



CENTRAL VALLEY REGIONAL
WATER QUALITY CONTROL BOARD

AMENDMENTS TO THE WATER QUALITY CONTROL
PLAN FOR THE SACRAMENTO AND
SAN JOAQUIN RIVER BASINS

FOR

THE CONTROL OF DIAZINON AND CHLORPYRIFOS
DISCHARGES

FINAL STAFF REPORT
MARCH 2014

APPENDIX E

**RESPONSES TO COMMENTS
ON THE JANUARY 2014 DRAFT**

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This appendix presents responses to the comments received by 18 February 2014 on the January 2014 Draft Staff Report and proposed Basin Plan Amendment. In some cases comments are paraphrased for brevity. Comments are arranged alphabetically by the commenting organization. Comments are numbered and shown in indented italics. Comment numbers in this document are not necessarily the same as the comment numbers provided by the commenters in their comment letters. Staff responses follow each comment in regular text. The responses identify where revisions to the Staff Report and Proposed Amendment have been made based on the comments received.

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1. Comments from the Central Valley Clean Water Association – Debbie Webster.

Comment 1.1:

Correct Existing Basin Plan Language

As a preliminary matter, it is important for the Central Valley Regional Water Quality Control Board (Regional Board) to understand that CVCWA's members rarely see detections for these two pesticides in wastewater effluent, as both pesticides have been USEPA-banned from residential uses for the past decade (chlorpyrifos in 2002 and diazinon in 2004). And where there are limited detections, the concentrations are very low and almost always below the proposed objectives. Thus, municipal wastewater is a de minimus source of diazinon and chlorpyrifos in the Sacramento River and San Joaquin River watersheds.

Considering this backdrop, CVCWA recommends that the scope of the proposed Basin Plan amendments be expanded to include revisions to existing total maximum daily load (TMDL) provisions contained in the Basin Plan. Specifically, current language in the Basin Plan implies that

numeric water quality-based effluent limitations (WQBELs) are required in NPDES permits for municipal wastewater dischargers to implement wasteload allocations (WLAs). This requirement is imposed regardless if diazinon or chlorpyrifos are actually found at levels with reasonable potential to cause or contribute to a violation of adopted water quality objectives. (See, e.g., Basin Plan, p. IV 36.04.) CVCWA disagrees with this approach and believes that the Basin Plan needs to be revised further to eliminate the need for WQBELs to implement WLAs. Such limitations are only necessary if the discharge is found to have reasonable potential to cause or contribute to a violation of a water quality objective.

CVCWA's position is consistent with the law. With respect to application of WLAs, the federal regulations state that when developing WQBELs, such limits must be "consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA . . ." (40 C.F.R. § 122.44(d)(1)(vii).) The term "when developing" presumes that the need for WQBELs has first been triggered by a proper reasonable potential analysis as is required by other federal regulatory sections preceding the one in question. (See 40 C.F.R. § 122.44(d)(1)(ii), (iii).) In such instances where WQBELs are necessary, such limitations must then be consistent with the assumptions and requirements of applicable WLAs. The federal regulations do not specifically require, or imply, that WQBELs are required for all pollutants for which a WLA exists. Thus, the proposed Basin Plan amendments should be expanded to correct the language in existing TMDLs.

Response to Comment 1.1:

The modification of existing total maximum daily load programs (TMDLs) is not within the scope of the current project. Although Board staff acknowledges that perceived ambiguities in some of the existing TMDLs have created controversies regarding whether or not numeric WQBELs should be included in National Pollutant Discharge Elimination System (NPDES) Permits, Board staff are of the opinion that numeric WQBELs are not required when a discharge does not exhibit the potential to cause exceedances of concentration-based wasteload allocations.

Comment 1.2:

In general, and as indicated above, CVCWA believes that issues with respect to diazinon and chlorpyrifos are from nonpoint sources of pollution and not municipal wastewater, as residential uses were banned a decade ago. Accordingly, the inclusion of municipal wastewater as part of this implementation program is questionable. To the extent that municipal wastewater may have rare detections of either of these pesticides, standard NPDES permitting practices would address such issues. For example, if either pesticide were detected in effluent at a level that would cause or contribute to a violation of the proposed applicable water quality objective, the Regional Board would then be required to adopt a WQBEL into the NPDES permit. The WQBEL must be set at a level that would be protective of water quality. (See, e.g., 40 C.F.R. §

122.44(d)(1).) Considering standard permitting practices, CVCWA sees no value in specifically including discharges from municipal wastewater in the proposed Basin Plan amendments. Thus, all references to municipal wastewater should be removed from the proposed amendments.

Response to Comment 1.2:

Staff agree that diazinon and chlorpyrifos are largely a nonpoint source pollution problem because they have been banned for almost all non-agricultural uses. However, as discussed in the Staff Report, these pesticides are still detected in NPDES-permitted discharge at concentrations that threaten beneficial uses. Therefore, specific requirements are included in the proposed Amendment to ensure that when these pesticides are detected, these sources are properly monitored and controlled.

Comment 1.3:

Provision 2, page C-5: This provision implies that municipal dischargers are able to control the use of pesticides by its users to avoid the presence of pesticides in wastewater effluent. This is not the case. While municipalities can encourage consumers to implement proper practices and not dump household pesticides into the sewer system, municipalities have no regulatory control over the use of pesticides. The California Department of Pesticide Regulation has exclusive authority with respect to the registration and use of pesticides in California. Thus, the California Department of Pesticide Regulation must ensure that when it registers pesticides for use in California, such pesticides will not be harmful to the environment. Further, because municipalities cannot control actions by others, this provision should be limited in application to those dischargers that have direct control over their use of a pesticide.

Response to Comment 1.3:

Staff acknowledges that municipalities do not have direct control over pesticide use. The quoted provision does not imply otherwise. However, municipalities do have some ability to affect consumer behavior and they certainly have control over their collection and treatment systems. Municipalities therefore have responsibilities under the CWA and Porter-Cologne Water Quality Control Act (Porter-Cologne) that include ensuring that their discharges do not cause or contribute to exceedances of applicable water quality objectives.

Comment 1.4:

Provision 3, page C-5: This provision proposes to include a time schedule for compliance with water quality objectives for diazinon and chlorpyrifos for five years. Rather than including a specific time schedule within the Basin Plan amendment, CVCWA recommends that existing compliance schedule policies apply. In other words, should a municipal discharger have reasonable potential to discharge diazinon or chlorpyrifos at a level that would cause or contribute to a violation of water quality objective, and a WQBEL is then adopted into the permit, time for compliance with the WQBEL should be governed by the State Water Resources Control

Board's Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits (Compliance Schedule Policy). Under this policy, the discharger needs to provide the Regional Board with a proposed schedule that includes necessary justification for the time requested. Then, when adopting the schedule into the permit, the Regional Board must ensure that the schedule is as short as possible, but cannot exceed ten years from when the new numeric water quality objective is adopted. Thus, should the Regional Board adopt the proposed water quality objectives in March of 2014, the ultimate backstop for compliance would be March of 2024. However, as a practical matter, individual permittees would need to propose a schedule for compliance that is as short as possible. The Regional Board maintains the discretion to determine what amount of time is necessary for each individual discharger based on their particular circumstances. Accordingly, CVCWA recommends that Provision 3 be revised to state as follows: "Compliance with water quality objectives for diazinon and chlorpyrifos shall be as soon as practicable. The Regional Board shall establish time schedules for compliance with such objectives in Waste Discharge Requirements or waivers in accordance with existing laws and policies."

Response to Comment 1.4:

Provision 3 has been changed to reference existing policies and permits as suggested by the commenter. The revised Provision 3 also contains a backstop provision to ensure there is a 10-year schedule for compliance where a schedule is not dictated by existing laws or policies.

Comment 1.5:

Provision 8, page C-7: This provision is a restatement of applicable law and is not necessary as part of the proposed Basin Plan amendment. All waste discharge requirements or waivers need to be consistent with and implement Basin Plan requirements. Accordingly, it is not necessary to include a specific provision as part of the amendment here.

Response to Comment 1.5:

Staff concur that all waste discharger requirements (WDRs) and waivers need to be consistent with and implement Basin Plan requirements. However the proposed Provision 8 is needed to eliminate any ambiguity about which WDRs or waivers the quoted provisions apply to.

Comment 1.6:

Municipal Storm Water and Municipal and Domestic Wastewater Monitoring, page C-9: CVCWA is greatly concerned with the monitoring provisions proposed for municipal wastewater agencies. As proposed, this language would mandate ongoing monitoring of diazinon and chlorpyrifos in municipal wastewater effluent even though such pesticides are rarely found in many effluents. Considering the fact that such pesticides are rarely found, such monitoring into perpetuity is not

necessary. The monitoring program needs to be revised to allow the discontinuation of monitoring upon a showing by a discharger that such pesticides are not found in the effluent, or are only found at levels below the applicable objectives.

Response to Comment 1.6:

The proposed monitoring requirements would require that the monitoring and reporting program for wastewater and storm water discharges be designed to collect the information necessary to determine whether the discharge causes or contributes to an exceedance of the proposed diazinon and chlorpyrifos objectives. This information could include documentation that demonstrates these pesticides are not being discharged. In cases where diazinon and chlorpyrifos are not being discharged, monitoring in perpetuity would not be required. The Proposed Amendment has been changed to explicitly state that “Regular monitoring for diazinon and chlorpyrifos can be discontinued upon a showing by a discharger that such pesticides are not found in the effluent at concentrations with the potential to cause or contribute to exceedances of water quality objectives.”

Comment 1.7:

Further, CVCWA is concerned that monitoring provision number 3 suggests that municipal wastewater agencies will be responsible for monitoring pesticides that are considered to be alternatives to diazinon and chlorpyrifos. Such monitoring is open-ended, and in fact, many of these alternatives do not have adopted objectives.

Response to Comment 1.7:

Commenter is correct that the subject monitoring Provision 3 for municipal storm water and wastewater agencies would make them responsible for monitoring of diazinon and chlorpyrifos alternatives in their discharge. The presence of pesticides in municipal discharges remains a risk to water quality that the Board must regulate.

This provision is intentionally non-specific as appropriate monitoring requirements may vary. Specific monitoring requirements would be established during the establishments of monitoring reporting programs by the Board, with appropriate consideration of monitoring costs. The Staff Report includes an estimation of those costs for Board consideration.

Staff acknowledge that many of the diazinon and chlorpyrifos alternatives do not have water quality objectives. Part of the reason for the collection of data will be to inform regulatory efforts including, when appropriate, establishment of numeric water quality objectives.

Comment 1.8:

Moreover, CVCWA believes it inappropriate to use this Basin Plan amendment to control actions with respect to other pesticides.

Response to Comment 1.8:

Staff disagree that addressing alternatives in this Basin Plan Amendment is inappropriate, as it would be contrary to the goals of the Basin Plan Amendment for the Board's action to result in the substitution of one set of substances that have a potentially deleterious effect on aquatic life with another set of substances that could potentially have even greater deleterious effects. The inclusion of provisions to address potential impacts of alternatives to diazinon and chlorpyrifos is within the noticed scope of this project, and is necessary to assess potential impacts of alternative pesticides.

Comment 1.9:

As explained previously, municipal dischargers are unable to control the use of pesticides by consumers. To the extent that alternatives exist that may be of concern, CVCWA encourages the Regional Board to work with the California Department of Pesticide Regulation with respect to the alternatives prior to imposing requirements on municipal dischargers.

Response to Comment 1.9:

See response to comment 1.3 regarding responsibility of municipal dischargers with respect to pesticide discharges. The Board will certainly continue to work with DPR to address alternatives to diazinon and chlorpyrifos, but the responsibility to ensure the protection of water quality ultimately lies in the hands of the Boards, and this responsibility cannot be made contingent on the outcome of coordination efforts undertaken with a partner agency.

Comment 1.10:

Appendix B – Cost Calculations includes estimates for POTW monitoring. An hourly rate of \$150 per person per day was used to calculate the estimated monitoring cost and \$10,000 per person-month for the monitoring plan and quality assurance plan. The estimate for monitoring personnel is extremely low. CVCWA suggest using at least \$65/hour per person as a cost basis for the monitoring, which is more typical of the cost a municipality would experience. Additionally, the cost basis for the monitoring & quality assurance plans should also be adjusted up, however this cost will vary greatly depending on if in-house expertise is available or if this must be contracted out.

Response to Comment 1.10:

The cost calculations in Appendix B have been revised as suggested by the commenter.

2. Comments from Earthjustice, Pacific Coast Federation of Fisherman's Associations, Golden Gate Salmon Association,

and Golden Gate Fisherman's Associations – Irene Gutierrez and Greg C. Loarie

Comment 2.1:

As discussed in further detail below, the proposed amendments to the basin plan fail to comply with the water board's obligations to develop total maximum daily loads for chlorpyrifos and diazinon in waterways designated as "impaired" under the federal Clean Water Act. Furthermore, the water board has not adequately justified how its current proposal complies with its obligations under state and federal law.

Response to Comment 2.1:

The Proposed Amendment will establish pollution control requirements that mirror those that have been proven to be successful in addressing diazinon and chlorpyrifos impairments. The Proposed Amendment therefore meets the Boards' obligations under state and federal law. The Staff Report now contains a "4b Demonstration" (Appendix F) that has been prepared following USEPA guidance (USEPA, 2006) which documents how these impairments are being addressed without the establishment of TMDLs. Responses to specific comments are below.

Comment 2.2:

The Water Board Is Required to Develop TMDLs for Impaired Waterways Listed Under the Clean Water Act

There are various waterways in the Central Valley polluted by chlorpyrifos and diazinon, and which have been listed on EPA's §303(d) list of "impaired" waterways.⁴ Consequently, under the federal and state statutes governing the maintenance of clean water, the Central Valley Regional Water Quality Control Board must set TMDLs to control chlorpyrifos and diazinon levels in these waterways.

*The Clean Water Act ("CWA") was enacted in 1972, to promote the "restoration and maintenance of chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. §1251(a). As part of their obligations under the CWA, state water quality control agencies must establish a "total maximum daily load" ("TMDL") for waterways that are impaired and fail to meet the water quality standards for particular pollutants. 33 U.S.C. §1313(d)(1)(C). 40 C.F.R. §130.7. If a waterway is on the CWA's list of "impaired" waterways (the "§303(d)(1) list"), a TMDL must be established for that waterway.⁵ 33 U.S.C. §1313(d)(1)(C); 40 C.F.R. §130.7(c)(1); see also, *Pronsolino v. Marcus*, 91 F.Supp.2d 1337, 1343-44 (N.D. Cal. 2000)(TMDLs required for listed water bodies, even if those waters affected only by nonpoint source pollution), *aff'd*, *Pronsolino v. Natri*, 291 F.3d 1123, 1127-28, 1132 (9th Cir. 2002); *San Francisco**

BayKeeper v. Whitman, 297 F.3d 877, 885 (9th Cir. 2002)(state must develop TMDLs for listed waterways).

California's Porter-Cologne Water Quality Control Act implements provisions of the CWA, and its goal is to "attain the highest water quality which is reasonable, considering all demands being made and to be made on *the state's waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." Water Code §13000. Under the Porter-Cologne Act, the State and regional water boards are tasked with "coordination and control of water quality" in the state. Water Code §13001. To achieve the objectives of the CWA and Porter-Cologne Act, regional water boards will develop "basin plans" which address the beneficial water uses to be protected, the water quality objectives, and contain a program of implementation. Water Code §§13241, 13242; see also, *City of Arcadia v. State Water Resources Control Bd.*, 191 Cal. App. 4th 156, 164 (2010). In connection with this basin planning process, water boards must establish TMDLs for waterways on the §303(d)(1) list. See Resolution 2005-0050, Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options (June 16, 2005)("TMDL Policy") at 4; see also, *Pronsolino*, 291 F.3d at 1127-28; *San Joaquin River Exchange Contractors Water Authority v. State Water Resources Control Bd.*, 183 Cal. App. 4th 1110, 1116, 1119 (Cal. Ct. App. 2010).

Response to comment 2.2:

Upon EPA approval of the 4b Demonstration associated with the subject diazinon and chlorpyrifos listings, these impairments will no longer be included on the 303(d) list of water bodies requiring TMDLs. Since the pollution control requirements of the Proposed Amendment will address the subject diazinon and chlorpyrifos impairments, TMDLs are unnecessary. However, if the monitoring fails to demonstrate that the impairments are being resolved through the implementation of the Proposed Amendment, TMDLs could still be developed in the future.

Comment 2.3:

The Water Board Has Not Justified Its Failure to Develop TMDLs For Chlorpyrifos and Diazinon

The water board has failed to comply with its obligations to develop TMDLs for §303(d)(1) listed Central Valley waterways. The water board has acknowledged that there are a number of listed waterways, which currently do not have TMDLs in place. See Draft Staff Report at 42. The water board has also acknowledged that a number of these waterways have concentrations of diazinon and chlorpyrifos at levels of concern, and in excess of water quality standards. Id. at 52-53, 58-62, 65-68, 70-76.

In order to address these impairments, rather than adopting TMDLs, the water board has proposed to adopt numeric water quality objectives, based on the California Department of Fish and Game's Aquatic Life Criteria. Draft Staff Report at 82. The water board contends that adoption

of these objectives, and reliance on existing regulatory programs to enforce these objectives, will resolve impairments in listed waterways. Id. It also contends that this plan exempts it from the CWA's requirement to adopt TMDLs for listed waterways, since these other regulatory programs constitute "other pollution control requirements<required by State authority," within the meaning of 40 C.F.R. §130.7(b)(1)(iii). Id. at 153-54.

However, the water board's actions do not satisfy its obligations under state or federal law. Pursuant to the CWA and the state's Porter-Cologne Act, water boards are required to develop TMDLs for all §303(d)(1) listed waterways. See 33 U.S.C. §1313(d)(1)(C); 40 C.F.R. §130.7(c)(1); TMDL Policy at 4; Pronsolino, 291 F.3d at 1127-28.

The C.F.R. section cited by the water board in its Draft Staff Report does not provide an exemption to this requirement to develop TMDLs. Draft Staff Report at 153-54. Rather, 40 C.F.R. §130.7(b)(1)(iii) pertains to "Identification and priority setting for water quality-limited segments still requiring TMDLs," and asks the states to identify waterways requiring TMDLs. It does provide an exception to the listing requirement if other regulatory programs will resolve the impairment, and a waterway need only be listed where "[o]ther pollution control requirements (e.g., best management practices) required by local, State, or Federal authority are not stringent enough to implement any water quality standards (WQS) applicable to such waters." However, where waterways have already been listed as impaired, water boards must develop TMDLs for those waterways. By failing to develop TMDLs for already-listed waterways, the water board has failed to fulfill its obligations under state and federal law.

Additionally, the water board has failed to properly certify that other programs will correct the impairments. A water board need not develop a TMDL if it can formally certify that other regulatory programs will resolve the impairment. TMDL Policy at 6. However, if a water board chooses to follow this route, it must make various formal findings to issue the certification, including: that the other regulatory programs are consistent with the assumptions of the TMDL, that the program will address the impairment in a reasonable period of time, that effective enforcement mechanisms exist, that there is a monitoring program in place, and a date upon which the certification will expire if not reissued. Id. at 6-9. Here, the water board has not followed these requirements, and has not properly certified that other regulatory programs, like the ILRP, will resolve the impairments due to chlorpyrifos and diazinon. See Draft Staff Report at 154-55.

Response to comment 2.3:

The approach for resolving diazinon and chlorpyrifos impairments contained in the Proposed Amendment contains more than just the adoption of water quality objectives and a reliance on existing regulatory programs as described by the commenter - the Proposed Amendment also contains implementation and monitoring requirements that include enforceable timelines under which specific actions must be taken to ensure that the impairments are resolved.

Following the adoption of the Proposed Amendment, the Board will have adequate justification for removing the subject diazinon and chlorpyrifos impairments from the 303(d) list. Once EPA approves their removal, TMDLs will not be necessary for these impairments. Staff has provided a 4b Demonstration supporting the removal of these impairments from the 303(d) list. This 4b Demonstration documents how existing regulatory programs will resolve the subject impairments, and also addresses all of the elements in the State's TMDL policy referred to in this comment.

3. Comments from the East San Joaquin Water Quality Coalition – Teresa A Dunham

Comment 3.1:

As a preliminary matter, the ESJWQC submitted comments on the March 2013 Draft Staff Report in May of 2013. To the extent that the Central Valley Regional Water Quality Control Board (Regional Board) staff did not address ESJQQC's concerns expressed in its May 2013 letter, we incorporate by reference those same concerns. Also, we support the comments submitted by the Western Plant Health Association.

Response to Comment 3.1:

This comment states that some previous unspecified ESJWQC comments were not addressed in the responses to comments released with the January 2014 Staff Report. Since this commenter does not specify which previous ESJWQC comments were not addressed, it is not possible to provide a response. Responses to comments submitted by the Western Plant Health Association are included below.

Comment 3.2:

***Specific Pesticide Objectives, p. C-1:** The proposed Basin Plan amendment proposes to list specific water bodies to which the objectives would apply, and also proposes to indicate that the objectives are also applicable to waters with designated beneficial uses of WARM and/or COLD. Because the objective would apply to waters with such designated beneficial uses, it is unnecessary to individually list a sub-set of water bodies. Further, to the extent that the Regional Board's process for consideration of beneficial uses finds that one of the specifically listed water bodies does not properly include WARM and/or COLD beneficial uses, a Basin Plan amendment would be required to remove application of the water quality objective. Accordingly, the ESJWQC recommends that the references to the individual water bodies be removed*

Response to comment 3.2:

The naming of specific water bodies to which the proposed objectives would apply is necessary to provide certainty that the impairments in these specific water bodies will be resolved through achievement of the proposed water quality objectives; this is necessary

for the 4b demonstration (see Appendix F). As described in the Staff Report, Staff has determined that WARM and/or COLD are existing beneficial uses for the water bodies specifically named in the Proposed Amendment. Staff agrees the modification of the proposed objectives would require a Basin Plan Amendment. The Board's process for consideration of beneficial uses is intended to include the development of future amendments to the Basin Plan, as appropriate.

Comment 3.3:

Diazinon and Chlorpyrifos Discharges, Provision 1.c, p. C-5: The language in this subdivision refers to the level of concentrations in the discharge versus concentrations in the receiving waters. Water quality objectives apply to receiving waters and are not discharge limitations. Accordingly, references to meeting water quality objectives in the discharge itself should be deleted. We recommend that this provision be revised as follows: "Encourage implementation of measures or practices by all dischargers that result in concentrations of chlorpyrifos and diazinon in all applicable waters discharges that are below the water quality objectives."

Response to Comment 3.3:

Staff agree that water quality objectives apply in the receiving waters and not in the discharge. The intent of this control program is to encourage implementation of practices that will achieve the water quality objective concentration in the discharges, since that will guarantee attainment of the water quality objectives in the receiving waters. This language has been clarified in Provision 1.c of the Proposed Amendment. The language proposed by the commenter will not be included in the Proposed Amendment because the word "encourage" gives impression that the Board will seek voluntary compliance, when the Board will instead impose mandatory requirements requiring discharger to achieve compliance with the water quality objectives.

Comment 3.4:

Diazinon and Chlorpyrifos Discharges, Provision 2, p. C-5: The ESJWQC does not believe that provision 2 is necessary. In the waste discharge requirements (WDRs) for irrigated agriculture, wastes discharged from covered agricultural operations are not allowed to cause or contribute to exceedances of applicable water quality objectives. (See, e.g., Order No. R5-2012-0116-R1, p. 17.) If such exceedances do exist, then the dischargers are required to comply with water quality management plan requirements, which must be approved by the Regional Board's Executive Officer. Because the receiving water limitations are in all of the Regional Board's orders for irrigated agriculture (and other dischargers as well), it is unnecessary to include provision 2 here. Further, elimination of the provision here ensures that there is no confusion with respect to time schedules and application of management plans as contained in WDRs for irrigated agriculture.

To explain further, the General Order for the Eastern San Joaquin River Watershed (Order No. R5-2012-0116-R1) includes time schedules for

compliance. This language would potentially allow for time schedules for alternatives to diazinon and chlorpyrifos. However, the Eastern San Joaquin River Watershed's General Order specifically states that "Any applicable time schedules for compliance established in the Basin Plan supersedes the schedules given below (...)." Would the language of provision 2 requiring that dischargers ensure that pesticide discharges not cause or contribute to an applicable water quality objective for alternatives supersede the time schedule language allowed in the General Order?

There is no specifically stated time schedule for meeting water quality objectives for alternatives, which could be argued to mean that compliance is required immediately. Without a specific schedule, and the fact that the General Order states that the Basin Plan is superseding, would provision 2 then mean that immediate compliance with water quality objectives must occur upon the effective date of the Basin Plan amendment? Considering that the inclusion of reference to alternatives creates confusion, such language should be deleted.

Moreover, as a practical matter, the proposed Basin Plan amendment is intended to address diazinon and chlorpyrifos. Because it is specific to those two pesticides, it is inappropriate to include additional language referencing "alternatives." As explained further below, the term "alternatives" can be very broad and could increase the economic impact of this proposed amendment three-fold. Thus, such reference to "alternatives" is speculative and should be removed.

Response to Comment 3.4:

While most WDRs contain generic prohibitions that prohibit discharges from causing or contributing to exceedances of water quality objectives (which implicitly address the potential toxicity of diazinon and chlorpyrifos alternatives), the Board should not simply rely on these generic prohibitions and otherwise ignore the potential for alternative pesticides to create their own set of water quality problems. Adding provisions that specifically address how the Board plans on assessing potential water quality impacts associated with alternative pesticides helps ensure that the Proposed Amendment does not unintentionally exacerbate water toxicity problems.

However, Board staff recognize that the time schedules that were initially proposed (5 years or less) would have been inconsistent with WDRs such as the Eastern San Joaquin River Watershed's General Order. However, since the time schedule now included in the Proposed Amendment has been lengthened (as short as practicable but not to exceed 10 years), it is now consistent and the time schedule contained in the WDRs and is not intended to supersede the existing time schedule.

Board staff understands the confusion that was caused by the initial draft of the Proposed Amendment, but have determined that lengthening the time schedule in order to maintain consistency across existing regulatory programs is a preferred alternative to simply eviscerating the entirety of the alternative pesticide monitoring requirements. Furthermore, the Proposed Amendment is not intended to require immediate compliance with narrative water quality objectives related to alternative pesticides when compliance

with those narrative water quality objectives is already being pursued on timeline contained in an existing regulatory program (as is the case with the Eastern San Joaquin River Watershed's General Order); Board staff do not interpret the Proposed Amendment as requiring the Board to revisit and shorten or eliminate those existing timelines.

Comment 3.5:

Diazinon and Chlorpyrifos Discharges, Provision 3, p. C-5: Time schedules in WDRs and waivers need to be set according to existing time schedule policies contained in laws and policies, and not be set here for compliance in five years. For example, in the ESJWQC's WDRs, time schedules are established for meeting receiving water limitations. Receiving water limitations are essentially equivalent to adopted water quality objectives. In the ESJWQC's WDRs, growers are required to meet receiving water limitations immediately, or they are subject to management plans that must include a schedule for compliance. The schedule for compliance in management plans must be as short as practicable but cannot exceed ten years. The Executive Officer maintains the discretion to adopt the management plans, and the proposed schedule contained therein. The schedule contained within the management plan, or such schedule that the Executive Officer may be willing to approve, may be shorter than five years. The primary advantage of deferring to existing laws and policies is that it allows for schedules to be realistic and to be supported with proper justification. Otherwise, the five years as proposed in the Basin Plan is basically arbitrary and not linked to actual management plan actions as is required in the WDRs. Thus, it is unnecessary to include a specific time for compliance as part of the Basin Plan amendment. The ESJWQC recommends that provision 3 be revised to reflect this accordingly.

Response to comment 3.5:

Under Porter-Cologne, the Board must specify a time schedule for actions taken pursuant to any program of implementation for achieving water quality objectives in the Basin Plan. (Wat. Code, §13242(b).) However, in response to concerns expressed by multiple parties, the five-year time schedule has been replaced with Provision 3 of the Proposed Amendment, which now refers to existing laws and policies but also requires compliance within 10 years when a schedule is not dictated by existing laws or policies.

Comment 3.6:

Diazinon and Chlorpyrifos Discharges, Provisions 6 and 7, pp. C-5 through C-6: Provision 6 is unnecessary. Considering the WDRs for irrigated agriculture, there is no need for an independent management plan to be required by the proposed Basin Plan amendment. Rather than including specific provisions, the Basin Plan amendment should refer to management plan requirements contained in the irrigated lands WDRs.

Response to comment 3.6:

The “independent management plan” provisions in the Proposed Amendment are meant to be harmonious with existing requirements under the ILRP – the Proposed Amendment is not intended to impose redundant requirements. When the ILRP is already requiring management plans that will address diazinon and chlorpyrifos impairments, additional plans will not be not required. However, having this statement in the Basin Plan helps ensure that management plans will address *all* of the diazinon and chlorpyrifos impairments.

Comment 3.7:

Diazinon and Chlorpyrifos Discharges, Provision 8, p. C-7: Provision 8 is a restatement of the law and is unnecessary. All adopted WDRs or waivers are required to be consistent with the Basin Plan. Thus, it is unnecessary to repeat the requirement here.

Response to comment 3.7:

See response to comment 1.5

Comment 3.8:

Agricultural Discharge Monitoring: In general, the ESJWQC does not believe that the specific agricultural discharge monitoring requirements as proposed are necessary. Rather than identifying specific monitoring program requirements, we recommend that the language be limited to only requiring that WDRs for irrigated agriculture include a monitoring and reporting program that addresses agricultural discharges of diazinon and chlorpyrifos. Under the current WDRs, the Regional Board mandates monitoring that is reflective of constituents of concern in certain geographic areas. This allows the Regional Board to identify what pesticides are appropriate for monitoring based on the crops in the geographic area and constituents detected in past monitoring activities.

Conversely, as proposed, the Basin Plan amendment would mandate monitoring for diazinon, chlorpyrifos, and alternatives to these pesticides into perpetuity regardless of the data and information gathered from third parties and individuals implementing said WDRs. This may result in monitoring by certain third parties that is unnecessary. For example, as written, the proposed Basin Plan amendment would require that any WDRs that address agricultural pesticide discharges meet the requirements set forth in the proposed language. The California Rice Commission implements WDRs that address agricultural pesticide discharges. However, these chemicals are not used on rice. Regardless of this fact, the proposed language would require the monitoring of these chemicals and alternatives by the California Rice Commission. To avoid this and other similar consequences, the language must be revised to (1) be limited to WDRs or waivers that apply to growers that use diazinon and chlorpyrifos, and (2) allow the Regional Board the discretion to require agricultural discharge monitoring for these two pesticides as determined appropriate in the various WDRs.

Response to comment 3.8:

The proposed monitoring requirements require that the monitoring and reporting program for agricultural discharges be designed to collect the information necessary to determine whether discharges cause or contribute to an exceedance of the proposed diazinon and chlorpyrifos objectives. This information could include documentation that demonstrates these pesticides are not being discharged. The Board is neither interested in imposing perpetual superfluous monitoring requirements, nor does it necessarily have the legal authority to impose such wholly unreasonable requirements.

However, given their widespread use and given the fact that these pesticides are still detected with some regularity in watersheds with extensive agricultural discharges, most coalitions would likely be expected to continue to monitor for these pesticides in the near future (with the possible exception of the Rice Coalition). Similar requirements have existed for agricultural discharges in the Sacramento Valley for over a decade under the Sacramento and Feather Rivers Diazinon and Chlorpyrifos TMDL and have not resulted in the Board requiring diazinon and chlorpyrifos monitoring for the rice growers.

The proposed monitoring requirements for agricultural discharges would require that the monitoring and reporting program for agricultural discharges be designed to collect the information necessary to determine whether alternatives to diazinon and chlorpyrifos are being discharged at concentrations that have the potential to cause or contribute to exceedances of applicable narrative water quality objectives, and this is not a departure from current regulatory requirements.

Comment 3.9:

Agricultural Discharge Monitoring, Provision 4, p. C-8: To the extent that the Regional Board determines to maintain the agricultural discharge monitoring provisions as essentially proposed, the ESJWQC believes that provisions 4 and 5 need to be deleted. With respect to provision 4, it would mandate that the ESJWQC and others would need to monitor for alternatives to diazinon and chlorpyrifos. Such a requirement could result in a substantial increase in the irrigated lands monitoring and reporting programs for the ESJWQC and others. Chlorpyrifos is a widely used chemical with registrations on many commodities and is effective for controlling many pests. There are an extremely large number of alternative products that can be used in place of both chlorpyrifos and diazinon. In fact, any product with overlapping registrations for commodities and pests could be viewed as an alternative product, whether it is applied as an alternative or not. Requiring monitoring of these chemicals without the additional step of determining whether they may or may not be worth monitoring is going to be extremely costly. The waste discharge requirements that are being adopted within the irrigated lands program require that the Regional Board, Department of Pesticide Regulation, and the various third parties develop a process that allows for identification of pesticides that should be monitored in each watershed. Rather than mandating "alternatives monitoring" here, the ESJWQC and others should be allowed to use that process to identify appropriate

pesticides to monitor in each subwatershed, instead of simply adding as many chemicals as possible because they might be considered alternatives to chlorpyrifos and diazinon.

Response to comment 3.9:

See response to comments 3.4 and 3.8. If certain alternative pesticides do not pose a significant threat to water quality, documenting this lack of a threat would be sufficient to address this monitoring requirement for those alternative chemicals. The cost calculations for the Proposed Amendment included the costs of monitoring for alternatives to diazinon and chlorpyrifos.

Comment 3.10:

***Agricultural Discharge Monitoring, Provision 5, p. C-8:** With respect to provision 5, it would require monitoring to determine if discharges are causing or contributing to toxicity impairment due to additivity or synergistic effects of multiple pollutants. Attempting to identify additive and synergistic effects of multiple pollutants is difficult to do under the most optimum of circumstances and generally, additivity and synergy cannot be detected. If toxicity in a sample is at least 50%, a toxicity identification evaluation (TIE) may be able to identify classes of constituents that contribute to the toxicity. However, the TIE only points to a class of constituents (e.g., non-polar organics), and additional chemical analyses must be performed to identify potential chemicals contributing to toxicity. Even if toxic units of the chemicals are known, it will still not be clear if additivity or synergy is present because it is not possible to determine if the chemical analyses found every chemical. Attempting to do so would require a Phase III TIE, which can cost several thousand dollars per sample with no guarantee of success. While the ESJWQC has been somewhat successful in determining the classes of compounds responsible for toxicity in some samples, the requirement to determine additivity or synergy in every toxic sample would be extremely burdensome and costly.*

Response to comment 3.10:

The proposed monitoring provision merely requires that toxicity testing be performed, and some reasonable attempt at identifying the toxicants to see if the discharge is causing or contributing to toxicity. This provision does not require the determination of additivity or synergism in every toxic sample (which staff agrees would be extremely burdensome and costly and not presently possible in many cases, such as low-level toxicity). The same provision has been in place for the existing diazinon and chlorpyrifos monitoring requirements for the Sacramento and Feather Rivers, the San Joaquin River and the Delta and has been met with existing coalition toxicity testing. The cost estimates provided adequately characterize the potential costs of this provision.

4. Comments from the City of Roseville – Keyle McKinney, PE

Comment 4.1:

While the City understands the BPA's intent that all monitoring be conducted with analytical methods providing limits of quantification at or below the Basin Plan objectives for chlorpyrifos and diazinon, the City requests that "limit of quantification" be more explicitly defined. Laboratories may use different methods of determining their quantification limits. If it is the Central Valley Regional Board's intent that "limit of quantification" mean "reporting limit", as defined in the State Implementation Policy for Toxics Control (SIP), the BPA should state this.

Response to comment 4.1:

The intent of the term “limit of quantification” in this provision is the limit at which the laboratory can reliably quantify the concentration. This is synonymous with the term “reporting limit” as used in the SIP, although the SIP does not specifically define this term. The Proposed Amendment has been modified to include both synonymous terms.

Comment 4.2:

*The BP A continues to include a provision that dischargers (the City understands this to mean both point and non-point dischargers) of diazinon and chlorpyrifos "are responsible for ensuring that their pesticide discharges to surface water and groundwater, including discharges of pesticides used as alternatives to diazinon and/or chlorpyrifos do not cause or contribute to an exceedance of applicable water quality objectives" (emphasis added). This provision is further developed in the Surveillance and Monitoring Program Provisions:
"The monitoring and reporting program for any waste discharge requirements must be designed to collect the information necessary to:*

- 1. Determine whether the discharge causes or contributes to an exceedance of water quality objectives for diazinon and/or chlorpyrifos;*
- 2. Determine whether the discharge causes or contributes to a toxicity impairment due to additive or synergistic effects of multiple pollutants; and*
- 3. Determine whether alternatives to diazinon and/or chlorpyrifos are being discharged at concentrations with the potential to cause or contribute to exceedances of water quality objectives."*

Similar to previous comments on these provisions, City again respectfully disagrees that this requirement is not overly burdensome and exceedingly difficult to implement. The City has no authority over the use of any pesticide outside of its own municipal applications. This authority resides with the California Department of Pesticide Regulation. It should not be, and cannot be the responsibility of the City, or any other stormwater or wastewater discharger, to research the use of pesticides and research the interaction (i.e. additivity and synergism) of these pesticides in the environment. Yet the BPA places this "responsibility" on the discharger, and requires assurance from the discharger that exceedances of water

quality objectives will not occur.

The City is accustomed to achieving reductions of pollutants in its storm water discharges "to the maximum extent practicable" (MEP). The City achieves MEP through implementation of best management practices (BMPs) that include such elements as physical infrastructure to settle and filter particular matter, infiltrate runoff prior to entering receiving waters, as well as programmatic activities such as public outreach and education. While the City can evaluate the effectiveness of its storm water management program in controlling the discharge of chlorpyrifos and diazinon to the MEP standard, the City is the inappropriate entity to bear responsibility for investigating and evaluating emerging contaminants such as insecticide alternatives and the additivity and synergism of those alternatives. Moreover, without any uniform basis (i.e. numeric water quality objective) upon which to evaluate alternative insecticides, determination of "cause and contribute" will vary wildly across the Central Valley Region. Again, the BP A places the responsibility of assurance on the discharger, and will leave individual dischargers in the position of independently interpreting the Basin Plan's narrative pesticide and toxicity objectives in light of their own research. These dischargers do not have the expertise or resources to make these decisions in a scientifically defensible manner.

In summary, these provisions for each discharger to evaluate alternatives and evaluate additivity and synergism will have disastrous consequences for BP A implementation. The City requests the following revisions be made to the specific language of the proposed BPA:

~~"2. Dischargers are responsible for ensuring that their pesticide discharges to surface water and groundwater, including discharges of pesticides used as alternatives to diazinon and/or chlorpyrifos do not cause or contribute to exceedance of applicable water quality objectives."~~

And

~~"The monitoring and reporting program for any waste discharge requirements must be designed to collect the information necessary to:~~

- ~~1. Determine whether the discharge causes or contributes to an exceedance of water quality objectives for diazinon and/or chlorpyrifos;~~
- ~~2. Determine whether the discharge causes or contributes to a toxicity impairment due to additive or synergistic effects of multiple pollutants;~~
- ~~and~~
- ~~3. Determine whether alternatives to diazinon and/or chlorpyrifos are being discharged at concentrations with the potential to cause or contribute to exceedances of water quality objectives."~~

Response to comment 4.2:

See response to comment 1.3. The costs of the proposed monitoring requirements have been estimated in the Staff Report. As described in the Staff Report, determining the contribution to additive or synergistic toxic effects can be done through toxicity testing, and would not require an extensive research project. Characterizing the nature of the discharge and working to ensure it does not cause or contribute to exceedances of water quality standards is a standard requirement for dischargers under both the Clean Water Act and the Porter-Cologne Water Quality Control Act.

Comment 4.3:

While the economic analysis is vastly improved in this latest iteration of the proposed BP A, it accounts primary for monitoring costs. It does not adequately account for the costs associated with planning and developing an adequate monitoring program necessary to assess pesticide alternatives and their additivity and synergism. The economic analysis assumes \$5,000 for a monitoring plan and quality assurance plan. Again, the requirement to determine whether a discharge is causing or contributing to toxicity from synergism or additivity as well as the requirement to determine if pesticide alternatives are causing or contributing to water quality exceedances involves research. Typical research grants are in the realm of hundreds of thousands of dollars. Evidence for this can be found on the Department of Pesticide Regulations website as well as the Central Valley Water Boards own research expenditures. Short of doing this research, monitoring efforts will be misguided and monitoring expenses will be wasted.

Response to comment 4.3:

See response to comment 4.2. The monitoring and planning activities and costs necessary to meet the proposed monitoring requirements have been characterized in the cost estimates and Staff Report. The Proposed Amendment does not require extensive research on pesticide use and synergism, only monitoring for diazinon, chlorpyrifos, toxicity, and alternative pesticides, which both the Board and DPR will assist the dischargers in determining. Additionally the Proposed Amendment would allow individual dischargers to meet the monitoring goals through representative monitoring programs, which could provide a lower-cost alternative to individual monitoring.

5. Comments from Sacramento County – Dana Booth

Comment 5.1:

The County supports the Water Board's efforts to share information and foster open dialogue on the development of this Basin Plan Amendment. The stakeholder process has been useful and informative, and the County appreciates the time and effort that has gone into the public engagement process throughout the development of the amendment.

Response to Comment 5.1:

Comment acknowledged.

Comment 5.2:

The County also supports the Water Board's decision to craft the Basin Plan Amendment without creating a "total maximum daily load" (TMDL) regulation, as we agree that the beneficial use impairments can be addressed through other means and measures.

Response to Comment 5.2:

Comment acknowledged.

Comment 5.3:

The County appreciates and supports the Central Valley Water Board's stated intent to continue to coordinate with the CA Department of Pesticide Regulation (DPR), the United States Environmental Protection Agency (USEPA) and the County Agricultural Commissioners on appropriate pesticide registration and use requirements for the protection of water quality.

Response to comment 5.3:

Comment acknowledged. Staff also acknowledges Sacramento County's proactive efforts in coordinating with those agencies to address pesticide water quality issues.

Comment 5.4:

Primary Issue - Responsibility for Receiving Water Monitoring and Assessment

The County appreciates the Water Board's stated intent to allow flexibility in terms of the specific monitoring requirements. However, the Basin Plan Amendment places an undue burden on municipal stormwater agencies to evaluate receiving water quality.

Local agencies do not have regulatory authority over the uses of pesticides that may be present in urban runoff. Regulation of pesticide uses occurs at the federal and state -not local - level. This severely limits the capability of municipal storm water agencies to control discharges of pesticides to receiving waters.

Response to Comment 5.4:

See response to comment 1.3.

Comment 5.6:

For many years municipal stormwater agencies and the California Stormwater Quality Association (CASQA) have collaborated with the

Water Boards in the Urban Pesticides Pollution Prevention Project ("UP3 Project") and related efforts to address urban pesticides water pollution. In recent years, collaborative working of CASQA and Water Board staff with the California Department of Pesticide Regulation (DPR) resulted in significant changes in pesticide regulation when DPR adopted surface water quality protection regulations in 2012, specifically to address receiving water impacts from registered uses of pyrethroid pesticides in California's urban watersheds (DPR, 2012).

DPR has committed to continued collaboration with Water Boards and CASQA to solve pesticide water pollution problems in urban areas. Based on this commitment, and DPR's recognition that state law prevents municipal regulation of pesticide use, we expect that DPR will continue to take the lead for addressing future urban pesticide water pollution, as it has already been doing for pyrethroids.

The implementation strategy for the TMDL for Diazinon and Pesticide-Related Toxicity in Bay Area Urban Creeks, produced by the San Francisco Bay Regional Water Quality Control Board, contains specific implementation actions relating to both USEP A and DPR (Attachment A).

These implementation actions reflect the cooperative strategy in which dischargers and Water Board staff work together to help improve state and federal regulation of pesticide uses and water quality impacts. As described in the staff report for the proposed Basin Plan Amendment, the 1997 Management Agency Agreement (MAA) between the State Water Resources Control Board and DPR also provides a process for protection of water quality.

CASQA has been actively engaged with the Water Boards and DPR to encourage the implementation of a coordinated, statewide approach to monitoring and assessment of pesticide impacts upon receiving water quality. CASQA's recommendations and suggested approach are outlined in a recent letter to state and regional Water Board staff (Attachment B).

Response to Comment 5.6:

Staff acknowledges the progress made by CASQA, DPR and others in addressing urban pesticide problems. Current Basin Plan language, as well as language added to the Proposed Amendment in response to these comments (see response to comment 5.7) expresses the Board's commitment for ongoing coordination.

The implementation of a coordinated statewide monitoring approach is beyond the scope of the Proposed Amendment. The Proposed Amendment, however, contains adequate flexibility to allow for use of information gathered through statewide monitoring and assessment approaches to be used to meet proposed monitoring requirements.

Comment 5.7:

The County of Sacramento requests that the proposed Basin Plan Amendment and the associated staff report incorporate the following elements:

1. A statement acknowledging that for urban water bodies, full implementation of pesticide regulators' authorities should be the primary mechanism for addressing pesticide-caused water quality impairments.

Response to comment 5.7:

Staff agrees that implementation of pesticide regulators' authority should be one of the primary mechanisms for addressing pesticide-caused water quality impairments. However, the Board is ultimately responsible for ensuring the reasonable protection of water quality, and this requires that the Board to continue to exercise its traditional regulatory authority over the discharges of pesticides that could cause water quality impairments.

Chapter 4 of the Basin Plan currently contains provisions recognizing the benefits of coordinating pesticide control efforts with other agencies, and states that "Whenever possible, the burdens on pesticide dischargers will be reduced by working through DFA [now DPR] or other appropriate regulatory processes. Staff acknowledge the progress that has been made in recent years by DPR in addressing pesticide impairments, and the role that CASQA and others have played in coordinating with agencies regulating pesticide use to address water quality impairments. In response to the comments being provided here a statement recognizing the implementation of the authorities of agencies regulating pesticide use as one of the primary mechanisms for addressing pesticide water quality impairments has been added to the revised Proposed Amendment in proposed changes under the section Pesticide Discharges.

Comment 5.8:

2. Acknowledgement within the Basin Plan Amendment and associated staff report that the implementation strategy will include actions relating to DPR and USEP A pesticide regulation authorities.

Response to Comment 5.8:

See response to comment 5.7. The Basin Plan expresses the Board's commitment to coordinate with other agencies, such as DPR in implementing pesticide control efforts. The Proposed Amendment also includes language that recognizes that such agency authorities are one of the primary means for addressing pesticide discharges, as described in the response to comment 5.7, above.

Comment 5.9:

3. Acknowledgement that region-wide requirements for pesticide monitoring by individual discharges is not necessary, and that DPR and Water Board monitoring programs should be the primary mechanism for assessing pesticide issues in urban receiving waters and the effectiveness of DPR's surface water protection efforts.

Response to comment 5.9:

See response to comment 1.3, 1.9 and 5.6.

Comment 5.10:

Re: new section for "Diazinon and Chlorpyrifos Discharges" under "Pesticide Discharges" (per staff report, p. C-4, Proposed Basin Plan Amendment): item 1.a should refer to discharges that cause or contribute to exceedances of water quality objectives.

Response to comment 5.10

The proposed item 1a is intended to refer to all discharges of diazinon and chlorpyrifos, not just the ones that cause or contribute to exceedances of water quality objectives.

Comment 5.11:

In same section, item 3 (staff report, p. C-5): change "comply" to "ensure compliance", and refer to discharges that cause or contribute to exceedances of water quality objectives.

Response to comment 5.11:

See response to comment 3.3.

Comment 5.12:

These two sentences under "Changes to Chapter 5" (staff report, p. C-8) are vague and should be clarified or deleted:

"The Central Valley Water Board will ensure that there will be a focused monitoring effort to monitor pesticide discharges in the Sacramento and San Joaquin River Basins.

The Board will require those that discharge diazinon and chlorpyrifos to provide information to the Board."

Response to comment 5.12:

These two sentences provide the overall rationale for the monitoring requirements. The actual requirements are specified below in that same section of the Proposed Amendment.

Comment 5.13:

Under the Municipal Monitoring section (staff report, p. C-9), item 3 is too broadly stated, and could represent enormous requirements for municipal agencies. Per the comments above this responsibility should not be imposed on municipal dischargers, but should be shared by DPR and Water Board programs. Among other issues, there is the ongoing question of the technical capabilities of commercial laboratories to perform analyses for new pesticides at environmentally-relevant levels.

Response to comment 5.13:

See responses to comment 1.7. Staff agrees that the technical capacities for commercial laboratories may be limited for some pesticides, and this will be a consideration in the design of monitoring and reporting programs.

6. Comments from the Western Plan Health Association – Rachel Kubiak

Comment 6.1:

WPHA, along with other agricultural organizations, provided comments on the previous version released last year and appreciates some of the revisions made in response to those comments. For other WPHA comments not addressed, many of those comments remain relevant but are not repeated here.

Response to Comment 6.1:

This comment states that some previous unspecified WPHA comments were not addressed in the responses to comments released with the January 2014 Staff Report. Since this commenter does not specify which previous WPHA comments were not addressed, it is not possible to provide a response.

Comment 6.2

Comments in Response to Appendix D - Responses to Comments [previous WPHA Comment 1.2 on the March 2013 Draft] - WPHA continues to express concern with the Central Valley Regional Water Quality Control Board's (Regional Board) approach for developing and applying new water quality objectives for pesticides that will apply to all waterbodies considered to be designated with WARM and/or COLD beneficial uses. The Regional Board's approach fails to consider that the broad application of WARM and/or COLD may not be appropriate as applied to many agricultural drainage and/or conveyance facilities.

While we recognize that the Regional Board is currently engaged in a comprehensive process to evaluate application of such beneficial uses to facilities of this type WPHA believes that such a process should be completed prior to the continued development of water quality objectives in the manner as proposed here. Otherwise, in the interim period between adoption of objectives and completion of the review of application of beneficial uses, the water quality objectives are likely to be applied as if WARM and/or COLD is applicable. Such application may trigger the need for actions that are not necessary considering the receiving water in question.

Response to Comment 6.2:

The Board is required to protect designated and existing beneficial uses. Currently WARM and/or COLD are applied broadly via the tributary statement in the Basin Plan only to tributary streams; constructed drainage and conveyance facilities are not generally designated with these beneficial uses. While the Board acknowledges that some fine tuning of the application of WARM and/or COLD may be appropriate, and has initiated a process to do so, the Board cannot abdicate the responsibility to protect designated beneficial uses in the interim.

Comment 6.3:

[Referring to the Response to Previous WPHA Comment 1.7 on the March 2013 Draft]- The Response to Comments states that the cost information contained in the Staff Report is adequate to satisfy Water Code section 13241 because "costs articulated in the Staff Report essentially rectify water quality impairments caused by non-compliance with the existing narrative objective." This statement is prefaced by another statement that "the Board has already been citing the proposed numeric objective as an applicable water quality criteria to ensure compliance with the existing narrative objective."

Read collectively, it appears that staff is trying to justify use of inadequate documentation of cost considerations because the proposed numeric objectives are already being used to interpret narrative water quality objectives. Such justification is also contained directly in the staff report: "Similar costs would likely be incurred even if the Board made no changes to water quality objectives, because growers would still need to meet the applicable narrative objectives." (Staff Report, p. 115.)

This philosophy or approach to considering the statutorily mandated provisions for adoption of water quality objectives, directly contravenes the intent and purposes of the Porter-Cologne Water Quality Control Act (Porter-Cologne). The adoption of water quality objectives (both narrative and numeric) is supposed to be a public process that takes into account a number of considerations for the development of beneficial uses. Ultimately, adopted water quality objectives are to reasonably protect beneficial uses.

We believe that discounting consideration of the statutorily mandated factors by claiming such considerations are irrelevant because such criteria will be used to interpret narrative objectives undermines the intent of the law. Under this approach, the Regional Board will never be able to properly consider if a water quality objective is appropriate for adoption. Rather, Regional Board staff will continue to rely on the interpretation of narrative objectives without ever considering costs and reasonableness associated with meeting the numeric value used to interpret the objective.

WPHA encourages the Regional Board to reject this approach when considering adoption of numeric objectives, and believes that the Staff

Report should be revised to ensure proper consideration of the Water Code section 13241 factors.

Response to comment 6.3:

The Staff Report contains adequate consideration of all Water Code section 13241 factors, including extensive calculations of potential costs of meeting the proposed numeric objectives. The comment does not specify any deficiency in the analysis of 13241 factors in the Staff Report. The statements referred to by the commenter in the Staff Report and Responses to Comments that explain existing standards and requirements were not made as a justification for an inadequate consideration of costs; these statements are qualification of the cost estimates in consideration of costs of other existing requirements.

Comment 6.4:

[Referring to the response to previous WPHA Comment 1.8-] The staff's response to WPHA's comment is not responsive. Specifically, WPHA stated that the data evaluation in section 1.5 of the staff report was not sufficient to inform the reader if the data evaluated was temporally representative. The response does not directly answer this question. Rather, it just states that the listing policy allows the Regional Board to consider data collected during a rain event. It is still unknown if the data evaluated would be considered temporally representative.

Response to Comment 6.4:

While additional monitoring data could help increase the level of temporal representation, the data evaluated are considered adequately temporally representative to support the determinations made in the Staff Report.

Comment 6.5:

II. Comments on Appendix C - Proposed Basin Plan Amendment Specific Pesticide Objectives, Page C-1- *The proposed Basin Plan Amendment proposes to list specific waterbodies to which the objectives would apply, and also proposes to indicate that the objectives are also applicable to waters with designated beneficial uses of WARM and/or COLD. Because the objective would apply to waters with such designated beneficial uses, it is unnecessary to individually list a sub-set of water bodies.*

Further, to the extent that the Regional Board's process for consideration of beneficial uses finds that one of the specifically listed water bodies does not properly include WARM and/or COLD beneficial uses, a Basin Plan amendment would be required to remove application of the water quality objective. Accordingly, WPHA recommends that the references to the individual water bodies be removed.

Response to Comment 6.5:

See Reponse to Comment 3.2.

Comment 6.6:

***Diazinon and Chlorpyrifos Discharges, provision 1.c, Page C-5** - The language in this subdivision refers to concentrations in the discharge versus concentrations in the receiving waters. Water quality objectives apply to receiving waters and are not discharge limitations. Accordingly, references to meeting water quality objectives in the discharge itself should be deleted. We recommend that this provision be revised as follows: "Encourage implementation of measures or practices by all dischargers that result in concentrations of chlorpyrifos and diazinon in all applicable waters discharges- that are below the water quality objectives."*

Response to Comment 6.6:

See response to comment 3.3.

Comment 6.7:

***Diazinon and Chlorpyrifos Discharges, provision 2, Page C-5** - Similar to the comments immediately above, this provision needs to be revised to specifically refer to water quality objectives as they apply to the receiving water and not to the discharge. Accordingly, we recommend that the term "in applicable waters" be added to the end of this provision.*

Response to Comment 6.7:

By definition water quality objectives consist of "limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance" (Wat. Code, §13050(h).), and are distinct from discharge limitations. The provision as stated does not state or imply that the objectives apply to the discharges themselves, and so the proposed addition of the term "in applicable waters" could cause confusion, since it could be interpreted as a narrowing the scope of this provision, which should apply to all relevant water quality objectives.

Comment 6.8:

***Diazinon and Chlorpyrifos Discharges, provision 3, Page C-5** - Rather than including an arbitrary date in the Basin Plan for compliance with water quality objectives, WPHA recommends that time schedules in waste discharge requirements and waivers be set according to existing time schedule policies contained in laws and policies. For example, for irrigated agriculture, time schedules are established in waste discharge requirements for meeting receiving water limitations. Such limitations are essentially equivalent to adopted water quality objectives.*

In such waste discharge requirements, growers are required to meet receiving water limitations immediately, or they are subject to

management plans that must include a schedule for compliance. The schedules for compliance in management plans must be as short as practicable but cannot exceed ten years. The Executive Officer maintains the discretion to adopt the management plans, and the proposed schedule. Because it is addressed within the waste discharge requirements, it is unnecessary to include a specific time for compliance as part of the Basin Plan amendment. Provision 3 should be revised to reflect this accordingly.

Response to Comment 6.8:

See response to comment 3.5.

Comment 6.9:

Agricultural Discharge Monitoring, provision 4, Page C-8 - WPHA believes that provision 4 should be removed. While we recognize the Regional Board's long-term commitment to ensure replacement products are not affecting water quality, we feel this issue is currently being addressed through the current irrigated lands waste discharge requirement process. We see no benefit in duplicating a process that is already in place. The current process requires the Regional Board, the Department of Pesticide Regulation (DPR), and the various third parties to work in tandem to develop a process for identification of alternative pesticides that should be monitored for in the various watersheds. The Regional Boards and DPR are in a much better position to help identify such alternatives.

Without inclusion of an additional step to determine if alternatives should be monitored, the provision will significantly increase agricultural costs. As proposed, there is no language that would allow the board to suspend monitoring for a pesticide or group of pesticides. This could lead to unnecessary costs for monitoring products that are no longer being utilized, or demonstrated to not be problematic. If the Board intends to move forward with the proposed provision, we recommend language be included that provides the Board the ability to suspend monitoring when applicable.

Response to Comment 6.9:

See response to comment 3.8 and 3.9.

Comment 6.10:

Diazinon and Chlorpyrifos Discharges, provisions 6 and 7, Page C-5 through C-6- Provision 6 is unnecessary. Considering the waste discharge requirements for irrigated agriculture, there is no need for an independent management plan to be required by the proposed Basin Plan amendments. Rather than including specific provisions, the Basin Plan amendment should refer to management plan requirements contained in the irrigated lands waste discharge requirements.

Response to Comment 6.10:

See response to comment 3.6.

Comment 6.11:

Diazinon and Chlorpyrifos Discharges, provision 8, Page C-7 -
Provision 8 is a restatement of the law and is unnecessary. All adopted waste discharge requirements or waivers are required to be consistent with the Basin Plan. Thus, it is unnecessary to repeat the requirement here.

Response to Comment 6.11:

See response to comment 1.5