

Response to Comments - Amendment to Order 2012-0011-DWQ (Caltrans MS4 Permit)

Commenter: Matthew Fabry of BASMAA

Comment A1

Given that trash-related issues in the Bay Area have been identified as high priority and requirements associated with reducing trash impacts are included in Attachment V of the proposed amendments, we recommend that language be added in Attachment IV to more clearly state that Bay Area water bodies impacted by trash and with discharges covered by NPDES stormwater permit requirements for trash should be included in the prioritization process. This language would confirm consistencies between the Bay Area and Caltrans MS4 permittees, and allow further collaboration among Bay Area municipal permittees and Caltrans on reducing this high priority issue.

Response

Activities specified in Attachment V are not subject to the prioritization and not eligible for compliance units because they are not related to TMDLs, and the Department did not want to expand its Attachment IV obligations beyond TMDLs.

Commenter: Mike Santor of City of Palo Alto

Comment B1

We are eager to collaborate with Caltrans on future storm water implementation efforts and recommend that trash, mercury, and other pollutants of concern in the Bay Area be categorized as high priority by Caltrans and the State Board. Identifying these pollutants-water body combinations as high priority would provide consistency with priorities established via the Bay Area regional MS4 permit and greatly facilitate cooperation implementation efforts, as described in Section II.B Cooperative Implementation of the proposed permit.

Response

See comment response to A1

Comment C1

A: Comment Letter Cover Page

Permit does not adequately enforce all TMDL requirements as set forth in regional Basin Plan amendments, including interim milestones, compliance with WLAs, and special studies. Since Caltrans discharges in the City's municipal separate storm sewer system (MS4), the Permit's terms directly affect the City's ability to comply with TMDLs, and the cost to the City of achieving compliance.

B: Fact Sheet Overview (page 22)

#1 Prioritization Process Recommendation - Modify the following sentence to clarify as follows that Caltrans inventory will include all TMDL reaches and describe prioritized implementation controls for each reach:

"Accordingly, Attachment IV requires the Department, by October 1, 2014, to prepare and submit an inventory of all impaired reaches subject to TMDLs to which the Department discharges, (delete: 'with' and add: 'including a description of') prioritized implementation of controls for these (delete 'these' and add 'each') reaches based on a set of qualitative criteria."

Response

A: The Categorical requirements were developed in collaboration with the Regional Water Boards to be consistent with the assumptions and requirements of the TMDLs. State Water Board staff will consider the applicable TMDL compliance schedules when finalizing the prioritization list that will guide implementation efforts. Page 155, Section I.A.5. of the Amendment includes consideration of TMDL deadlines in the prioritization process. See page 24 of the Fact Sheet for more discussion on this topic.

B: It is not possible or necessary to specify the BMPs to be implemented in a survey/inventory of the reaches. Control measures to be implemented will be specified in the TMDL Status Review Report. See section I.B.1.c. The prioritized list of reaches will be developed using a set of qualitative criteria and that list will then be used to determine the Department's implementation activities required each year. No change required.

Comment C2

Fact Sheet Overview (pages 22 & 24) and ATT-IV Section I.A.5.c. (page 154)

All TMDL milestones set forth in a regional Basin Plan should be enforced by this permit. Recommend adding the following to the list of criteria: "c. TMDL [interim milestones and] final deadlines specified in a Basin Plan."

{Added text displayed in brackets}

Response

See comment response C1.A. Also, see Fact Sheet page 24 for more discussion on this topic. No change required.

Comment C3

Fact Sheet Overview (page 24)

All TMDL requirements as set forth in regional Basin Plans should be equally enforced via permit requirements for all listed Responsible Parties. This permit needs to enforce TMDL interim milestones and describe how Caltrans will demonstrate progress toward meeting WLAs.

Response

See Response to comment C4. Also, see Fact Sheet page 24 and 25 for more discussion on this topic.

Comment C4

Fact Sheet Overview (pages 24-25)

It is unclear how Caltrans will demonstrate compliance with WLAs or track progress toward meeting the WLAs. This permit must define possible determinations of compliance. For example the following language is a condition of the San Diego Regional MS4 Permit, Order R9-2013 -0001, Attachment E: Compliance with the final WLAs, on or after the final TMDL compliance date, may be demonstrated via one of the following methods:

- (a) There is no direct or indirect discharge from the Responsible Copermittee's MS4s to the receiving water; OR
- (b) There are no exceedances of the final receiving water limitations ... in the receiving water at, or downstream of the Responsible Copermittee's outfalls; OR
- (c) There are no exceedances of the final effluent limitations ... at the Responsible Copermittee's MS4 outfalls; OR
- (d) The Responsible Copermittees develop and implement the Water Quality Improvement Plan that incorporates BMPs and includes analysis using watershed modeling to demonstrate that implementation of the BMPs will achieve compliance with the TMDL [paraphrased].

Response

The Department will submit annually a TMDL STATUS REVIEW REPORT. This is a comprehensive report discussing and tracking BMP implementation and effectiveness. Attachment IV has been amended to clarify that both of these topics will require data and analysis to support any of the submitted findings. See Attachment IV, Sections I.B.1. and I.B.2. See also Permit Section E.4.b.

The Department is also required to submit a report at the end of the permit term titled TMDL PROGRESS REPORT (Section III.A.3.c.). This report is a comprehensive overall assessment of TMDL implementation activities and requires a detailed analysis of whether the controls implemented will be sufficient to achieve the WLAs or other performance standards of the TMDLs. This report is subject to public review and comment, and will be used in the development of the reissued permit.

Comment C5

Fact Sheet, Section A (page 25)

Comprehensive TMDL Monitoring and Reporting should integrate pending collaborative monitoring and strategic plans. As an example of an existing effort, the Water Quality Improvement Plan for Los Peñasquitos Watershed is currently being developed in collaborative stakeholder workshops, as required by the Regional Board. This plan will serve as the Comprehensive Load Reduction Plan (CLRP) required by the pending Los Peñasquitos Lagoon Sediment TMDL.

Response

Comment Noted. The Comprehensive TMDL Monitoring Plan required under Section III.A.1. will be carefully reviewed for applicable monitoring requirements. The Los Peñasquitos Lagoon Sediment TMDL has not been approved by the Office of Administrative Law or USEPA and has been deleted from the list of TMDLs in ATT-IV.

Comment C6

Fact Sheet (page 69) and ATT-IV (page174)

Los Peñasquitos Lagoon Sediment TMDL

Recommend adding the following relevant TMDL requirements and collaborative efforts to the description of this TMDL, and that Caltrans continue to participate in the development of the watershed Water Quality Improvement Plans, which will serve as the CLRP for the pending Los Peñasquitos Lagoon Sediment TMDL.

"The Los Peñasquitos Lagoon Sediment TMDL requires the development of a Comprehensive Load Reduction Plan within 18 months of OAL adoption. The TMDL requires special studies to determine the sources of sediment to better understand dischargers' contributions. The Responsible Parties, including the City and Caltrans, are developing a Water Quality Improvement Plan that will serve as the CLRP for this TMDL. Caltrans will integrate the monitoring TMDL requirements of this Plan into their Comprehensive TMDL Monitoring Plan (Resolution No. R9-2012-0033, A-8)."

Response

See Comment Response C.5. No change required.

Comment C7

Fact Sheet (page 102)

Chollas Creek Dissolved Copper, Lead, and Zinc TMDL

Recommend adding: "Dissolved" Metals in Final Concentration-based WLAs column one header.

Response

The subheader for this table indicates that the WLAs are expressed as dissolved metals. No change required.

Comment C8

Fact Sheet (page 102) & Att-IV (page 174)

Chollas Dissolved Metals TMDL Monitoring and Assessment

Recommend adding a reference as provided below to the existing TMDL monitoring program in this section to identify which TMDLs meet Section III.A.1.a.:
"Caltrans shall continue to implement the monitoring and assessment requirements issued under Investigation Order No. R9-2004-0277, California Department of Transportation and San Diego Municipal Separate Storm Sewer System Copermittees Responsible for the Discharge of Diazinon into the Chollas Creek Watershed, when it is amended to include monitoring requirements for the Total Maximum Daily Loads for Dissolved Copper Lead and Zinc in Chollas Creek."

Response

Section III.A.1 already requires that the Department to continue to implement existing TMDL monitoring plans. According to Section III.A.2, the Department will be submitting their comprehensive monitoring plan to the State Water Board for approval. If the Department does not submit the required information, including the monitoring plan described in this comment, then the plan will not be approved.

No change required.

Comment C9

Fact Sheet (page 102)

Chollas Creek Dissolved Copper, Lead, and Zinc TMDLs

The Permit incorrectly states the final compliance date for this TMDL as December 18, 2018. The final compliance date is in 2028. The Interim Date is October 22, 2018. San Diego Regional Board Resolution R9-2007-0043, Attachment A, at 7.

Response

The Fact Sheet has been revised to show that the final compliance date to meet 100% Chollas Metals TMDL WLA is December 18, 2028.

Comment C10

Fact Sheet (pages 133-134)

Project I - Twenty Beaches and Creeks in the San Diego Region

"The dry weather TMDLs were assigned entirely to the Municipal MS4s land use category as dry weather WLAs, meaning only discharges of bacteria loads to the receiving waters are expected or allowed from the Municipal MS4s land use category during wet weather."

Recommend deleting the following portion of this sentence: ", meaning only discharges of bacteria loads to the receiving waters are expected or allowed from the Municipal MS4s land use category during wet weather"

Response

The Fact Sheet language for this TMDL was paraphrased from the Basin Plan. It has been revised to accurately reflect the Basin Plan language.

Comment C11

Fact Sheet (page 136)

Project I - Twenty Beaches and Creeks in the San Diego Region

Recommend adding interim compliance dates for dry weather, which start in 2016 for multiple watersheds in San Diego.

Response

See response to Comment C1.A. No change required.

Comment C12

Fact Sheet (page 136)

Diazinon Pollutant Category

Recommend revising the Chollas Creek Diazinon WLA Table to include the averaging period for both the acute and chronic numeric targets. The acute averaging period is expressed as 1 hour, and chronic averaging period is expressed as 4 days.

Response

Agree. The table has been edited accordingly.

Comment C13

Fact Sheet (page 136) and ATT-IV (page 174)

Chollas Creek Diazinon TMDL Monitoring and Assessment

Recommend adding the following reference to the existing TMDL monitoring program to identify which TMDLs meet Section III.A.1. "Responsible Parties have an MOU to monitor Diazinon in Chollas to evaluate progress towards meeting the WLA. Caltrans shall continue to implement the monitoring and assessment requirements issued under Investigation Order No. R9-2004-0277, California Department of Transportation and San Diego Municipal Separate Storm Sewer System Copermittees Responsible for the Discharge of Diazinon into the Chollas Creek Watershed."

Response

See comment response C.8. No change required.

Comment C14

Fact Sheet (page 135)

General Description for Diazinon TMDL Pollutant Category

Category Section III.A.I. requires continuation of existing TMDL monitoring programs. Attachment IV, Part F does not require additional monitoring and is inconsistent with Section III.A.1. Recommend that Attachment IV, Part F be updated to be consistent with Section III.A.1.

Response

Section III.F is the categorical implementation requirements for Diazinon. The fact that the categorical implementation requirement does not require extra monitoring does not make it inconsistent with III.A.1. The provisions of Section III.A.1 still apply and does not need to be repeated. No change required.

Commenter: Gene Matter of City of San Diego

Comment C15

ATT-IV Section I.B.1 (page 155) and Section III.3.b (page 175) [sic]

TMDL Status Review Report

The correct reference for the TMDL Status Review Report is Section E.4.b, and not E.4.c.

Response

Section E.4.b. TMDL-Specific Permit Requirements has been deleted in the Order and all TMDL specific requirements are now found in ATT-IV. The commenter is correct, but ultimately, that phrase was deleted to dispel confusion regarding circular referencing.

Comment C16

ATT-IV, Section I.B.2. TDML Status Review Report

Caltrans should evaluate progress towards meeting WLAs on annual basis either individually or jointly if part of a group effort. Recommend adding the following line to reporting requirements:

"An evaluation of the implemented and planned control measures and progress toward achieving WLAs."

Response

The Department will be required to evaluate progress toward achieving the WLA by monitoring the effectiveness of the BMPs installed on an annual basis. The Department will evaluate the effectiveness of the controls and submit the results of the evaluation in the TMDL Status Review Report as part of the Annual Report. If the controls implemented are shown to be ineffective, then the Department must either redesign the BMPs or implement a new type of control measure to address the inadequacies of the current design. This will ensure that progress is made toward achieving the requirements of the TMDL. In addition, six months prior to the end of the permit cycle a TMDL Progress Report is to be submitted as part of the reissuance application. The report must include 1) a summary of the effectiveness of the control measures installed for each reach that has been addressed, as a result of BMP effectiveness assessment, 2) the determination as to whether the control measures have been or will be sufficient to achieve WLAs and other performance standards by the final compliance deadlines, 3) where the control measures are determined not to be sufficient to achieve WLAs or other performance standards by the final compliance deadlines, a proposal for improved control measures to address the relevant pollutants, and 4) a summary of the estimated amount of pollutants that were prevented from entering the receiving waters. In addition, the TMDL Progress Report will be subject to public review and comment and will inform the requirements of the reissued permit. No change required.

Commenter: Napp Fukuda of City of San Jose

Comment D1

We're eager to collaborate with Caltrans on future stormwater implementation efforts and recommend that trash, mercury, and other pollutants of concern in the Bay Area be categorized as high priority by Caltrans and the State Board. Identifying these pollutants-water body combinations as high priority would provide consistency with priorities established via the Bay Area regional MS4 permit and greatly facilitate cooperation between the City of San Jose and Caltrans in the form of cooperative implementation efforts, as described in Section II.B Cooperative Implementation of the proposed amendment.

Response

See comment response to A1. No change required.

Commenter: Scott McGowen of Department of Transportation

Comment E1

We are concerned that there are limited opportunities for cooperative implementation. We would like to explore statewide programmatic agreements or lump sum contributions, where Caltrans contributions would be administered by a third party, such as contributing to a statewide grant or other programs.

Response

The State Water Board acknowledges that the Department is generally a small contributor to the TMDL watersheds and may have limited opportunity to venture into cooperative agreements. Because of limited opportunities for cooperative implementation, Attachment IV has been revised to establish a framework for a voluntary grant program.

Comment E2

There are a number of TMDLs where Caltrans is not a source or is otherwise identified as an insignificant source of the pollutant(s) causing impairment, a number of TMDLs where the Regional Water Board has determined that compliance with the NPDES permit will meet the wasteload allocation, and one TMDL that has not been approved to date. Caltrans requests that the State Board consider adjusting the compliance unit threshold for those reasons.

Response

Please refer to response to comment E24 that addresses TMDLs where the Department is not a source or otherwise identified as an insignificant source of pollutants causing impairment. Staff has evaluated all TMDLs that the Department is subject to and is satisfied that the content of Table IV.2 is accurate and complete to date. It is anticipated that the number of TMDLs will increase in the future. Adjustments in the annual number of compliance units may be considered when the Permit is reissued. The number of compliance units presented in the draft amendment was, in fact, Caltrans proposal that we accepted. Therefore, there will be no change in the number of annual compliance units. No change required.

Comment E3

Caltrans has utilized extensive capital resources and limited right of way to implement BMPs to address TMDLs. These factors should be considered in a comprehensive accounting of total annual compliance units:

- 1) BMPs currently in operation to address TMDL compliance
- 2) BMPs treating existing drainage area
- 3) BMPs in projects initiated or programmed to date in TMDL watersheds
- 4) BMPs in projects that cannot be redesigned. The State Transportation financing and programming process currently has programmed projects in the pipeline.

Response

- 1: Projects already installed are not eligible for compliance units. Compliance Units are only applicable to projects completed after the adoption of this amendment.
- 2: See answer to 1 above.
- 3: BMPs installed after the adoption of the amendment can be eligible for compliance units. Section I.B.3. states that stand alone retrofits and post-construction BMPs that treat above and beyond the base permit requirements can receive credit. Projects initiated or programmed to date will have to meet the base post-construction requirements in the permit. Therefore, no change is needed as the projects described are already addressed.
- 4: See answer to 3 above. Also, projects described in 3 and 4 will be subject to the monitoring requirements established in Attachment IV and subject to adaptive management.

Comment E4

Caltrans requests that the Order and Factsheet provide clarity by adding:

- 1) Language stating that Order requirements govern when there is conflict with the details of the fact sheet
- 2) Table of contents referencing Permit Section numbers

Response

The Fact Sheet sets forth the principal facts and rationale supporting the provisions. It is based on information available when the permit amendment was drafted and is not independently enforceable. The only enforceable language in the adopted permit is found in the provisions. No change required.

The existing table of contents in the permit will not require modification because of the amendment. The findings, fact sheet, provisions, and attachments associated with the permit amendment will only affect existing sections that either require new text or edits to the existing text.

Commenter: Scott McGowen of Department of Transportation

Comment E5

Page 3, Order, Finding 40. "The Regional Water Boards may require additional monitoring through Regional Water Board orders pursuant to Water Code section 13383."

Limit monitoring requirements to only what is required to address the TMDL requirements in Attachment IV.

Response

Water Code section 13383 would still apply even if the reference were removed. No change required.

Comment E6

Page 3, Order, Provisions E.2.c.2)a)ii)- Total Maximum Daily Loads "TMDL monitoring shall also include the constituents listed in Attachment II. "

Comment: Attachment IV language on page 178 excludes Attachment-II monitoring for Selenium, Trash, and Bacteria TMDLs.

Recommendation: Modify the last sentence of the first paragraph in this section as follows: "TMDL monitoring shall also include the constituents listed in Attachment II except as exempted by Attachment IV."

Response

Agree. Section E.2.c.2.a)ii) will be modified to add language to exempt those Pollutant Categories (Selenium, Trash, and Bacteria) from constituents listed Attachment II.

Comment E7

Page 23, Fact Sheet "Accordingly, for purposes of this calculation, the percentage of inaccessible/unsafe sites is reduced by one-half for TMDL watersheds, or 32 percent, translating into approximately 22,000 fewer acres ($68,000 \times 32 \text{ percent} = 22,000$) that must be treated. Therefore, the Department will have to address approximately 46,000 acres of ROW to comply with the TMDL requirements of Attachment IV. With the objective of addressing all TMDLs in Attachment IV within 20 years, the Department must treat or otherwise address 2300 acres per year ($46,000/20 = 2300$) throughout the state within the TMDL watersheds listed in Attachment IV "

Comment: Caltrans ROW noted in the Fact Sheet, ... ($68,000 \text{ acres} \times 32 \text{ percent} = 22,000 \text{ acres}$) is based on initial preliminary estimates.

Recommendation: This should be adjusted based on the most current estimates.

Response

The Fact Sheet was revised to note that the initial estimates were based on preliminary assessments for the first approach. Also, the Fact Sheet was revised to state that current estimates were used for the second approach.

Commenter: Scott McGowen of Department of Transportation

Comment E8

Page 24, Fact Sheet "Using an average cost \$176,000 per BMP/acre, the proposed annual cost to meet this requirement relying solely on retrofits is approximately \$290,000,000."

Comment: Footnote needs to be clarified as cost estimate of \$176,000/Acre (\$290M annual) provided by Caltrans to the Water Board to clarify the cost per acre.

Recommendation: Revise footnote, "Construction capital cost based on information provided by Caltrans staff."

Response

Footnote has been edited to read: Construction capital cost was based on information provided by Department staff.

Comment E9

Page 36, Fact Sheet Lost River Nitrogen Biochemical Oxygen Demand, the WLA listed is incorrect.

Final Nitrogen WLAs

Segment	Total Dissolved Inorganic Nitrogen WLA {average g/day}	Total Carbonaceous Biochemical Oxygen Demand (CBOD) (average kg/day)
Lost River from Border of Tule Lake Refuge	79.5	197.0
Tule Lake Refuge TMDLs	181.5	901.1
Lower Klamath Refuge TMDLs	76.2	889.9

Response

The Fact Sheet has been revised to reflect the correct WLAs for the Lost River Nitrogen TMDL.

Comment E10

Page 47, Fact Sheet South Fork Trinity River Watershed Sediment TMDL " ... TMDLs are portions of Highways 36 and 101."

Comment: Highway 101 is not within the South Fork Trinity Watershed.

Recommendation: Should be changed to Highway 36, 299, and 3.

Response

The second sentence under the Departments' Pollutant Contribution has been revised to read: "The state highways in the geographic area of the South Fork Trinity River Watershed include Highways 3, 36, and 299."

Comment E11

Page 60, Fact Sheet Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients, the last value in the Caltrans Nutrient Contribution table is calculated incorrectly

Source	Summer TN kg/mo (Apr 15-Nov 15)	Load Winter TN kg/mo (Nov 16-Apr 14)	Load Summer TP kg/mo (Apr 15 - Nov 15)	Load Winter TP Load kg/mo (Nov 16-Apr 14)
Total Load	789	20,442	140	2,842
Department Runoff (estimate based on area)	6.31	164	1.12	22.7

Response

The Fact Sheet has been revised to reflect the correct Malibu Creek and Lagoon TMDL Winter Total Phosphorus Load for the Department Runoff (22.7 kg/mo).

Comment E12

Page 80, Fact Sheet Dominguez Channel and Greater Los Angeles and Long Beach Harbor Toxic Pollutants TMDL, Inner Cabrillo Beach should not have allocations for Caltrans in the table.

Final Mass-Based Sediment Allocations for the Department

	Total PAHs (kg/yr)	Total DOTs (g/yr)	Total PCBs {g/yr}
Dominguez Channel Estuary	0.0023	0.004	0.004
Consolidated Slip	0.00009	0.00014	0.00006
Inner Harbor	0.0017	0.0010	0.0011
Outer Harbor	0.00021	0.000010	0.00004
Fish Harbor	0.000021	0.0000010	0.000006
Cabrillo Marina	0.0000016	0.00000028	0.00000024
Inner Cabrillo Beach (CT wants to strike this)			
San Pedro Bay	0.077	0.002	0.019
LA River Estuary	0.333	0.014	0.047

Response

Inner Cabrillo Beach has been removed from the Final Mass-Based Sediment Allocations Table on page 80 of the Fact Sheet for the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Toxic Pollutants TMDL.

Commenter: Scott McGowen of Department of Transportation

Comment E13

Page 89, Fact Sheet Los Angeles Area TMDLS, the Total DDTs TMDL for fish tissue is an error- 5.98 should be 5.28

Response

The Fact Sheet has been revised to show the correct Fish Tissue target in the Los Angeles Area of 5.28 ug/kg dry weight.

Comment E14

Page 106, Fact Sheet Ballona Creek Trash TMDL has the wrong baseline WLA for volume. The Department is assigned the following baseline WLAs of trash.

Weight (lbs/mile ²)	Volume (ft ³ /mile ²)
7479.36	(66,566...to be removed) 892.64

Response

The Fact Sheet has been revised on page 106, to reflect the correct number.

Comment E15

Page 109, Fact Sheet Machado Lake Trash TMDL Point Source Area is incorrect. Values should be as follows:

Point Source Area (mile ²)	Baseline WLA (gal/yr)
0.63	4,215.84

Response

The Fact Sheet has been revised to reflect the correct number.

Comment E16

Pages 156, Attachment IV, Section I.B.2.d. - TMDL Prioritization and Implementation "The effectiveness of the BMPs installed."

Comment: The effectiveness evaluation is covered under Section III.A.3.c. The TMDL Progress Report seems like a better place for this item as it is expected to cover a "discussion of previous year's activities."

Recommendation: Suggest delete this item.

Response

It is not appropriate to defer evaluation of the effectiveness of BMPs to the end of the permit term. Evaluation of BMP effectiveness is appropriate for inclusion in the Annual TMDL Status Review Report. It is an ongoing annual assessment to verify progress toward achieving the requirements of the TMDL through adaptive management. The TMDL Progress Report is required six months prior to the end of the permit cycle and is subject to public review. In addition, the TMDL Progress Report will be used for the development of the reissued permit. See reponse to comment C.4. No change required.

Comment E17

Page 156, Attachment IV, Section I.B.2.j "Any other information requested by the SWRCB Executive Director or designee."

Comment: Statement is too broad. The requirement "any other" is overly broad. Caltrans cannot assure compliance with unknown and possibly arbitrary requirements.

Recommendation: Delete the sentence.

Response

The Caltrans Permit Amendment contains specific and general requirements for TMDLs where the Department is specified as a responsible discharger. Any modification to the existing TMDL may require additional information not already required in Attachment IV. Requests for additional information will only be made as authorized under the California Water Code and Federal Clean Water Act. No change required.

Comment E18

Page 157, Attachment IV, Section 1.B.6 "No credit will be given to post-construction BMPs that only meet the minimum requirements of this Order (Section E.2.d.2)a)). Other projects within a TMDL watershed where treatment is provided above and beyond the post-construction requirements in this Order, may receive compliance units according to the following formula ... "

Comment: The crediting formula (for "beyond post construction requirements") only shows the methodology for volume based BMPs. The Order also allows crediting for flow based BMPs.

Recommendation: Delete the equation as it only implies volume based BMPs are credited for beyond post-construction. This should be based on the area treated and credit should be based on the area treated above and beyond what is required with post-construction. Revise the last sentence to state, "Other projects within a TMDL watershed where treatment is provided above and beyond the post-construction requirements in this Order may receive compliance units."

Response

The area treated will not change for improved BMPs, but rather it is the volume of runoff coming from the prescribed area that is being addressed "above and beyond" the permit conditions. In other words, if the Department were to claim that they added area treated to a BMP, that would indicate that they were not meeting the baseline permit requirements to begin with, as the permit states that they are to treat the runoff from their ROW emanating from the 85th percentile, 24-hour storm event. The Department is correct that the formula only addresses volume based BMPs. This is due to oral comments received on the March, 2012 draft, where the flow-based design standard for BMPs was removed due to the Department's comment that they do not implement flow-through BMPs. The credit system was based on this claim. Since there is no design standard for flow-through devices in the adopted MS4 permit, there would be nothing to compare to for the determination of "above and beyond". If the Department plans on implementing flow-through treatment devices, then they may discuss potential credit for compliance units with State Water Board staff. Any sizing criteria for flow-through devices considering compliance unit credits should be evaluated based upon a sizing criteria of two times the 85th percentile, 1 hour rainfall intensity as a baseline.

Comment E19

Page 158, Attachment IV, Section I, Table IV.I - Reach Prioritization Scoring Matrix

Comment: Additional factors to be considered for reach prioritization should not be limited to Table IV.1. Other factors that should be considered include:

- BMP effectiveness for the pollutant of concern.
- Potential for meeting a water quality standard if BMPs are constructed.
- Significance of the Caltrans' load in the TMDL causing impairment. Insignificant sources would be lower priority.

Recommendation: Caltrans requests to add to the secondary factors listed under Section I.A.5

Response

BMP effectiveness is not an appropriate rating criterion. The Department must select BMPs that are effective in treating the pollutant of concern. Similarly, the potential to meet the water quality standard is not an appropriate criterion. The Department must design a treatment system for the impaired reach that will meet the standard (WLA). The significance of the Department's load in causing the impairment is addressed in the Department's contributing drainage area and proximity to receiving waters. It is not appropriate to include other factors that duplicate these criteria. No change required.

Comment E20

Page 158. Attachment IV, Table IV.I Reach Prioritization Scoring Matrix (Definitions) "Connectivity to Receiving Waters -Directly Connected" definition

Comment: The Permit's glossary (Attachment VIII) defines an indirect discharge as "conveyed to the receiving water through 300 feet or more ..." thereby meaning any discharge less than 300 feet is a direct discharge. The statement in Att IV.1 contradicts the Permit's definition. 1/4 mile is equivalent to 1320 feet for a direct discharge.

Recommendation: Change "direct connectivity" to "proximity" - change in prioritization factors guidance table and the text below the table.

Response

Agree. The text has been revised to read: "This rating factor measures the relative proximity of the Department's ROW within a reach to the receiving water. Sites discharging through conveyances within 0.25 miles of the pertinent reach are considered to have greater potential to contribute pollutants and receive a higher rating." Other references to connectivity in this context have been changed to "proximity" to avoid confusion with other references in the permit to connectivity.

Commenter: Scott McGowen of Department of Transportation

Comment E21

Pages 159, Attachment IV, Section II.B.2 "2. Where the Department has existing cooperative implementation agreements with other responsible parties, it shall fulfill the commitments and requirements of those agreements. "

Comment: Caltrans should have discretion to withdraw from cooperative agreements, without violating the Permit, where it is in the best interest to do so. If an agreement is for sampling only it may be in the best interest to use funds for construction and monitoring in a higher priority watershed.

Recommendation: Delete item 2. It should not be a permit violation if Caltrans decides to withdraw participation through a cooperative agreement.

Response

The permit does not limit the Department's discretion or ability to withdraw from cooperative agreements.

Comment E22

Page 159, Attachment IV, Section II.B.4: "cooperative agreements relative to the TMDL implementation activity are subject to approval by the applicable Regional Water Board Executive Officer. "

Comment: Regional Water Board Executive Officer approval of the cooperative agreements will cause delays in the stakeholder process. It is not appropriate for the Water Boards to engage in approval of these legal agreements between stakeholders. A listing of the mutually agreed activities to be performed will be submitted to the Regional Board with the annual TMDL Status Review Report

Recommendation: Delete II.B.4.

Response

Cooperative agreements are subject to Executive Officer approval to ensure that the activities conducted under the terms of the agreement, and for which compliance units will be credited, are reasonably focused on the impairments. No change required to this section.

Commenter: Scott McGowen of Department of Transportation

Comment E23

Page 160, Attachment IV, Section II.B.5 "5. The Department shall submit sufficient information to document the progress in achieving the requirements of the TMDL for each cooperative implementation agreement in its annual TMDL Status Review Report. "

Comment: This paragraph could be deleted since the item is covered in detail in Section I.B.2.

Recommendation: Delete this paragraph.

Response

Section II.B.5. and I.B.2. cover the same report, but Section II.B.5. adds the requirement that sufficient information must be provided to document the progress in meeting the requirements of the TMDL for each cooperative agreement. Due to other revisions in response to comments, Section II.B.5. is now referenced as Section II.B.1.e., and has been modified to include a reference to Section I.B.2.

Comment E24

20. Page 161, Attachment IV, Table IV.2. TMDL Summary Table and Control Requirements

The following are TMDLs that should be removed from Attachment IV.

1. TMDLs stating, Compliance with the NPDES permit is sufficient to attain and maintain the wasteload allocations.

- a. Napa River Sediment TMDL
- b. Sonoma River Sediment TMDL
- c. San Lorenzo River Sediment TMDL
- d. Morro Bay Sediment TMDL
- e. Ballona Creek Wetlands Sediment and Invasive Exotic Vegetation TMDL
- f. Truckee River Sediment TMDL (this TMDL was approved for delisting)
- g. San Pedro and Pacifica State Beach Bacteria TMDL

2. TMDLs stating, USEPA did not establish specific wasteload allocations for point sources, so the waste load allocations are set to zero. The Department point source contribution is insignificant.

- a. Albion River (WLA set to zero, not significant)
- b. Big River (WLA set to zero, not significant)
- c. Eel River, Lower (WLA is zero)
- d. Eel River, South Fork (WLA set to zero, insignificant)
- e. Eel River, Upper Main (WLA set to zero, insignificant)
- f. Gualala River (WLA set to zero, insignificant)
- g. Navarro River (WLA set to zero, insignificant)
- h. Ten mile River (WLA set to zero, insignificant)
- i. Trinity River, South Fork (WLA set to zero)
- J. Van Duzen River and Yager Creek (WLA set to zero)

3. TMDLs not fully approved

- a. Los Peñasquitos Lagoon Sediment TMDL

Response

The TMDLs listed in Table IV.2 of Attachment IV

1. TMDLs a. - g. have identified the Department as a point source of the pollutant and in some cases assigned a WLA and implementation plan. No change required.
2. TMDLs a - j. are USEPA Established TMDLs and although there are no significant individual point sources of sediment in these impaired watersheds, the WLA for point sources are set at zero. This is a prohibition and the Department is not allowed to discharge the specified pollutant. No change required.
3. The Peñasquitos Lagoon Sediment TMDL has not been approved by the Office of Administrative Law or USEPA, and has been removed from Attachment IV, Table IV.2.

Comment E25

Page 172, Attachment IV, Table IV.2. TMDL Summary Table and Control Requirements- Lake Tahoe TMDL "By March 15, 2017, the Department shall update its Pollutant Load Reduction Plan to describe how it will achieve the pollutant load reduction requirements for the second five-year TMDL implementation period, defined as the ten-year load reduction milestone in the Lake Tahoe TMDL."

Comment: Lake Tahoe TMDL Pollutant Load Reduction Plan and the Pollutant Load Reduction Progress Report due dates should be updated. The date should be revised in Attachment IV.

Recommendation: Update schedule.

Response

Agree. The Lake Tahoe Pollutant Load Reduction Plan and the Pollutant Load Reduction Progress Report due dates have been modified to show compliance dates of July 31, 2014, and July 15, 2014, respectively.

Comment E26

Page 175, Attachment IV, Section III.A.1.b.-TMDL Prioritization and Implementation ... shall also include monitoring for all TMDLs that do not have existing approved water quality monitoring plans. . . . The comprehensive TMDL monitoring plan shall include a time schedule for implementation ...

Comment: Is Caltrans expected to monitor where there is no WLA or WLA =0 or where the Regional Boards or EPA have determined the Department's contribution is insignificant?

Recommendation: Change language so monitoring is limited to TMDLs where Caltrans has a WLA or where Caltrans is a significant source.

Response

Yes. Where there is no WLA or the WLA is 0, there is a prohibition of discharge of the pollutant(s) of concern. Monitoring is needed to confirm that this effective prohibition is being met. No change needed.

Commenter: Scott McGowen of Department of Transportation

Comment E27

Page 175, Attachment IV, Section III.A.1.a. "The Department shall continue to implement existing TMDL water quality monitoring plans, including cooperative water quality monitoring plans that have already received approval from the Regional Water Board Executive Officer."

Comment: This language appears to imply that the Caltrans TMDL Monitoring Plan would have to attach all the different monitoring plans for each TMDL listed in ATT IV even when Caltrans might not be a participant in a cooperative effort.

Recommendation: Suggest the following changed language: Caltrans shall continue to implement existing approved TMDL water quality monitoring plans for cooperative efforts where Caltrans is a participant. These efforts shall be listed in a separate section of Caltrans' Monitoring Plan.

Response

The provision has been clarified to indicate that the requirement only applies to cooperative efforts where the Department is a participant.

Comment E28

Page 175. Attachment IV, Section III.A.3.b "b. The Department shall summarize the previous year's TMDL monitoring results, deliverables and other actions as specified in its annual TMDL Status Review Report, per Provision E.4.c. of this Order."

Comment: This is a circular reference since here it refers to Section E.4.c of order which again refers to ATT IV.

Recommendation: Delete.

Response

Section III.A.3.b. has been revised to remove the reference to Provision E.4.c. It should be noted that the requirements of what to include in the TMDL Status Review Report are stated in Section I.B.

Commenter: Scott McGowen of Department of Transportation

Comment E29

Page 184, Attachment V, Part 2 Section 5.b. "Include trash capture devices on the outlets of treatment systems for new and redeveloped highway projects to achieve the full trash capture standard. "

Comment: This requirement may not be possible in areas where endangered species or species of special concern exist.

Recommendation: Delete requirement: 1 - not all outlets need to be retrofitted for full capture, and 2 - consideration needs to be given regarding endangered species or special concerns/wildlife and flood control.

Response

Attachment V, Part 2, Section 5.b. (San Francisco Bay Region Specific Requirements) does not state that trash capture devices must be installed at all of the Department's outlets; instead it is specific to new and redeveloped highway projects where trash capture devices must be included on the outlets of treatment systems to achieve the full capture standard. The full capture and endangered species/wildlife/flood control issues related to new and redeveloped highways and must be addressed at the required pre-construction meetings with the San Francisco Bay Regional Water Board.

Comment E30

Page 184, Attachment V, Part 2 Section 6.e. "Total trash load by volume"

Comment: Please clarify. Total trash load may refer to the total load in the Bay Area but in this context, it seems to refer to trash load collected or prevented from discharge.

Recommendation: Delete part e, report total trash load by volume adequate to report trash reduction actions.

Response

Agree. This requirement is too vague. The requirement has been revised to read "The reporting of trash load shall be in a manner approved by the Executive Officer".

Comment F1

[...W]e continue to have serious concerns with the State Board's trepidation in using numerical Water Quality Based Effluent Limitations (WQBELs) to hold Caltrans responsible for their impairments – especially those TMDLs assigning Caltrans specific numeric waste load allocations (WLAs).

Response

To develop an implementation program for an MS4 that spans the entire state and crosses numerous watersheds, staff relied on the method of compliance through implementation of BMPs. The Department will submit a prioritization list of TMDL reaches where the top priority reaches will be those that have due dates the soonest, greater impairment of the waterbody for the pollutant of concern, reaches where the Department has opportunity to address multiple pollutants/TMDLs, and reaches where the Department's contribution to the problem is the greatest. By utilizing this prioritization scheme the Department will move closer, year by year, to attainment of TMDL goals of all TMDLs they are party to within the State. Also see Fact Sheet pages 20-22.

Comment F2

BMPs used as a substitute for numeric WQBELs ignore the U.S. EPA's 2010 guidance and can only be allowed if numeric WQBELs are deemed infeasible.

A. In order to successfully implement Caltrans's TMDL program as the EPA intended, we strongly recommend the State Board incorporate WLAs as numeric WQBELs. If the State Board continues to use BMPs to implement Caltrans's WLAs, the State Board must conduct a proper analysis to determine whether numeric WQBELs are feasible. In addition to the feasibility analysis, the State Board must provide an adequate demonstration that the BMPs selected will be sufficient to implement the applicable WLAs.

B. In addition to the above recommendation, we request the following two changes be made to the Order: Finding #35: "Due to the nature of storm water discharges, and the typical lack of information on which to base numeric WQBELs, federal regulations allow for the implementation of BMPs to control or abate the discharge of pollutants from storm water, {only when numeric WQBELs are demonstrated to be infeasible.}" --- {added text within brackets}

C. P.24 of the Order should be redacted: "...the WLAs are to be achieved jointly by a number of storm water dischargers {and accordingly are of limited use in determining and enforcing the Department's specific responsibilities under the TMDL.}" The Clean Water Act requires the State Board to ensure "effluent limits are consistent with the assumptions and requirements of any available wasteload allocation for the discharge." The State Board's statement that WLAs are of "limited use" makes clear that the Board disregarded Caltrans's WLAs when developing the Orders' BMP program to implement the TMDLs. --- {deleted text within brackets}

Response

A: See response to comment F1 and Fact Sheet pages 20-22. Also, the Department has conducted multiple pilot studies that have shown that the BMPs they employ are effective in removing pollutants from their storm water discharges. As to whether or not they are sufficiently effective to meet WLAs, the State Water Board has included BMP effectiveness monitoring, followed by adaptive management if necessary, in the permit amendment to ensure that the BMPs installed will meet the goals of the TMDLs.

B: In a March 17, 2011 letter soliciting comments on its November 12, 2010 memorandum, U.S. EPA confirmed that "EPA and State permit writers and other decision makers retain the discretion to adopt approaches on a case-by-case basis that differ from those described in [the November 12, 2010 memorandum] where appropriate." As explained in Fact Sheet pages 20-22 and response to comment F1, it is not appropriate to utilize numeric WQBELs in this situation. In addition, 40 CFR 122.44(k)(2) does not require any particular demonstration that numeric WQBELs are infeasible for storm water. No changes required.

C: The State Water Board did not disregard WLAs specific to the Department. The statement in question raises the issue of whether combined WLAs are of use in determining or enforcing an individual's responsibility (in this case the individual is the Department). Staff believes that the statement is true as written and therefore no changes are required.

Comment F3

The State Board needs to properly consider the applicable TMDL compliance schedules when determining the Order's compliance schedule.

Response

The State Water Board will consider the applicable TMDL compliance schedules when finalizing the prioritization list that will direct implementation efforts. Page 158, Section I.A. specifically calls out TMDL deadlines as essential consideration for the prioritization process. More clarity is needed to indicate that TMDL deadlines are a top priority in this process. Language has been added to the Fact Sheet to clarify this intent.

Comment F4

TMDLs with specific WLAs pertaining to Caltrans should be incorporated into the Permit as numeric WQBELs.

A. Furthermore, the Final Permit stated that the State Board would require the "Department [to] implement all controls necessary to meet the WLAs or LAs included with the TMDL, or to meet the specifically assigned actions to implement the TMDL." This provision is redacted from the Draft Order, along with the Final Permit's statement that for "many of the TMDLs, WLAs, LAs, effluent limitations, implementation requirements, and monitoring requirements are specified in the adopted and approved Regional Water Board Basin Plans, which are incorporated by reference as enforceable parts of this Order." Does this mean that the Final Permit, as currently adopted, requires specific TMDL requirements to be achieved by Caltrans, but if redacted as proposed in the Draft Order, Caltrans would only have to meet the requirements of the CU compliance program? If so, this is inappropriate.

B. The following two TMDLs serve as examples of the State Board's requirement to incorporate Caltrans's specific WLAs into the Order: Los Angeles River Metals TMDL and Los Angeles Trash TMDL

Response

A: The State Water Board staff developed this process through consultation with all Regional Water Quality Control Boards. In this process it was realized that many of the requirements were similar in nature and the pollutant categories were defined around TMDLs with similar implementation requirements. The participants generally agreed that, if followed, the categorical requirements would meet the assumptions and requirements of the TMDLs. In cases where Regional Water Board staff did not agree that the categorical requirements met the assumptions and requirements of a TMDL, then specific requirements were included in the amendment. Table IV.2. lists the implementation requirements for each waterbody for the pollutant of concern.

B: As stated above, the categorical requirements for metals were developed in consultation with the staff of the Regional Water Board as being sufficient to meet the assumptions and requirements of the TMDL. The Los Angeles River Trash TMDL on the other hand requires the Department to continue to implement the requirements of the TMDL. (see page 173, Table IV.2 for both TMDL implementation requirements)

Comment F5

The Order should not excuse Caltrans's lack of effort to improve water quality to date.

The Order does not outline any measures that Caltrans has taken to comply with TMDLs. The State Board should review what Caltrans has or has not done for each TMDL before they are given a compliance off-ramp for strict compliance with interim deadlines and final WLAs. Based on this evaluation, the State Board should determine if a 20 year compliance timeline is prudent across-the-board for all Caltrans's TMDL responsibilities. At a minimum, any measures taken to date should not apply as future "compliance units."

Response

The 20 year timeline is the time frame that the Department is given to complete implementation actions for all 84 TMDLs. Many high priority TMDLs (those with shorter compliance deadlines) will be completed sooner. As stated in Comment Response F.3., the State Water Board considers TMDL compliance deadlines to be important and will therefore be a major factor in determining the prioritization list. The Department is not receiving a 20 year extension of compliance for all these TMDLs. Efforts to date should not receive credit. Compliance Units will only be credited for actions implemented after the adoption of this amendment. See Section I.B.3.

Comment F6

The State Board needs to ensure all TMDLs are identified in the Order.

We request the State Board provide reasoning for not including the following TMDLs:

Entire TMDLs Missing

- Harbor Beaches of Ventura County (Kiddie Beach and Hobie Beach) Bacteria TMDL.

TMDL Waste Load Allocations Missing

- Ballona Creek Estuary Toxic Pollutants TMDL - WLAs for cadmium, copper, lead, silver, and zinc.

- Lake Sherwood TMDL - WLA for mercury

- Ballona Creek Wetlands TMDL for Sediment and Invasive Exotic Vegetation - load allocations for invasive exotic vegetation.

We also request the State Board to revise the Order to reflect newly adopted TMDL requirements that apply to Caltrans. For instance, the TMDLs for Bacterial Indicator Densities in Ballona Creek, Ballona Estuary, and Sepulveda Channel as well as the Marina del Rey Harbor Toxic Pollutant TMDL have recently been reconsidered. The Order does not reflect these newly adopted revisions.

Finally, the Order only includes final WLAs and deadlines for applicable TMDLs. The inclusion of final compliance points is imperative for reducing impairments; however, the interim compliance points are also essential for tracking progress. Thus, interim WLAs compliance points outlined in all TMDLs' implementation schedules should be included in the Order.

Response

Attachment IV includes all TMDLs that have specifically named Caltrans as a responsible discharger.

Though Department is named in the Harbor Beaches of Ventura County (Kiddie Beach and Hobie Beach) Bacteria TMDL, ownership of the portion of State Route 1 that lies within the watershed has been turned over to the City of Oxnard. Pursuant to Resolution No, R-3869 (May 7, 2014) the City of Oxnard has assumed responsibility for this TMDL. No change required.

Waste Load Allocations missing for the following TMDLs:

* Ballona Creek Estuary Toxic Pollutants TMDL - The Fact Sheet has been revised to include the WLAs for cadmium, copper, lead, silver, and zinc.

* Lake Sherwood TMDL - The Fact Sheet has been revised to include the Final WLA for mercury.

* Ballona Creek Wetlands Sediment and Invasive Exotic Vegetation TMDL - The Fact Sheet has been revised to include the load allocation for invasive exotic vegetation.

There are no newly adopted TMDLs where the Department is named as a responsible discharger and no changes have been made for the existing Indicator Densities in Ballona Creek, Ballona Estuary, and Sepulveda Channel TMDL. No change required.

Revisions have been made in the Fact Sheet and Attachment IV for the following recent modifications to existing TMDLs:

* Malibu Creek Watershed Bacteria TMDL,

* Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL, and the

Commenter: Sean Bothwell of Heal the Bay/ CA Coastkeeper

* Santa Monica Bay Beaches Bacteria TMDL.

Comment F7

Minimizing Caltrans's overall contribution to water quality impairment throughout the Order sets a bad precedent and should not be trivialized.

A. With over 15,000 miles of state highways in California and responsibility for over 85 TMDLs, the contribution of Caltrans to the state's water quality impairments should not be trivialized. Thus, these statements should be removed for the Draft Order.

Response

A: Do not agree. The Department's overall contribution is not being minimized or trivialized. The fact is, that in many TMDL watersheds, the Department's overall contribution to the problem is minor compared to other sources. In cases where the Department's operations and facilities are impacting the environment, it is required under the permit to address them.

Comment F8

The Compliance Unit structure is flawed and needs to accurately access Caltrans's responsibility to improve water quality impairments.

- A. First, there is mention that the Caltrans's right-of-way (ROW) within TMDL watersheds is 68,000 acres. Where is the documentation and associated maps used to derive this estimate? There is also the assumption that 32 percent of the acres in the ROW do not need to be treated, which is somehow derived from the percentage of Areas of Special Biological Significance (ASBS) sites that were found to be inaccessible. How does the State Board correlate "inaccessible" sites to those that are not necessary to be treated to meet Caltrans's TMDL responsibilities? This proposal needs more clarification.
- B. The second approach that is discussed and is ultimately recommended by staff also has serious flaws. It appears that Caltrans's proposed arbitrary CU commitments total 1650 CUs each year. How did staff ensure that this proposal meets the assumptions of the underlying WLAs. Again, an unsubstantiated total ROW of 33,000 acres is provided. A footnote states that Caltrans developed an average cost per BMP/acre value that again does not include any documentation or references. Staff concludes without adequate discussion that this is "a reasonable balance of resources and environmental protection, and will be sufficient to address the TMDLs...in the foreseeable future." This approach is unscientific and does not provide any type of assurance that TMDL WLAs will ultimately be met. Also, it is unclear what design criteria will be used for the BMPs.
- C. If the State Board moves forward with the CU approach, further documentation should be provided for all of the assumptions made to arrive at the final CU annual requirement. The monitoring program should be sufficient to determine throughout the implementation process that the assumptions were, in fact, correct and that sufficient progress towards TMDL compliance is being made. In addition, we strongly urge the State Board to include a significant margin of safety in their calculation for an annual CU to account for the large uncertainty in this approach.
- D. The Order allows for a "50% discount" for participation in "coordinated efforts." While leveraging funds and collaborating on projects is often prudent, the "discount" proposed by the State Board is not justified. The dollar amount spent on implementation does not necessarily correlate to the effectiveness of treatment, and hence the environmental benefit. Also, how does this proposal ensure that the best, most effective projects are implemented? How do we ensure that credit is not taken for projects that have already been completed or projects that are already underway? Again, this is another unsubstantiated factor that lessens the responsibility of Caltrans. We urge the State Board to remove the credit system. At a minimum, there needs to be strict criteria in place for projects that would qualify for a credit.
- E. Proper assessment of BMP effectiveness and continued operation and maintenance of BMPs is critical for the effectiveness of an implementation program. The Order should outline this expectation explicitly. [...]An effective way to ensure the success of stormwater programs and the attainment of water quality standards is to assess BMPs based on performance. Flow-based design criteria are simply not adequate to ensure that water quality standards are consistently met because flow, and corresponding BMP size, is but one factor determining BMP effectiveness.
- F. The draft Order states that "[t]he determination of the number of CUs the Department must complete each year is based on the objective of addressing every TMDL." Instead the State Board should maintain the ultimate objective of "complying with" every TMDL." Using this as the standard, the State Board should determine how the proposed approach will lead to meeting approved WLAs and associated timelines.

Response

A: The estimate of ROW acreage came directly from the Department, and was subsequently revised. The comment mischaracterizes what is said in the Fact Sheet. The Fact Sheet states that we used the percent from the ASBS sites that were deemed to be inaccessible and unsafe. The percentage was applied in the

same manner, that a number of sites would be unsafe for the Department to conduct implementation efforts, not that they would not NEED to be treated. This is an important distinction.

B: The total number of compliance units proposed, and ultimately accepted by the State Water Board, was not arbitrary but is based on the number of acres within TMDL watersheds that the Department has in each of the pollutant categories, as well as the number of acres that the Department claims are overlapping. The statement in the Fact Sheet is true as the permit and amendment require the Department to implement controls, monitor those controls for effectiveness, and to adapt the controls if inadequate to achieve the goals of the TMDL. See Fact Sheet pages 22-24. As for the design criteria, Section II.A.1. states that BMPs installed must meet the requirements of E.2.d and E.2.e. of the permit. These sections are the design criteria for post-construction BMPs (and hydromodification) and BMP Development and Implementation, respectively. Staff has modified the language in Section II.A. to specify clearly which requirements apply.

C: Sufficient justification has been provided to document the rationale for the compliance unit approach. The Fact Sheet (see pages 22-24) discusses the assumptions that were used in the determination of the final TMDL compliance unit totals. Monitoring and the adaptive management program are in place to ensure that the Department is indeed progressing towards meeting TMDL goals. A margin of safety was not used in the calculation of annual compliance units, but the amendment does require that the Department report to the State Water Board at the end of the permit term on their progress towards attainment of TMDL goals. This report is titled the TMDL Progress Report and the requirements are listed in Section III.A.3.c. If, after reviewing the report, the State Water Board determines that there has not been sufficient progress towards meeting TMDL goals, then the next permit will be revised to reflect this.

D: The discount for participation in cooperative agreements is justified due to the overall benefit to the watershed and the participants in the agreement. Other participants in a cooperative agreement gain the benefit of the Department's knowledge and technical resources as well as financial help. These arrangements are win-win scenarios. Any cooperative agreement must be approved by the respective Regional Water Board executive officer. We contend that this ensures that effective programs will be implemented to address the goals of the respective TMDL. See comment response F.5. with regard to compliance unit crediting.

E: Operation and maintenance of BMPs is very important. Section II.A.1. of Attachment IV states that BMPs implemented shall meet the minimum requirements of E.2.d and E.2.e. See comment response F.2b above regarding change of language. Specifically, the Attachment calls back to Section E.2.e.2, which contains requirements for inspection of BMPs as well as tracking of BMP maintenance. Staff contends that the performance standard of the BMPs will be the attainment of the goals of the TMDL, and that the proposed process of installation of BMPs, monitoring to assess BMP effectiveness, and adaptive management as necessary, the ultimate end point will be sufficient to meet the goals of the TMDL. Flow based BMPs are effective and have been shown to be effective in treating storm water pollution with the proper operation and maintenance. Removing this option would also have the effect of reducing the size of the "toolbox" of options that are available to treat stormwater.

F: See comment response to F.8.E., above. The Fact Sheet, pages 22-24, states how the proposed approach leads to meeting approved WLAs and associated timelines.

Comment F9

The Draft TMDL Program states that "...phase-in must be accomplished in a manner that addresses discharges with the highest impact on water quality first." How will the set of qualitative criteria be developed? How is "percent pollution reduction needed to achieve the WLA" evaluated? Does the more reduction needed equate to the higher priority? As these criteria are a key part in the proposed Order, we believe that the Board should approve the criteria with opportunity for public comment. Further, we support the criterion that "multi-benefit projects that provide benefits in addition to water quality" would be prioritized. However, how will the State Board ensure that this occurs?

Response

The criteria listed in Table IV.1 are qualitative in nature and meant to give some flexibility in the ordering of the initial prioritization list. Note that Section I.A.4. specifically states that the prioritization list will be subject to a 30 day public review period. Also, note that Section I.A.5 lists the factors that will be considered in the final priority list, including multi-benefit projects as well as TMDL deadlines. Section I.A.5 has been revised to indicate that the State Water Board will give more weight to TMDL deadlines.

Comment F10

The draft Order requires monitoring necessary to determine compliance with effluent limits. However, it also states that "[w]here monitoring limitations are specified as BMPs, the permit should specify the monitoring necessary to assess if the expected load reductions attributed to BMP implementation are achieved." While we agree that BMP performance should be assessed, the ultimate goal of the monitoring program should be to assess whether or not interim and final WLAs are being met, and if not, the progress towards meeting these allocations. An evaluation during the permit reissuance application is not sufficient. Thus the Draft TMDL Program should be modified to include this critical goal.

The draft Order requires a monitoring plan by January 2015 for those TMDLs without a regional board-adopted program in place. The public should have the opportunity to evaluate these draft plans prior to approval.

Response

The amendment requires annual effectiveness assessments as well as an overall assessment at the end of the permit term. Section I.B.2 requires the Department to submit annually a TMDL Status Review Report that among other items requires assessment of the effectiveness of BMPs as well as an assessment of whether or not the Department is meeting the goals of the TMDL. Also, Section III.A.3.c, requires the Department to submit a TMDL Progress Report to the State Water Board at the end of the permit term summarizing their actions and evaluating their compliance with the permit and amendment. More analysis could be done to ascertain whether the Department has indeed met its requirements. Language was added to Section III.A.3.c. to require the Department to submit an analytical analysis, which may include modeling, to show whether or not their actions will be enough to achieve the assumptions and requirements of the TMDLs where implementation actions have occurred.

The Department is required to submit a comprehensive monitoring plan by January 1, 2015, which will include monitoring for TMDL watershed without a Regional Water Board approved program in place. The monitoring program approval is consistent with current policies.

Commenter: Sean Bothwell of Heal the Bay/ CA Coastkeeper

Comment F11

While Caltrans is free to conduct a WER study, this should be done of their own accord and not encouraged by the Board and touted as a “cost-effective regulation.” We have found that WER studies are typically conducted with the goal of weakening protections and only represent a small “snap shot” in time. Instead money would be more wisely spent to implement pollution reducing projects. Thus, the permit should not overtly encourage these studies.

Response

Language removed regarding WER studies.

Commenter: Adam Olivieri of SCVURPPP

Comment G1

SCVURPPP is supportive of the proposed amendment because it is generally consistent with the MS4 permit requirements already in place in the Bay Area, including those associated with mercury reduction and trash controls. To further clarify consistencies among the two permits, we recommend that trash, mercury and other pollutants of concern in the Bay Area be categorized as high priority by Caltrans and the State Board, consistent with priorities established via the Bay Area regional MS4 permit. To facilitate this prioritization, we also request that language be added to Attachment IV of the proposed amendment to more clearly state that Bay Area water bodies impacted by trash will be included in the prioritization process. [Comment similar to comment A.1.]

Response

See comment response to A.1.

Commenter: Mike Sullivan of Santa Clarita Sanitation District

Comment H1

The Final Chloride Waste Load Allocations (WLAs) described in the Permit Amendment are conditional WLAs that would apply and supersede the existing WLA of 100 mg/L Cl only when chloride load reductions and/or chloride export projects are in operation by the Sanitation District. On October 28, 2013 the Sanitation District’s Board of Directors approved a project to comply with the existing WLA of 100 mg/L Cl, which effectively discontinued efforts to comply with the conditional WLAs.

Additional language was submitted to reflect the specific changes requested in the TMDL specific language in the Fact sheet

Response

Permit and fact sheet language have been revised to reflect the specific changes.

Comment I1

We're eager to collaborate with Caltrans on future stormwater implementation efforts and recommend that trash, mercury and other pollutants of concern in the Bay Area be categorized as high priority by Caltrans and the State Board. Identifying these pollutants-waterbody combinations as high priority would provide consistency with priorities established via the Bay Area regional MS4 permit and greatly facilitate cooperation between the West Valley Clean Water Program (WVCWP), and Caltrans in the form of cooperative implementation efforts, as described in Section II.B Cooperative Implementation of the proposed amendment.

To ensure that water quality concerns in Santa Clara Valley water bodies associated with Caltrans right-of-ways receive an adequate level of attention, we look forward to providing further input on the waterbody-pollutant prioritization process outlined in the proposed amendment. Additionally, we look forward to enhanced collaborations with Caltrans on implementing high priority pollutant control programs and cost-effective control measures to meet water quality goals in the west valley, in the Cities of Campbell, Monte Sereno, Saratoga, and Town of Los Gatos.

[Comment similar to Comment A.1. submitted by BASMAA]

Response

See comment response to A.1.
