

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

COMMENT RESPONSE REPORT

(April 27, 2012 Draft)

This report contains the State Water Board's responses to the public comments submitted on the Second Revised Draft Tentative Order dated April 27, 2012 for the renewal of the Department of Transportation's MS4 permit. Responses to the comments submitted are being released on September 10, 2012.

Responses are presented in alphabetical order of the organization that submitted them. 131 comments from 36 commenters were received on the Second Revised Draft Tentative Order as shown below.

Commenters on Draft Tentative Order

Commenter		
ID	Representative	Organization
AA	Jim Scanlin	Alameda Countywide Clean Water Program
AB	Jim Earp	California Alliance for Jobs
AC	Michael Murphy	California Coastkeeper Alliance
AD	Robert Lucas	California Council of Environmental and Economic Balance
AE	Vicki Kramer	California Department of Public Health
AF	Scott McGowen	California Department of Transportation
AG	Richard Boon	California Stormwater Quality Association
AH	Bernie Schroeder	City of Auburn
AI	Syed Murtuza	City of Burlingame
AJ	Farrokh Abolfathi	City of Carson
AK	Lilia Leon	City of Commerce
AL	Daryl Parrish	City of Covina
AM	Mitchell Lansdell	City of Gardena
AN	David Davies	City of Glendora
AO	Thomas Clark	City of Hughson
AP	Konradt Bartlam	City of Lodi
AQ	Reva Feldman	City of Malibu
AR	Jacques LaRochelle	City of Napa
AS	Dwayne Chisam	City of Pismo Beach
AT	Pauline Roccucci	City of Roseville
AU	Krishna Patel	City of San Dimas
AV	Ernesto Olivares	City of Santa Rosa
AW	Kenneth Farfsing	City of Signal Hill
AX	Leon Churchill	City of Tracy
AY	Robert Ketley	City of Watsonville
AZ	Shannon Yauchzee	City of West Covina
BA	Steven Baker	City of Yreka
BB	Mark Grey	Construction Industry Coalition on Water Quality
BC	John Presleigh	County of Santa Cruz
BD	Joyce Dillard	General Public
BE	Melissa Thorme	Downey Brand, LLP
BF	Kristen James	Heal the Bay
BG	Noah Garrison	Natural Resources Defense Council
BH	Ray Tahir	TECS Environmental Compliance Services
BI	David Smith	US Environmental Protection Agency
BJ	James Simonelli	Workable Approach to Environmental Regulation

The Comment Response Report contains a summary of each comment. The Commenter IDs (AA through BJ) are hyperlinked to the comment letters in pdf format. All information regarding this permit can be accessed at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/caltrans_permits.shtml

Department of Transportation's MS4 Permit Comment Response Report (by Commenter) for 2nd Draft Tentative Order (4/27/12)

Representative Jim Scanlin of Alameda Countywide Clean Water Program

Comment AA1 Comment Letter Page # 1

Summary: Previously, we and other permittees have presumed that permit language like that expressed in Receiving Water Limitation D.4 in conjunction with Board Policy (WQ 99-05) established an iterative management approach and process as the fundamental, and technically appropriate, basis of compliance. The "iterative process language" in the revised draft Tentative Order, as combined with General Discharge Prohibition A.4, raises the question of whether implementation of the iterative process will constitute compliance. Moreover, in the wake of the July 2011 Ninth Circuit Court of Appeal's decision (NRDC v. County of Los Angeles), if this language is not revised, we are concerned that a precedent may be set for MS4s and could create significant liability for government entities in the San Francisco Bay region and across the State.

Section D.4 of the Caltrans MS4 Permit addresses compliance with the prohibitions and limits of Sections A.4, D.2 and D.3 of the Permit. Our Program firmly supports the linkage between the iterative process in Sections D.4 and E.2.c.6.c) of the Permit and the prohibitions and limits of Section A.4, D.2 and D.3. However, to strengthen this linkage in a crucial way, the Board should change the phrase "assure compliance with" in the last clause of Section D.4 to either "achieve compliance over time with" or "obtain compliance over time with." The last clause would thus read as follows: "the Department shall "achieve compliance over time with" Sections A.4, D.2 and D.3 of this order by complying with the procedure specified in Section E.2.c.6.c) of this Order." In addition, the Board should amend Section D.2 to read as follows: "Except as provided in Section D.4 below, the discharge of storm water from a facility or activity shall not cause or contribute to an exceedance of any applicable water quality standard."

Response: Under federal law, an MS4 permit must include "controls to reduce the discharge of pollutants to the maximum extent practicable . . . and such other provisions as . . . the State determines appropriate for the control of such pollutants." (Clean Water Act §402(p)(3)(B)(iii).) The State Water Board has previously determined that limitations necessary to meet water quality standards are appropriate for the control of pollutants discharged by MS4s and must be included in MS4 permits. (State Water Board Orders WQ 91-03, 98-01, 99-05, 2001-15; see also *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F3d 1159.). The Tentative Order accordingly prohibits discharges that cause or contribute to violations of water quality standards.

The Tentative Order further sets out that, upon determination that a Permittee is causing or contributing to an exceedance of applicable water quality standards, the Permittee must engage in an iterative process of proposing and implementing additional control measures to prevent or reduce the pollutants causing or contributing to the exceedance. This iterative process is modeled on receiving water limitations set out in State Water Board precedential Order WQ 99-05 and required by that Order to be included in all municipal storm water permits.

The Ninth Circuit held in *Natural Resources Defense Council, Inc. v. County of Los Angeles* (2011) 673 F.3d 880 that engagement in the iterative process does not provide a safe harbor from liability for violations of permit terms prohibiting exceedances of water quality standards. The Ninth Circuit holding is consistent with the position of the State Water Board and Regional Water Boards that exceedances of water quality standards in an MS4 permit constitute violations of permit terms subject to enforcement by the Boards or through a citizen suit. While the Boards have generally directed dischargers to achieve compliance by improving control measures through the iterative process, the Board retains the discretion to take other appropriate enforcement and the iterative process does not shield dischargers from citizen suits.

The State Water Board has received multiple comments, from the Department and from other interested parties, expressing confusion and concern about the Order provisions regarding receiving water limitations and the iterative process. The Department has commented that the provisions as currently written do not provide the Department with a viable path to compliance with the Tentative Order. Other commenters, including environmental parties, support the current language.

As stated above, the provisions in this Order regarding receiving water limitations and the iterative process are based on precedential Board orders. Accordingly, substantially identical provisions are found in the proposed statewide Phase II MS4 NPES permit, as well as the Phase I NPDES permits issued by the Regional Water Boards. In the context of the proposed Phase II MS4 permit, similar comments have been received. Because of the broad applicability of any policy decisions regarding the receiving water limitations and iterative process provisions, the State Water Board has scheduled a public workshop, tentatively to be held in November 2012, to consider this issue and seek public input.

Rather than significantly delay consideration of adoption of the Tentative Order, the Board has added a reopener clause to the Order to facilitate any future changes to the receiving water limitations and iterative process provisions that may result from the public workshop and deliberation. In the interim, the relevant provisions have not been revised.

Comment AB1 Comment Letter Page # 1

Summary: Many of the changes appear to improve cost effectiveness in the Draft Permit's more detailed, prescriptive requirements, though we have not had the opportunity to see updated estimated costs of compliance with the new draft. Such a cost estimate should be carefully reviewed before the final permit is adopted.

Response: A number of substantive requirements have been removed, replaced or modified from the Revised Draft Tentative Order with the goal of focusing the Department's limited resources on the most significant water quality issues. A cost analysis is included in the Fact Sheet that explains costs were analyzed using the Department's own estimates and data for annual cost or compliance.

Comment AB2 Comment Letter Page # 2

Summary: Unworkable general Receiving Water Limits and Prohibitions continue to threaten perpetual litigation exposure and uncertainty. The State Water Board should revise its standard prohibitions and receiving water limits in new clarified language for the Caltrans permit. Receiving Water Limitation D.4 requires that when exceedances of instream water quality standards are identified, Caltrans submit specified reports, including an evaluation of and schedule for adopting additional, targeted water quality improvement measures. General Discharge Prohibition A.4 and Receiving Water Limitations D.2 and D.3 must include language that makes it clear they will be satisfied by compliance with the stringent procedures in Receiving Water Limitation D.4.

Response: See Comment Response AA1

Comment AB3 Comment Letter Page # 3

Summary: Additional prohibitions found in Attachment V, relating to summer dry weather flows, should also indicate it will be satisfied by compliance with the procedures in Receiving Water Limitation D.4.

Response: The storm water provisions found in the Region Specific Attachment are still subject to the MEP standard.

Comment AB4 Comment Letter Page # 3-4

Summary: The Draft Permit should maximize opportunities for standard requirements for similar projects throughout the State and reduce uncertainty created by deferral of requirements to individual Regional Water Boards. One important area in which the State Water Board can help foster consistency is with implementation of waste load allocations for TMDLs that often have similar goals. The Response to Comments also indicates that the State Water Board will choose not to develop a uniform dewatering standard for Caltrans projects. It is suggested that a statewide approach would be more demanding. While we appreciate that water quality conditions may vary, standardization would enhance training, budgeting, oversight, and progress in improving water quality control measures. One of the ways in which the State Water Board could make such a direction clear would be to adopt guidelines for TMDL implementation.

Response: The process to include the implementation language for TMDLs (section E.4) involves the State Water Board's Assistant Executive Officer working with the Regional Water Boards and the Department to determine compliance efforts. This process should establish consistency where there is opportunity.

Comment AB5 Comment Letter Page # 4

Summary: Where the Draft Permit calls for decisions to be made by Regional Water Boards, it should provide a mechanism to resolve significant controversies with those boards.

Response: See permit provision E.12. - Dispute Resolution

Comment AB6 Comment Letter Page # 4-5

Summary: The Draft permit remains more stringent, complex and costly than permits issued to transportation agencies by other states, continuing to far exceed the minimum federal standard of controls to the "maximum extent practicable," without clearly acknowledging and supporting the State's decision to do so. The Draft Permit definition should be revised to eliminate the new concept that every "applicable" BMP must be adopted unless proven technically infeasible or cost prohibitive.

Response: No other state has the variety, complexity, and extensive natural resources as California, therefore, comparing the requirements of other states to the requirements in this permit brings about a false equivalency. All BMPs shall be considered whether or not the Department has "approved" them or not. The use of only "approved" BMPs would limit the Department's ability to use new and creative BMPs where appropriate.

Comment AB7 Comment Letter Page # 5

Summary: The Draft Permit requirement of a minimum of 100 monitoring sites is an open ended cost liability. Monitoring requirements should be less expansive. At a minimum, a maximum number of monitoring sites should be included, rather than a minimum number with unfettered ability on the part of the Water Boards to add requirements under ASBS Special Protections, TMDLs, or Tier 2 requirements.

Response: The monitoring requirements in the draft permit are consistent with ASBS and TMDL requirements. As noted by other commenters, these requirements are applicable regardless of whether or not they are in this permit. This permit establishes requirements for when those monitoring efforts are completed.

Comment AC1 Comment Letter Page # 2

- Summary:** The Permit Fails to Implement Measures Already In Place or Required in Caltrans Districts 7 and 11. Those programs, having been successfully implemented, now define MEP for Caltrans storm water pollution control. For example, the Draft Permit fails to require the included 14 points (See comment letter for points).
- Response:** Staff disagrees that the measures implemented by Caltrans Districts 7 and 11 in response to court mandates define MEP for the Department's storm water pollution control and the commenter has not shown that they were identified or intended as such.

Additionally, staff responds as follows:

The permit requires that the Department continue to maintain and ensure effectiveness of existing BMPs (See permit provisions E.2.e.2) and E.2.h.6)).

The 14 points expressed in the comment letter fall into one of three categories: studies, installation, and maintenance of BMPs.

In regard to the comments on studies and/or identification efforts, the draft permit has removed those provisions that have not been deemed essential in order to reduce the cost of the permit. Some of the proposed points would greatly increase the cost of the permit. Another suggestion (#4) would rely on the Department's on-going practices, which the draft permit attempts to strengthen with a clean-out/maintenance schedule criteria.

In regard to the comments on installation of BMPs, the draft permit has opted for the use of design standards and the accompanying maintenance plan to accomplish the goals of the program. The suggestion to use performance standards in this draft permit is problematic in a few ways. The first issue is the antecedent dry period (or lack thereof) and how performance will be evaluated without a corresponding allowance for draw-down. Another issue is how such performance will be measured. In order to accommodate the suggestion, the Department would have to monitor every BMP after every storm event. This is not practical given the constraints of having to monitor within the right-of-way.

In regard to maintenance activities, the permit calls for maintenance facility inspections, a highway maintenance program effectiveness evaluation, BMP maintenance tracking and reporting, drain inlet inspection and maintenance, and an overall program effectiveness evaluation. These provisions along with the Department's current adaptive maintenance program are sufficient to underscore the need for routine and vigorous maintenance.

Comment AC2 Comment Letter Page # 4

- Summary:** The Permit Sacrifices 85 Percent of Receiving Waters Without Any Meaningful Rationale. The Draft Permit only requires that, where Tier 2 monitoring shows violations of water quality standards, "[corrective actions shall be implemented at the top 15 percent of sites (rounded up) on the Tier 2 priority list . . ." This constitutes an arbitrary cap on when and where Caltrans is required to reduce pollutant discharges, regardless of whether additional reductions are practicable. In addition, this provision does not contain a time frame so it is unclear whether the intent of the permit to solely require site upgrades at 15 percent of Tier 2 monitoring locations per year, on a rolling basis, or in total, under the life of the permit. This arbitrary sacrifice is inconsistent with MEP.
- Response:** The permit in no way "sacrifices" waterways. The permit prioritizes, focuses efforts and current resources on those waterbodies in the most need. In addition, there are non-structural BMPs that are applied statewide. The intent is to address problems where the Department has existing monitoring data so that the Department is retrofitting for known problems before moving onto additional monitoring. Fifteen percent represents the Board's reasonable determination as to what retrofitting the Department may be able to accomplish in total during this permit term.

Comment AC3 Comment Letter Page # 4

- Summary:** While Staff justifies its 15 percent compliance cap based on costs savings, the Revised Draft Permit fails to meaningfully account for the cost of compliance when rendering its determination as to what improvements will constitute MEP. However, no evidence in the administrative record shows how the Board considered the costs of this permit. Moreover, the Board inaccurately attributes additive costs to this Draft Permit, when in fact such costs either pre-exist, or are derived from other regulations.
- Response:** The Fact Sheet section on cost of compliance explains the substantive differences between the current and previous draft permit. NPDES permits are not required to provide a detailed cost-benefit analysis, yet the State Water Board provides an explanation in the Fact Sheet. Implementing new requirements that translate into achieving water quality benefits do not create an imprudent economic burden on Caltrans, but considers the goals of the MEP standard that focuses on water quality issues.

Comment AC4 Comment Letter Page # 4-5

- Summary:** Staff Comments Suggest that the Iterative Process Shields Dischargers from the WQS Compliance Requirement. In response to the admission from Caltrans that discharges fail to comply with WQS now, violating existing permit requirements, staff seems to suggest that Caltrans would not be in violation of the Permit despite documented exceedances so long as the "iterative process" has been started. This interpretation of the Permit language is inconsistent with the interpretation of State Superior Courts, State Courts of Appeal, and the Federal District Court and the 9th Circuit Court of Appeals.
- Response:** See response to comment AA1.

Comment AC5 Comment Letter Page # 5

Summary: The Permit Backslides and Fails to Meet the MEP Standard. The Board states in the Revised Draft Permit that because "numerous advances in storm water regulation and management and the size of the Department's MS4, the Order does not require the Department to fully incorporate and implement all advances in a single permit term, but takes an incremental approach that allows for prioritization of efforts for the most effective use of the increased, but nevertheless limited, Department funds." This backsliding from existing requirements for Caltrans to meet MEP and receiving water quality standards is wholly unsupported by any cost analysis, unjustified, contrary to the spirit and letter of the CWA, and violates the CWA's anti-backsliding provision -- it must be deleted.

Response: The Clean Water Act prohibition against backsliding applies under a narrow set of criteria specified in Clean Water Act section 402(o), none of which are implicated by the contested provisions issued under section 402(p). Regardless, the Board strongly disagrees that the Tentative Order represents a weakening of the requirements from the 1999 Order. To the contrary, as described in the findings, the Tentative Order contains significantly strengthened and revamped conditions for the Department in most areas of storm water management. These new or significantly strengthened requirements include, but are not limited to, post-construction requirements, increased monitoring and retrofitting based on monitoring, TMDL compliance, and control of ASBS discharges. The finding quoted in no way implies that the Tentative Order contains provisions that are less protective of water quality than the 1999 Order. Rather, the finding explains that the State Water Board considered the requirements to be imposed on the Department in light of not just technical effectiveness, but also cost-effectiveness. In this permit term, the State Water Board imposed a set of requirements that it determined to be technically effective, while not cost prohibitive, and that were designed to focus the Department's resources on the highest priority water quality issues. The fact that the State Water Board may not have required the Department to implement every advancement in storm water control technology is not a violation of the MEP standard (or the CWA anti-backsliding provisions). The MEP standard is a flexible and evolving standard that considers not just technical feasibility but also economic feasibility. (See discussion of the MEP standard in State Water Board Order WQ 2000-11, City of Bellflower).

Comment AC6 Comment Letter Page # 5

Summary: Staff's response to comments rejects the use of integrated pest management (IPM) practices required under other permitting regimes that would help to reduce pesticide impacts from Caltrans's operations, asserting that such IPM techniques constitute best available technology (BAT) under the CWA, which staff asserts equates to a higher pollution control standard than MEP. Instead, staff takes the inappropriate position that MEP always constitutes a weaker standard than BAT/best control technology (BCT).

Response: Integrated pest management (IPM) and integrated vegetation management (IVM) principles to reduce pesticide impacts and ensure MEP were already required in the draft permit. An edit has been made to specifically require the Department to incorporate them into their vegetation control program. These IPM & IVM practices consider feasibility, cost and benefit, and are appropriate for demonstrating attainment of MEP in the following ways: initial assessment of site prior to application for the minimization of chemical applications, reduction of fertilizers and herbicides when feasible, support the use of native plants/species, and non-toxic alternatives, justification for increases in chemical-use, and reporting in the Annual Report.

Comment AC7 Comment Letter Page # 5-6

Summary: Numeric Effluent Limitations (NELs) are feasible and required in the revised draft permit. NELs provide a simple and transparent regulatory scheme that dischargers can readily comply with and that regulators can easily enforce when necessary. Dischargers will still have the quantitative information to help determine what additional steps are necessary to achieve compliance. Discharges from Caltrans outfalls have the reasonable potential to cause or contribute to water quality standards excursions. Therefore, the Board must take action to establish NELs for Caltrans's discharges.

Response: Under Clean Water Act section 402(p)(3)(B)(iii) and 40 Code of Federal Regulations section 122.44(k)(2)&(3), the State Water Board may impose BMPs for control of storm water discharges in lieu of numeric effluent limitations. In 2005, the State Water Board assembled a Blue Ribbon Panel to address the feasibility of including numeric effluent limits as part of NPDES municipal, industrial, and construction storm water permits. The panel issued a report dated June 19, 2006, which included recommendations as to the feasibility of including numeric limitations in storm water permits, how such limitations should be established, and what data should be required (SWRCB, 2006).

The report concluded that "It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges. However, it is possible to select and design them much more rigorously with respect to the physical, chemical and/or biological processes that take place within them, providing more confidence that the estimated mean concentrations of constituents in the effluents will be close to the design target." Consistent with the findings of the Blue Ribbon Panel and precedential State Water Board orders (State Water Board Orders Nos. WQ 91-03 and WQ 91-04), this Order allows the Department to implement BMPs to comply with the requirements of the Order.

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

Of note is that where WLAs in TMDLs are expressed as numerical limitations, the TMDL-specific permitting requirements (to be developed within one year of the adoption of the Order) must be consistent with the requirements and assumptions of those WLAs. 40 CFR 122.44(d)(1)(vii)(B).

Comment AC8 Comment Letter Page # 7

Summary: The Revised Draft Permit Must Contain a Clear Numeric Low Impact Development Standard. The Permit should clearly state that BMPs shall be designed to infiltrate, harvest and re-use, or evapotranspire the entire storm water runoff volume from the 85th percentile 24-hour storm event.

Response: The permit prioritizes LID, but does give the option for other BMPs, which can meet the MEP standard. This prioritization is in response to the type of work that the Department does, specifically highway systems.

Comment AC9 Comment Letter Page # 7

Summary: Infiltration, Capture and Reuse Systems Should be Prioritized Over Flow-Through Low Impact Development Features and Conventional Treatment Devices. Thus, the flow-through and treatment device options on-site should be eliminated.

Response: The Permit does make this prioritization, however, flow-through treatment devices may be appropriate when it is not possible to infiltrate, capture, or, reuse. The elimination of flow-through BMPs is not an option, because the balance of the public's health & safety with water quality goals precludes it.

Comment AC10 Comment Letter Page # 7-8

Summary: Alternative Compliance Requirements Should be Strengthened. The Permit must outline how infeasibility will be demonstrated. The request for a "proposal for alternative compliance" is also far too vague. The requisite criteria for and goals of these proposals is unclear. The goal of an alternative compliance program should be to attain the same water quality and hydrologic benefit that would be gained from the primary program. We urge the Board to employ a specified program that calls for offsite treatment in the same watershed with an appropriate multiplier of twice the amount, if on-site infeasibility is sufficiently demonstrated. Using a multiplier will incentivize creativity to retain the water onsite.

Response: The commenter is correct that the goal of the alternative compliance requirements are to attain the same water quality and hydrologic benefit that would be gained at the primary location. Therefore a multiplier would be infeasible to achieve this goal, as it would then be expected that any alternative compliance would have to enhance, not just meet the benefits that would be gained at the primary location. The requirement has been changed to require the submittal of documentation for any infeasibility claim. Also, refer to comment response BF.6.

Comment AC11 Comment Letter Page # 8

Summary: Crucial Project Planning and Design Acreage thresholds Must be Retained. The Draft Permit significantly increases the threshold for projects subject to post-construction treatment from the last permit proposal. The Board should reduce the threshold so that more post-construction projects are included and more water quality benefits result.

Response: Thresholds for Post-construction treatment controls in the previous iteration of the permit were the same for both highway and non-highway projects. In the current draft permit highway and non-highway projects subject to treatment controls have been separated by the amount of new impervious area created. The threshold for Non-highway projects is 5,000 square foot or more of impervious surface. The threshold for highway projects has been increased to one acre or greater of impervious surface, this will provide a substantial increase in water quality benefits over the status quo.

Comment AC12 Comment Letter Page # 8

Summary: The Board must strengthen monitoring and discharge characterization requirements. The significant reduction in monitoring requirements from the previous Draft Permit inhibits the ability of Caltrans to accurately capture the impacts of its discharges into waters of the state. The Draft Permit fails to require timely monitoring throughout most of Caltrans's system, including hundreds of locations already known to have caused or contributed to exceedances of water quality standards.

Response: This monitoring and discharge characterization program in the draft permit gives first priority (Tier 1 monitoring) to ASBS and TMDL watersheds without limitation as to the number of sites in those locations. This not only prioritizes the resources for the Department's stormwater program but advances the State's water quality goals. Prioritization of the monitoring program is crucial, not only because of limited resources, but essential and fundamental to the Waterboards' efforts that focus on impaired watersheds. The monitoring program will be required to focus on impaired watersheds, this includes the Department's effluent discharges under the purview of all nine Regional Waterboards. The second priority (Tier 2 monitoring) is a retrofit and verification requirement that will focus on monitoring locations where the Department's existing data has shown elevated levels of pollutants. This monitoring approach far exceeds what is currently required of the Department and what is required of Department of Transportations in EPA-issued NPDES permits.

Comment AC13 Comment Letter Page # 9

Summary: "Tiered" Monitoring Requirements Do Not Ensure Compliance. The Draft Permit requires no new monitoring. Tier 1 monitoring consists of ASBS and TMDL locations, but the Board acknowledges that "[m]onitoring in these locations must be conducted pursuant to the applicable requirements of the ASBS Special Protections or TMDL." Hence, Tier 1 monitoring poses no additive requirement of this permit since monitoring is already required pursuant to other mandates. Moreover, the Draft Permit includes no additive monitoring requirements for Tier 2 locations, stating "[m]onitoring under Tier 2 need not be initiated until there are less than 100 sites actively monitored under Tier 1," an unpredictable eventuality that may never occur. The Tier 2 monitoring is also illegal as proposed because it does not ensure that data collected can be used to evaluate Caltrans's compliance with the Draft Permit. Therefore, in addition to the current sites proposed in Tier 1 and 2, the Board should require Caltrans to sample a mandatory number of identified Tier 2 sites and develop a randomized system that will result in Caltrans' sampling at least an additional 10-15 percent of its outfalls each wet season.

Response: See Comment Response to AC.12.

Comment AC14 Comment Letter Page # 10

Summary: Water Quality Monitoring Must Include "First Flush" Measurements for All Tier 1 Sites. The first flush measurement provision should be included in the final permit to observe trends over time, especially when there are noted exceedances during first flush storm events, to inform actions needed to control pollution and potential enforcement actions.

Response: The Tier 1 monitoring program in the Draft permit is reliant on the monitoring requirements in the ASBS Special Protections (WQO 2012-0012) and the requirements of the various TMDLs. The draft permit utilizes this process to coordinate between programs and to make the most of the limited resources available. Staff is in favor of first flush monitoring and if included in TMDL monitoring, staff would commend such an inclusion. ASBS monitoring is limited to the requirements presented in the Special Protections, as this language was included verbatim from the Order. To reiterate, this permit prioritizes the monitoring program to maximize the use of resources. See comment response AC 12.

Comment AC15 Comment Letter Page # 10-11

Summary: The Board must revise the ASBS provisions to ensure the Permit's consistency with the California Ocean Plan ASBS Special Protections. The Special Protections for Areas of Special Biological Significance, Governing Point Source Discharges of Storm Water and Nonpoint source Waste Discharges, Attachment B to the California Ocean Plan (ASBS Policy) were adopted by the Board as an amendment to the California Ocean Plan. Consequently, the Draft Permit's requirements must be consistent with the language of the ASBS Policy.

A) First, the Draft Permit should clearly state that the exceptions to the general prohibition on nonstormwater discharges into and from the MS4 listed in Non-Storm Water Discharge Prohibition B.2 do not apply to Caltrans's discharges into the ASBS, and the only exceptions to the non-storm water prohibition for discharges into the ASBS are those in Non-Storm Water Discharge Prohibition B.4.

B) Second, to ensure consistency with the ASBS Special Protections, the second paragraph in Non-Storm Water Discharge Prohibition B.4 must be removed. In addition, the ASBS Special Protections do not differentiate between direct and indirect discharges for purposes of the non-storm water discharge prohibition. In fact, under the ASBS Special Protections, all conditionally exempted non-storm water discharges, regardless of whether they are to or from segments with direct or indirect discharge to an ASBS, are prohibited from altering the natural water quality in an ASBS.

C) Third, Section E.c.2. of the Draft Permit (Water Quality Monitoring) must be revised because it is inconsistent with the requirements of the ASBS Special Protections. Contrary to the requirements of the ASBS Special Protections, Section E.c.2. provides that only receiving water sampling and reference sampling locations are subject to State and Regional Board approval, and inexplicably excludes outfall sampling sites from the Regional Boards' purview. We recognize that Attachment III to the Draft Permit includes a list of priority discharge outfalls that must be monitored. However, this list is not exhaustive and the State Board and Regional Boards are required to approve any additional sampling site locations and oversee Caltrans's monitoring program. Furthermore, the analytical chemistry methods mandated by the ASBS Special Protections are similarly missing from the Draft Permit, and must be added.

D) Fourth, the Draft Permit's determination of compliance with ASBS Special Protections is also inconsistent with the language of the ASBS Special Protections and the goals of the CWA -- it should be deleted.

E) Finally, the ASBS Special Protections requires dischargers, such as Caltrans, to submit a written ASBS Compliance Plan within one year from the effective date of the Special Protections Policy. Allowing Caltrans two years to prepare an ASBS Compliance Plan is illegal.

Response: Staff is working in coordination with the Ocean Standards Unit to ensure that the language in the permit is consistent with the Special Protections for ASBS (WQ Order 2012-0012). Staff has made a number of changes to the non-storm water provisions to clarify the differences in requirements between non-storm water discharges generally and those entering an ASBS. (Released as a change sheet).

Specifically, regarding point C) the methods are specified on page 2 of Attachment II. While not stated specifically, the requirement to use the method that will yield a MDL lower than the objective in the Ocean Plan is sufficient to ensure that all non-detects are indeed below objectives.

D) This Order is an enforcement tool for both the State Water Board Executive Director and the Regional Water Board Executive Officer to make the determination of compliance. In addition, each measure described in the ASBS Compliance Plan is subject to approval by the enforcement authorities listed above.

E) The Tentative Order's Reporting provision for the ASBS Compliance Plan is consistent with Attachment B - Special Protection for ASBS Compliance Schedule. The Schedule requires that a draft ASBS Compliance Plan be submitted within eighteen months and thirty months from the effective date of the Special Protections Policy (March 20, 2012).

- Summary:** The Board must incorporate existing, applicable waste load allocations. There are at least 68 TMDLs that establish WLAs applicable to Caltrans. Caltrans's deadlines for compliance with final and interim WLAs established by these TMDLs have expired. Unfortunately, the Draft Permit fails to incorporate these WLAs as water quality-based effluent limitations into the Draft Permit, and defers incorporation for a later date. This deferment is illegal, as it is inconsistent with the assumptions and requirements of the available WLAs.
- Response:** The revised Proposed Order requires the Department to comply with all TMDLs listed in Attachment IV (ATT-IV). ATT-IV identifies TMDLs adopted by the Regional Water Boards and approved by the State Water Board and USEPA that assign the Department a WLA or that specify the Department as a responsible party in the implementation plan. In addition, ATT-IV identifies TMDLs established by USEPA that specify the Department as a responsible party or that identify NPDES permitted storm water sources or point sources generally, or identify roads generally, as subject to the TMDL. The listed TMDLs are incorporated by reference into the Order and are enforceable through the Order. However, the high variance in the level of detail and specificity in the TMDLs developed by the Regional Water Boards and USEPA necessitates the development of more specific permit requirements in many cases, including deliverables and required actions, derived from each TMDL's WLA and implementation requirements.

These requirements will provide clarity to the Department regarding its responsibilities for compliance with applicable TMDLs. The development of TMDL-specific permit requirements is subject to notice and a public comment period. Given the number of TMDLs that apply to the Department, it is not possible to develop TMDL-specific permit requirements for every TMDL listed in Attachment IV without severely delaying the issuance of the Order. Because most of the TMDLs were developed by the Regional Water Boards, and because some of the WLAs are shared by multiple dischargers, the development of TMDL specific permit requirements is best coordinated initially at the Regional Water Board level.

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

Summary: The Board must revise the Caltrans permit to address pollutants from agricultural return flows.

A) The law requires the Draft Permit to require Caltrans to effectively prohibit the discharge of return flows from irrigated agriculture to its MS4. The Draft Permit shifts responsibility for controlling the pollutants in agricultural runoff from the private sector - the agriculture industry - to the State of California - Caltrans.

B) Second, the Board's practical argument that agricultural return flows passing through the MS4 are not subject to the NPDES permit program because they do not mix with illicit discharges or other water in the MS4 is not supported by evidence.

C) Further, to the extent the pollutants from agricultural return flows mix with and are subsequently discharged with storm water, Caltrans is now responsible for ensuring the discharge of these pollutants complies with the terms of the Permit. Notably, Caltrans must ensure these pollutants do not cause or contribute to a violation of water quality standards. A requirement that Caltrans effectively prohibit agricultural return flows would help ensure that Caltrans can meet its obligations under the permit.

Response: The Board has not changed its position on agricultural return flows based on this comment and reiterates its response in the April 27, 2012, response to comments:

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

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

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

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

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

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

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

Comment AD1 Comment Letter Page # 1&3

Summary: The permit needs to be revised to be clear that non-storm water discharges made pursuant to NPDES permits to MS4 systems that discharge to Areas of Special Biological Significance (ASBS) are authorized by the draft Permit. To be consistent with the general exception adopted by the SWRCB for discharges to an ASBS (Resolution 2012-0012- Attachment B.I.A.1.e.2.ii), CCEEB requests the following language be added to this paragraph:

"The exception also authorizes the discharge of non-stormwater to a MS4 when an NPDES permitting authority finds that the discharge does not alter natural ocean water quality in the ASBS. Since non-stormwater NPDES permits contain conditions and requirements to protect water quality and many of these permits are for short-term and/ or intermittent discharges (e.g., discharges from underground utility substructures, construction groundwater dewatering, hydrotest water), the State Water Board authorizes their discharge to MS4 systems that discharge to ASBS."

Response: The Department has been granted an exception under the General Exception for Storm Water and Non-Point Source Discharges to ASBS. As noted in Finding #22 of the Tentative Order, the Ocean Plan prohibits waste discharges into ASBS provided the Department 'complies' with the special protections in the General Exception.

The permit language in the Tentative Order is consistent with ASBS Resolution 2012-0012. Furthermore, Attachment-B (ATT-B) of the Special Protection for ASBS (section I.A.1.e. (3) states that authorized non-storm water discharges shall not cause or contribute to a violation of the water quality objectives in Chapter II or the Ocean Plan nor alter natural water quality in an ASBS. Also, section A.2 of ATT-B states that the Compliance Plans for inclusion in the Storm Water Management Plan shall specifically address the prohibition of non-storm water runoff and maintain natural water quality. The definition for Natural Water Quality has been added to the Tentative Order's glossary (Attachment VIII).

Comment AD2 Comment Letter Page # 2,6&7

Summary: A) The structure of Section B.4 of the draft Permit is not consistent with the adopted ASBS exception language and we are concerned that, as it is written, it could be interpreted to mean that the exception for non-storm water discharges covered by a NPDES permit only applies "when the discharge is essential for emergency response purposes, structural stability, slope stability, or occurs naturally."

B) CCEEB requests that this language be revised to be consistent with and maintain the integrity of the exception Policy and not make authorized non-storm water discharges subject to the criteria in Attachment B, Section I.A.1.e.2.i of the exception Policy.

C) CCEEB recommends that the this paragraph be revised to state:
"Since discharges of non-storm water covered by NPDES permits are subject to the conditions and requirements of the NPDES permit for the purpose of protecting water quality, this permit authorizes these discharges to MS4s that discharge to ASBS.

Response: Tentative Order Section B.4.a.- f. is consistent with Special Protections for ASBS ATT-B, section A.1.e.(2) (i). No added language is required in this individual permit for Caltrans. These provisions are not intended for dischargers or permittees of other storm water permits. In addition, the last two paragraphs of Tentative Order section B.4 are also consistent with Special Protections sections A.1.e.(2) (ii) and A.1.e.(3).

Comment AD3 Comment Letter Page # 2&8

Summary: The SWRCB's Construction General Permit is clear that linear underground/ overhead projects (LUPs) are not subject to post-construction BMPs, such as SUSMPs, LID and hydromodification, and the draft Permit needs to also provide that clarity. Also, consistent with this request, the definition of "Redevelopment" needs to include the statement that Redevelopment does not include trenching and/ or resurfacing associated with utility work; resurfacing and reconfiguring surface parking lots and existing roadways; and routine replacement of damaged pavement, such as pothole repair" (sic) as is included in other MS4 permits.

A) CCEEB requests that the following language be added to this section:
"Linear underground/ overhead projects are not subject to post-construction requirements due to the nature of their construction to return project sites to preconstruction conditions."

B) Consistent with the comment above on Section Order E.2.d, CCEEB requests that the following language be added to this section:
"Linear underground/ overhead projects are not subject to post-construction requirements due to the nature of their construction to return project sites to preconstruction conditions."

C) Also, consistent with this request, the definition of "Redevelopment" needs to include Redevelopment the following statement that is included in other MS4 permits:
"Redevelopment does not include trenching and/or resurfacing associated with utility work; resurfacing and reconfiguring surface parking lots and existing roadways; and routine replacement of damaged pavement, such as pothole repair."

Response: The Tentative Order only specifies requirements or exceptions for the Department and it's contractors that perform work on Caltrans R-O-Ws. Therefore, additional language specifying requirements or exceptions is not warranted in this permit. The definition of Redevelopment in ATT-VIII (glossary) is appropriate for the Department and the requirements for LUPs are covered in the Statewide Construction General Permit.

Comment AD4 Comment Letter Page # 2&7

Summary: It is premature and inappropriate for this permit to mandate the use of the Test of Significant Toxicity (TST) protocol, since the use of this protocol is the subject of a yet to be adopted State Water Board Toxicity Policy. CCEEB requests that reference to the TST protocol be removed from the draft Permit.

Response: USEPA has approved Test of Significant Toxicity (TST) method and it's subsequent end points. We reference the federal regulations and USEPA documents, not State documents, policies or codes. This is a Federal permit, therefore, it is appropriate to use federal documents and regulations in the permit itself.

Comment AD5 Comment Letter Page # 3

Summary: Finding 6 states: "Non-storm water discharges that are regulated by a separate NPDES permit are not subject to the discharge prohibition."

CCEEB concurs with this statement as the use of NPDES permits are imperative for construction and operations and contain their own requirements to protect water quality.

Response: Thank you for your concurrence.

Comment AD6 Comment Letter Page # 4

Summary: Provision A.2. - CCEEB requests that the draft Permit be revised to be consistent with the exception Policy and clarify this section applies to "storm water" discharges. Additional comments regarding the inclusion of the exception Policy language into this permit are provided.

Response: The Tentative Order is consistent with State Water Board Resolution 2012-0012 as already noted in State Water Board response AD.2.

With regard to storm water, Attachment B of the Special Protections section I.A.1.b. States: "Discharges composed of storm water runoff shall not alter natural ocean water quality in an ASBS. Tentative Order section A.2.b. is copied verbatim and therefore consistent with the resolution,. No clarification is necessary, because General Discharge Prohibitions in section A apply to storm water, whereas Prohibitions in Section B .4 apply to non-storm water discharges to ASBS.

Comment AD7 Comment Letter Page # 2,3

Summary: Provision B.2. - CCEEB requests that the draft Permit be revised to clarify that when a particular non-point source discharge is determined to be a source of pollutants, it can continue to be considered conditionally exempt as long as effective measures are taken to reduce and/or minimize the discharge of pollutants. This approach is consistent with Section B.7.

Response: Non-storm water discharges listed in Provision B.2. are considered conditionally exempt as long as they are not identified as sources of pollutants. The State Water Board Executive Director may require additional monitoring if any category of conditionally exempt non-storm water discharges is determined to be a source of pollutant.

Comment AE1 Comment Letter Page # 1-2

Summary: Page 44, Section E.2.e.1 (Vector Control) Subsection a).- This subsection requires some clarification. Please consider adding the following language (bolded in original document) to this subsection:
"All storm water BMPs that retain storm water shall be designed, operated and maintained to minimize mosquito production, and to drain within 96 hours of the end of a rain event, unless designed and maintained to control vectors. Proprietary BMPs shall be maintained at the frequency specified by the manufacturer. The drain-down limitation of 96 hours does not apply in the Lake Tahoe Basin and in other high-elevation regions of the Sierra Nevada above 5000 feet elevation with similar alpine climates between October 1 and April 15. The Department shall operate and maintain all BMPs to prevent the propagation of vectors, including complying with applicable provisions of the California Health and Safety Code relating to vector control."

A) Add "propriety device" to ensure that BMPs are maintained according to manufacturer recommendations

B) Change dates for BMPs above 5000 feet to Oct 1 to Apr 15.

Response: The language in this section will be changed accordingly.

Comment AE2 Comment Letter Page # 2

Summary: Please consider broadening the inventory requirement to include all structural BMPs, including those in the Lake Tahoe Basin or other regions of the Sierra Nevada above 5000 feet. We suggest that the subsection be revised to read as follows:
"The Department shall cooperate and coordinate with the California Department of Public Health (CDPH) and with local mosquito and vector control agencies on issues related to vector production in the Department's structural BMPs. The Department shall prepare and maintain an a statewide inventory of structural BMPs. The inventory shall be provided to CDPH in electronic format for distribution to local mosquito and vector control agencies. The inventory shall be provided in Year 2 of the permit and updated every two years."

Response: The language in this section will be changed accordingly.

Comment AF1 Comment Letter Page # 1-2

Summary: The Department requests that the State Board develop a detailed process whereby disputes between the Regional Boards and Caltrans over interpretation of the permit can be objectively, expeditiously and authoritatively resolved to help promote our need for statewide consistency.

Response: While staff understands and appreciates the comment, the Regional Water Boards are autonomous entities responsible for water quality protection within their boundaries. While a fully consistent plan of oversight on the part of the Regional Water Boards is desirable, it is not possible based upon the varying degrees to which receiving waters need to be protected.

Staff supports the goal of statewide consistency, but understands that the Department also has a role in achieving this goal by ensuring the consistent implementation of a storm water program that complies with the various permit conditions by its Districts.

Refer to Comment B.I.6

Comment AF2 Comment Letter Page # 2

Summary: "To avoid potential conflicts in meeting "Region-specific" requirements, Caltrans recommends removing the Region-specific requirements."

Response: Region-specific requirements were discussed with Caltrans on multiple occasions. They do not merely reflect Regional Water Board preferences, but contain requirements found in Regional Water Board Basin Plans and MS4 permits. These requirements are needed for consistency with the requirements placed on other MS4 dischargers within the Regions and to address water quality issues specific to the Region that are not generally applicable statewide. It is not acceptable to establish a uniform statewide process at the expense of the unique environmental conditions existing throughout the state.

Comment AF3 Comment Letter Page # 3

Summary: Change the language (receiving water limitations and discharge prohibitions) and use similar approaches requested by CASQA or other MS4s so Caltrans is not in automatic non-compliance. Caltrans strongly believes this language needs to be worked out before adoption and before the limitations become effective.

Response: See comment response AA1.

Comment AF4 Comment Letter Page # 4

Summary: A) Omit specific TMDL and ASBS implementation language until the agreed upon statewide meetings with Regional Boards occur (p.14 of the Order).

B) It is essential that the effluent limitations associated with the implementation of TMDL waste load allocations (WLAs) be based on the proven effectiveness of tested best management practices (BMPs) and not numeric limits or numeric standards.

C) All TMDL WLAs applicable to Caltrans should be implemented as BMPs. Further, we request the State Board work with Caltrans to develop a more efficient and effective process.

D) Prioritize TMDLs to address only where Caltrans is a major source generator of specific pollutants.

Response: A) The Tentative Order does not provide implementation language in ATT-IV, except for the Lake Tahoe Sediment & Nutrient TMDL. Section E.4.b. explains the process that the Department and Regional Water Boards must follow for incorporation of TMDL-WLAs, deliverables, and actions. ASBS Compliance Requirements of E.5. must be followed where the Department's discharges to ASBS.

B) The final determination for implementation of TMDL WLAs for ATT-IV's TMDL requirements, including BMPs, will be based on the results from consultations held between the Department and the Regional Water Boards.

C) Some TMDLs may be allowed to have WLAs expressed as BMPs, and there may be others that only allow numeric WLAs.

D) TMDLs have already been prioritized based on whether the Department is a responsible discharger. TMDLs included in the previous iterations of the draft permit where the Department was not specifically named have been removed.

[Overall TMDL Implementation] With the exception of the Lake Tahoe Clarity TMDL, implementation language for TMDLs will not be included in the Permit for at least a year from the time of adoption. During this time, State Water Board staff will be meeting with Department Headquarters and Districts; and the Regional Water Boards to develop the implementation language. A desired outcome of these meetings is implementation language that is consistent with the TMDL and that all parties understand. This language will be incorporated into the Department's Statewide Permit at a future date. In meeting with each of the Regional Water Boards to discuss TMDL implementation, it is anticipated that a single course of action can be developed for pollutant causing or contributing to an impairment in multiple Regions.

Comment AF5 Comment Letter Page # 5

Summary: There are additional specific issues that have been identified to State Board staff that will subject Caltrans to develop and implement new procedures. Additional resources will be required (e.g., statewide monitoring, statewide retrofits, and water quality treatment measures) that will impact project delivery along with maintenance and operations. Caltrans would like to continue to work with State Board staff to refine the permit approach on issues 1 through 5 (sic) raised above. Caltrans and the State Board have a common interest in achieving the highest water quality benefit at a minimum life cycle cost to ensure responsible expenditure of public funds. Many of the provisions in the draft order related to these issues may still pose impediments to achieve this objective.

Response: The State Water Board staff and the Department have met and communicated on multiple occasions during the development of the permit, including before and during the comment period, to identify provisions of concern to the Department and consider focusing the permit on those requirements that will achieve the most water quality benefit. While staff agrees that the Department and the State Water Board have a common interest in ensuring responsible expenditure of public funds and has been willing to continue to meet with the Department to discuss these issues, staff has only made those changes it believes are appropriate and are protective of water quality.

Summary: The Draft Tentative Order in Provisions A and C will expose the Department to unwarranted and immediate liability. The "iterative process language" now at issue in the draft Tentative Order, however, combined with General Discharge Prohibition A.4, renders the iterative process obsolete as a compliance strategy. Moreover, in the wake of the July 2011 Ninth Circuit Court of Appeal's decision, if this language is not revised, the precedent may be set for municipal permits that create unlimited liability for government entities across the State.

CASQA believes that our suggested Receiving Water Limitations language is drafted in a manner to clearly indicate that compliance with the iterative process provides effective compliance with the discharge prohibition (General Discharge Prohibition A.4), and the "shall not cause or contribute" receiving water limitations (Receiving Water Limitations D.2 and D.3).

[Recommended Language submitted with Comment]

Response: See comment response to AA1

Summary: Part D of the Caltrans MS4 Permit addresses compliance with the prohibitions and limits of Parts A.4, D.2 and D.3 of the Permit. The City of Auburn firmly supports the linkage between the iterative process in Part E.2.c.6).c) of the Permit and the prohibitions and limits of Parts A.4, D.2 and D.3. However, to strengthen this linkage in a crucial way, the Board should change the phrase "assure compliance with" in the last clause of Part D.4 to either "achieve compliance over time with" or "obtain compliance over time with ." The last clause would thus read as follows:
"the Department shall "achieve compliance over time with" Sections A.4, D.2 and D.3 of this order by complying with the procedure specified in Section E.2.c.6).6) of this Order."
In addition, the Board should amend Part D.2 to read as follows: "Except as provided in Part D.4 below, the discharge of storm water from a facility or activity shall not cause or contribute to an exceedance of any applicable water quality standard."
The language change suggested above would achieve the State's iterative BMP-based compliance goals in a manner consistent with the receiving waters limitations language of the precedential orders. It would require compliance with water quality objectives through the iterative BMP process.

Response: See comment response to AA1

Summary: Part D of the Caltrans MS4 Permit addresses compliance with the prohibitions and limits of Parts A.4, D.2 and D.3 of the Permit. The City of Burlingame firmly supports the linkage between the iterative process in Part E.2.c.6).c) of the Permit and the prohibitions and limits of Parts A.4, D.2 and D.3. However, to strengthen this linkage in a crucial way, the Board should change the phrase "assure compliance with" in the last clause of Part D.4 to either "achieve compliance over time with" or "obtain compliance over time with ." The last clause would thus read as follows:
"the Department shall "achieve compliance over time with" Sections A.4, D.2 and D.3 of this order by complying with the procedure specified in Section E.2.c.6).6) of this Order."
In addition, the Board should amend Part D.2 to read as follows: "Except as provided in Part D.4 below, the discharge of storm water from a facility or activity shall not cause or contribute to an exceedance of any applicable water quality standard."
The language change suggested above would achieve the State's iterative BMP-based compliance goals in a manner consistent with the receiving waters limitations language of the precedential orders. It would require compliance with water quality objectives through the iterative BMP process.

Response: See comment response to AA1

Comment AJ1 Comment Letter Page # 2-3

Summary: Part D.4, Receiving Water (RWL) reads:
"The Department shall comply with Sections A. 4, D.2 and D.3 of this Order through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the SWMP and other requirements of this Order including any modifications. The SWMP shall be designed to achieve compliance with Sections A4, D.2 and D.3 of this Order.
If exceedance(s) of WQS persist notwithstanding implementation of the SWMP and other requirements of this Order, the Department shall assure compliance with Sections A.4, D.2 and D.3 of this Order by complying with the procedure specified at Section E.2.c.3)c) of this Order."

Instead, the sentence highlighted in bold (in original) should be changed to: "achieve compliance over time with Sections A.4, D.2 and D.3 of this order by complying with the procedure specified in Section E.2.c.6).6) of this Order."

In addition, the Board should amend Part D.2 to read as follows: "Except as provided in Part D.4 below, the discharge of storm water from a facility or activity shall not cause or contribute to an exceedance of any applicable water quality standard."

Response: See comment response to AA1

Comment AJ2 Comment Letter Page # 3

Summary: The permittees request the inclusion of a clear definition of "ambient" as it relates to receiving water monitoring. The draft Caltrans MS4 permit should contain a finding that makes it clear that: (1) monitoring for stormwater is at the outfall, not in the receiving water; and (2) ambient monitoring is restricted to the receiving water, must conform to State Surface Water Ambient Monitoring (SWAMP), and must always be conducted during dry weather.

Response: The requirements for monitoring are already clearly laid out in the Order provisions. The State Water Board disagrees with the substance of the clarifications requested in this comment and will not make any changes.

Comment AJ3 Comment Letter Page # 3-4

Summary: On behalf of my clients, please extend my most sincere appreciation to the State Board members and staff for the opportunity to comment on the draft Caltrans MS4 permit. The Caltrans MS4 permit provides: (1) much needed clarity on where and how stormwater compliance is determined; (2) an affirmation that numeric water quality based effluent limitations (WQBELs) are not feasible at this time (in deference to BMP WQBELs); (3) that wet weather monitoring cannot be considered ambient monitoring, which serves as a referent condition in a receiving water rather than a compliance criterion; and (4) a clearly delineated iterative process that must be included in all MS4 permits issued in the State.

Response: See comment responses AA1 and AJ2. While the State Water Board appreciates the commenter's support of the Tentative Order, the Board disagrees with the comment's representation of the Order's conditions and intent.

Summary: Part D of the Caltrans MS4 Permit addresses compliance with the prohibitions and limits of Parts A.4, D.2 and D.3 of the Permit. The City of Commerce firmly supports the linkage between the iterative process in Part E.2.c.6.c) of the Permit and the prohibitions and limits of Parts A.4, D.2 and D.3. However, to strengthen this linkage in a crucial way, the Board should change the phrase "assure compliance with" in the last clause of Part D.4 to either "achieve compliance over time with" or "obtain compliance over time with ." The last clause would thus read as follows:
"the Department shall "achieve compliance over time with" Sections A.4, D.2 and D.3 of this order by complying with the procedure specified in Section E.2.c.6.6) of this Order."
In addition, the Board should amend Part D.2 to read as follows: "Except as provided in Part D.4 below, the discharge of storm water from a facility or activity shall not cause or contribute to an exceedance of any applicable water quality standard."
The language change suggested above would achieve the State's iterative BMP-based compliance goals in a manner consistent with the receiving waters limitations language of the precedential orders. It would require compliance with water quality objectives through the iterative BMP process.

Response: See comment response to AA1

Comment AL1 Comment Letter Page # 1

Summary: Part D.4, Receiving Water (RWL) reads:
"The Department shall comply with Sections A. 4, D.2 and D.3 of this Order through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the SWMP and other requirements of this Order including any modifications. The SWMP shall be designed to achieve compliance with Sections A4, D.2 and D.3 of this Order.
If exceedance(s) of WQS persist notwithstanding implementation of the SWMP and other requirements of this Order, the Department shall assure compliance with Sections A.4, D.2 and D.3 of this Order by complying with the procedure specified at Section E.2.c.3)c) of this Order."

Instead, the sentence highlighted in bold (in original) should be changed to: "achieve compliance over time with Sections A.4, D.2 and D.3 of this order by complying with the procedure specified in Section E.2.c.6).6) of this Order."

In addition, the Board should amend Part D.2 to read as follows: "Except as provided in Part D.4 below, the discharge of storm water from a facility or activity shall not cause or contribute to an exceedance of any applicable water quality standard."

Response: See comment response to AA1

Comment AL2 Comment Letter Page # 1-2

Summary: The City of Covina requests the inclusion of a clear definition of "ambient" as it relates to receiving water monitoring. The draft Caltrans MS4 permit should contain a finding that makes it clear that: (1) monitoring for stormwater is at the outfall, not in the receiving water; and (2) ambient monitoring is restricted to the receiving water, must conform to State Surface Water Ambient Monitoring (SWAMP), and must always be conducted during dry weather.

Response: See comment response to AJ2

Comment AL3 Comment Letter Page # 2

Summary: The City of Covina extends its most sincere appreciation to the State Board members and staff for the opportunity to comment on the draft Caltrans MS4 permit. The Caltrans MS4 permit provides: (1) much needed clarity on where and how stormwater compliance is determined; (2) an affirmation that numeric water quality based effluent limitations (WQBELs) are not feasible at this time (in deference to BMP WQBELs); (3) that wet weather monitoring cannot be considered ambient monitoring, which serves as a referent condition in a receiving water rather than a compliance criterion; and (4) a clearly delineated iterative process that must be included in all MS4 permits issued in the State.

Response: See comment responses AA1 and AJ2. While the State Water Board appreciates the commenter's support of the Tentative Order, the State Water Board disagrees with the comment's representation of the Order's conditions and intent.

Comment AM1 Comment Letter Page # 2-3

Summary: Part D.4, Receiving Water (RWL) reads:
"The Department shall comply with Sections A. 4, D.2 and D.3 of this Order through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the SWMP and other requirements of this Order including any modifications. The SWMP shall be designed to achieve compliance with Sections A4, D.2 and D.3 of this Order.
If exceedance(s) of WQS persist notwithstanding implementation of the SWMP and other requirements of this Order, the Department shall assure compliance with Sections A.4, D.2 and D.3 of this Order by complying with the procedure specified at Section E.2.c.3)c) of this Order."

Instead, the sentence highlighted in bold (in original) should be changed to: "achieve compliance over time with Sections A.4, D.2 and D.3 of this order by complying with the procedure specified in Section E.2.c.6).6) of this Order."

In addition, the Board should amend Part D.2 to read as follows: "Except as provided in Part D.4 below, the discharge of storm water from a facility or activity shall not cause or contribute to an exceedance of any applicable water quality standard."

Response: See comment response to AA1

Comment AM2 Comment Letter Page # 3

Summary: The permittees request the inclusion of a clear definition of "ambient" as it relates to receiving water monitoring. The draft Caltrans MS4 permit should contain a finding that makes it clear that: (1) monitoring for stormwater is at the outfall, not in the receiving water; and (2) ambient monitoring is restricted to the receiving water, must conform to State Surface Water Ambient Monitoring (SWAMP), and must always be conducted during dry weather.

Response: See comment response to AJ2

Comment AM3 Comment Letter Page # 3-4

Summary: On behalf of my clients, please extend my most sincere appreciation to the State Board members and staff for the opportunity to comment on the draft Caltrans MS4 permit. The Caltrans MS4 permit provides: (1) much needed clarity on where and how stormwater compliance is determined; (2) an affirmation that numeric water quality based effluent limitations (WQBELs) are not feasible at this time (in deference to BMP WQBELs); (3) that wet weather monitoring cannot be considered ambient monitoring, which serves as a referent condition in a receiving water rather than a compliance criterion; and (4) a clearly delineated iterative process that must be included in all MS4 permits issued in the State.

Response: See comment responses AA1 and AJ2. While the State Water Board appreciates the commenter's support of the Tentative Order, the State Water Board disagrees with the comment's representation of the Order's conditions and intent.

Comment AN1 Comment Letter Page # 2-3

Summary: Part D.4, Receiving Water (RWL) reads:
"The Department shall comply with Sections A. 4, D.2 and D.3 of this Order through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the SWMP and other requirements of this Order including any modifications. The SWMP shall be designed to achieve compliance with Sections A4, D.2 and D.3 of this Order.
If exceedance(s) of WQS persist notwithstanding implementation of the SWMP and other requirements of this Order, the Department shall assure compliance with Sections A.4, D.2 and D.3 of this Order by complying with the procedure specified at Section E.2.c.3)c) of this Order."

Instead, the sentence highlighted in bold (in original) should be changed to: "achieve compliance over time with Sections A.4, D.2 and D.3 of this order by complying with the procedure specified in Section E.2.c.6).6) of this Order."

In addition, the Board should amend Part D.2 to read as follows: "Except as provided in Part D.4 below, the discharge of storm water from a facility or activity shall not cause or contribute to an exceedance of any applicable water quality standard."

Response: See comment response to AA1

Comment AN2 Comment Letter Page # 3

Summary: The permittees request the inclusion of a clear definition of "ambient" as it relates to receiving water monitoring. The draft Caltrans MS4 permit should contain a finding that makes it clear that: (1) monitoring for stormwater is at the outfall, not in the receiving water; and (2) ambient monitoring is restricted to the receiving water, must conform to State Surface Water Ambient Monitoring (SWAMP), and must always be conducted during dry weather.

Response: See comment response to AJ2

Comment AN3 Comment Letter Page # 3-4

Summary: On behalf of my clients, please extend my most sincere appreciation to the State Board members and staff for the opportunity to comment on the draft Caltrans MS4 permit. The Caltrans MS4 permit provides: (1) much needed clarity on where and how stormwater compliance is determined; (2) an affirmation that numeric water quality based effluent limitations (WQBELs) are not feasible at this time (in deference to BMP WQBELs); (3) that wet weather monitoring cannot be considered ambient monitoring, which serves as a referent condition in a receiving water rather than a compliance criterion; and (4) a clearly delineated iterative process that must be included in all MS4 permits issued in the State.

Response: See comment responses AA1 and AJ2. While the State Water Board appreciates the commenter's support of the Tentative Order, the State Water Board disagrees with the comment's representation of the Order's conditions and intent.

Summary: Part D of the Caltrans MS4 Permit addresses compliance with the prohibitions and limits of Parts A.4, D.2 and D.3 of the Permit. The City of Hughson firmly supports the linkage between the iterative process in Part E.2.c.6.c) of the Permit and the prohibitions and limits of Parts A.4, D.2 and D.3. However, to strengthen this linkage in a crucial way, the Board should change the phrase "assure compliance with" in the last clause of Part D.4 to either "achieve compliance over time with" or "obtain compliance over time with ." The last clause would thus read as follows:
"the Department shall "achieve compliance over time with" Sections A.4, D.2 and D.3 of this order by complying with the procedure specified in Section E.2.c.6) of this Order."
In addition, the Board should amend Part D.2 to read as follows: "Except as provided in Part D.4 below, the discharge of storm water from a facility or activity shall not cause or contribute to an exceedance of any applicable water quality standard."
The language change suggested above would achieve the State's iterative BMP-based compliance goals in a manner consistent with the receiving waters limitations language of the precedential orders. It would require compliance with water quality objectives through the iterative BMP process.

Response: See comment response to AA1

Summary: Part D of the Caltrans MS4 Permit addresses compliance with the prohibitions and limits of Parts A.4, D.2 and D.3 of the Permit. The City of Lodi firmly supports the linkage between the iterative process in Part E.2.c.6).c) of the Permit and the prohibitions and limits of Parts A.4, D.2 and D.3. However, to strengthen this linkage in a crucial way, the Board should change the phrase "assure compliance with" in the last clause of Part D.4 to either "achieve compliance over time with" or "obtain compliance over time with ." The last clause would thus read as follows: "the Department shall "achieve compliance over time with" Sections A.4, D.2 and D.3 of this order by complying with the procedure specified in Section E.2.c.6).6) of this Order."

In addition, the Board should amend Part D.2 to read as follows: "Except as provided in Part D.4 below, the discharge of storm water from a facility or activity shall not cause or contribute to an exceedance of any applicable water quality standard."

The language change suggested above would achieve the State's iterative BMP-based compliance goals in a manner consistent with the receiving waters limitations language of the precedential orders. It would require compliance with water quality objectives through the iterative BMP process.

Response: See comment response to AA1

Comment AQ1 Comment Letter Page # 2, 3

Summary: The City supports SWRCB staff recommendations with respect to addressing the complex management issues associated with overlapping jurisdictions in these watershed or drainage areas. For example, the proposed provisions for developing and managing a Municipal Coordination Plan as part of the Storm Water Management Plan (SWMP) are essential to meeting California's water quality objectives. The City would like to emphasize the importance of collaboration with the City of Malibu prior to Caltrans submittal of the Plan to the SWRCB for approval.

The Municipal Coordination Plan is important for other reasons. For the past two years, Caltrans has incrementally increased impermeable paved areas in Malibu that may cumulatively result in more than 1 acre of surface areas, and created new curbs that, post-construction, may generate and transport more pollutants to critical water bodies.

Response: Thank you for your concurrence on the provision for a Municipal Coordination Plan [E.2.b.1)b)] that requires communication, coordination, cooperation and collaboration regardless of stormwater activity.

Comment AQ2 Comment Letter Page # 2

Summary: This early consultation is imperative because the agencies need to identify precisely where Caltrans' MS4 facilities operate within the City limits. Without an accurate, comprehensive drain inventory, it will be impossible for Caltrans, and the City of Malibu, to develop the required compliance and monitoring plans necessary to comply with MS4 permit requirements, as well as the ASBS Special Protections

Response: Please see comment response to AQ1.

Comment AQ3 Comment Letter Page # 2

Summary: Next, the Stormwater Management Plan/Municipal Coordination Plan must cover both dry and wet weather management coordination. Malibu recognizes that Caltrans does not typically engage in activities, such as irrigation that generate significant dry-weather (non-stormwater) runoff within the City of Malibu; however, Caltrans does have hundreds of PCH drains that discharge wet weather runoff directly to Santa Monica Bay or Malibu Creek. None of the agencies in the North Santa Monica Bay region work in a vacuum, and the agencies must collaborate on wet- and dry-weather runoff strategies to ensure program success.

Response: See comment response to AQ.1.

Comment AQ4 Comment Letter Page # 2

Summary: The City of Malibu expressly requests that Regional Water Quality Control Board staff include the City of Malibu in its collaboration with Caltrans to develop any TMDL-specific permit requirements (as set forth in Provision 39).

Response: It is the State Water Board's intention that only the principles involved will be invited to these meetings. The principles would be the Department and their Districts, the State Water Board, and the Regional Water Board.

Comment AQ5 Comment Letter Page # 3

Summary: Lastly, the City supports comments submitted by the Statewide Stormwater Coalition regarding compliance with water quality objectives in the permit through the iterative BMP process.

Response: Please see comment response to AA1.

Summary: Part D of the Caltrans MS4 Permit addresses compliance with the prohibitions and limits of Parts A.4, D.2 and D.3 of the Permit. The City of Napa firmly supports the linkage between the iterative process in Part E.2.c.6.c) of the Permit and the prohibitions and limits of Parts A.4, D.2 and D.3. However, to strengthen this linkage in a crucial way, the Board should change the phrase "assure compliance with" in the last clause of Part D.4 to either "achieve compliance over time with" or "obtain compliance over time with ." The last clause would thus read as follows:

"the Department shall "achieve compliance over time with" Sections A.4, D.2 and D.3 of this order by complying with the procedure specified in Section E.2.c.6) of this Order."

In addition, the Board should amend Part D.2 to read as follows: "Except as provided in Part D.4 below, the discharge of storm water from a facility or activity shall not cause or contribute to an exceedance of any applicable water quality standard."

The language change suggested above would achieve the State's iterative BMP-based compliance goals in a manner consistent with the receiving waters limitations language of the precedential orders. It would require compliance with water quality objectives through the iterative BMP process.

Response: See comment response to AA1

Summary: Part D of the Caltrans MS4 Permit addresses compliance with the prohibitions and limits of Parts A.4, D.2 and D.3 of the Permit. The City of Pismo Beach firmly supports the linkage between the iterative process in Part E.2.c.6.c) of the Permit and the prohibitions and limits of Parts A.4, D.2 and D.3. However, to strengthen this linkage in a crucial way, the Board should change the phrase "assure compliance with" in the last clause of Part D.4 to either "achieve compliance over time with" or "obtain compliance over time with ." The last clause would thus read as follows:
"the Department shall "achieve compliance over time with" Sections A.4, D.2 and D.3 of this order by complying with the procedure specified in Section E.2.c.6.6) of this Order."
In addition, the Board should amend Part D.2 to read as follows: "Except as provided in Part D.4 below, the discharge of storm water from a facility or activity shall not cause or contribute to an exceedance of any applicable water quality standard."
The language change suggested above would achieve the State's iterative BMP-based compliance goals in a manner consistent with the receiving waters limitations language of the precedential orders. It would require compliance with water quality objectives through the iterative BMP process.

Response: See comment response to AA1

Summary: Part D of the Caltrans MS4 Permit addresses compliance with the prohibitions and limits of Parts A.4, D.2 and D.3 of the Permit. The City of Roseville firmly supports the linkage between the iterative process in Part E.2.c.6.c) of the Permit and the prohibitions and limits of Parts A.4, D.2 and D.3. However, to strengthen this linkage in a crucial way, the Board should change the phrase "assure compliance with" in the last clause of Part D.4 to either "achieve compliance over time with" or "obtain compliance over time with ." The last clause would thus read as follows:
"the Department shall "achieve compliance over time with" Sections A.4, D.2 and D.3 of this order by complying with the procedure specified in Section E.2.c.6.6) of this Order."
In addition, the Board should amend Part D.2 to read as follows: "Except as provided in Part D.4 below, the discharge of storm water from a facility or activity shall not cause or contribute to an exceedance of any applicable water quality standard."
The language change suggested above would achieve the State's iterative BMP-based compliance goals in a manner consistent with the receiving waters limitations language of the precedential orders. It would require compliance with water quality objectives through the iterative BMP process.

Response: See comment response to AA1

Comment AU1 Comment Letter Page # 1-2

Summary: Part D.4, Receiving Water (RWL) reads:
"The Department shall comply with Sections A. 4, D.2 and D.3 of this Order through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the SWMP and other requirements of this Order including any modifications. The SWMP shall be designed to achieve compliance with Sections A4, D.2 and D.3 of this Order.
If exceedance(s) of WQS persist notwithstanding implementation of the SWMP and other requirements of this Order, the Department shall assure compliance with Sections A.4, D.2 and D.3 of this Order by complying with the procedure specified at Section E.2.c.3)c) of this Order."

Instead, the sentence highlighted in bold (in original) should be changed to: "achieve compliance over time with Sections A.4, D.2 and D.3 of this order by complying with the procedure specified in Section E.2.c.6).6) of this Order."

In addition, the Board should amend Part D.2 to read as follows: "Except as provided in Part D.4 below, the discharge of storm water from a facility or activity shall not cause or contribute to an exceedance of any applicable water quality standard."

Response: See comment response to AA1

Comment AU2 Comment Letter Page # 2

Summary: The City request the inclusion of a clear definition of "ambient" as it relates to receiving water monitoring. The draft Caltrans MS4 permit should contain a finding that makes it clear that: (1) monitoring for stormwater is at the outfall, not in the receiving water; and (2) ambient monitoring is restricted to the receiving water, must conform to State Surface Water Ambient Monitoring (SWAMP), and must always be conducted during dry weather.

Response: See comment response to AJ2

Comment AU3 Comment Letter Page # 2-3

Summary: Please extend the City's most sincere appreciation to the State Board members and staff for the opportunity to comment on the draft Caltrans MS4 permit. The Caltrans MS4 permit provides: (1) much needed clarity on where and how stormwater compliance is determined; (2) an affirmation that numeric water quality based effluent limitations (WQBELs) are not feasible at this time (in deference to BMP WQBELs); (3) that wet weather monitoring cannot be considered ambient monitoring, which serves as a referent condition in a receiving water rather than a compliance criterion; and (4) a clearly delineated iterative process that must be included in all MS4 permits issued in the State.

Response: See comment responses AA1 and AJ2. While the Board appreciates the commenter's support of the Tentative Order, the Board disagrees with the comment's representation of the Order's conditions and intent.

Comment AV1 Comment Letter Page # 1

Summary: We encourage the State Water Resources Control Board (State Board) to use language that would create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but also allows the MS4 to operate in good faith with the iterative process without fear of unwarranted third party action.

Response: See comment response to AA1

Comment AV2 Comment Letter Page # 1

Summary: To that end, we support the February 21, 2012 CASQA Proposal for Receiving Water Limitations (attached) that aims to capture-that intent. This language was submitted by CASQA to the State Board earlier this year for consideration as model language to be used statewide. However, the language within the Draft Order is inconsistent with the CASQA recommendations.

[CASQA Language submitted as attachment]

Response: See comment response to AA1

Summary: The City of Signal Hill is concerned that the Receiving Water Limitations language in the draft permit is counter to established State Water Board policy. Further, it may create a regulatory situation with which it is impossible for Caltrans to comply.

The Caltrans Draft Permit provides the State Water Board the opportunity to provide the textual support that the Court of Appeals found lacking in the Los Angeles MS4 Permit. Clear language implementing the direction in WQ Order 99-05 that the iterative process applies to both discharge prohibitions and receiving water limitations is essential to maintain the focus of permittees on improving water quality in California through an iterative adaptive management process that responds to the episodic and variable nature of rainfall and increased understanding of the nature and sources of water pollutants.

Response: See comment response to AA1

Summary: Part D of the Caltrans MS4 Permit addresses compliance with the prohibitions and limits of Parts A.4, D.2 and D.3 of the Permit. The City of Tracy firmly supports the linkage between the iterative process in Part E.2.c.6).c) of the Permit and the prohibitions and limits of Parts A.4, D.2 and D.3. However, to strengthen this linkage in a crucial way, the Board should change the phrase "assure compliance with" in the last clause of Part D.4 to either "achieve compliance over time with" or "obtain compliance over time with ." The last clause would thus read as follows:

"the Department shall "achieve compliance over time with" Sections A.4, D.2 and D.3 of this order by complying with the procedure specified in Section E.2.c.6).6) of this Order."

In addition, the Board should amend Part D.2 to read as follows: "Except as provided in Part D.4 below, the discharge of storm water from a facility or activity shall not cause or contribute to an exceedance of any applicable water quality standard."

The language change suggested above would achieve the State's iterative BMP-based compliance goals in a manner consistent with the receiving waters limitations language of the precedential orders. It would require compliance with water quality objectives through the iterative BMP process.

Response: See comment response to AA1

Summary: Part D of the Caltrans MS4 Permit addresses compliance with the prohibitions and limits of Parts A.4, D.2 and D.3 of the Permit. Watsonville firmly supports the linkage between the iterative process in Part E.2.c.6.c) of the Permit and the prohibitions and limits of Parts A.4, D.2 and D.3. However, to strengthen this linkage in a crucial way, the Board should change the phrase "assure compliance with" in the last clause of Part D.4 to either "achieve compliance over time with" or "obtain compliance over time with ." The last clause would thus read as follows: "the Department shall "achieve compliance over time with" Sections A.4, D.2 and D.3 of this order by complying with th the procedure specified in Section E.2.c.6) of this Order."
In addition, the Board should amend Part D.2 to read as follows: "Except as provided in Part D.4 below, the discharge of storm water from a facility or activity shall not cause or contribute to an exceedance of any applicable water quality standard."
The language change suggested above would achieve the State's iterative BMP-based compliance goals in a manner consistent with the receiving waters limitations language of the precedential orders. It would require compliance with water quality objectives through the iterative BMP process.

Response: See comment response to AA1

Comment AZ1 Comment Letter Page # 2-3

Summary: Part D.4, Receiving Water (RWL) reads:
"The Department shall comply with Sections A. 4, D.2 and D.3 of this Order through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the SWMP and other requirements of this Order including any modifications. The SWMP shall be designed to achieve compliance with Sections A4, D.2 and D.3 of this Order.
If exceedance(s) of WQS persist notwithstanding implementation of the SWMP and other requirements of this Order, the Department shall assure compliance with Sections A.4, D.2 and D.3 of this Order by complying with the procedure specified at Section E.2.c.3)c) of this Order."

Instead, the sentence highlighted in bold (in original) should be changed to: "achieve compliance over time with Sections A.4, D.2 and D.3 of this order by complying with the procedure specified in Section E.2.c.6).6) of this Order."

In addition, the Board should amend Part D.2 to read as follows: "Except as provided in Part D.4 below, the discharge of storm water from a facility or activity shall not cause or contribute to an exceedance of any applicable water quality standard."

Response: See comment response to AA1

Comment AZ2 Comment Letter Page # 3

Summary: The permittees request the inclusion of a clear definition of "ambient" as it relates to receiving water monitoring. The draft Caltrans MS4 permit should contain a finding that makes it clear that: (1) monitoring for stormwater is at the outfall, not in the receiving water; and (2) ambient monitoring is restricted to the receiving water, must conform to State Surface Water Ambient Monitoring (SWAMP), and must always be conducted during dry weather.

Response: See comment response to AJ2

Comment AZ3 Comment Letter Page # 3-4

Summary: On behalf of my clients, please extend my most sincere appreciation to the State Board members and staff for the opportunity to comment on the draft Caltrans MS4 permit. The Caltrans MS4 permit provides: (1) much needed clarity on where and how stormwater compliance is determined; (2) an affirmation that numeric water quality based effluent limitations (WQBELs) are not feasible at this time (in deference to BMP WQBELs); (3) that wet weather monitoring cannot be considered ambient monitoring, which serves as a referent condition in a receiving water rather than a compliance criterion; and (4) a clearly delineated iterative process that must be included in all MS4 permits issued in the State.

Response: See comment responses AA1 and AJ2. While the State Water Board appreciates the commenter's support of the Tentative Order, the State Water Board disagrees with the comment's representation of the Order's conditions and intent.

Summary: Part D of the Caltrans MS4 Permit addresses compliance with the prohibitions and limits of Parts A.4, D.2 and D.3 of the Permit. We believe that the Board should change the phrase "assure compliance with" in the last clause of Part D.4 to either "achieve compliance over time with" or "obtain compliance over time with ." The last clause would thus read as follows:
"the Department shall "achieve compliance over time with" Sections A.4, D.2 and D.3 of this order by complying with the procedure specified in Section E.2.c.6) of this Order."
In addition, the Board should amend Part D.2 to read as follows: "Except as provided in Part D.4 below, the discharge of storm water from a facility or activity shall not cause or contribute to an exceedance of any applicable water quality standard."
The language change suggested above would achieve the State's iterative BMP-based compliance goals in a manner consistent with the receiving waters limitations language of the precedential orders. It would require compliance with water quality objectives through the iterative BMP process.

Response: See comment response to AA1

Comment BB1 Comment Letter Page # 2

Summary: In general, we remain concerned that the State Board is imposing a regulatory burden on Caltrans that takes millions of dollars of funding away from the agency's primary mission to build and maintain public roadways and directs those resources to complying with the Tentative Order requirements.

Response: The costs of the permit have been analyzed and are presented in the Fact Sheet. The Department has responsibility for the runoff that leaves their right-of-way, even if a major source of the pollution is the public itself through the use of the roads and highways.

Comment BB2 Comment Letter Page # 2

Summary: Despite limited pull back of monitoring requirements in a very few instances, the Tentative Order creates new and additional expenditures for stormwater monitoring that appear to bear no relationship to improving water quality. For example, it appears that Caltrans is being asked to fund a disproportionate amount of water quality monitoring within Areas of Special Biological Significance, and the number and breadth of monitoring requirements continues to be excessive, and without justification.

Response: The responsibilities of the Department include compliance with the Special Protections for discharges to ASBS (WQ Order 2012-0012), regardless of the state of this permit. The language included in this permit is consistent with the Special Protections. Significant efforts have been expended to work with the Department to identify and justify the list of outfalls that discharge to ASBS (Attachment III) that the Department will be required to monitor and, where necessary, to implement corrective actions.

Comment BB3 Comment Letter Page # 2

Summary: The Tentative Order appears to give wide discretion to local Regional Boards to place additional regulatory burdens on Caltrans beyond that contained in the Tentative Order.

Response: Regional Water Quality Control Board discretion exists whether or not we include such language in this permit.

Comment BB4 Comment Letter Page # 2

Summary: While CICWQ supports the evaluation and use of all types of LID BMPs and other water quality treatment technologies in managing post-construction runoff from land development projects, we cannot support the mandatory consideration and application of certain LID BMPs for roadway construction projects at all times in all locations in California.

Response: Staff is not certain with what provision the commenter has issue. The design criteria outlines a priority system for LID, but does not require mandatory LID BMPs in every case for every location.

Comment BB5 Comment Letter Page # 3

Summary: Harvest and use and evaporative-type LID BMPs are generally unsuitable for the roadway environment managed by Caltrans for several reasons.

Response: Design standards set priorities for the use of BMPs and at that stage LID BMPs are determined to be feasible or infeasible for the highway projects. In addition, the Department facilities outside of the highway environment may benefit from suitable harvest / re-use and evaporative-type LID BMPs.

Comment BB6 Comment Letter Page # 4

Summary: CICWQ urges the State Board to require that all roadway projects greater than 1 acre, if shown to be technically and economically feasible, install soil infiltration or biofiltration LID BMPs to the maximum extent practicable, and if these two types of systems are technically and economically infeasible, then require installation of conventional volume-based or flow-based storm water treatment devices for the remaining volume of runoff not managed in soil-based infiltration or biofiltration LID BMPs.

Response: The commenters suggestion would limit the applicability of other effective BMPs that could be in-place in a highway environment. The proposed permit requires the prioritization of infiltration BMPs, but does offer other options to cover the myriad of situations that the Department faces on a day-to-day basis. The use of conventional treatment devices is, in fact, the last thing the State Water Board wants installed given that other methods can be installed or employed, therefore it was set as a last resort option in the prioritization of BMPs.

Comment BB7 Comment Letter Page # 4

Summary: Clarify Infeasibility Factors and Include Economic and Technical Feasibility Consideration when Conducting LID BMP Selection Processes, and Consider LID BMP Installation Cost-benefit Analysis.

Response: The prioritization of BMPs was not specific about what factors to consider due to the high variability of such factors. A site-by-site analysis would be required to determine all the factors that would need to be considered to determine infeasibility. Therefore the State Water Board staff and the Department have met and communicated on multiple occasions during the development of the permit, including before and during the comment period, to identify provisions of concern to the Department and consider focusing the permit on those requirements that will achieve the most water quality benefit. Staff agrees that the Department and the State Water Board have a common interest in achieving the highest water quality at a reasonable life cycle cost to ensure responsible expenditure of public funds.

Comment BB8 Comment Letter Page # 4

Summary: Eliminate "Alternative Compliance with Treatment Sizing Criteria", found on page 39 of the Tentative Order.

Response: The draft permit covers a wide array of situations and scenarios. It has been determined that the requirements held within will not be suitable for all situations. Therefore, a method for determining compliance through alternative means is necessary. The language in the permit has been crafted to ensure that the needs of the Department and the State Water Board and the applicable Regional Water Boards are met.

Comment BB9 Comment Letter Page # 5

Summary: Revise the Receiving Water Limitation Language Consistent with the Suggestions Made by the California Stormwater Quality Association

Response: See comment response to AA1

Summary: Part D of the Caltrans MS4 Permit addresses compliance with the prohibitions and limits of Parts A.4, D.2 and D.3 of the Permit. The County firmly supports the linkage between the iterative process in Part E.2.c.6).c) of the Permit and the prohibitions and limits of Parts A.4, D.2 and D.3. However, to strengthen this linkage in a crucial way, the Board should change the phrase "assure compliance with" in the last clause of Part D.4 to either "achieve compliance over time with" or "obtain compliance over time with ." The last clause would thus read as follows: "the Department shall "achieve compliance over time with" Sections A.4, D.2 and D.3 of this order by complying with the procedure specified in Section E.2.c.6).6) of this Order."

In addition, the Board should amend Part D.2 to read as follows: "Except as provided in Part D.4 below, the discharge of storm water from a facility or activity shall not cause or contribute to an exceedance of any applicable water quality standard."

The language change suggested above would achieve the State's iterative BMP-based compliance goals in a manner consistent with the receiving waters limitations language of the precedential orders. It would require compliance with water quality objectives through the iterative BMP process.

Response: See comment response to AA1

Comment BD1 Comment Letter Page # 1

Summary: Maximum extent practicable (MEP) is a generic term with no baseline for comparison.

Response: The MEP standard has a very specific definition and is defined in Attachment VIII of the draft permit. For more discussion on MEP, please see the response A3 to comments on the August 18, 2011 draft. (http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/caltrans/draftentord_rev0412/final_response_comments.pdf)

Comment BD2 Comment Letter Page # 1

Summary: The problem with Best Management Practices BMPs is that the burden lies on taxpayer-funded solutions based on little to no science. BMP is the wrong approach if the pollutant load is high. Identification of source points are important.

Response: There is a body of evidence of scientific literature devoted to BMPs and BMP performance. While staff agrees that source control is the most cost-effective method of pollutant "removal", BMPs work well for storm water due to their passive nature. High pollutant loads can cause multiple issues, one of which is BMP performance. In the case where BMP performance is reduced due to high loads, looking to the source would be the preferable option.

Comment BD3 Comment Letter Page # 1

Summary: Fracking is an issue in California, unregulated by DOGR Department of Oil and Gas Resources. The process of fracking fluid, usually proprietary, could be a major contributor to the pollutant load. What BMP would alleviate the pollutant load? None.

Response: This comment is outside the scope of this permit.

Comment BD4 Comment Letter Page # 1

Summary: Pipelines can be found underneath Caltrans right-of-ways. Are the pipes leaking or broken? Pipelines are aging, may be dangerous and have no required disclosures or insufficient disclosures or completely incorrect disclosures. They may be owned by the Gas Company, or Oil Transport Companies or a vary of owners. Does Caltrans have the jurisdiction to require disclosure and monitoring and testing.

Response: The jurisdictional powers of the Department in regard to easements is beyond the scope of this permit.

Comment BD5 Comment Letter Page # 1

Summary: Where are the monitoring stations throughout the system? Most monitoring stations are at the coastline or receiving waters. Again, no source point has been identified. You expect the taxpayer to carry the burden to reduce pollutant loads with no source point identification.

Response: The commenter is correct that most monitoring will be conducted at the coast or in the receiving waters. The monitoring program was prioritized to address the water-bodies that have the most need. In terms of permit provisions, these water-bodies are TMDL and ASBS sites. The Department and the State Water Board have a common interest in achieving the highest water quality benefit at a minimum life cycle cost to ensure responsible expenditure of public funds.

Comment BD6 Comment Letter Page # 1

Summary: The operations and maintenance cost, in the City of Los Angeles under their Proposition O (BMP program) is estimated at an unfunded \$350 million a year for a capital cost of \$500,000,000. How many billions have you projected for the cost and who do you expect to pay for it?

Response: For a discussion on costs, please refer to the Fact Sheet.

Comment BD7 Comment Letter Page # 1

Summary: There is not enough geological assessment to identify nature versus man-made sources.

Response: The anthropogenic contribution of pollutants to the State's highway system is significant enough to maintain the focus of efforts in this area.

Comment BD8 Comment Letter Page # 2

Summary: The urban setting needs more analysis and science behind these policy decisions. Lacking is the Public Health standards around BMPs and the jurisdictional responsibility. Outbreak of disease has never been addressed.

Response: The permit contains provisions regarding vector control, which was supplied with the cooperation of the California Department of Public Health.

Comment BD9 Comment Letter Page # 2

Summary: The Southern California Bight needs to be addressed.

Response: Various portions of the Southern California Bight have been designated as ASBS (Areas of Special Biological Significance). The proposed permit gives priority to ASBS, please refer to the discussion on ASBS in the Fact Sheet.

Comment BD10 Comment Letter Page # 2

Summary: Basin Plans are implementing TMDLs without the collection of the vast information needed to determine applicability and reduction results.

Response: The information on reduction results (and thus applicability) is what is being obtained through the TMDL efforts. And to clarify, the implementation of TMDLs is not through the Basin Plans, but rather through permits, such as this one.

Comment BD11 Comment Letter Page # 2

Summary: LID Low Impact Ordinances may have no effect whatsoever.

Response: LID offers a lower cost method of reducing pollutants that would otherwise enter our surface waters. LID has a proven track record of providing pollutant reductions.

Comment BE1 Comment Letter Page # 1

Summary: The cost to the State of compliance with this permit is not being adequately considered, particularly given the severe budget deficit from which the State of California is currently suffering. Caltrans conservatively estimated the costs when it made the comment that "Total estimated personnel cost ranges from \$55 million to \$1.1 billion annually. Total estimated capital cost ranges from \$735 million to \$1.1 billion annually." (See Caltrans 3/14/11 Comment Letter at page 3 (emphasis added in original).)

Response: The Fact Sheet has addressed the costs involved with the implementation of the proposed permit.

Comment BE2 Comment Letter Page # 2

Summary: The currently proposed Receiving Water Limitations requirements represent a policy choice that if imposed on Caltrans, and then on all cities, counties and industries statewide, will potentially bankrupt state and local governments and many businesses in California while likely failing to meet stringent water quality standards. Because our clients are rightfully fearful that the Caltrans permit will be used as a template for city, county, and industrial stormwater permits statewide, we urge the State Water Board to make a different policy choice - to allow standards to be met rationally, and over time, with an understanding that standards for many of the pollutants cannot be met immediately, and are dependent on behavior of third parties.

The State Water Board needs to return to its initial rulings before EPA Region IX go (sic) involved to short circuit an otherwise valid stormwater program.

Response: See comment response to AA1.

Comment BE3 Comment Letter Page # 4

Summary: We propose that the State Water Board consider its past history and consider other alternative approaches that protect water quality while at the same time limiting potential liability for stormwater dischargers actively undertaking progressive BMPs under the iterative process.

Instead of moving forward with the proposed policy approach of requiring strict compliance with water quality standards the MS4 program should re-focus its attention on improving all permittee stormwater pollution control programs to incorporate better and better programs and practices to continue the mandated reduction of pollutants to the maximum extent practicable, and to continue to improve these programs over time as the science and technology progresses.

To accomplish this, the Caltrans Permit should provide an express safe harbor in the form of the permit shield provided by the Clean Water Act itself.

Response: See Comment Response AA.1.

Comment BF1 Comment Letter Page # 2-4

Summary: The Monitoring Program should be significantly strengthened. The significant reduction in monitoring requirements from the last tentative draft of the permit to this draft coupled with the other monitoring program inadequacies described in our previous letters and below threatens to inhibit the ability of the data collected to truly capture the impacts of Caltrans' discharge on waterways throughout the state.

A) Thus, we strongly recommend that they be required to conduct sampling for those receiving waters as well as conduct causal assessments, if degraded conditions are present.

B) The constituents required for monitoring are very limited, and as mentioned above, have been greatly reduced in the Revised Permit. What is the justification for reducing 29 pollutants from the monitoring requirements?

C) The purpose of the "Tier 2 Monitoring Requirements" is unclear and should be clarified and expanded upon.

D) It is unclear if the Tier 2 sites are the discharge locations or receiving waters or both.

E) The Revised Permit includes a number of provisions to further reduce monitoring as the permit is implemented. Also, "[f]ollow up monitoring is not required where the discharge has been eliminated, or where the implemented BMP provides full retention of the 85th percentile, 24-hour rain event." The ultimate determination of compliance should be that the discharge is meeting water quality standards -- not a "design storm" approach as proposed. We urge staff to delete this proposed provision.

Response: A) Please see comment response to AC.12.

B) The constituent list was revised to accommodate a prioritization of resources. (See comment response AC.12.) Staff feels that the constituent list represents a comparable effort to monitoring required in other USEPA issued storm water permits.

C) The title of Tier 2 monitoring has been changed to reflect the activities involved, namely "Retrofit and Verification Monitoring"

D) Discharge locations are the target.

E) If there is not a discharge (at least up to the 85th percentile event) then there is no need for monitoring.

Comment BF2 Comment Letter Page # 4

Summary: The Permit must clearly state that numeric waste load allocations must be met for compliance purposes. A permit issued to regulate discharges into receiving waters must incorporate existing water quality standards and TMDL WLAs. Thus, these alternatives to "compliance" must be deleted. Regardless of BMPs used, Caltrans must meet their numeric WLAs. Thus, the Permit must clarify that any exceedance of a WLA is a violation and will be enforced.

Response: The Tentative Order states that "Waste Load Allocations, Load Allocations, effluent limitations, implementation requirements, and monitoring requirements for the TMDLs listed in Attachment IV are specified in the adopted and approved Regional Water Board Basin Plans or in USEPA-established TMDLs, which are incorporated herein by reference as enforceable parts of this Order." Provision E.4.a.

However, the Board has not yet developed the TMDL-specific permit requirements that must be "consistent with the assumptions and requirements of the available TMDL WLAs." (40 CFR section 122.44(d)(1)(vii)(B)). It is the intent of this permit for numeric limitations to be used where feasible and where consistent with the assumptions and requirements of the WLAs. However where numeric limitations are not feasible, limitations may be expressed in the form of BMPs. The Department must consult with the Regional Water Boards to develop TMDL implementation language, deliverables, and actions that will determine the effluent limitations to be consistent with the requirements and assumptions of the WLAs in the TMDL. See also discussion of numeric effluent limitations under Response to Comment AC.7.

The requirement to provide, "[w]here a BMP-based approach is proposed, an explanation of how the proposed BMPs will be sufficient to implement applicable WLAs," (E.4.B.3)) reflects guidance from USEPA. (See USEPA November 12, 2010, Memorandum from James. A. Hanlon, p. 4).

The findings and provisions referenced by commenter are substantially similar to the findings and provisions of the August 18, 2011 Draft, and accordingly not "steps backwards" from the August 18, 2011, draft permit as commenter suggests.

Comment BF3 Comment Letter Page # 4-5

Summary: Appendix IV should include all applicable TMDLs and TMDL compliance milestones and requirements. In addition, USEPA recently approved ten new TMDLs for Region IV, several previously adopted TMDLs are still missing in their entirety (Colorado Lagoon Toxics, Los Cerritos Metals, San Gabriel River Metals & Se., and Machado Lake Toxics). Staff should evaluate these new TMDLs to identify if Caltrans is listed as a responsible party and add the TMDL to Attachment IV if this is the case.

Although we believe the Clean Water Act requires this consistency, at a minimum, the Revised Permit should specify an expedited timeframe of 6 months to finalize the requirements that should be included in Appendix IV. The Revised Permit should also specify that a reopener of the permit will occur within one year to incorporate the revised Appendix IV.

Response: The Los Cerritos Metals, San Gabriel River Metals & Se TMDLs were already in the April 26, 2012 draft permit, and the Colorado Lagoon Toxics & Machado Lake Toxics TMDLs were recently added. The Regional Water Boards will, within one year of the permit adoption, identify WLAs, deliverables and actions to be implemented by the Department. However, the logistics of coordinating all the appropriate personnel will take time and expediting the development of TMDL implementation language will not achieve the best results.

Comment BF4 Comment Letter Page # 5-6

Summary: The Permit Must Contain a Clear Numeric LID Standard. The Permit should clearly state that BMPs shall be designed to infiltrate, harvest and re-use, or evapotranspire the entire storm water runoff volume from the 85th percentile 24-hour storm event.

Response: See comment response to AC.8.

Comment BF5 Comment Letter Page # 6

Summary: Infiltration, capture and reuse systems should be prioritized over flow-through LID features and conventional treatment devices. The flow-through and treatment device options on-site should be eliminated.

Response: Section E.2.d.2)b) of the Tentative Order addresses the commenters first statement. Infiltration, capture, reuse and evapotranspiration systems are the top priority. The next priority is flow-through options. In order to maintain the balance between the public's safety using highways and the need for pollution control, the flow-through option will remain in the permit.

See also comment response to AC 9

Comment BF6 Comment Letter Page # 6-7

Summary: Alternative Compliance Requirements should be strengthened. The Permit must outline how infeasibility will be demonstrated. The request for a "proposal for alternative compliance" is far too vague. What are the criteria that will be required in these proposals? What will be the goal of these proposals? The goal of an alternative compliance program should be to attain the same water quality and hydrologic benefit that would be gained from the primary program. We urge the State Board to employ a specified program that calls for offsite treatment in the same watershed with an appropriate multiplier of twice the amount, if on-site infeasibility is sufficiently demonstrated. Using a multiplier will incentivize creativity to retain the water onsite.

Response: Section E.2.d.2)d) Alternative Compliance has been revised to incorporate the goal of attaining and allowing the water quality and hydrologic benefits outside of the project limits and within the Department's R-O-W. The permit was changed to require the Department to submit documentation to support a claim of infeasibility. Long-term maintenance will still be required for Alternative Compliance. Also, refer to comment response AC.10.

Comment BF7 Comment Letter Page # 7

Summary: The Permit should retain crucial Project Planning and Design acreage thresholds.

The Revised Permit significantly increases the thresholds for projects subject to post-construction treatment from the last permit proposal. The State Board should reduce the threshold so that more post-construction projects are included and more water quality benefits result.

Response: See comment response to AC 11.

Comment BF8 Comment Letter Page # 7

Summary: The Permit should retain pilot retrofit requirements. We are extremely disappointed with the deletion of the requirement for pilot Low Impact Development retrofits. The Permit should include critical retrofit project details, such as performance criteria, sizing criteria and the size of the area to be treated.

Response: It is foreseen that the draft permit will require the installation and maintenance of BMPs for discharges to ASBS and TMDL waterbodies. After these initial BMPs are installed, the permit calls for the Department to retrofit areas that have the greatest threat to water quality. So while staff has removed the LID retrofit pilot studies, we have ensured that retrofitting will be conducted during the term of this permit.

Comment BF9 Comment Letter Page # 8

Summary: The Draft Permit Provides No Justification for Any Allowance of Waivers from Numeric Post-Construction Criteria. [...]The CWA requires that discharges from MS4 systems "shall require controls to reduce the discharge of pollutants to the maximum extent practicable"; no basis exists to allow for such a waiver to be granted solely because a project's impact to water quality is "minimal." Allowing this waiver is completely unjustified and inappropriate.

Response: The waiver clearly states that where a project will have minimal impact on the receiving waters, the Regional Water Board Executive Officer may waive the treatment control requirements, or lessen the stringency of the requirements. Waivers may not apply to projects where the treatment controls requirements are based on a WLA. A waiver based on an expectation of minimal impacts on water quality cannot be said to violate the MEP standard. A number of considerations inform what constitutes MEP for addressing a discharge, including whether the control measure will actually address a pollutant of concern and whether the costs of the control measure will have a reasonable relationship to the pollution control benefits to be achieved.

Comment BF10 Comment Letter Page # 8

Summary: Maintenance Program: The deleted requirement to report the amount of waste and debris removed from drainage inlets should be restored, along with the deleted requirement to prepare and implement a storm drain system survey plan. Of note, this requirement had already been weakened by replacing quantitative measurements of trash and litter removal with estimated annual volumes.

Response: Reporting Requirements for Trash and Litter have been added to be more comprehensive, they now include more than drainage inlets and catch basins. Estimated annual volumes to be reported on trash and litter removal activities include, but not limited to, storm drain maintenance, road sweeping, public education, and the Adopt-A-Highway program. In addition, the Storm Drain Survey Plan and Illegal Dumping Response Plan requirements were integrated to create one standard and avoid duplication of effort.

Comment BF11 Comment Letter Page # 8

Summary: Toxicity Testing: We support that the Permit requires the use of the Test of Significant Toxicity approach to calculate either a Pass or Fail of the effluent concentration chronic toxicity test at the IWC

Response: Thank you.

Comment BG1 Comment Letter Page # 1-2

Summary: The Tentative Order must be supported by evidence that justifies the State Board's decision to include, or not to include, specific requirements. Currently, the Tentative Order's provisions are not supported by the necessary evidence, as discussed below, and the State Board has failed to explain its decision not to adopt control measures and standards that have been adopted by other jurisdictions and proven by scientific studies to be more effective than the control measures and standards in the Tentative Order. The lack of substantial evidence to support the Tentative Order renders it unlawful. (See, e.g., Bangor Hydro-Elec. Co. v. F.E.R.C. (D.C. Cir. 1996) 78 F.3d 659, 664.)

Response: Commenter's contentions are addressed in the specific responses below.

Comment BG2 Comment Letter Page # 2-3

Summary: The Tentative Order's Definition of Maximum Extent Practicable is Inadequate. We are concerned that reference to the MEP standard contained within the Tentative Order's findings remains vague and inadequate. The State Board should revise its finding regarding compliance with MEP accordingly.

Response: Finding 8 has been revised to reflect the greater specificity provided in the glossary definition of MEP.

Comment BG3 Comment Letter Page # 3

Summary: The Tentative Order's Project Planning and Design Section is Legally Inadequate. The Tentative Order, as currently drafted, still does not require any specific level of LID implementation and would allow less effective (or in many cases, relatively ineffective) flow through conventional treat-and-discharge techniques to be used to address runoff in place of LID practices that retain runoff onsite. The fact sheet flatly acknowledges the lack of any mandate for a project to implement LID practices, as it states "Not all of the storm water treatment and infiltration principles identified in the Order are required to be implemented but are listed in order of preference with the most environmentally protective and effective alternatives listed first." The Tentative Order fails to meet the MEP standard as a result of its lack of any specific numeric metric for implementation of LID.

Response: The Tentative Order requires that the Department's project comply with planning and design requirements and incorporate numeric sizing criteria that includes low-impact development practices. The LID management strategies such as infiltration, harvest, re-use, and evapotranspiration of rainwater that promote the use of natural systems and ultimately attain water quality objectives does achieve MEP. These management practices have proven to effectively remove pollutants from stormwater, and reduce the volume and intensity of stormwater flows. The performance standard for LID practices is compliance with the WQSs and maintenance of beneficial uses.

The proposed permit provides for a prioritization of treatment options to mitigate pollution in storm water runoff from highway environments, including LID as the top priority. Staff does not contest the value or desire for implementation of LID, but recognizes that there are other factors that must be considered in a highway environment, including the safety of the public, safety of the Department's staff, and availability of space to implement treatment options.

Comment BG4 Comment Letter Page # 8

Summary: The Tentative Order Does Not Contain -- Nor Does it Justify the Lack of -- Specific Standards for LID Implementation. Critically, as demonstrated in the EPA comments quoted above, and in the implementation of standards requiring the implementation of LID practices that retain runoff on-site unless technically infeasible, the prioritization of LID practices or statement of a preference for LID is insufficient by itself to meet the MEP standard and must be paired with a measurable requirement for the implementation of LID. While we appreciate the fact that the Tentative Order does require some undefined level of LID implementation, the Tentative Order remains legally insufficient due to the lack of a mandatory numeric performance requirement for LID at Department and Non-Department Projects, and the availability of all-encompassing waivers from treatment standards (discussed below).

Response: See comment response BG.3.

Comment BG5 Comment Letter Page # 9

Summary: The Tentative Order's Allowance for Complete Waivers from Treatment Control Requirements violates the Clean Water Act. Federal regulations mandate that MS4 permits impose requirements to reduce the discharge of stormwater pollution from new development and redevelopment projects.

Response: See comment response BF.9.

Comment BG6 Comment Letter Page # 9

Summary: The Tentative Order Fails to Include Provisions that Effectively Prohibit all Non-Stormwater Discharges, as Required by the Clean Water Act. Federal law requires that MS4 permits "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers." (See, 40 C.F.R. 122.26; Tentative Order ¶ B.1.) The Tentative Order states that certain enumerated non-stormwater discharges "are conditionally exempt from [the] prohibition" against non-stormwater discharges into the MS4 system. (Tentative Order ¶ B.2.) Caltrans' own data indicates that agricultural runoff is a source of pollutants, and so should be "removed" according to federal regulations.

Response: Section 402 (p) (3) (B) (ii) of the Clean Water Act specifically prohibits non-storm water discharges into the storm water sewers. 40 CFR section 122.26 (d)(2)(iv)(B) (1) lists the categories of non-storm water that shall be addressed where such discharges are identified as sources of pollutants to the waters of the U.S. Hence, the conditionally exempt non-storm water discharges listed in Provision B.2. are prohibited unless they are identified as sources of pollutants to the receiving water. If the State Water Board Executive Director determines that any category of conditionally exempt non-storm water is a source of pollutants, then the Department may be required to monitor and submit a report or order to cease the discharges.

Refer to response to comment AC.17 for the issue of Agricultural runoff.

Comment BH1 Comment Letter Page # 1-2

Summary: Part D.4, Receiving Water (RWL) reads:
"The Department shall comply with Sections A. 4, D.2 and D.3 of this Order through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the SWMP and other requirements of this Order including any modifications. The SWMP shall be designed to achieve compliance with Sections A4, D.2 and D.3 of this Order.
If exceedance(s) of WQS persist notwithstanding implementation of the SWMP and other requirements of this Order, the Department shall assure compliance with Sections A.4, D.2 and D.3 of this Order by complying with the procedure specified at Section E.2.c.3)c) of this Order."

Instead, the sentence highlighted in bold (in original) should be changed to: "achieve compliance over time with Sections A.4, D.2 and D.3 of this order by complying with the procedure specified in Section E.2.c.6).6) of this Order."

In addition, the Board should amend Part D.2 to read as follows: "Except as provided in Part D.4 below, the discharge of storm water from a facility or activity shall not cause or contribute to an exceedance of any applicable water quality standard."

Response: See comment response to AA1

Comment BH2 Comment Letter Page # 2

Summary: The permittees request the inclusion of a clear definition of "ambient" as it relates to receiving water monitoring. The draft Caltrans MS4 permit should contain a finding that makes it clear that: (1) monitoring for stormwater is at the outfall, not in the receiving water; and (2) ambient monitoring is restricted to the receiving water, must conform to State Surface Water Ambient Monitoring (SWAMP), and must always be conducted during dry weather.

Response: See comment response to AJ2

Comment BH3 Comment Letter Page # 2-3

Summary: On behalf of my clients, please extend my most sincere appreciation to the State Board members and staff for the opportunity to comment on the draft Caltrans MS4 permit. The Caltrans MS4 permit provides: (1) much needed clarity on where and how stormwater compliance is determined; (2) an affirmation that numeric water quality based effluent limitations (WQBELs) are not feasible at this time (in deference to BMP WQBELs); (3) that wet weather monitoring cannot be considered ambient monitoring, which serves as a reference condition in a receiving water rather than a compliance criterion; and (4) a clearly delineated iterative process that must be included in all MS4 permits issued in the State.

Response: See comment responses AA1 and AJ2. While the State Water Board appreciates the commenter's support of the Tentative Order, the State Water Board disagrees with the comment's representation of the Order's conditions and intent.

Comment BI1 Comment Letter Page # 1

Summary: We recommend the permit be revised to incorporate all applicable WLAs at this time as the necessary information should already be available with the Regional Boards.

Response: The State Water Board has determined that specific enforceable permit requirements are necessitated because of the high variance in the level of TMDL detail and specificity. Some TMDLs have been assigned a grouped or aggregate WLA that each discharger is jointly responsible for complying with the joint WLA. The Department is currently responsible for TMDLs that require clarity for their specific compliance responsibility. No later than six months after the permit adoption, the Department and each Regional Water Board will consult for the purpose of developing TMDL implementation language. Also, refer to comment AC.16.

Comment BI2 Comment Letter Page # 2

Summary: Section E.2.d.2.a.iii of the April 2012 permit (section E.2.d.1.a.i.3 in the August 2011 draft) provides for waivers of post-construction requirements for projects with a "minimal impact on water quality." In our September 2011 comments, we recommended this provision be deleted unless clear criteria are provided concerning what a "minimal impact" would be. For the April 2012 permit, we again found no such guidance and we reiterate our previous recommendation.

Response: See comment response to BF.9

Comment BI3 Comment Letter Page # 2

Summary: We recommend section E.2.d.2.b.ii (second paragraph) in the April 2012 draft be revised to replace "may be" with "shall be" with regards to the treatment of excess volume. This is a reiteration of our comment on section E.2.d.1.a.ii of the August 2011 draft permit.

Response: Staff contends that flexibility is still needed for the treatment of the storm water volume in question. The proposed permit prioritizes LID and then LID flow-through devices, and then conventional treatment devices. Limiting the treatment options to strictly LID does not seem practicable in a highway environment. Therefore, if we are to continue with this priority mechanism, then the words "shall be" would be out of place.

Comment BI4 Comment Letter Page # 2

Summary: Our September 2011 letter had recommended the permit more clearly distinguish between requirements for "treatment" BMPs and LID requirements. We reiterate this recommendation throughout section E.2.d.2 of the April 2012 draft permit.

Response: The proposed permit has used the term "LID-based" to indicate the difference between LID and conventional type treatments devices. While it may differ from what other Regional Water Boards may have put into their MS4 permits, staff contends that the requirement in question is in fact clear.

Comment BI5 Comment Letter Page # 2

Summary: Section E.2.d.2.b of the April 2012 draft permit includes a new provision which provides that "Design Pollution Prevention BMPs" may be used to comply with the treatment requirements of this section. The term "Design Pollution Prevention BMP" is not defined in the permit, but appears to refer to a category of BMPs in section 4.3 of Caltrans' 2003 stormwater management plan (SWMP) where the term is also found. The 2003 SWMP refers to the BMPs as non-treatment controls which would not seem to fit within section E.2.d.2.b.ii of the draft permit (which prescribes treatment requirements). We recommend additional clarification of this matter, or deletion of the last sentence of the first paragraph of this section.

Response: Whereas the permit provisions of E.2.d.2)b) establishes sizing criteria for projects that exceed the thresholds listed in E.2.d.2)a). The Design Pollution Prevention BMPs established in E.2.d.1) are for every project, whether they meet the threshold requirements or not. In other words, the principles listed here are what staff feel should be considered everywhere.

Comment BI6 Comment Letter Page # 2

Summary: We recommend that section E. 12 of the draft permit (Dispute Resolution) be removed. This section seems to set up a special enforcement mechanism for this particular permit which we believe is inappropriate and unnecessary.

Response: The Dispute Resolution provision is necessary for the Department because of the number of players involved in this statewide permit. This permit involves the staff at nine Regional Water Boards, Department Headquarters staff, District Office staff, and consultants. The Department has often experienced challenges in implementing a consistent statewide program via its large organization that operates in various watersheds that have a complex geography, geology, climate, and region-specific expectations. The dispute resolution provides a mechanism for disagreements not easily resolved between the Regional Water Board and the Department.

Comment BI7 Comment Letter Page # 3

Summary: Section E. 1.g of the draft permit notes that public comment would be solicited for revisions to the SWMP which require Executive Director approval. Section E.1.a also requires that an entirely new SWMP be submitted for Board review and approval within one year of the effective date of the permit. We presume that proposed Board action on this SWMP would also be public noticed and public comment would be solicited, but this is not entirely clear at the moment, and we believe this matter should be clarified.

Response: Thank you for the comment. The proposed permit will provide such clarification.

Comment BJ1 Comment Letter Page # 2

Summary: The Ninth Circuit found that the State Water Board's language meant that discharges may not cause or contribute to water quality exceedances in streams, because the language was not expressly linked closely enough the specific methods of compliance in the permit. As a result, unless the iterative process language in the receiving water limitation section of the Draft Caltrans' MS4 Permit is revised to address the Ninth Circuit's decision, it could create open ended liabilities and expenses for Caltrans and, by virtue of the precedent set by the language of the Caltrans MS4 Permit, other municipalities.

To avoid these potentially severe impacts on Caltrans, municipalities and the public and private facilities which discharge to the MS4s, WATER requests that the State Water Board revise the current receiving water limitations language to make clear that compliance with the iterative management process provides effective compliance with the receiving water limits and prohibitions.

Response: See comment response to AA1

Comment BJ2 Comment Letter Page # 2

Summary: We believe that the proposed permit needs to be revised to be consistent with Finding 76 in the Construction General Permit to provide clarity that linear underground/overhead projects (LUPs) are not subject to post-construction BMPs. The State Water Board's Construction General Permit is clear that LUPs are not subject to post-construction BMPs, such as SUSMPs, LID and hydromodification, and the proposed CalTrans MS4 Permit needs to also provide that same clarity.

Response: Staff contends that such an explicit exemption is not needed, as the threshold for post-construction controls is set as 1 acre of New Impervious. If LUP projects are as consistent and negligible as the commenter suggests, then these projects will not be adding 1 acre of new impervious.

Comment BJ3 Comment Letter Page # 2

Summary: WATER believes that it is premature and inappropriate for this permit to mandate the use of the Test of Significant Toxicity (TST) protocol, since the use of this protocol is the subject of a yet to be adopted State Water Board Toxicity Policy. We request the use of the Protocol be removed until if, and when, it is adopted for use by the State Water Board.

Response: USEPA has approved Test of Significant Toxicity (TST) method and it's subsequent end points. We reference the federal regulations and USEPA documents, not State documents or codes. This is a Federal permit, therefore, it is appropriate to use federal documents and regulations in the permit itself.