

**Regional Water Quality Control Board
Central Valley Region
Board Meeting –5/6 December 2013**

RESPONSE TO WRITTEN COMMENTS ON TENTATIVE WASTE DISCHARGE
REQUIREMENTS FOR CITY OF BAKERSFIELD AND COUNTY OF KERN
STORM WATER DISCHARGES FROM
MUNICIPAL SEPARATE STORM SEWER SYSTEM
FRESNO COUNTY

At a public hearing scheduled for 5/6 December 2013, the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) will consider adoption of Waste Discharge Requirements (NPDES No. CA0083399) (hereafter Permit), which were circulated as tentative on 13 September 2013 for the City of Bakersfield and County of Kern (collectively Discharger) for discharges from the Municipal Separate Storm Sewer System (Bakersfield-Kern MS4). This document contains responses to written comments received from interested parties regarding the tentative Permit. Written comments from interested parties were required to be received by the Central Valley Water Board by 5:00 p.m. on 14 October 2013 in order to receive full consideration. Comments were received by the deadline from Kern Delta Water District.

Written comments from the Kern Delta Water District are summarized by staff below, followed by the staff responses. Some minor changes were made to the tentative Permit based on the comments received. Some changes were also made by Central Valley Water Board staff to correct grammatical and typographical errors.

KERN DELTA WATER DISTRICT COMMENTS

KERN DELTA WATER DISTRICT COMMENT 1: The Kern Delta Water District commented that it is the owner/operator of the East Side Canal, Stine Canal, and the Kern Island Canal, and partial owner, along with the City of Bakersfield of the Carrier Canal. These canals are identified in tentative Permit Findings and the Fact Sheet as receiving storm water discharge from the Bakersfield-Kern MS4. The Kern Delta Water District commented it does not agree the canals should be categorized as waters of the U.S. as they do not feed, enter into, or provide water to waters of the United States.

RESPONSE: The tentative Permit has been modified to include in the findings that Kern Delta Water District is the owner/operator of the East Side Canal, Stine Canal, and the Kern Island Canal, and partial owner of the Carrier Canal, and that the canals are either Waters of the U.S. themselves [See *Headwaters, Inc. vs. Talent Irrigation District*, 243 F.3d. 526 (Ninth Cir., 2001)] or tributaries to waters of the U.S. The Canals are also waters of the State. Under these scenarios, the Board has jurisdiction to regulate discharges to the canals under the National Pollutant Discharge Elimination System (NPDES) program and the Water Code.

Correspondence received on 10 June 1994 from Raul Rojas, City of Bakersfield, states that water can be diverted from the Kern River to the Carrier Canal at the Rocky Point weir, and then downstream, can be discharged back from the Carrier Canal to the Kern River at the Calloway weir, making the Carrier Canal a tributary to the Kern River, and

therefore, that discharges from the Carrier Canal discharge to a water of the U.S (the Kern River). In the NPDES application, Part 1, submitted on 15 May 1992, the City of Bakersfield and the County of Kern state, "The Kern River is the only water of the United States to receive storm water discharge. This is either directly through outfalls or from reversal of flows in the East Side Canal during large volume storms," indicating that during periods of heavy rainfall, the East Side Canal becomes a tributary to the Kern River. The East Side Canal appears to discharge to a water of the U.S.

No formal analysis has been done to show the Stine and Kern Island Canals are not tributaries to waters of the U.S., or that water in the canals are not or cannot be diverted back into a water of the U.S. Therefore, there is no evidence in the record to contradict the Board's finding that discharges from the Stine and Kern Island Canals are tributaries to waters of the U.S. Nonetheless, pursuant to Water Code (WC) section 13050, these two canals are also waters of the State. Staff has modified the Findings of the tentative Permit to note that these canals are also regulated under authority of the Water Code as discharges to waters of the State.

KERN DELTA WATER DISTRICT COMMENT 2: The Kern Delta Water District commented that the Bakersfield-Kern MS4 discharges of storm water to both canals used for agriculture irrigation and to retention basins have the potential to impact both ground and surface water. The Kern Delta Water District suggests that monitoring and reporting requirements related to the MS4 discharge be coordinated and consistent with monitoring and reporting requirements of the irrigated lands waste discharge requirements, and that monitoring provide sufficient detail such that any water quality degradation attributable to the MS4 discharge (groundwater or surface water) be readily ascertainable and reported.

RESPONSE: The National Urban Runoff Program (NURP) study in 1983 investigated recharge basins in Fresno and Long Island, New York, to determine whether urban storm water pollutants were migrating into groundwater. Groundwater monitoring was not included in the tentative Permit as the NURP studies concluded that soils in storm water recharge basins provide a high degree of removal of storm runoff pollutants (e.g., heavy metals and organic chemicals), and are adequately protective of groundwater quality. The tentative Permit has been changed to allow for Permit modification if new information is provided that indicates a potential water quality problem.

The tentative Permit requires the Discharger to propose modifications to its current monitoring program to insure collected data provides meaningful assessment of potential impacts to receiving waters, including the canals described above. The Central Valley Water Board encourages dischargers to cooperate with other programs to prevent duplication of effort and minimize the cost of data collection when possible.