

**Central Valley Regional Water Quality Control Board
23/24 June 2016 Board Meeting**

**Response to Comments on
Tentative Region-wide MS4 General Permit**

At a public hearing scheduled for 23/24 June 2016, the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) will consider adoption of a new Region-wide Municipal Separate Storm Sewer System (MS4) General Permit. The tentative permit was issued for a 30-day public comment period on 20 April 2016, with comments due by 5 pm on 20 May 2016. Central Valley Water Board received public comments regarding the Tentative Order before the due date from:

1. U.S. EPA;
2. City of Elk Grove, and Laguna Creek Watershed Council; and
3. Multiple MS4 Permittee representatives including the City of Citrus Heights, the City of Elk Grove, the City of Folsom, the City of Galt, the City of Sacramento, the City of Stockton, the City of Tracy, Fresno Metropolitan Flood Control District, the Port of Stockton, the County of Sacramento, and the County of San Joaquin (consolidated comments document).

Written comments from the above interested parties are summarized below followed by responses from Central Valley Water Board staff. The consolidated comments document submitted by multiple MS4 Permittee representatives (listed above) also included an attached table titled "Summary of Other Edits and Recommendations". Responses to the comments outlined in this table are included in tabular format following our response to formal written comments below.

U.S. EPA COMMENTS

U.S. EPA COMMENT #1. Compliance Schedules Associated with Total Maximum Daily Load (TMDL) Requirements

Order should be modified to incorporate any compliance schedules and associated interim milestones as required by 40 CFR 122.2 and 122.47. Fact sheet should be revised to demonstrate that any compliance schedule is necessary and is as short as possible pursuant to 40 CFR 122.47.

RESPONSE:

Central Valley Water Board staff agrees. The Findings, Order, and Fact Sheet have been revised to include requested language regarding compliance schedules.

U.S. EPA COMMENT #2a. Monitoring and Reporting

Include requirements to monitor for the following constituents in outfalls and receiving waters once during the Permit term: bacterial indicators, heavy metals, and current-use pesticides.

RESPONSE:

Central Valley Water Board staff agrees. Attachments J & K have been revised to require the Permittees to conduct periodic re-evaluation of constituents of concern in storm water (e.g. bacterial indicators, heavy metals, and current-use pesticides).

U.S. EPA COMMENT #2b. Monitoring and Reporting

Order should specify required frequency of monitoring for each parameter.

RESPONSE:

Central Valley Water Board staff does not agree. Attachments J & K of the Tentative Order require each Permittee to propose the frequency of monitoring for each parameter in their individual Storm Water Management Plan (SWMP) and corresponding Work Plan. The monitoring proposal will be evaluated for adequacy by Central Valley Water Board staff, then the SWMP will be considered for approval by the Central Valley Water Board.

U.S. EPA COMMENT #3. Effectiveness of Storm Water Structural BMPs.

Order should be strengthened to require actions to ensure the continued efficacy of structural BMPs. Recommend including specific language requiring Permittees to inventory, inspect, evaluate and report on BMP installation, maintenance and effectiveness and to require Permittees to develop and implement asset management systems and associated long term financial plans to ensure that BMPs are inventoried, tracked, inspected and maintained in the long term.

RESPONSE:

Central Valley Water Board staff does not agree that the permit language needs to be strengthened. Attachment J, *Program Elements, Section F*, and Attachment K, *Program Elements, Section F* already include requirements to ensure that structural BMPs remain effective.

U.S. EPA COMMENT #4. Alternatives to Onsite LID.

Order should provide sufficient structure authorizing use of offsite practices or facilities. Recommend Permit include specific requirements for the use of offsite LID approaches to help ensure effective technical design and maintenance, appropriate legal mechanisms, and long term financial viability.

RESPONSE:

Central Valley Water Board staff finds that the Tentative Order already contains appropriate language regarding alternatives to onsite LID. The Tentative Order contains specific requirements in Attachments J & K, *Alternative Compliance Program to Onsite LID and Hydromodification Implementation*, requiring the Permittees to obtain reliable sources of funding for candidate projects. The previous Administrative Draft Permit was already revised to include stronger language regarding financial ability in response to US EPA's previous comments on the Administrative Draft version of the Permit.

CITY OF ELK GROVE AND LAGUNA CREEK WATERSHED COUNCIL COMMENTS

ELK GROVE/LAGUNA CREEK COMMENT #1. Infiltration BMPs.

Recommend adding the following language to the Permit: "The Regional and/or State Boards are in the process of developing guidelines specific to the design and siting of dry wells that should be followed once released"

RESPONSE:

Central Valley Water Board staff agrees. Attachments J & K of the Tentative Order have been revised to include the proposed language (slightly modified).

ELK GROVE/LAGUNA CREEK COMMENT #2. Retrofitting and Rehabilitation.

Suggest that additional prioritization criterion be added to assess the capacity of the subsurface to treat and infiltrate storm water. Recommend adding the following language to the Permit: "(g) infiltration and treatment capacity of the subsurface."

RESPONSE:

Central Valley Water Board staff agrees, in part. Attachments J & K of the Tentative Order have been revised to include the following: "(g) infiltration capacity of the subsurface."

MS4 PERMITTEES COMMENTS (consolidated comments document)

MS4 PERMITTEE COMMENT #1. Technology Based Effluent Limitations (TBELs).

Definition for Technology Based Effluent Limitations (TBELs) needs to be consistent with federal regulations as applied to municipal storm water discharges .

RESPONSE:

Central Valley Water Board staff does not agree. A “technology-based standard” is the term for what the law requires, in statute or in regulations. A “technology-based effluent limitation” is the term for when the permitting authority implements that statutory or regulatory standard into a permit. The Tentative Order’s use of “Technology-Based Effluent Limitation” also is consistent with the federal definition of an “effluent limitation,” which includes “any restriction imposed by the [permitting authority] on quantities, discharge rates, and concentrations of ‘pollutants’ which are ‘discharged’ from ‘point sources’ into ‘waters of the United States,’ the waters of the ‘contiguous zone,’ or the ocean.” 40 CFR 122.2 (emphasis added); see *also* EPA, NPDES Permit Writer’s Manual (2010), Chapter 5: Technology-Based Effluent Limitations, *available at* https://www.epa.gov/sites/production/files/2015-09/documents/pwm_chapt_05.pdf.

MS4 PERMITTEE COMMENT #2. Water Quality Based Effluent Limits (WQBELs).

The Order should recognize that the Final Water Quality Based Effluent Limits (WQBELs) may be expressed as receiving water limits, effluent limitations, and/or BMPs.

RESPONSE:

Central Valley Water Board staff does not agree. Although the commenter is correct that, as a general matter, WQBELs can be expressed in forms other than numeric effluent limitations, WQBELs still must be consistent with the assumptions and requirements of waste load allocations that they implement. (See 40 CFR 122.44(d)(1)(vii). In some cases, a particular expression of WQBELs may be inconsistent with the waste load allocation, and therefore unavailable. The Central Valley Water Board reviewed applicable Basin Plan amendments corresponding to applicable TMDLs implemented by Attachment G and devised WQBELs that, in its judgment, would best implement applicable waste load allocations. Acknowledging that other methods of implementation

may have been available is not necessary to support the operative provisions in the permit from a legal or technical basis.

MS4 PERMITTEE COMMENT #3. TMDL Compliance Determination.

The Order should recognize that final TMDL compliance determination may include several methods including no discharge, attainment of the WQBELs at the MS4 outfalls, attainment of the WQBELs in the receiving water, or attainment of the BMP-based WQBELs.

RESPONSE:

Central Valley Water Board staff agrees in part. The Tentative Order included multiple methods for a Permittee to demonstrate compliance with WQBELs. The Tentative Order has been revised to reflect an additional method of demonstrating compliance where a Permittee is implementing a Board-approved compliance schedule.

MS4 PERMITTEE COMMENT #4. Alternative Compliance Pathway, Part V.C.

The Alternative Compliance Pathway (Part V.C) should satisfy the prohibitions in Part II.A. and III.B.

RESPONSE:

Central Valley Water Board staff agrees in part. The Tentative Order has been revised and now reflects that the Alternative Compliance Pathway can serve as compliance with Part II.A. The commenter's requested change with respect to Part III.B was not made, however.

Pursuant to the State Water Board's precedential order reviewing the Los Angeles Regional Water Board's region-wide MS4 permit, State Water Board WQ Order No. 2015-0075 (the "LA MS4 Order"), the Alternative Compliance Pathway is not available in all situations. Specifically, where the final compliance deadline for a TMDL has passed, the LA MS4 Order states that the Permittee must either comply with the final effluent limitation or request a time schedule order to bring itself into compliance. This Order reflects that binding precedent, but also accounts for the fact that several TMDLs with expired final compliance dates have not been implemented in MS4 permits until this Order.

Incorporating Part III.B into the Alternative Compliance Pathway described in Part V.C would have required distinguishing between WQBELs associated with TMDLs with expired final compliance dates and WQBELs associated with TMDLs with unexpired final compliance dates, which would have unnecessarily

complicated an already complex permit. Instead, the Central Valley Water Board recognized that, prior to final compliance deadlines, Attachment G already allows Permittees to perform the kind of adaptive management that will ultimately attain WLAs by the final compliance deadline. For TMDLs with expired final compliance deadlines, Central Valley Water Board staff recognized that this Order was the first MS4 permit to implement those TMDLs in the form of WQBELs and relied on authority under the State Water Board's Compliance Schedule Policy to provide Permittees additional time, where needed, to come into compliance with applicable WLAs. These provisions, in combination, should adequately address the underlying compliance jeopardy concern that likely motivated the commenter's request to include Part III.B in the Alternative Compliance Pathway.

MS4 PERMITTEE COMMENT #5. TMDL Requirements (Attachment G).

The TMDL requirements should be revised to align with the approach within the MS4 General Permit and the corresponding Basin Plan amendments.

RESPONSE:

Central Valley Water Board staff incorporated some of the commenter's changes, such as aligning the frequency of certain reporting associated with TMDLs with Mid- and End-Term reporting required under the main body of the Tentative Order. However, other proposed changes introduced terminology that was inconsistent with the remainder of the Order, and which therefore would have required global revisions to the permit. Those proposed changes were not incorporated into the Tentative Order.

**MS4 Permittee Table “Summary of Other Edits and Recommendations”
(consolidated comments document)**

COMMENT NUMBER	COMMENT	RESPONSE TO COMMENT
#1	<p>Language in Finding 3 is not a direct quote from CWA Section 402(p)(3)(B). The statute actually applies to “Permits for discharges from municipal storm sewers.” In fact, section 402(p)(3)(B)(iii) states: “(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.” Thus, (iii) does not distinguish non-storm water from storm water.</p>	<p>Central Valley Water Board staff does not agree. The quoted text in the finding in question references the heading for CWA Section 402(p), which indicates that its corresponding subsections relate specifically to the permitting of storm water discharges. (33 U.S.C. § 1342(p); see also State Water Board WQ Order No. 2015-0075, pp. 61-62.) The Tentative Order has been revised to include a clarifying citation to this section of the Clean Water Act. The Clean Water Act’s requirement that MS4 permits contain provisions requiring the Permittee to “effectively prohibit” non-storm water from the MS4 further underscores the expectation, embodied in the statute, that MS4 permits will authorize the discharge storm water, not any and all discharges from the MS4. See 55 Fed. Reg. 47990, 47995 (Nov. 16, 1990).</p>
#2	<p>Include proposed Finding, “<i>Pesticide Control in Urban Runoff</i>”, since it is the key element of pesticide control in urban runoff and the MS4 General Permit does not currently provide this foundational information.</p>	<p>Central Valley Water Board staff does not agree. The commenter’s proposed finding contained several factual inaccuracies and, even after correcting those inaccuracies, the finding still is not necessary from a legal or technical standpoint to support the operative provisions of the Tentative Order.</p>
#3	<p>Include proposed Finding “<i>Diazinon Delisting</i>”. The Sacramento River from Shasta Dam to the I Street Bridge and the Feather River from Fish Barrier Dam to the Sacramento River were removed from the 303(d) list for diazinon.</p>	<p>Central Valley Water Board staff agrees with the content of the comment, but finds that it is not necessary to provide a finding regarding the delisting in the Tentative Order because the Tentative Order is not the place to address this issue. 303(d) list or TMDL modifications should be separate Basin Planning actions.</p>
#4	<p>Finding #16 and Fact Sheet II.G. Hydromodification Standards. Language is confusing and does not support the main point. This statement is not limited to LID failures. Remove sentence in Permit regarding importance of hydromodification if LID measures fail.</p>	<p>Central Valley Water Board staff agrees. The finding was modified as recommended. A clarifying sentence was added to Finding 16 denoting the relationship of LID measures to hydromodification.</p>
#5	<p>Finding #20 – Water Quality Control Plans. As written, the language is not an accurate representation of the statutory definition in CWA section 303(c). Revise language regarding what constitutes water quality standards under the CWA.</p>	<p>Central Valley Water Board staff does not agree. The language in the Tentative Order is consistent with the definition of “water quality standard” in Title 40, section 131.3 of the Code of Federal Regulations. It is also consistent with the definitions section in EPA’s NPDES Permit Writer’s Manual, which defines “antidegradation,” in pertinent part, as: “A policy developed and adopted <u>as part of a state’s water quality standards</u> that ensures protection of existing uses and maintains the existing level of water quality where that water quality exceeds levels necessary to protect fish and wildlife propagation and recreation on and</p>

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		<p>in the water. ..." See EPA, NPDES Permit Writer's Manual (2010), Appendix A, available at: https://www.epa.gov/sites/production/files/2015-09/documents/pwm_app-a.pdf</p> <p>In contrast, Clean Water Act section 303(c) does not contain a statutory definition of "water quality standard," but rather describes the procedure for promulgating a water quality standard.</p>
#6	<p>Finding #33 – Storm Water Resource Planning. This Finding should clarify when a Storm Water Resource Plan is required.</p>	<p>Central Valley Water Board staff agrees. The Tentative Order was revised to incorporate suggested language.</p>
#7	<p>Consistent with II.B.1, the non-storm water discharge prohibitions should acknowledge that discharges authorized by irrigated lands WDRs do not need to be effectively prohibited.</p>	<p>Central Valley Water Board staff agrees, in part. The Clean Water Act excludes agricultural storm water discharges and "return flows" from the definition of a "point source" for the purposes of the NPDES permitting program. 33 U.S.C. § 1362(14). Therefore, when such flows discharge into a water of the United States, they do not require an NPDES permit. However, the same exclusion does not apply to return flows entering an MS4. An MS4 permittee may not passively allow non-storm water to enter its MS4. The Tentative Order reconciles the issue of agricultural runoff and return flows entering MS4s by requiring that the Permittee demonstrate to the Board that it has taken means to seek voluntary cooperation or employ regulatory controls, if available, to control the discharge of pollutants in agricultural discharges.</p>
#8	<p>Within the Order the terms "water quality milestones" and "non-water milestones" are defined. "Water Quality improvement milestones" is also used. Recommend deleting the term "water quality improvement" so it is clear that the milestones, which improve water quality, may be water quality or non-water quality based.</p>	<p>Central Valley Water Board staff agrees. The Tentative Order was revised as recommended.</p>
#9a & 9b	<p>Part V.C.5 should recognize that, if this requirement is triggered:</p> <p>a) The Permittee could comply with this Part either through Part V.C.7 OR by completing V.C.5.a-d; AND</p> <p>b) Consistent with V.C.5.a, if the assessment of the MS4</p>	<p>Central Valley Water Board staff does not agree.</p> <p>a) The commenter is mistaken as to the respective purposes of Parts V.C.5 and V.C.7. Part V.C.5 is triggered when a deadline for a water quality milestone passes and the Permittee has not met that milestone. Part V.C.7 can only be triggered if the deadline for meeting the water quality milestone has not yet lapsed.</p>

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	<p>discharge indicates that it is not a significant source, then the Permittee should re-prioritize the PWQCs consistent with Parts V.E.5 and V.E.6.</p>	<p>b) The commenter’s proposed revision is not justified. If a Permittee’s assessment reveals that its discharges were not responsible for a “missed” water quality milestone, then the Permittee did not, in fact, miss the water quality milestone. However, a determination that one milestone was not missed does not mean that the Permittee’s discharges are no longer causing or contributing to exceedances of water quality standards for that PWQC; only that its discharges are still meeting the benchmarks set out in the Permittee’s SWMP. Re-prioritization of PWQCs should occur when final attainment with the corresponding water quality standard for a PWQC has been reached.</p>
#10	<p>Given the time necessary to run an RAA and submit a revised SWMP, it is recommended that the timeline in Part V.C.5.d mirror the timeline in the table in Part V.F.2.</p>	<p>Central Valley Water Board staff does not agree. Provision V.C.5 deals with the situation where a Permittee fails to achieve a water quality milestone, without first seeking and receiving a time extension. Under these circumstances an expedited and focused process is needed to develop a path and implement actions to get back on track. Six months is adequate time for this process. The timeline cited in Provision V.F.2 is for the development of an entire Storm Water Management Program and an associated full Reasonable Assurance Analysis, not the focused actions required by Provision V.C.5.d.</p>
#11	<p>Part V.E.5.b.ii and iii - The language should be modified to indicate that, as applicable, the components of the discharge reduction assessment could be conducted as a part of the MS4 discharge assessment. However, this should not be uniformly required since it may not make sense for all constituents and types of assessments conducted.</p>	<p>Central Valley Water Board staff agrees. The Tentative Order was revised as recommended.</p>
#12	<p>While the Permittees agree that there will need to be annual milestones within the SWMP/Work Plan and that the milestones may be a mix of non-water quality and water quality milestones, the definition of the water quality milestone should clarify this difference so that third parties do not assume that there would be annual water quality milestones. Requiring annual water quality milestones would be arbitrary and could not be measured with</p>	<p>Central Valley Water Board staff agrees. The Tentative Order was revised to include a sentence clarifying that the Permittee’s SWMP must include at least one water quality milestone per permit term for each priority water quality constituent (PWQC).</p>

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	environmental data with any level of confidence.	
#13	Attachment F – Fact Sheet II.D.3. Cite/include language consistent with the Antidegradation Policy.	Central Valley Water Board staff does not agree that the commenter’s proposed language was necessary to explain the Tentative Order’s implementation of state and federal antidegradation requirements. Central Valley Water Board staff made minor clarifying revisions to the Fact Sheet.
#14	Attachment F includes a new section Supplemental Information Regarding Specific TMDLs (p. F-34, VI.B.1). Although this section includes background information for two of the eight TMDLs included within Attachment G, it is unclear why this section of the Fact Sheet does not include background/current information for all of the TMDLs. Recommend modifying this section to include foundational background information for all of the TMDLs included in Attachment G. Put the information in the order in which the TMDLs appear within Attachment G so that it is easier to cross reference.	Central Valley Water Board staff does not agree. The Fact Sheet section, <i>Supplemental Information Regarding Specific TMDLs</i> , is intended to be “supplemental information”, not a background section. The supplemental information provided in this section of the Fact Sheet provides context for TMDLs for which WLAs have been expressed in an unusually complex manner. Substantial background information is readily available in final Board-approved TMDL documents accessible on the Central Valley Water Board TMDL website.
#15	Attachment F – Fact Sheet VI.B.2. The statement regarding compliance schedules is not true if this is the first time that the TMDL-based requirements are being imposed. If the schedule was adopted, but never implemented, then of course the schedule will not be met. The schedule should be modified to include MS4 implementation and compliance schedules are allowed under compliance schedule policy as new and newly interpreted requirements.	Central Valley Water Board staff agrees. The Fact Sheet has been revised to reflect modifications to the Tentative Order authorizing compliance schedules for WQBELs implementing “new, revised, or newly interpreted” water quality standards.
#16	Attachment G – TMDLs. While the Permittees appreciate the presentation of TMDL information in a standard format, which is a helpful way to condense a significant amount of information, we request that the table be separated for each of the TMDLs to improve readability.	Central Valley Water Board staff does not agree that reformatting the table is necessary at this time; however the suggestion is noted and will be considered for future versions of the permit.
#17	Attachment G – TMDLs. Many of the TMDL documents do not specifically identify MS4 agencies, yet this information has been added to Attachment G. While the “Responsible Permittees” column is a reasonable effort to capture this	Central Valley Water Board staff agrees. The “Responsible Permittees” lists were generated based on Basin Plan language and geographic analysis for each TMDL. For some TMDLs, WLA apply to dischargers to upstream tributaries of the water bodies for which TMDLs are

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	<p>information so that MS4s are aware of the TMDL applicability, it is not clear how these lists were generated. Thus, it would be helpful to allow MS4s the option of demonstrating they do not have direct discharges and, if demonstrated, would not be a Responsible Permittee under the TMDL.</p>	<p>established. Therefore staff did not include the proposed footnote. Central Valley Water Board staff has however, modified the compliance language to allow dischargers to demonstrate that the waste load allocations are not applicable to them.</p>
#18	<p>Attachment G – TMDLs. Lower San Joaquin River, Stockton Deep Water Ship Channel TMDL. Much of the text included within this section is also included within the Fact Sheet Supplemental Information Regarding Specific TMDLs (p. F-34, VI.B.1). Recommend deleting this information since this is background information that should be included within the Fact Sheet.</p>	<p>Central Valley Water Board staff agrees. The redundant text has been deleted.</p>
#19	<p>Attachment G – TMDLs. Lower San Joaquin River, Stockton Deep Water Ship Channel TMDL. In order to align the various efforts related to the PWQCs, the monitoring and reporting for the TMDLs should be incorporated into the overall SWMP – Attachment G should not require the submittal of separate and distinct documents.</p>	<p>Central Valley Water Board staff agrees. The Tentative Order was revised to require Permittees to incorporate a monitoring and reporting plan into their SWMPs.</p>
#20	<p>Attachment G – TMDLs. Lower San Joaquin River, Stockton Deep Water Ship Channel TMDL. Attachment G requires the Port of Stockton to monitor dissolved oxygen in the Stockton Deep Water Ship Channel (SDWSC), provide operations and maintenance for the aerator devices in the SDWSC, and participate in the stakeholder aerator agreement. The aerator on Rough and Ready Island (i.e., the Port of Stockton’s West Complex) is operated under a voluntary agreement. The 2015 Staff Report for the Low Dissolved Oxygen TMDL notes that loads could not be calculated for the factors associated with the low dissolved oxygen impairment of the SDWSC, even though a substantive effort was undertaken. <u>While operation of the aerator under an updated agreement is planned (including participation by the Port of Stockton), a requirement to</u></p>	<p>Central Valley Water Board staff agrees. The Tentative Order was revised to include a footnote stating, “The Port of Stockton is listed as a “Municipality” for this TMDL, but its municipal storm water discharges’ contribution to oxygen demanding substances has been shown to be <i>de minimis</i>. It participates in the aerator operation and maintenance agreement on a voluntary basis. Descriptions of Port of Stockton activities that implement this TMDL therefore should not be construed as WQBELs or other permit requirements”. Attachment G has been further revised to clarify that continued participation pursuant to the aerator operation and maintenance agreement is voluntary, not a requirement of this Order.</p>

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	<p><u>operate the aerator should not be a permit requirement since it has not been shown, that the Port's storm water discharge is causing or contributing to the DO impairment.</u> Recommend that participation in this agreement remain voluntary. As required in the Port of Stockton's current MS4 Permit, an assessment of the Port's impacts on the low DO impairment of the SDWSC was included in the Report of Waste Discharge (August 5, 2015). This assessment showed that the Port's contribution to the impairment was negligible since the excursions of the DO WQOs in the SDWSC occurs during dry, warm summer months when storm water and non-storm water discharges from the Port to the San Joaquin River are not occurring. The Port's assessment supports the removal of the requirement to implement any further elements of a Low Dissolved Oxygen Plan.</p>	
#21	<p>Attachment G – TMDLs. Delta Methylmercury TMDL. The WQBELs table should be footnoted to indicate that WLAs will be revised, as necessary to correct errors when the TMDL is reviewed. Since the adoption of the TMDL, the Port of Stockton has identified that the Port's WLA to the San Joaquin River Subarea was underestimated 17 fold because the drainage area was significantly under-calculated (the WLA assumed a 28 acre drainage area, while the actual drainage area is 495 acres).</p>	<p>Central Valley Water Board staff does not agree. The commenter's proposed language refers to a possible future basin planning action by the Central Valley Water Board, which at this time is uncertain. The proposed language could be construed as committing the Board to such action, and it would create ambiguity regarding the enforceability of the WQBELs that implement the current basin plan as written. The commenter's proposed language also is not necessary to implement the current basin plan, which this Order is required to do. If and when the Central Valley Water Board amends the basin plan to update methylmercury WLAs, this Order will be revised accordingly.</p>
#22	<p>Attachment G – TMDLs. Sacramento County Urban Creeks Diazinon & Chlorpyrifos TMDL. The deadline for attainment is not specified in this TMDL and was not incorporated into a Basin Plan Amendment. The TMDL states that compliance will be implemented through the NPDES permit. Remove final compliance deadline from Attachment G.</p>	<p>Central Valley Water Board staff agrees that this TMDL did not specify a final compliance deadline. The final compliance deadline has been removed from Attachment G for the Sacramento County Urban Creeks Diazinon & Chlorpyrifos TMDL.</p>
#23	<p>Attachment G – TMDLs. Sacramento County Urban</p>	<p>Central Valley Water Board staff agrees that the TMDL does not</p>

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	Creeks Diazinon & Chlorpyrifos TMDL. This TMDL document does not specify monitoring or assessment requirements beyond the previous NPDES permit cycle, although additional data collection and assessments are identified, if necessary. For consistency with the compliance section of Attachment G, the Permittees request that the assessment should demonstrate either urban runoff or receiving water compliance with the WQBEL.	specify monitoring or assessment requirements beyond the previous NPDES permit cycle. However, data demonstrating attainment of the waste load allocations is still needed. The language in the Tentative Order allows that receiving water data can, in some cases, be used to demonstrate compliance with the WQBEL.
#24	Attachment G – TMDLs. Lower San Joaquin River Diazinon & Chlorpyrifos TMDL. The WQBELs should only apply to MS4s that have outfall discharges to the applicable water bodies.	Central Valley Water Board staff agrees. The Tentative Order has been revised to further clarify that under the terms of Attachment G, a Permittee can avoid compliance jeopardy by showing that its MS4 does not discharge to any Applicable Water Body.
#25	Attachment G – TMDLs. Lower San Joaquin River Diazinon & Chlorpyrifos TMDL. The Basin Plan implementation requirements for the Amendment for the Control of Diazinon and Chlorpyrifos Runoff into the San Joaquin River is intended for agricultural discharges as stated on page V-4.00, “The Regional Water Board requires a focused monitoring effort of pesticide runoff from orchards and fields in the San Joaquin Valley.” Moreover, the reach of the San Joaquin River now meets TMDL targets and additional compliance assessments are not necessary.	Central Valley Water Board staff agrees that the focused monitoring requirements should not have been included. However, Board staff disagrees with the statement that no additional MS4 compliance assessments are necessary. The Basin Plan contains waste load allocations applicable to MS4 discharges. While the lower reach of the San Joaquin River is meeting the diazinon and chlorpyrifos objectives and TMDL targets, MS4 attainment of waste load allocations still needs to be demonstrated.
#26	Attachment G – TMDLs. Lower San Joaquin River Diazinon & Chlorpyrifos TMDL. This reach of the San Joaquin River is in attainment of diazinon or chlorpyrifos TMDL targets and the demonstration of compliance should acknowledge this and not require specific new findings of attainment.	Central Valley Water Board staff does not agree. The Basin Plan contains waste load allocations applicable to MS4 discharges. While the lower reach of the San Joaquin River is meeting the diazinon and chlorpyrifos objectives and TMDL targets, MS4 attainment of waste load allocations still needs to be demonstrated.
#27	Attachment G – TMDLs. Sacramento-San Joaquin Delta Waterways Diazinon & Chlorpyrifos TMDL. The required assessment goes significantly beyond what is required and intended by the Basin Plan resolution for MS4 discharges. Attachment G refers to requirements for agricultural (non-point source) discharges. For example, the TMDL Staff	Central Valley Water Board staff concurs that the assessment required in the Basin Plan was included in error, as the Basin Plan monitoring goals associated with this TMDL were applied only to agricultural discharges. The monitoring goals in Attachment G for the diazinon and chlorpyrifos TMDLs have been revised as requested.

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	<p>Report Section 9.3 states “As discussed previously, all urban uses of diazinon and almost all urban uses of chlorpyrifos are being phased out. Therefore, it is not anticipated that NPDES permittees (municipal storm water permittees or publicly owned treatment works) will be required to implement additional management measures or treatment technologies to control diazinon or chlorpyrifos. Additionally, any diazinon or chlorpyrifos monitoring that is currently part of an NPDES permit is not expected to increase or change as a result of adoption of this Basin Plan Amendment. (Emphasis added)</p> <p>Therefore, no change in control costs or monitoring costs is projected to occur for NPDES permit holders with adoption of this Basin Plan Amendment.” The Permittees acknowledge that assessments of replacement pesticides should be considered in monitoring planning for the SWMP, however, it should not be required in the initial assessment. Additionally, the Basin Plan does not specify that MS4 agencies prepare an assessment of synergistic effects and this should not be included in the initial assessment.</p>	
#28	<p>Attachment G – TMDLs. Sacramento and Feather River Diazinon & Chlorpyrifos TMDL. Attachment G should clarify that this reach is not impaired for chlorpyrifos or diazinon.</p>	<p>Central Valley Water Board staff agrees with the content of the comment, but finds that it is not necessary or appropriate to discuss this issue within the Tentative Order. The associated TMDL remains in effect even if the water body to which it applies is removed from the 303(d) list. 303(d) list or TMDL modifications should be separate Basin Planning actions.</p>
#29	<p>Attachment G – TMDLs. Sacramento and Feather River Diazinon & Chlorpyrifos TMDL. The Basin Plan implementation requirements for the Amendment for the Control of Diazinon and Chlorpyrifos Runoff into the Sacramento and Feather Rivers are intended for agricultural discharges as stated on page V-3.02, “The Regional Water Board requires a focused monitoring effort of agricultural pesticide runoff into the Sacramento and</p>	<p>Central Valley Water Board staff agrees that the implementation requirements for agricultural discharges should not have been included. However, Board staff disagrees with the statement that no additional MS4 compliance assessments are necessary. The Basin Plan contains waste load allocations applicable to MS4 discharges. While the lower reach of the Sacramento River upstream of the Delta is meeting the diazinon and chlorpyrifos objectives and TMDL targets, MS4 attainment of waste load allocations still needs to be demonstrated.</p>

COMMENT NUMBER	COMMENT	RESPONSE TO COMMENT
	Feather Rivers.” Moreover, the reach of the Sacramento River now meets TMDL targets and additional compliance assessments are not necessary.	
#30	Attachment G – TMDLs. Sacramento and Feather River Diazinon & Chlorpyrifos TMDL. This reach of the Sacramento River is no longer listed as impaired for aquatic life impacts due to diazinon or chlorpyrifos and the demonstration of compliance should acknowledge that TMDL targets were achieved.	Central Valley Water Board staff does not agree. The Basin Plan contains waste load allocations applicable to MS4 discharges. While the lower reach of the Sacramento River upstream of the Delta is meeting the diazinon and chlorpyrifos objectives and TMDL targets, MS4 attainment of waste load allocations still needs to be demonstrated.
#31	Similar to the Retrofitting process and in order to be consistent with the performance-based requirements, the Rehabilitation planning process should be focused on water bodies that are not meeting WQS for the identified PWQCs. It is important to note that, in most cases, Permittees do not have authority or jurisdiction to complete such work. In particular, the state, through the State Lands Commission, retains jurisdiction over tidelands, submerged lands, and beds of navigable lakes and rivers. (Pub. Resources Code, section 6009, et seq.) Additionally, in-stream activities may also be subject to the authority of the United States Army Corps of Engineers (33 U.S.C. section 1344 (Section 404 of the Clean Water Act)), the California Department of Fish and Wildlife (Fish and Game Code, section 1602), and other regulatory agencies. Recommend modifying language to acknowledge that a planning process for rehabilitation and restoration of streams is outside the control of Permittees.	Central Valley Water Board staff does not agree. Historical development practices have resulted in degraded watersheds. While applying LID principles to new development and redevelopment projects will prevent further degradation, it will not address the impacts from past development practices. The cities and counties managing MS4 systems should seek to address past impacts by looking for projects to retrofit or restore the natural/normal hydrograph. This includes degraded stream channel restoration, restoration of abandoned commercial development, reclamation of closed industrial areas, and infill LID projects. While funding availability and jurisdiction will be limiting factors in some cases, there are other cases where the cities and counties can be effective partners in promoting retrofit and rehabilitation projects. The Tentative Order does not require the Permittees to do anything outside of their control.
#32	Attachments J & K. The language for the Delta Regional Monitoring Program should be similar between the two subparagraphs and indicate that the Delta RMP is not intended to be an additive monitoring program. We also recommend that the Regional Water Board include a map that shows where the Delta legal boundary is in relation to the Phase I and Phase II MS4s.	Central Valley Water Board staff agrees that the language for the Delta Regional Monitoring Program should be similar between the two subparagraphs. The Tentative Order was revised as requested. Central Valley Water Board staff does not agree that including a map that shows where the Delta legal boundary is in relation to the Phase I and Phase II MS4s is necessary at this time; however the suggestion is noted and will be considered for future versions of the permit. Maps

Response to Comments
Tentative Region-wide MS4 General Permit
6 June 2016

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		showing the legal boundary of the Delta are readily available on the internet.