuing this assessment in coordination with Monterey County Water Resource Agency or on its own voluntarily.

Change made: None.

City of Salinas – 11
Section G.5.c – Non-structural BMP Performance Assessment
The Order states that "by the end of Year 1, the Permittee shall identify at least three Permittee-implemented nonstructural BMPs…..for performance assessments and proposed assessment methods. And at a minimum of every two years thereafter the Permittee shall obtain non-structural BMP performance data……to inform current load reductions". It does not seem feasible to identify three non-structural BMPs in Year 1. This coupled with the interim trash reduction BMPs seems like too much for Year 1 and would be more appropriately required by the end of Year 2. Year two to choose the non-structural BMPs and assessment methods, and data collection start of Year 3, for every two years thereafter.

Staff Response to Comment City of Salinas – 11
Central Coast Water Board staff made this requested change.

Change made: Revisions to Provision G.5; Attachment F.

City of Salinas – 12
Section G.6.b - Prioritization Tools
Prioritization of what? It is unclear what is being required here.

Staff Response to Comment City of Salinas – 12
A few of the provisions require the Permittee to prioritize projects (see Provision P – Construction Site Management), areas (see Provision N – Illicit Discharge Detection and Elimination), and facilities and operations (see Provision O – Commercial and Industrial). Central Coast Water Board staff modified Provision G.6 to provide clarification.

Change made: Revision to Provision G.6.

City of Salinas – 13
Section H.1.d – Interagency Agreements
This is a requirement for the City to develop interagency agreements with the example agencies listed. An interagency agreement may not be possible with some agencies listed and these agreements cannot be mandated as the City has no authority over these listed agencies. Recommend revising language to read as follows: "Work to develop interagency agreements where possible, to control the contribution of pollutants and flows between its MS4 and other storm drain and/or flood water conveyance systems".

It is also recommended that the Central Coast Water Board, through its regulatory ability, work with the listed agencies to accomplish the same as being required herein. To date, municipalities have been responsible for the implementation and enforcement of development standards on schools without being provided the tools or authority to do so. And the Reclamation Ditch is within the City limits; however, it is not owned by the City. MCWRA is the authority with responsibility for the Reclamation Ditch.

Staff Response to Comment City of Salinas – 13
Central Coast Water Board staff made this requested change.

The State Water Board has proposed designation of additional schools for the next Phase II Municipal Stormwater Permit reissuance.

Change made: Revision to Provision H.1.

City of Salinas – 14
Section I – Watershed Asset Management Program

- The City recommends revising this section to allow for a more phased approach (i.e. a certain percentage of the City storm drainage system to be evaluated each year. The City would then report out on the results determined from that year's evaluation. This section requires certain information be obtained for all components of the City's MS4 system. The list of required information is very extensive. The timeline for development of this Asset Management System should be re-evaluated as it took the City of San Diego 10 years and $5M to develop its Asset Management program. Considering the economic challenges and uncertainty the City of Salinas faces, development of an Asset Management Plan by Year 5 is highly unlikely.

- Recommend require development and submittal of the Asset Improvement Plan in the next permit cycle (end of Year 3, next cycle).The City estimates, assuming the City has the budget, that 30,000 linear feet of line can be assessed annually, and a complete assessment of the entire system could take 7 years. Recommend revising this section to allow more time to determine items requested in this section, especially the Hard Asset inventory, condition assessment, and valuation. Once this evaluation is complete, then an Asset Improvement Plan can be developed and submitted.
- The asset inventory includes natural assets, such as "land that may provide water capture, water quality improvement, and/or stormwater protection services". It's unclear if studies are necessary to determine whether a land may provide water capture or water quality improvement. How does the City identify these locations? Recommend having this requirement complete by Year 5.
- This section has been included to assist the City in determination of cost information that can be used to obtain a stormwater utility. This section seems to assume that the City will be successful in this effort; it may not, therefore the costs for implementation of this section should be further evaluated with consideration of Salinas' economic conditions.

Staff Response to Comment City of Salinas – 14
Central Coast Water Board staff acknowledges the resource demands of developing an effective asset management program; however, staff also recognizes the long-term benefits of an effective asset management program and the contribution of such a program toward compliance with draft Order requirements to protect beneficial uses.

See Section IV.B in Attachment G (Economic Considerations) to the draft Order, regarding economic considerations for the asset management requirements. Attachment G provides the example of the City of San Diego's cost to develop an asset management program, recognizing that San Diego is a large municipality and the Permittee would not be expected to expend the same level of resources to develop an asset management program. To further clarify the contrast, Central Coast Water Board staff revised Section IV.B of Attachment G (Economic Considerations) to indicate storm drain conveyance system length, municipality size, and population for both the City of San Diego and the Permittee. Additionally, Central Coast Water Board staff finds the Permittee could develop a less sophisticated asset management program, relative to City of San Diego, that meets the requirements of the draft Order and is tailored to the Permittee's needs.

Section IV.I of Attachment H (Fact Sheet) to the draft Order provides the principal facts and the central legal, methodological, and policy questions staff considered in preparing the asset management requirements. See Staff Response to Comment CASQA – 2. Central Coast Water Board staff revised the draft Fact Sheet to more clearly define the legal authority supporting the asset management requirements. Additionally, the Fact Sheet describes how the Permittee has already accomplished components of the asset management program and has established a foundation to support future components

of an asset management program. Therefore, the Permittee will not be starting from the beginning when embarking on an asset management program. The Fact Sheet also describes how other provisions of the draft Order require actions that will inform and populate aspects of the asset management program.

Additionally, the Permittee may be able to tap into other resources outside of the stormwater program to inform and populate aspects of the asset management program. For example, in 2018, the Permittee updated the City of Salinas' Pavement Management System to inform maintenance and repair to the Permittee's streets and roadways. This may provide a resource for the Permittee's asset inventory of roads and potentially the Permittee could look to align future updates of this plan with future level of service and valuation requirements for asset management in the draft Order. Monterey County Water Resource Agency (MCWRA) is the flood management authority for the Order coverage area. To develop an asset management program that holistically addresses stormwater within the Order coverage area, the Permittee would likely coordinate and share resources with MCWRA.

In response to the commenter, Central Coast Water Board staff revised the draft Order to provide additional time for inventorying the storm drain system hard assets. Additionally, Central Coast Water Board staff clarified that for the natural asset inventory, the Permittee can rely on existing information and does not need to conduct new studies and/or field work. The City of San Diego's Watershed Asset Management Plan provides an example for incorporating natural assets into an asset management program.

Central Coast Water Board staff did not revise the draft Order's required schedule for completion of the first version of the Asset Management Improvement Plan. Staff proposes to maintain the requirement to develop a plan during this Permit cycle to make progress in this Permit cycle, align and support the Pollutant Load Reduction Plan implementation, and support development of a stormwater funding mechanism or sustain an approved funding mechanism.

Central Coast Water Board staff also added further clarification, via footnotes in Provision I, to explain the following: the City does not have to conduct comprehensive effectiveness assessments for soft assets; the City may address other factors in its asset management planning to address other benefits such as flood risk management and water supply augmentation with stormwater; and the City can develop a living document in place of a static document for the Asset Management Improvement Plan.

Change made: Revisions to Provision I; Attachment F; Section IV.I of Attachment H (Fact Sheet); and Section IV.B of Attachment G (Economic Considerations).

City of Salinas – 15
Section J.2 – Fiscal Analysis

- Recommend deletion of "including legal restrictions on the use of such funds". If there are legal restrictions on the use of any funds, then the City will not consider use of these funds.
- Recommend deletion of "(including volunteer programs or programs of other agencies)". Cost-sharing with other agencies is normally encapsulated within the total costs of the implementation of the Public Education and Involvement program. Additionally, use of volunteers is reported in the body of the Annual Report. The dollar value of volunteer support cannot readily be determined. Recommend this requirement be deleted for inclusion in the fiscal analysis.
- Recommend the deletion of J.2.b.iii - The City's stormwater program is funded through the use of several funding sources; however, which fund supports which cost category is not attainable as the funds are consolidated into one pot of money. It is, however, possible to report which funding sources were used to support the entire NPDES program.

Staff Response to Comment City of Salinas – 15
The requirement to describe legal restrictions on the use of funds is found in 40 Code of Federal Regulations section 122.26(d)(2)(vi) (see Staff Response to Comment CASQA – 5). Restrictions on the use of funds are important to determine an accurate funding base for program implementation. In some situations, funding may be legally available for use for one activity, but not another. For example, grant funding from the State Water Board must be used only for the specific work outlined in the grant agreement, and would not be available for achieving compliance with most draft Order requirements

The draft Order does not require the Permittee to report a monetized value of volunteer programs, but simply to identify such programs where they exist so it is clear where implementation of Order requirements is cost neutral.

It is critical that the fiscal analysis identify resource sharing with other agencies to convey an accurate accounting of the costs to implement the Permittee's stormwater program. For example, if the Permittee is participating with other agencies in a public education campaign for the entire Monterey County, the fiscal analysis should clearly identify the Permittee's financial contribution to that campaign to avoid mischaracterizing or overstating the costs incurred by the Permittee for implementing the public outreach and education provisions of the draft Order.

Provision J.2.b includes the qualifier, "as applicable." So, for example, if the Permittee combines funding sources into one fund, the Permittee can explain this in its fiscal analysis and report the combined costs.

Change made: None.

City of Salinas – 16
Section K.1.a.iv – Pollutant Source Identification
What is meant by identification of sources of pollutants in MS4 discharges? Many sources are already monitored in various sections of the permit: Trash, Municipal Maintenance, Commercial and Industrial Facilities, and Illicit Discharge. The City is concerned by the vagueness in this item as there is a plethora of potential pollutant sources that may be contributors.

Staff Response to Comment City of Salinas – 16
Pollutant source identification in discharges from the MS4 is a primary objective of stormwater monitoring programs. The presence or absence of a pollutant in the MS4 discharge provides the preliminary basis and initial step for source identification in the contributing tributary area. The comment correctly states that source identification is also supported by required actions in other sections of the draft Order. The intent of including source identification among the objectives for monitoring is to ensure that the results of monitoring can potentially corroborate the Permittee's other source identification activities with data acquired through water quality monitoring.

Change made: None.

City of Salinas – 17
Section L.4.iv & v – Trash Monitoring Plan
- Section L.4.a.iv: Recommend changing language to "Has the amount of treated PLU area in compliance increased from the previous year?".
- Recommend changing language to "Has the cumulative length of receiving water with low trash increased from the previous year?".

This item requires the City to provide information that it cannot obtain. According to the methodology currently being used by the City to determine trash loading, the amount of trash in the City and its receiving waters at a certain point in time can be estimated; however, whether the trash in the receiving waters came from the City or originated outside of the City cannot be determined. The Trash Amendments do not require ongoing visual assessments of receiving waters; they require a set number of visual assessments of MS4 Priority Land Use Areas be performed during the dry and wet seasons. The correlation between the amount of trash on the cityscape and the amount of trash in the receiving waters (and its source) is very difficult to determine and may require resources beyond what the City can provide.

Staff Response to Comment City of Salinas – 17
The Trash Discharge Prohibition[19] states, "The Permitting Authority [Central Coast Water Board] must include monitoring and reporting requirements in its implementing

[19] At this time, the Trash Provisions, establishing a prohibition of discharge of Trash, for the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California Plan (ISWEBE Plan)

permits [the Order]. The following monitoring and reporting provisions are the minimum requirements that must be included within the implementing permits…" The prohibition specifies that MS4 permittees electing to comply with Track 2 must answer the questions specified in Provision L.4.

Change made: None.

City of Salinas – 18
Section M.4.b.i.1 – Pest Population Monitoring
Recommend deletion of item. This requirement seems very unreasonable. The City has no issue with development/implementation of an IPM policy and procedures and tracking of pesticide usage and replacement. However, the "monitoring of pest populations, including unwanted vegetation" is very vague and requires clarification as to what is requested in this item. The City can provide application rates and locations and types; however, the types and amounts of pest populations and unwanted vegetation seems quite onerous.

Staff Response to Comment City of Salinas – 18
A cornerstone of all pest management strategies is the preventative measures that reduce the occurrence of pest infestations. Successful prevention then supports a central tenet of Integrated Pest Management, which is targeted pesticide and fertilizer applications, only when and where necessary.

According to the California Department of Pesticide Regulation, pests can be insects or animals (e.g., mice), unwanted plants (weeds) or organisms that cause plant disease.[20] Central Coast Water Board staff added this definition to Attachment B (Definitions) of the Draft Order. Therefore, Integrated Pest Management practices also apply to unwanted vegetation.

To employ effective prevention strategies, the Permittee must conduct monitoring sufficient to understand the conditions that support pests, including unwanted vegetation. A University of California publication includes the following within the procedures for designing an Integrated Pest Management program, "Overall, the objectives of a monitoring program are to pinpoint precisely when and where pest problems may become intolerable and to determine the effectiveness of treatment actions."[21] The University of California definition of Integrated Pest Management

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are found in the Trash Amendments, adopted by the State Water Board on April 7, 2015, at Appendix E of the Final Staff Report to the Amendment to the Water Quality Control Plan for the Ocean Waters of California to Control Trash and Part 1 Trash Provisions of the Water Quality Control Plan for the ISWEBE Plan. The State Water Board plans to incorporate the Part 1 Trash Provisions to the ISWEBE Plan, once it is adopted.

[20] "A Guide to Pesticide Regulation in California," 2017 update, California Department of Pesticide Regulation, page 24, Web. 26 August 2019.

[21] Flint, Daar, and Molinar, "Establishing Integrated Pest Management Policies and Programs: A Guide for Public Agencies," publication 8093, University of California, Division of Agriculture and Natural Resources, Web. 31 July 2019, page 4.

includes, “Pesticides are used only after monitoring indicates they are needed according to established guidelines, and treatments are made with the goal of removing only the target organism.”[22]

University of Davis explains, “Monitoring methods vary from pest to pest,” and provides links to specific monitoring resources.[23] The draft Order does not specify the monitoring the Permittee must conduct but includes the requirement to monitor to ensure the Permittee is building its IPM program on a foundation of preventative measures and knowledge of when pesticides are needed.

Central Coast Water Board staff revised Provision M.4 to clarify the Order only requires the City to conduct pest population monitoring that is necessary to inform pesticide use and abatement of conditions conducive to pest populations and unwanted vegetation. Central Coast Water Board staff also revised Provision M.4 to clarify that the City does not need to submit revisions of its IPM policy. Central Coast Water Board staff can request a current version of the IPM policy when needed and/or view during inspections.

Provision E.3 in Order No. R3-2012-0005 required the City to implement BMPs for pesticide, herbicide, and fertilizer application, storage, and disposal that included integrated pest management measures that rely on non-chemical solutions for all municipal areas. Therefore, Order No. R3-2012-0005 already requires the City to adhere to Integrated Pest Management, and as described above, pest population monitoring is an integral component of Integrated Pest Management.

Change made: Revisions to Provision M.4; and Attachment B.

City of Salinas – 19
Section M.6.a - Prioritization
Recommend requiring the street prioritization occur in Year 2. This allows the City to evaluate the sediment loading on City streets in Year 1, which better informs the prioritization process. During Year 1, the City will continue to sweep according to current street sweeping routes.

Staff Response to Comment City of Salinas – 19
Central Coast Water Board staff made this requested change.

Change made: Revisions to Provision M.6.a; Attachment F.

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[22] Berger, Farrar, Goodell, and McIntyre, “Roadmap for Integrated Pest Management: Systems Thinking to Build Better IPM for All Californians,” University of California, Division of Agriculture and Natural Resources, Web. 31 July 2019, page 4.
[23] Flint, Daar, and Molinar, “Establishing Integrated Pest Management Policies and Programs: A Guide for Public Agencies,” publication 8093, University of California, Division of Agriculture and Natural Resources, Web. 31 July 2019, page 4.

City of Salinas – 20
Section M.6.b - Frequency
Recommend the City sweep according to the new permit frequencies in Year 3. This section needs to allow the flexibility for the City to determine its own street sweeping routes based on results of the sediment loading evaluation and prioritization.

Staff Response to Comment City of Salinas – 20
Central Coast Water Board staff made this requested change.

Change made: Revisions to Provision M.6.b; Attachment F.

City of Salinas – 21
Section M.6.c.ii – Parking Restrictions
Recommend commencement of the parking restriction program on high and medium priority streets begin in Year 3 with complete implementation by Year 5. The City has limited resources and there are many requirements in this permit that would, each individually, deplete those resources. The City needs to alternate program implementation requirements in order to be able to potentially fund them.

Staff Response to Comment City of Salinas – 21
Central Coast Water Board staff made the requested changes to provide the Permittee an additional year to develop and commence its parking restriction strategy and to complete the parking restriction program.

Change made: Revisions to Provision M.6.c; Attachment F.

City of Salinas – 22
Section N.2.d – Pesticide and Fertilizer Application
Section O.4 – Commercial Pesticide Applicator database
According to the DPR, information regarding which applicators are located within City limits can be determined. However, information regarding those applicators who are located outside of the City limits and apply pesticides in the City or applicator usage amount within City limits cannot be obtained. Usage amounts are only tracked according to County area. And the County does not have a list of applicators and their usage as it is not required by their permit. Delete the requirement for a pesticide/fertilizer application investigation program.

Staff Response to Comment City of Salinas – 22
Regarding the pesticide and fertilizer investigation requirements in Provision N.2.d, see Staff Response to Comment CASQA – 6.

See Staff Response to Comment CASQA – 6, for data indicating water quality impacts from pesticide and fertilizer application and justification for requiring the Permittee to help reduce the transport of pesticides into the MS4 and receiving waters. The Permittee must know what pesticide applicators are conducting business within the Order coverage area to most effectively target pesticide education and outreach efforts

to the applicators. Central Coast Water Board staff revised the draft Order to provide more guidance on resources available for developing this applicator inventory.

In response to the commenter, Central Coast Water Board staff removed the requirement in the draft Oder to track inventoried applicators' pesticide application use data (e.g., type and quantity). Central Coast Water Board staff acknowledges the challenges with obtaining application data specifically for the Order coverage area. Note that Provision R.10.c.ii requires the Permittee to target outreach to the licensed commercial pesticide applicators posing the highest threat to water quality, based on accessible data. This requirement intends for the Permittee to seek available data to inform which applicators might apply higher quantities of pesticides, use pesticides posing a higher threat to water quality, or have a history of pesticide misuse. In order to contribute to an effective and tailored education campaign for this potential pollutant source, the Permittee must work towards better characterizing this class of dischargers and its practices.

Change made: Revisions to Provision O.4; Provision R.10.c; and Attachment F.

City of Salinas – 23
Section P.1.b – Applicable Projects
Revise the words "updated weekly" to "updated as new applicable projects are submitted". The City will update the digital inventory as applicable projects are reviewed and approved. There may be no projects every week.

Staff Response to Comment City of Salinas – 23
The draft Order requires the Permittee to maintain a Construction Project Inventory that is updated weekly. The Permittee is required to update this inventory to include new projects, but also to track information (e.g., current construction phase, Permittee inspections, compliance status) about current projects already inventoried. To make this an enforceable requirement, Central Coast Water Board staff recommends retaining an update frequency for maintaining this inventory. If there are no necessary inventory updates during a particular week, the Permittee does not need to make updates.

Change made: None.

City of Salinas – 24
Section P.4.a – Plan Submittal
The City recommends adding language to indicate a WDID# will not be issued from the State unless an MS4's approval is obtained. This has been a past issue where applicants receive CGP approval prior to the City's review of the SWPPP and where applicants have indicated that other agencies don't have this review requirement as the CGP is between the applicant and the State.

Staff Response to Comment City of Salinas – 24
The draft Order requires the Permittee to ensure projects meeting the Construction General Permit applicability criteria demonstrate evidence to the Permittee that the

applicant has coverage under the State Construction General Permit (see Provision P.4.b.i.2). To require the State to wait for approval from the Permittee before issuing Waste Discharge Identification (WDID) numbers, would effectively alter the enrollment process established in the Construction General Permit. Additionally, because the State Water Board, not the Central Coast Water Board, issues WDID numbers to discharges, the commenter's proposal is not viable.

Change made: None.

City of Salinas – 25

Finding F33 & Section P.5.b – Inspection Frequency

"The Central Coast Water Board finds that the requirements in this Order are not more stringent than the minimum federal requirements." The requirements of this Order are more stringent for construction inspections than other orders. For example, Order R4-2012-0175 for MS4s within the Coastal Watersheds of LA County, has inspection frequencies less than this order. See table below:

Table 17. Inspection Frequencies for Sites One Acre or Greater

Site	Inspection Frequency Shall Occur
a. All sites 1 acre or larger that discharge to a tributary listed by the state as an impaired water for sediment or turbidity under the CWA § 303(d)	(1) when two or more consecutive days with greater than 50% chance of rainfall are predicted by NOAA[29], (2) within 48 hours of a ½-inch rain event and at (3) least once every two weeks
b. Other sites 1 acre or more determined to be a significant threat to water quality[30]	
c. All other construction sites with 1 acre or more of soil disturbance not meeting the criteria above	At least monthly

Figure 1. Inspection Frequencies for Sites One Acre or Greater from Order R4-2012-0175 (Salinas – 25).

Staff Response to Comment City of Salinas – 25

When drafting this Order, Central Coast Water Board staff referenced other municipal stormwater permits in an effort to promote greater consistency among the permits issued throughout the State. However, ultimately, Central Coast Water Board staff based the requirements in the draft Order on the federal requirements supporting this NPDES permit action and on the compliance history and other conditions related to implementation of the Permittee's stormwater permits. Central Coast Water Board staff is not obligated to use the same construction site inspection frequencies prescribed by other municipal stormwater permits. In the draft Order, Central Coast Water Board staff proposes similar wet season construction site inspection frequencies as Order No. R3-2012-0005 and a reduction in dry season inspections. See section IV.P in the draft Fact Sheet for a more detailed discussion about this. During the term of Order No. R3-2012-0005, the Central Coast Water Board Executive Officer issued a Notice of Violation to the Permittee because the Permittee's stormwater construction inspection program did not adequately identify and record deficiencies and noncompliance. Since the Notice of Violation issuance, the Permittee has demonstrated improvements to its oversight of construction sites. However, because of this compliance history, Central Coast Water

Board staff does not recommend a reduction in wet season construction site inspection frequency.

Change made: None.

City of Salinas – 26
Section P.5.b – Inspection Frequency
The City recommends that "weekly" be changed to "every two weeks" for High Priority projects. This will allow the City, with our limited resources, to increase the inspection frequency for low performing sites. In addition, the inspection frequencies in this section only address the rainy season. What are the inspection frequencies during dry season? Recommend maintaining current inspection frequency of monthly for High Priority and every two months for Low Priority.

Staff Response to Comment City of Salinas – 26
Central Coast Water Board staff revised the construction site inspection frequencies relative to Order No. R3-2012-0005, with the intent to focus the Permittee's resources for oversight of construction activities on those with the highest threat to water quality. For low priority sites during the rainy season, Central Coast Water Board staff proposes no change relative to the current Order for inspections. For high priority sites during the rainy season, Central Coast Water Board staff proposes weekly and post-rain event inspections, which is the same as the current Order. Additionally, Central Coast Water Board staff proposes requirements for the Permittee to provide closer oversight of low-performing construction sites. The Permittee has a history of non-compliance with construction site oversight; therefore, Central Coast Water Board staff finds this current level of oversight for high priority construction sites during the rainy season is necessary. Central Coast Water Board staff acknowledges that rigorous oversight of construction sites during the dry season is less critical; therefore, the draft Order moved dry season oversight of construction sites to Provision N (Illicit Discharge Detection and Elimination), because the primary water quality concern is illicit discharges.

Change made: None.

City of Salinas – 27
Section Q.1.b – Project Thresholds
The City's Stormwater Development Standards, adopted in December 2013, had different project thresholds and performance requirements than the Region 3 Post-Construction Requirements (PCRs). Recommend the date for updating the new project inventory according to the newly adopted PCRs be October 1, 2019, the adoption date of the new Permit. The City's current project inventory, which was required by the current permit, does include all projects greater than or equal to 2500 sf of new and/or replaced impervious surface that received first discretionary or ministerial approval of project design since 2013.

Staff Response to Comment City of Salinas – 27
Central Coast Water Board staff made this requested change.

Change made: Revision to Provision Q.1.b.

City of Salinas – 28
Section Q.5.a.iii
Recommend deleting the following: "If the Permittee allows recreational trails to be located within the setback, the permittee shall implement a re-vegetation program wherein a vegetative buffer is established between the trail and the outside edge of the riparian vegetation". If the trail is at the edge of the riparian vegetation, then there is already vegetation there. Why increase the vegetated area because of a trail?

Staff Response to Comment City of Salinas – 28
The areas within the designated setback areas will not always be vegetated. So, if there is a gap in vegetation between the edge of riparian vegetation and a new trail within a setback area, the draft Order requires the Permittee to require development projects to re-vegetate that area.

Change made: None.

City of Salinas – 29
Section Q.5.c.ii – In-Lieu Fee Compliance Program
The criteria for projects for which the fee is to be used are too restrictive. Due to the economic condition of the City, the City does not have a lot of projects to choose from to incorporate green riparian areas. And many times, project implementation schedules are years out from when the in-lieu fee exception must be used.

- Recommend changing "urban subwatershed" to "watershed" to allow greater flexibility in project location

Recommend changing the construction commencement schedule to commence within 5 years of the construction of the project being mitigated.

Staff Response to Comment City of Salinas – 29
The in-lieu fee compliance program outlined in Provision Q.5.c already provides flexibility to the Permittee by allowing projects in alternate Urban Subwatersheds, so long as there is demonstration that the alternate location is in more critical need for restoration of watershed processes.

Waiting five years to commence a mitigation project for impacts already incurred would unnecessarily extend the temporary loss of watershed processes. Central Coast Water Board staff is amendable to revising the draft Order to provide two years.

Change made: Revision to Provision Q.5.c.ii.

City of Salinas – 30
Section R.4 – Priority Stormwater Issues
Delete the requirement to include Ag-related pollutants and stormwater program funding challenges from the list of priority stormwater issues. The City implements and manages its program. And as such, it is familiar with what the priority stormwater issues are. Trash is a priority stormwater issue. Stormwater program funding is an administrative issue, not a pollutant issue. When the City takes the initiative to develop a stormwater utility, there will be plenty of education and outreach on the stormwater program funding challenges. Additionally, the City has no control over Ag-related pollutants. The City chooses to use its limited resources to address the stormwater pollutants the City has influence on. We have no authority over the Ag industry or their operations. We do not believe the CCWB can dictate what stormwater issues to address in our Education and Outreach program; it should be the Permittee's decision.

Staff Response to Comment City of Salinas – 30
Pursuant to Provision R.4, the Permittee can demonstrate that agricultural-related pollutants and stormwater program funding challenges are not priority water quality issues and include alternate topics if it deems appropriate.

In previous meetings and communications with the Permittee, it has emphasized the potential threat to water quality posed by agricultural-related pollutants generated within the Order coverage area and transported into the Order coverage area. In Finding 7, Central Coast Water Board staff acknowledges the Permittee's authorities are limited for regulating agricultural-related discharges into its MS4. However, federal and state regulations do not prevent the Permittee from implementing measures to reduce some agricultural-related discharges (e.g., agricultural field track-out onto the Permittee's MS4, agricultural-related pollutants transported on farm vehicles from fields into the Order coverage area).

Secondly, the Permittee has emphasized the challenges with funding its stormwater management program. To successfully establish a sustainable stormwater program funding source or utility, Central Coast Water Board staff finds that ensuring residents understand the necessity of a stormwater management program is critical for building the necessary support to pass a funding initiative.

Change made: None.

City of Salinas – 31
Section R.10.c.ii – Pest Control Professionals
Delete the following sentence: "The targeted outreach program shall explain to applicators……for instances of pesticide misuse". The City has no way to determine which applicators may be misusing pesticides. The City can provide targeted outreach to applicators; however, we cannot provide a reporting/notification process because we have no way of knowing when it occurs.

Staff Response to Comment City of Salinas – 31
See Staff Responses to Comment CASQA – 6 and Comment City of Salinas – 22 regarding identification of pesticide misuse. The draft Order requires the Permittee to help identify situations of pesticide misuse (see Provision N- Illicit Discharge Detection and Elimination) and when misuse is identified, to notify applicable entities with regulatory authority over licensed pesticide applicators.

Change made: None.

City of Salinas – 32
Section S.3.d.i.2 – Pesticide Management (reporting)
Delete this item. The City has no way to determine the information being requested for report out. Quantities and types of pesticides/fertilizers used by non-Permittee owned and operated areas (within the City) is not accessible.

Staff Response to Comment City of Salinas – 32
Central Coast Water Board staff made the requested change.

Change made: Revision to S.3.d.

City of Salinas – 33
Attachment B – "Impervious Surface"
Recommend that either synthetic turf be added to the listing of surfaces included as it may "impede the natural infiltration of stormwater" or the CCWB define how synthetic turf permeability is to be addressed when being utilized in development projects.

Staff Response to Comment City of Salinas – 33
Because there are many different types of synthetic turf and installation techniques, Central Coast Water Board staff does not propose a blanket treatment of these surfaces when applying post-construction requirements to applicable projects. Reference Attachment C (Definitions Related to Post-Construction Requirements) in the Central Coast Post-Construction Requirements for definitions for "impervious surfaces" and "permeable or pervious surface." Depending on the design of the synthetic turf, if could fall into either of these categories. For example, if the synthetic turf is constructed on top of an existing concrete surface, that would meet the impervious surface definition. However, if the project applicant constructs the synthetic turf using permeable materials allowing stormwater to infiltrate into the ground, that could meet the permeable or pervious surface definition.

For development projects triggering the Central Coast Post-Construction Requirements treatment requirements, the draft Order requires the Permittee to require the applicant to treat runoff from the entire site (pervious and impervious surfaces). Therefore, if there is potential for runoff of chemicals associated with the synthetic turf material and/or cleaning agents used on turf, the Permittee should ensure the applicant implements effective measures to specifically address those pollutants of concern.

Change made: None.

City of Salinas – 34
Attachment B – "Waters of the State"
Delete the following:" Under this definition, a MS4 is always considered to be a Waters of the State". Neither 40 CFR 122.2 nor the Porter-Cologne include an MS4 in the definition of Waters of the State. And 40 CFR 122.2 specifically states that stormwater conveyance systems are not included in the definition.

Staff Response to Comment City of Salinas – 34
Central Coast Water Board staff made this requested change.

Change made: Revision to Attachment B.

City of Salinas – 35
Attachment G – Economic Considerations
CCWB staff have provided a somewhat detailed cost analysis for implementation of the proposed new Order. CCWB staff have concluded that funding the program required by the new Order is feasible; however, they also stated that a more detailed analysis would be needed to estimate the full cost for implementation of the Order. CCWB staff have indicated that this Order "does not require the Permittee to fully implement all requirements within in single permit term" and CCWB staff have "where appropriate, provided the Permittee with additional time outside of the permit term to implement control measures…". The assumptions made in this section are ***assumptions***; these may or may not apply when the City moves forward to develop a stormwater fee.

Staff Response to Comment City of Salinas – 35
Central Coast Water Board staff finds using reasonable assumptions is appropriate when considering unknown or future costs.

Change made: None.

City of Salinas – 36
Homelessness
A lot of references to the homeless are made within this Order. There are limitations on what the City can do with respect to eliminating homeless encampments. Additionally, addressing homelessness is a multi-jurisdictional effort and the responsibility should not fall entirely on the City. This is an issue much bigger than just Salinas.

Staff Response to Comment City of Salinas – 36
See Staff Response to Comment CASQA – 4. The draft Order requires the Permittee to better characterize water quality issues related to homelessness, transient camps, and socio-economically stressed areas and to take some steps to reduce pollutant loading to receiving waters from these land uses and activities. However, the draft Order does not require the Permittee to eliminate homeless encampments.

Change made: None.

Fred Krieger – 1
I appreciate the opportunity to provide comments on the draft NPDES permit for stormwater discharges by the City (NPDES Permit No. CA0049981). I reviewed the draft from the following standpoint:

- Can the City reasonably comply with the permit requirements, both now and in the future?
- Will the permit provisions represent a reasonable and cost-effective expenditure of City funds, given other economic and social factors?

The attached set of comments is based on these criteria. The major concerns:

1. The permit appears to inadvertently place the City in a position of immediate non-compliance with no feasible method of coming into compliance. This exposes the City to enforcement action by the Water Boards or by third parties.
2. Even with an expended compliance periods, best management practices are not available to comply with the proposed permit requirements, especially those related to Basin Plan objectives which may be out of date. Providing a high level of treatment to urban runoff is not feasible.
3. The permit includes prescriptive requirements and appears to present a very significant administrative burden for this relatively small stormwater program. Many requirements go beyond those included in other California MS4 permits or other MS4 permits issued by U.S. EPA.[24]

Attachment with comments

Attachment

Comments submitted on the Draft Order

(Draft Order No. R3-2019-0073; NPDES Permit No. CA00 CA0049981; June 10, 2019)

These comments have been developed to address the feasibility of compliance and the need to protect the environment while ensuring the responsible expenditure of public funds.

Staff Response to Comment Fred Krieger – 1
Comments noted.

Change made: None.

[24] For example, see the Phase 1 MS4 permit issued by U.S. EPA to Washington DC., available here.

Fred Krieger – 2

1. Compliance with the Receiving Water Limitations:

   Similar to many of Phase 1 MS4 permits in California, this Draft Order specifies the discharges "*shall not cause or contribute to exceedances of water quality standards*." However, compliance with these Receiving Water Limitations does not appear feasible for several reasons.

   a. Potential for immediate non-compliance.

   As currently structured, provision *C. Receiving Water Limitations,* may expose Salinas to enforcement when the permit is issued.

   Permit provision: *C. Receiving Water Limitations*

   1) *Discharges from the MS4 shall not cause or contribute to exceedances of water quality standards in any receiving waters (hereinafter "receiving water limitations"), including but not limited to all applicable provisions contained in:*

   a) The Central Coast Water Board's Basin Plan;
   b) State Water Board policies and plans for water quality control, including specifically: ….
   c) Priority pollutant criteria promulgated by the USEPA through the following: {NTR & CTR]

   The 9th Circuit Court of Appeals decision in NRDC vs. Los Angeles County Flood Control District (July 13, 2011), and the preceding trial court opinion emphasized that an iterative process such as the one established in the Los Angeles MS4 permit simply specify the means of coming into compliance and do not undo the clearly stated requirement that discharges not cause or contribute to an exceedance of standards.[25] In other words, the subsequent procedures specifying the means of compliance do not contravene the stand-alone prohibition on exceeding standards.

   In this Draft Order, the iterative process is being replaced by the *Pollutant Load Reduction Plan*. Permit provision F.1) states:

   Water Quality Based Effluent and Receiving Water Limitations Compliance Determination – The Permittee's compliance with the below (Provisions F.1.a and F.1.b), shall constitute compliance with Provision B.2.a (Water Quality Based Effluent Limitations) and ***Provision C.1 (Receiving Water Limitations)****. The Permittee shall also ensure the controls implemented pursuant to the Pollutant Load Reduction Plan (PLRP) reduce discharge of pollutants to the maximum extent practicable (MEP) pursuant to Provision B.1 (Technology Based Effluent Limitations). [****emphasis added****]*

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[25] See the revised opinion by the U.S. 9th Circuit Court of Appeals regarding the LA County stormwater permit (*NRDC, Inc. v. County of Los Angeles, No. 10-56017, 9th Cir. 2011*), posted here.

The draft permit provision C. requires the discharges to *not cause or contribute* to exceedances and is not explicitly linked (within the provision) to the corresponding language regarding the PRLP.

Consequently, it may be interpreted as stand-alone permit provision. As indicated in the revised 9th Circuit Opinion: "*each permit term is simply enforced as written,*" implying that any exceedance constitutes a violation now – not after implementation of a subsequent permit provision. In other words, the preparation of the PRLP may not constitute an effective "enforcement shield," leaving Salinas in a difficult compliance situation.

As discussed later, the Basin Plan and EPA's CTR criteria include water quality standards that will be exceeded in the stormwater discharges and also in the receiving water. For some of these standards, cost-effective or feasible controls do not appear to be available, even in the long-term. This presents a serious compliance problem.

b. Demonstration of future compliance

The Fact Sheet (p. H-10):

> *Additionally, this Order requires the Permittee to demonstrate, in its Pollutant Load Reduction Plan, how it will achieve effluent and receiving water limitations, at the Salinas River discharge point as well as other Permittee discharge points.*

It is not possible for the PLRP to demonstrate future compliance. For example, the discharges from the urban areas are very unlikely to achieve a coliform concentration of 2.2/100 mL (seven-day median), which is the Basin Plan objective for receiving waters with the MUN beneficial use (Municipal and Domestic Water Supply). Similarly, the MUN waterways and the discharges entering them will not achieve the aluminum objective based on the primary Maximum Contaminant Levels (MCLs). The REC-1 bacteria objectives are another significant compliance obstacle. BMPs are not available for MS4s to provide the high level of pollution reductions necessary (e.g., disinfection). These pollutants of concern are discussed in more detail below. The consequence is that a permittee cannot develop a plan to achieve results that are not achievable.

c. Pollutants of concern

Compliance does not appear feasible for the following pollutants. In some cases, this is because the objectives are out of date or inappropriately assigned. Other pollutants, not listed below, may also present similar compliance problems.

Aluminum

The Basin Plan applies drinking water standards—the maximum contaminant levels (MCLs)—to waterways with the Municipal and Domestic Water Supply (MUN) beneficial use designation. The Basin Plan applies the MUN designation to Gabilan Creek and Alisal Creek and segments of the Salinas River. The MCLs are intended to protect human health in drinking water as delivered to the

customer. California considers aluminum a primary—health-based MCL—but U.S. EPA does not. The Primary MCL for aluminum is 1,000 µg/L (1 mg/L).

Aluminum is found in most rocks, clays, soils, and sediment and is often present in stormwater runoff and in both natural and impacted waterways during wet weather. U.S. EPA cites sources stating that, due to its abundance in the earth's crust, soil concentrations of aluminum average approximately 71,000 mg/kg.[26] Aluminum is naturally present in California benchmark soils at a similar average concentration (7.3%).[27]

Natural waterways often exceed the aluminum MCL. A historical evaluation of aluminum in three major watersheds in Ventura County found that 100% of wet weather samples in natural watersheds upstream from anthropogenic activities exceeded 1 mg/L.[28] In the Salinas Valley, the waterways with typically turbid agricultural runoff will potentially exceed this MCL by orders of magnitude. Consequently, Salinas will be required to achieve end-of-pipe (at the point of discharge) concentrations less than or equal to the 1 mg/l MCL. However, urban runoff from Salinas will almost certainly exceed the MCL. Necessary treatment to consistently achieve 1 mg/L would generally include stormwater capture and transport to treatment facilities, plus flocculation, precipitation, and filtration. This level of treatment is not feasible for the many points of discharge typical of MS4s. The costs (and feasibility) of this compliance problem was not addressed in the Fact Sheet or Economic Assessment.

Also, U.S. EPA has recently promulgated new recommended water quality criteria for aluminum for the protection of aquatic life in freshwater. EPA's recommended criteria must be considered by states in the development of their criteria ("objectives" in California). The new criteria for aluminum are based on local water chemistry—pH, hardness, and dissolved organic carbon (DOC)—factors affecting bioavailability. The compliance challenges of EPA's new aluminum criteria have not been assessed for the Salinas discharges.

The following table indicates the possible concentration of aluminum associated with a relatively low concentration (50 mg/L) of TSS in stormwater runoff.[29]

Estimated Runoff Concentrations due to Natural Soil Constituents

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[26] Docket ID No. EPA=HQ-OW-2017-0260 (Draft Aluminum Criteria), p. 6

[27] *Background Concentrations of Trace and Major Elements in California Soils*, Kearney Foundation of Soil Science, University of California, 1996, Table 2

[28] *Historical Data Evaluation of Aluminum in the Ventura River, Santa Clara River, and Calleguas Creek Watersheds*, June 2014, Prepared by: Larry Walker Assoc., available here.

[29] For example, the action level in the IGP is 100 mg/L TSS.

Constituent	Background Concentration in California Soils[30]	Minimum[31] Concentration in Runoff Assuming TSS = 50 mg/l (natural soils)	Water Quality Objectives Based on Primary MCLs
Aluminum	7.3%	3.7 mg/l	1 mg/l

Figure 2. Estimated runoff concentrations due to Natural Soil Constituents (Fred Krieger – 2).

Street runoff typically has an average TSS concentration of 100 mg/L, although the concentration varies significantly based on the antecedent dry period, length of the storm, etc. Any treatment facilities would need to take into account this wide variability. It is not reasonable to assume that non-treatment BMPs will achieve compliance.

Pathogens

The creeks, river, and canal receiving municipal runoff are classified in the Basin Plan with the Water Contact Recreation (REC-1) beneficial use. The Basin Plan includes a pH objective (6.5 – 8.5)[32] and a fecal coliform objective:

> *Fecal coliform concentration, based on a minimum of not less than five samples for any 30-day period, shall not exceed a log mean of 200/100 mL, nor shall more than ten percent of total samples during any 30-day period exceed 400/100 mL*

During the wet season, it is very unlikely that all the receiving waters will comply. For this reason, a TMDL has been adopted. Because of the presence of agricultural runoff, it is also very unlikely that these waterways will ever achieve the bacteria objective. Consequently, the urban runoff must eventually comply with the objective at the point of discharge. This compliance by the urban runoff is also extremely unlikely even with an extended period of implementation. It is infeasible to capture the runoff and provide disinfection. Although disinfection is applied to domestic wastewater, the many individual discharge points of stormwater make disinfection infeasible. The intermittent nature of stormwater runoff also presents a treatment challenge.

Also, the Basin Plan applies a "coliform organisms" limit of 2.2/100 mL (seven-day median) to MUN waters.[33] For comparison, the U.S.EPA freshwater Beach Action Values (BAVs) for public safety for a subset of coliform are much higher.[34]

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[30] *Background Concentrations of Trace and Major Elements in California Soils,* UC Riverside, 1996, Table 2, average concentrations, posted here.

[31] Additional iron and aluminum may be present in the dissolved form.

[32] The pH objective may present a significant challenge in some locations.

[33] This Basin Plan standard is presumably for total coliform.

[34] Recreational Water Quality Criteria (2012), Estimated Illness Rate (NGI): 36 per 1,000 primary contact recreators; (Units per 100 mL); available here.

E. coli – culturable (fresh): 235 CFU (Units per 100 mL)

The 2.2/100 mL objective is extremely restrictive. As with the REC-1 objectives, it is not possible for urban runoff to comply with the 2.2/100 mL objective at the point of discharge. As before, the feasibility and costs of compliance have not been assessed.

Other problematic pollutants

Additional pollutants and parameters have not been assessed for their impacts on compliance. For example, the outdated CTR copper objective[35] causes exceedances in many waterways in the state. Zinc causes similar compliance problems. In the future, new objectives for pollutants such as microplastics or brominated compounds may also present challenges for compliance at the point of discharge.

Staff Response to Comment Fred Krieger – 2

The draft Order incorporates receiving water limitations pursuant to authorities granted the Water Boards through state and federal statutes and regulations. See Section IV.C of the Fact Sheet for further discussion of these legal authorities. Central Coast Water Board staff revised the draft Order to include a footnote to Provision C (Receiving Water Limitations) stating the Permittee may comply with Provision C by achieving full compliance with applicable requirements in Provision F (Pollutant Load Reduction Plan). Provision F requires the Permittee to outline and commence an approach to effectively address receiving water limitation and effluent limitation exceedances. Provision F provides the following two compliance options for addressing these exceedances: 1) Option 1 – Volume Reduction; and 2) Option 2 – Iterative Approach.

For the Volume Reduction option, the Permittee would retain runoff from the entire design storm; therefore, all pollutants in those flows would not reach receiving waters. This approach negates the need to assess the adequacy of treatment options for various pollutants. The Permittee has proposed some volume reduction options that may address the entire design storm runoff volume, and thereby attenuate the full suite of pollutants in those managed flows. See Section IV.F of the Fact Sheet for a discussion of these project opportunities.

For the Iterative Approach option, the draft Order requires the Permittee to develop and implement an approach for comprehensively identifying and abating all sources of pollutants of concern. Central Coast Water Board staff finds this compliance pathway provides the opportunity for the Permittee to identify any pollutant sources that are outside of their jurisdictional authority to control. The draft Order requires the Permittee to propose and implement reasonable solutions to address pollutant loading that is not addressed through source control efforts. Because Central Coast Water Board staff acknowledges the complexities of making quantifiable water quality improvements, the

[35] EPA has issued a recommended water quality criterion for copper based on the biotic ligand model.

draft Order provides extended timeframes (i.e., 20 years) for fully addressing receiving water limitation and effluent limitation exceedances.

Requirements to develop water quality monitoring plans that demonstrate compliance are included. However, because the demonstration that receiving water limitations and effluent limitations have been achieved will likely occur beyond the term of this Order, Central Coast Water Board staff requires plans to achieve the load reductions and completion of load reduction actions, and places less emphasis on water quality monitoring to demonstrate final compliance.

Central Coast Water Board staff acknowledges that most stormwater treatment measures eventually reach a point of diminishing returns. The Permittee can address this issue in its reasonable assurance analysis if it opts for the Iterative Approach outlined in Provision F. There is guidance and examples available to assist the Permittee with this process. For example, there is a Cost-Benefit Analysis for San Diego Region Bacteria Total Maximum Daily Loads.[36] In the Pollutant Load Reduction Plan schedule, the Permittee might consider integrating communication points with the Central Coast Water Board Executive Officer, for instances when the Permittee anticipates reaching a point of diminishing returns, to discuss compliance approaches and assessments (e.g., natural source exclusion options, etc.). However, because the Permittee does not yet have the basis to justify modifying final water quality targets, Central Coast Water Board staff finds it premature to integrate related conditions and caveats into the draft Order.

Change made: Revision to footnote referenced in Provision C.

Fred Krieger – 3

2. Compliance with the Numeric Effluent Limitations:

   The permit includes the following provision:

   > ***Water Quality Based Effluent Limitations*** *– The Clean Water Act authorizes the Central Coast Water Board to establish numeric effluent limitations or BMP-based effluent limitations for pollutants in stormwater discharges from MS4s (Clean Water Act section 402(p)(3)(B)(iii),[9] 40 Code of Federal Regulations section 122.44(k)). This Order incorporates structural and non-structural management practice-based requirements to reduce pollutants in stormwater discharges to the MEP and attain of water quality standards. Where appropriate, this Order allows time for attainment and implementation of the WQBELs*

   These TMDL-based effluent limits include:

[36] "Cost-Benefit Analysis: San Diego Region Bacteria Total Maximum Daily Loads," prepared by Environmental Incentives and ECONorthwest, October 2017, Web. 30 July 2019.

Parameter	Waterway	Compliance date
Nutrients	Lower Salinas River Watershed	May 7, 2044
Fecal coliform (based on out-of-date criteria[37])	Gabilan Creek, Santa Rita Creek, Reclamation Canal, Natividad Creek, Salinas River, Alisal Creek	December 20, 2024
Sediment Toxicity & Pyrethroid Pesticides in Sediment	Lower Salinas River Watershed	June 28, 2023.

Figure 3. TMDL-based effluent limits (Fred Krieger – 3).

Given the presence of substantial agricultural runoff in these waterways (and particularly in Carr Lake), it is unlikely that the receiving waters will ever comply with the NELs. Consequently, Salinas must comply at the point of discharge and will not receive any potential benefits from dilution within the receiving water. The Fact Sheet does not appear to provide any information concerning the feasibility of urban runoff consistently meeting these NELs at the point of discharge.

Consistent compliance appears to be not feasible given the typical concentrations in runoff and the lack of BMPs available to MS4s to address these pollutants. For example, other than attempting to educate the public, the City has very limited opportunities to address pesticides which are regulated by DPR.

Staff Response to Comment Fred Krieger – 3
Attachment C (Water Quality-Based Effluent Limitations) to the draft Order outlines options for the Permittee to demonstrate compliance with the water quality-based effluent limitations (WQBELs). The draft Order requires the Permittee to implement a Pollutant Load Reduction Plan to demonstrate and implement a path for achieving WQBELs. Through the Pollutant Load Reduction Plan process, including the reasonable assurance analysis, the Permittee could explore options for demonstrating WQBELs compliance at the point of discharge that accounts for receiving water dilution factors. However, as discussed in Staff Response to Comment Fred Krieger – 2, Central Coast Water Board staff anticipates these discussions and demonstrations may occur beyond the term of this Order.

Attachment C to the draft Order outlines options for the Permittee to demonstrate compliance with the WQBELs for the Sediment Toxicity and Pyrethroid Pesticides in Sediment TMDL. In Attachment C, the footnote referenced in the “Demonstration of Compliance with WQBELs” for “Water Quality-Based Effluent Limitations for Sediment Toxicity and Pyrethroid Pesticides in Sediment in the Lower Salinas River Watershed”

[37] New permit-mandated pathogen requirements should be based on the State Board’s Bacteria Provisions, which are based on EPA’s 2012 recommended criteria.

acknowledges limits to the Permittee's authority for reducing pesticide loading within the Order coverage area.

Central Coast Water Board staff revised Attachment C to provide additional clarity for the methods in which the City can demonstrate compliance with WQBELs and to further clarify the WQBELs are based on wasteload allocations (WLAs). Central Coast Water Board staff also revised Finding 24 and Section IV.B of Attachment H (Fact Sheet) to clarify that it is appropriate for the Central Coast Water Board to require numeric WQBELs because water quality impairments continue to persist in those waterbodies with TMDLs despite the implementation of BMPs.

Change made: Revisions to Attachment C (Water Quality-Based Effluent Limitations); Finding 24; and Section IV.B of Attachment H.

Fred Krieger – 4

3. Compliance with groundwater infiltration requirements

   The Draft Order contains various statements concerning groundwater recharge which is strongly encouraged:

   The permit "*promotes stormwater capture and use projects to provide flood protection, augment local water supply, … in addition to water quality benefits and enhanced aquatic habitats*."

   The storm water strategy specifies "*stormwater runoff can be captured, infiltrated, and used to mitigate periodic drought conditions, reduce flood hazards and erosion rates, and recharge depleted groundwater aquifers and other water supply sources, all while reducing pollutant loads and maintaining beneficial uses in receiving waters*."

   Also, Salinas must "*Identify and map zones that infiltrate stormwater to support baseflow and interflow to wetlands and surface waters, and vertical infiltration to groundwater*.

   However, the Basin Plan applies TDS and other objectives to the groundwater in the Salinas Valley. The compliance risk of infiltration surface runoff into the groundwater has apparently not been assessed. Is infiltration feasible; will pretreatment be required?

Staff Response to Comment Fred Krieger – 4

The draft Order integrates source control requirements throughout most stormwater program elements. Additionally, the draft Order requires the Permittee to assess additional source control measures in the Pollutant Load Reduction Plan. Effective source control is essential to minimizing pollutant concentrations in stormwater runoff.

One cannot dismiss the potential for risks to groundwater quality from infiltrating urban stormwater runoff. However, the preponderance of evidence presented in the current research indicates the risks are fairly low in most locations where soil plays a major role

in attenuating pollutants.[38] Potential factors informing risk level include: separation between groundwater and the discharge point (i.e., surface, bottom elevation of bioretention facility, lateral and vertical points along an Underground Injection Control system); soil type; and anticipated pollutant concentrations in runoff often informed by land uses within the tributary area.

Treatment trains and pretreatment are essential considerations for all infiltration systems and there is extensive guidance and design standards for pre-treatment options, including the Central Coast Low Impact Development Initiative's guidance on engineered soils and design standards for bioretention systems.

During an assessment of dry wells as a stormwater management tool, the City of Elk Grove also assessed the risks to groundwater posed by dry wells. The assessment found the risks associated with the use of dry wells are primarily linked to the potential to introduce pollutants into the aquifer. Data collected at two project sites in the City of Elk Grove did not show evidence of groundwater contamination linked to the dry wells. Modeling suggested there is only minimal risk of groundwater contamination associated with common urban contaminants (e.g., polycyclic aromatic hydrocarbons (PAHs), metals, and pyrethroid pesticides).[39] Practices in other states and conclusions reached by USEPA suggest that with proper dry well siting, design, and maintenance, dry wells can be used safely.

Central Coast Water Board staff finds that the Permittee's compliance risks associated with the potential for introducing contaminants to groundwater through infiltration are greatly minimized by the factors described above (i.e., required source controls which reduce contaminants in runoff; limited overall risk of contaminant transport into groundwater due to soil and related natural attenuation; design conventions for pre-treatment at infiltration facilities). Nevertheless, some risk remains, and it is appropriate to address any localized risks on a case-by-case basis.

Change made: None.

Fred Krieger – 5

4. Financial Capability Assessments

   A financial capability assessment is necessary to help select feasible treatment and control BMPs and to set achievable schedules for achieving water quality objectives. They are also required (at least in some jurisdictions) for compliance with the State Water Code Section 13241. The assessments can also help the Water Boards, and

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[38] Pitt et al., 1994. "Potential Groundwater Contamination from Intentional and Nonintentional Stormwater Infiltration," U.S. Environmental Protection Agency's Risk Reduction Engineering Laboratory, May 1994. EPA/600/SR-94/051.

[39] "Separating Fact from Fiction: Assessing the Use of Dry Wells as an Integrated LID Tool for Reducing Stormwater Runoff While Protecting Groundwater in Urban Watersheds," City of Elk Grove, Final Project Summary, April 18, 2017, Web. 5 August 2019.

local governments prioritize competing requirements for funding drinking water, groundwater, sanitary sewer, flood protection, and stormwater improvements.

While this permit includes a financial assessment in Attachment G, the detail is not adequate to identify the costs of the programs and facilities necessary to meet permit requirements, especially compliance with WQS (Receiving Water Limitations) and the numeric effluent limits.

The Orange County Superior Court determined that the Economic considerations section in the Los Angeles 2012 MS4 Permit did not include an "*estimate of the possible cost or a range of costs of compliance with numeric WQBELs.*" Although the Superior Court ruling (Duarte) is not binding on the Central Coast Regional Board, it is indicative of what other courts are likely to determine.

The State Water Board has developed draft guidance for collecting information on past compliance costs and future TMDL costs. Unfortunately, the guidance does not consider the future cost so of compliance with the receiving water limitations. This guidance was used in the preparation of the Draft Order for the Salinas. However, the resulting assessment does not appear to meet the requirements of the Water Code. It also does not appear to meet the recommendations from the Little Hoover Commission or the California State Auditor's report (2018).

In 2017, the National Academy of Public Administration (NAPA), sponsored by U.S. EPA, published Developing a New Framework for Community Affordability of Clean Water Services. This document provides an update to earlier EPA affordability guidance documents. The NAPA Framework offers 21 recommendations including assessing all municipal costs when evaluating a community's financial burden, not just costs for clean water, and the use of markets for stormwater retention credits (NRDC description). This draft permit does not appear to address affordability other than to assume that Salinas can implement a fee system. Although the definitions in Prop 218 have been changed recently, Prop 218 continues to present a significant impediment to increasing fees.

Staff Response to Comment Fred Krieger – 5
See Staff Response to Comment City of Salinas – 3 regarding Water Code section 13241 factors consideration when adopting WQBELs in an MS4 permit.

A financial capability assessment is not required in connection with the consideration of this draft Order, either as a standalone analysis or as part of the economic considerations in Attachment G. The remaining comments pertain to recommendations directed to the State Water Board.

Change made: None.

Fred Krieger – 6
5. Compliance status of other MS4s

The Fact Sheet (p. H-12)

But, as municipalities' stormwater management programs have matured, an increasing body of monitoring data indicates that many water quality standards are in fact, not being met by many MS4s. This is also the case in the City of Salinas.

Except for MS4s that capture and infiltrate all their stormwater, it is very likely that all MS4s do not comply with at least some WQOs. It is not feasible to provide the level of treatment necessary to reduce bacteria levels to comply with REC-1 pathogen objectives or to meet many of the chemical objectives.

Staff Response to Comment Fred Krieger – 6
See Staff Responses to Comments Fred Krieger – 2 and Fred Krieger – 3.

Change made: None.