Staff Report for Order No. R3-2012-0005
ATTACHMENT 2.d

CITY OF SALINAS COMMENTS RECEIVED ON
PROPOSED ORDER No. R3-2012-0005 AND STAFF RESPONSE

SUPPLEMENTAL COMMENTS

Supplemental - 1
"The following comments on the Draft NPDES Permit for the City of Salinas were developed in coordination with, and at the request of, City staff. These comments on the Draft Permit identify specific areas where:

- *The language of the Draft Permit places the City in a position of immediate non-compliance with no feasible method of coming into compliance, thereby exposing the City to enforcement action by the Water Boards or by third parties.*
- *The permit provisions as written appear to require an unreasonable expenditure of City funds without a valid evaluation showing that the required actions would be a cost effective means to improve water quality.*
- *The language of the Draft Permit is ambiguous, or could be interpreted in a manner other than that intended by the Board."*

Staff Response to Comment City of Salinas Supplemental - 1
This comment provides an introduction for the entire comment letter, and does not address the Order directly. Comment noted; no response is necessary.

Supplemental - 2
"Costs – The City of Salinas general fund decreased $8.6 million from FY 2009-2010 to FY 2010-2011. This was a 10% reduction. Decreases are expected to continue since the majority of the City's revenues come from property tax and sales tax. Approximately 65% of the City's expenditures are for fire and police. The City has recently eliminated funding to four school districts for after school programs and numerous other programs have been cut and more cuts will be needed.

In this fiscal environment it is impossible to implement a major expansion of the stormwater program.

Attachment B includes the cost increases to implement the Draft Permit we have identified to date. These are estimates but they provide our best approximation of expenditures necessary to implement this permit. Attachment B does not include two key potential costs:

- *Litigation expenses if permit compliance is challenged*
- *Costs for retrofitting treatment facilities to bring all stormwater and non-stormwater discharges into full compliance with water quality standards as specified in the permit (see comment #3)*

We also would like to point out one of the recommendations of the 2009, Little Hoover Commission report on the Water Boards (~~here~~http://www.lhc.ca.gov/studies/195/report195.pdf). The Commission's Recommendation 4 is:

> 'The water boards must develop standardized economic analysis procedures to help set priorities and determine the most effective and efficient means to improve water quality.

- To fully implement Porter-Cologne's demand that water quality regulations be reasonable, given other economic and social factors, the boards must institute the use of economic analysis into decision-making. Cost-effectiveness analysis also would increase transparency of board decision-making and help the boards set priorities.'

We strongly urge the Central Coast Water Board to restructure the permit so that implementation costs do not increase, but rather are better directed at priority problems."

Staff Response to Comment City of Salinas Supplemental – 2
Central Coast Water Board staff recognizes there are costs associated with compliance with this Order, and that many communities and businesses are experiencing economic challenges. While the majority of requirements contained in this Order are also contained in Order No. R3-2004-0135 or in the City's current SWMP, this Order contains new requirements that are necessary for compliance with the MEP standard established in federal regulations (See Staff Response to Comment City of Salinas Supplemental – 4). In incorporating new requirements to be consistent with the federal MEP standard, Central Coast Water Board staff took steps to consider Order implementation costs (See Staff Response to Comment City of Salinas – 26). Central Coast Water Board staff does not believe the increase in program cost associated with new requirements will be prohibitive (see Staff Response to Comment Latino-1). Central Coast Water Board staff has reduced requirements in some cases in response to specific comments. In addition, Central Coast Water Board staff's initial review of the program cost estimate cited in the comment identified significant costs that appear to result from an understanding of the Order requirements and MEP standard that is different from the prevailing understanding of the Water Boards and Phase I municipalities throughout California. Finally, the requirements in this Order are designed to focus on priority problems, directing the City to identify high priority sources, to address high priority problems, and to demonstrate tangible results of addressing high priority problems.

Supplemental - 3
"Compliance with water quality standards – Discharge Prohibition A.3 states: 'Discharges from MS4s that cause or contribute to the violation of water quality standards are prohibited.'

In addition, the permit's Receiving Water Limitation C.1 contains essentially the same prohibition, and other permit provisions are similar. As in most MS4 permits, a later permit provision (C.3) states that exceedances of water quality standards are to be addressed by an iterative process of improving best management practices (BMP).

In the past, this iterative process was considered by many, if not most, municipal stormwater systems (and possibly some Regional Water Boards[1]) as presenting a shield against enforcement: if the MS4 was implementing the iterative process when exceedances were detected, then the MS4 remained in compliance with the permit.

However, the recent 9th Circuit Court of Appeals opinion in NRDC vs. Los Angeles County Flood Control District, July 13, 2011, and the preceding trial court opinion indicate that the

[1] "Even if water quality does not improve as a result of the implementation efforts, there is no violation of the permit's receiving water provision as long as a good faith effort is underway to participate in the iterative process." *LA Board letter and Q&A posted ~~here~~http://www.swrcb.ca.gov/rwqcb4/water_issues/programs/stormwater/02_0100_q&a.pdf*.

iterative process is not a shield – the prohibition stands by itself as a permit requirement.[2] Any stormwater system discharge causing or contributing to an exceedance of standards would make the City non-compliant with the provisions of the Draft Permit. The Los Angeles Regional Water Board's amicus brief also emphasizes that the prohibition stands alone and the iterative process is not a shield.

The waterways in and near Salinas are impaired for many pollutants as indicated by their presence on the 303(d) list of impaired waterways. Stormwater and other runoff are frequently identified as one of the sources of this impairment. (See list in Permit Finding 24.)

The City is already implementing stormwater measures to control pollutants to the maximum extent practicable (MEP). These are often non-structural methods such as street sweeping and public education. Ensuring that stormwater and other runoff does not cause or contribute to exceedances of water quality standards will require a substantially increased level of controls, specifically treatment facilities such as sand filters, at most or maybe all stormwater discharge locations and possibly additional treatment to address bacteria and dissolved constituents. A retrofit program to install these facilities would be extraordinarily expensive and, to our knowledge, has never been accomplished for a municipality.

The Draft Permit includes extensive discharge and receiving water monitoring. While this court decisions place all MS4s at risk, those implementing effluent monitoring are possibly at higher risk: "When self-reported exceedances of an NPDES permit occur, the Clean Water Act allows citizens to bring suit to enforce the terms of the Permit."

The 9th Circuit opinion and related issues are discussed in more detail in later comments. However, given this court decision, it is essential that the permit wording be modified so that the City can be in compliance with the permit.

Prohibition A.3) and Limitation C.1) and similar prohibitions in the permit should be replaced requirements to make additional further progress in improving water quality using an iterative and cost-effective approach.

For example, the permit could use a prioritized approach to address discharges impacting beneficial uses:

- *Identification - Identify problem discharges using thresholds such as those established by the Water Board's 2006 Blue Ribbon Storm Water Panel (posted ~~here~~http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/numeric/swpanel_final_report.pdf).*
- *Prioritization - Address these identified locations using a prioritized or tiered approach, with the highest priority directed at locations impacting beneficial uses.*
- *Retrofit controls – Prioritized sites would be addressed based on highest priority first and available funding. In many cases, grants or other outside funding will be required.*

Exceedances, rather than identifying permit violations, could trigger more in-depth assessments similar to the San Diego Water Board's Triad Approach to Determining Follow-Up Action. This approach uses chemistry, toxicity, and benthic alteration to determine the priority of follow-up actions (see Attach E, page 10).

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[2] The revised opinion by the U.S. 9th Circuit Court of Appeals regarding the LA County stormwater permit is posted ~~here~~http://www.ca9.uscourts.gov/datastore/opinions/2011/07/13/10-56017.pdf.

Alternatively, compliance with water quality standards could be based on compliance with TMDLs which are designed to address the significant and demonstrated problems in local waterways. TMDLs are also designed to provide an achievable implementation period often coupled with adaptive management approaches to take into account new information regarding impacts and control options.

MS4 compliance with MEP pollutant control is required by the CWA; compliance with water quality standards, however, is discretionary with the State - see Defenders of Wildlife v. Browner (~~here~~http://caselaw.findlaw.com/us-9th-circuit/1367308.html). The approaches suggested above could be used instead of the absolute and unworkable prohibitions on exceedances."

Staff Response to Comment City of Salinas Supplemental – 3
In 1998, the State Board issued Order WQ 98-01, which directed the Water Boards to use specific receiving water limitations language in municipal stormwater permits. This language essentially served as a "safe harbor" for municipalities, allowing them to remain in compliance with water quality standards so long as they were in the process of revising their programs for the purpose of attaining water quality standards. Following inclusion of that receiving water limitations language in municipal stormwater permits, USEPA objected to the permits, based on the receiving water limitations language. USEPA then reissued the permits itself. In light of USEPA's objection to Order WQ 98-01, the State Board revised its instructions for receiving water limitations language in municipal stormwater permits in State Board Order WQ 99-05. The revision removed language that could be interpreted as a shield from enforcement when municipal stormwater discharges were causing or contributing to a violation of water quality standards.

State Board WQ Order WQ 99-05 is precedential and specifies the receiving water limitations language the Water Boards must use in municipal stormwater permits. As such, the Order's receiving water limitations language is virtually identical to that of State Board Order WQ 99-05. Receiving water limitations are designed to protect water quality and beneficial uses of receiving waters. Requiring compliance with receiving water limitations is consistent with the Clean Water Act's objective to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.

Supplemental - 4
"Best Management Practices (BMP) dictated by the Water Board – The need for self-determination for BMP selection – Rather than allow Salinas to select the BMPs that are appropriate for the Salinas system; this Draft Permit prescribes in detail extensive lists of BMPs in each program category. This is contrary to previous permits and also contrary to USEPA guidance: 'EPA envisions that permittees will determine what the MEP is on a location-by-location basis and consider such factors as conditions of receiving waters, specific local concerns, and other aspects of a comprehensive watershed plan.' *[emphasis added; from Requirements for Regulated Small MS4s, posted here].*

The State Board quotes other EPA guidance: 'EPA has intentionally not provided a precise definition of MEP to allow maximum flexibility in MS4 permitting. MS4s need the flexibility to optimize reductions in storm water pollutants on a location-by-location basis.' *(~~here~~http://cfpub.epa.gov/npdes/stormwater/measurablegoals/part1.cfm).*

The prescriptive BMPs should be removed from the Permit and replaced with overall guidance and goals; Salinas should be allowed to select appropriate BMPs for its stormwater management program."

Staff Response to Comment City of Salinas Supplemental – 4

The Order has been written to balance the City's need for flexibility with the need for clear and specific requirements. To achieve this balance, the Order frequently prescribes minimum measurable outcomes, while providing the City with flexibility in the approaches it uses to meet those outcomes. Measurable outcomes included in the Order are related to implementation, behavioral change, pollutant load reduction, and water quality improvements. Such clear, specific requirements are necessary so all parties understand what must be implemented. This need for clarity is demonstrated by the City's frequent requests for guidance or examples on how to comply with permit requirements. Overly flexible permit language, without clear minimum measurable outcomes, can result in disagreement over the meaning of permit requirements and result in implementation of inadequate programs. In addition, for permit language to be effective, it generally must be enforceable. Permit requirements that allow for too much flexibility are often difficult to enforce, which can lead to poor program implementation, due to decreased risk of enforcement.

The specific requirements of the Order have been tailored to address the watershed processes and runoff conditions impacted by stormwater management in order to protect water quality and beneficial uses. This specificity is meant to shift the focus of the City's efforts from simple program implementation to actions that achieve water quality results. After over 12 years of City program implementation, it is critical that the City's actions are better linked to positive impacts on water quality. Specific permit requirements are appropriate when they target the City's watershed processes and runoff conditions impacted by stormwater management in order to protect water quality and beneficial uses and increase tangible program results.

Where the Order includes detailed requirements, it does so to be in compliance with CWA section 402(p)(3)(B)(iii), which mandates that MS4 permits "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." Clearly, the CWA provides the Central Coast Water Board with the discretion to include specific requirements in the Order. Further, the inclusion of detailed requirements in the Order is consistent with USEPA guidance. For example, the preamble to the Phase I NPDES storm water regulations states that "this rule sets out permit application requirements that are sufficiently flexible to allow the development of site-specific permit conditions."[1] In addition, in its review of a City of Irving Texas NPDES municipal storm water permit, the USEPA Environmental Appeals Board stated that Congress "created the 'maximum extent practicable' ('MEP') standard and the requirement to 'effectively prohibit non-storm water discharges' into the MS4 in an effort to allow permit writers the flexibility necessary to tailor permits to the site-specific nature of MS4 discharges."[2]

It is important to note that throughout the comments from the City, where the Order provides clear and specific requirements, the comments say the Order is too prescriptive. However where the Order provides flexibility, the comments ask for more details and say the Order doesn't provide enough information for the City to know how to comply.

[1] 55 Fed. Reg. 48038.

[2] Environmental Appeals Board, USEPA. *NPDES Appeal No. 00-18; Order Denying Review.* 16 July 2001.

Supplemental - 5

"Overly Prescriptive and Detailed Permit Provisions; excessive length – As noted above, this proposed permit represents a shift away from a permit that allowed Salinas to identify and implement appropriate BMPs to a permit that would specify, in excessive detail, what BMPs must be implemented.

The Little Hoover Commission report on the Water Boards, reference above, singled out the draft Ventura permit for being nearly twice as long and much more detailed that permits issued by other Boards. This proposed permit for Salinas is even longer than the Ventura permit. This Draft Permit is also longer than stormwater permits issued by USEPA. This Salinas Draft Permit includes the following sections totaling 359 pages as shown in Table A-1:

Comment Table A-1 – Salinas Permit pages

Draft Salinas Permit	*pages*
WDR/NPDES Permit	129
Fact Sheet	178
Attachment A	1
Attachment B	10
Attachment C	1
Attachment D	11
Attachment E	5
Attachment F	2
Attachment G	5
Attachment H	2
Attachment I	6
Attachment J	1
Attachment K	8
Total pages	**359**
Washington DC permit by USEPA	***92***

The USEPA-issued Washington DC MS4 permit (~~here~~http://www.epa.gov/reg3wapd/pdf/pdf_npdes/Wastewater/DC/DCMS4permit2011.pdf) consists of a 54 page permit including standard conditions, plus a 38 page Fact Sheet (~~here~~http://www.epa.gov/reg3wapd/pdf/pdf_npdes/Wastewater/DC/DCMS4FINALDCfactsheet093011.pdf) for a total of 92 pages. The Salinas draft stormwater permit is larger by a factor of 4.

Table A-2, in the next comment, provides a list of the first year tasks. This list is indicative of the very large number of individual tasks required of Salinas by this permit. Many of these tasks are new or expanded and will require a very large commitment of new resources: staff, equipment, consultant support, and subcontractors. It is simply infeasible from a financial and management standpoint to address all of these overly prescriptive requirements."

Staff Response to Comment City of Salinas Supplemental – 5

See Staff Response to Comment City of Salinas Supplemental – 4. Permit length alone is not an adequate comparison of municipal stormwater permits. A valid comparison must also

consider watershed processes and runoff conditions, clarity and enforceability of requirements, and effectiveness of requirements at achieving tangible positive impacts on water quality. In addition, the Order incorporates many activities that are currently contained in the City's SWMP document, while the Washington D.C. permit presumes the existence of a separate SWMP document. Moreover, the Fact Sheet for the Order makes up more than half of the pages cited in the comment. The Fact Sheet is lengthy (178 pages) for the purpose of providing the rationale and technical support for the Order's requirements. Central Coast Water Board staff finds a comprehensive Fact Sheet that fully supports the Order's requirements preferable to a brief Fact Sheet which minimally supports permit requirements. It's likely that if Central Coast Water Board staff opted for a brief Fact Sheet, the City would be requesting additional information in support of the Order's requirements. See Staff Response to Comment City of Salinas Supplemental – 6 for discussion of the scope and timing of tasks required by the Order.

Supplemental - 6

"'Front loaded' requirements – Permit Attachment K provides a useful summary of milestones and deadlines (~~here~~http://www.swrcb.ca.gov/rwqcb3/water_issues/programs/stormwater/docs/salinas/salinas_stormwater_draft_attachments_9_13_11.pdf). An extraordinary amount of tasks must be completed in the first year. These range from administrative tasks such as developing and maintaining an information management system, to operational tasks such as inspecting all catch basins, to major implementation projects such as develop and implement minimum BMPs for municipal facilities, maintenance operations, and events. [emphasis added]

Table A-2 lists the 109 individual tasks that must be accomplished in the first year. The administrative tasks alone would require many more staff than are available in the entire program.

Comment Table A-2 – Tasks to be completed by Salinas in Year 1

	First 3 months (1 through 7 within 2 months)
1.	Revise SWDS to separate the document into SWDS Requirements and SWDS Guidance
2.	Revise SWDS to include Priority Development Project interim applicability thresholds
3.	Revise SWDS to include requirement for Priority Development Project applicants to submit a Stormwater Control Plan
4.	Revise SWDS to include requirement for Priority Development Project applicants to adhere to site layout requirements
5.	Revise SWDS to include requirement for Priority Development Project applicants to implement source control measures
6.	Revise SWDS to include requirement for Priority Development Projects to use decentralized controls
7.	Revise SWDS to include Priority Development Project interim flow control criteria
8.	Develop and maintain an information management system
9.	Require Specific Plans or other master planning documents to meet requirements specified in Order

10.	Enforcement information management system that tracks instances of violations
11.	Identify chronic violators
12.	Submit QAPP
	First 6 months
13.	Submit alternative to minimum of 20 percent of Permit coverage area designated as High Priority IDDE areas (optional task)
14.	Develop and maintain information management system for construction sites
	Year 1
15.	Municipal maintenance inventory
16.	Municipal facilities, maintenance operations, and events assessment
17.	Develop and implement minimum BMPs for municipal facilities, maintenance operations, and events
18.	Develop, update, and implement a stormwater pollution prevention plan for High Priority Municipal Facilities and Events
19.	Develop, update, and implement standard operating procedures for High Priority Maintenance Operations
20.	Inspect all catch basins
21.	Prioritize routes for sweeping
22.	Develop and keep current sweeping map
23.	Sweep streets and parking lots
24.	Develop and implement procedure to dispose of street sweeper waste material
25.	Develop and implement BMPs to reduce the tracking of dirt and other debris onto streets.
26.	Develop and utilize legal authority for tracking of dirt and other debris onto streets
27.	Verification of the maintenance of structural BMPs
28.	Develop inspections of Municipal Facilities, Maintenance Operations, and Events
29.	Develop and implement assessment and reduction of water quality impacts in new flood management projects
30.	Develop and maintain information management system
31.	Develop plan for Salinas River Outfall

32.	Staff training* and assessment
33.	Commercial and industrial inventory
34.	Designate and require implementation of minimum BMPs
35.	Notify commercial and industrial owners and operators of stormwater requirements
36.	Develop inspection procedures including Inspection Ratings
37.	Obtain, track and analyze monitoring data collected by enrollees in the General Industrial Permit
38.	Develop and maintain information management system
39.	Staff training* and assessment
40.	Prioritize residential areas and activities
41.	Staff training* and assessment
42.	Identify and prioritize existing private development
43.	Establish criteria for new private residential development
44.	Update MS4 System Map
45.	High Priority IDDE areas: develop and implement procedures, identify and map.
46.	Develop, implement, promote and publicize illicit discharge reporting system.
47.	Develop information management system to track reports of illicit discharges
48.	Develop and maintain written response procedure
49.	Develop mechanism for sewage spill notification
50.	Test reporting system
51.	Include illicit discharge reporting procedure in fleet vehicles
52.	Develop and implement procedures for illicit discharge identification
53.	Conduct drive-by inspections
54.	Develop and maintain information management system for drive-by inspections

55.	Review results of drive-by inspections
56.	Develop dry weather screening procedures, parameters, stations, and Information management system
57.	Develop and implement illicit discharge source investigation
58.	Facilitate disposal of household hazardous waste
59.	Identify storm drains to be labeled and dumping signs to be installed
60.	Prohibit excessive water application
61.	Enforcement of illicit discharges
62.	Staff training* and assessment
63.	Revise SWDS to include Non-Priority Development Project requirements
64.	Establish legal authority to implement Non-Priority Development Project requirements
65.	Develop guidance for long-term BMP maintenance and provide to Non-Priority Development Project owners
66.	Revise SWDS to include Priority Development Project final flow control criteria (includes: applicability criteria, numeric flow control criteria, modeling requirements)
67.	Revise SWDS to include Priority Development Project final treatment criteria (includes: applicability criteria, pollutant identification and reduction criteria, numeric treatment criteria)
68.	Model biotreatment soil media specifications report
69.	Revise SWDS to include Priority Development Project requirements for operation and maintenance plans
70.	Staff training*
71.	Establish criteria for High Priority Construction Sites
72.	Require minimum BMPs for all construction sites
73.	Implement minimum requirements for High Priority Construction Sites
74.	Review construction plans
75.	Develop and implement inspections of construction sites and information management system to track inspections
76.	Inspect structural BMP installation

77.	Enforcement of construction site management
78.	Staff training* and assessment
79.	Revise planning and building requirements related to new development and redevelopment projects subject to parcel-scale development requirements
80.	Modify and implement riparian setback requirements
81.	CEQA process updates
82.	Participate in the Salinas Valley Integrated Regional Water Management process
83.	Upon next revision of General Plan Housing Element, identify areas to address stormwater in flood management decisions
84.	Identify highest Priority Stormwater Issues
85.	Identify target audiences for each identified Priority Stormwater Issue
86.	Implement education for new development and redevelopment projects
87.	Implement public advisory group
88.	Keep website up-to-date
89.	Identify and implement trash control BMPs
90.	Inspect surface drainage structures
91.	Ensure all catch basins found to be 60% full have been moved to higher priority tier
92.	Track and analyze street sweeping solids data
93.	Track pesticide, herbicide, and fertilizer usage data
94.	Record and track all exceptions, exemptions, and variances from Riparian Protection Policies and Requirements
95.	Determine the total amount of riparian encroachment and mitigation/creation
96.	Quantify annual Urban Subwatershed pollutant loads
97.	Quantify Pre-developed, Developed, and 24-Hour 85th Percentile Storm Event runoff volume
98.	Conduct Stormwater Discharge Trend Monitoring
99.	Conduct Receiving Water Monitoring

100.	Delineate existing and future urban subwatersheds
101.	Create and maintain a MS4 system map
102.	Identify and map all ephemeral, intermittent, and perennial water bodies
103.	Submit the dominant watershed processes for each urban subwatershed
104.	Annual Budget Summary for the current reporting year
105.	Annual Fiscal Analysis for the upcoming reporting year
106.	Review and revise the existing municipal codes, ordinances, statutes, standards, specifications, permits, contracts, and other regulations in order to implement and enforce all of the requirements of this Order
107.	Enforcement Response Plan
108.	Statement certified by the Permittee's chief legal council
109.	Staff training*
	End of First year

* Multiple references to staff *training and assessment* refer to training for specific program activities.

These 109 individual tasks will result in an extremely burdensome workload that cannot be accomplished by a relatively small stormwater program. We doubt that even a major municipality could accomplish these tasks in one year. We also request the Board provide examples of other MS4s that have accomplished the program requested above."

Staff Response to Comment City of Salinas Supplemental – 6
Attachment K in the Order outlines implementation milestones and deadlines for the requirements in the Order. Many of the tasks scheduled to commence in Year 1 are requirements the City is already required to do under its existing Order No. R3-2004-0135; therefore, the City should already be doing a lot of the items required in Year 1. See Staff Response to Comment City of Salinas - 3. For Central Coast Water Board staff's rationale for deadlines associated with the development requirements, see Staff Response to Comment City of Salinas – Provision J.2.a. The Order includes modifications from the existing Order No. R3-2004-0135 in order to bring the City to the same level as other Phase I municipalities throughout California and to ensure the program is protective of water quality.

Supplemental - 7
"Requirements to prohibit agricultural and other non-stormwater discharges – The permit requires Salinas to prohibit all stormwater flows except those on a list of exempt flows (see Discharge Prohibition A.5, page 15). Agricultural flows are not on this list. However, as noted in the permit, agricultural and other flows not on the list enter the MS4. The feasibility and legality of banning these flows is not addressed by the permit. This problem includes the difficulty of preventing non-stormwater flows from entering the Reclamation Ditch and other waterways—which the permit considers MS4s—from outside jurisdiction of the City."

Attachment 2.d: City of Salinas Supplemental Comments Received on Draft Order No. R3-2012-0005 and Staff Response

Staff Response to Comment City of Salinas Supplemental – 7
The Order does not consider the Reclamation Ditch part of the City's MS4 because it is owned and operated by Monterey County Water Resources Agency.

Central Coast Water Board staff have added irrigation water, individual residential car washing, incidental runoff from landscape irrigation and lawn watering to the list of the non-stormwater flows that do not have to be prohibited unless they are identified as significant sources of pollutants.

See Staff Responses to Comments City of Salinas Supplemental – 21 and 30, and Staff Response to Comment City of Salinas – Finding 31, for a discussion on the City's responsibilities regarding agricultural discharges, the Reclamation Ditch not being part of the City's MS4, and the City not being responsible for discharges entering creeks upstream of the Permit coverage area.

Supplemental - 8
"Requirements outside the scope of the Clean Water Act – These proposed permit provisions conflate provisions for implementing the Clean Water Act with provisions that are outside the scope of the Act. As a result, if the Draft Permit were to be adopted as-is, non-Clean Water Act requirements would be implemented and enforced using the CWA mechanisms.

Some examples of non-CWA permit requirements include:

- *Page 59:* 'Groundwater Recharge and Discharge – Maintain infiltration to support baseflow and interflow to wetlands and surface waters, and deep vertical infiltration to groundwater at pre-development levels;' *[the other specifications in this section also implement non-CWA requirements]*
- *Page 77:* 'The Permittee shall review Future Growth Area Specific Plan language to ensure it includes, at a minimum:
  (a) Provisions for protecting and/or utilizing groundwater recharge zones; …
  (c) Reduced parking ratios from existing Permittee standards to take advantage of shared parking opportunities and mixed use;
  (d) Parking allowed in building setbacks; and
  (e) Reduced parking requirements for any assisted living, low income housing, or other housing units likely to have lower parking demand.'
- *Pages 21 & 22:* 'BMPs for pesticide, herbicide, and fertilizer application, storage, and disposal, including the following: …
  vii) Implementation of procedures to encourage the retention and planting of native vegetation to reduce water, pesticide, herbicide, and fertilizer needs;'

In some cases, these are environmentally beneficial things to do, but they are outside the scope of an NDPES permit. In other cases these requirements are not beneficial, for example, some non-native plants are being tested as part of BMPs because they provide better and more consistent control of pollutants.

Elsewhere in the permit "waters of the US" and "waters of the state" appear to be treated as interchangeable. They are not. An NPDES permit can be used only to control discharges to waters of the US.

It may be possible to include the non-Clean Water Act provisions in this permit; however, they have to be set apart and clearly delineated as being based on the State Water Code. The NDPES reporting, enforcement, and other mechanisms cannot be applied to these non-CWA provisions."

Staff Response to Comment City of Salinas Supplemental – 8

The Order's requirements are necessary to meet the objectives and requirements of the federal Clean Water Act and its associated regulations. As such, the Order's requirements are not "outside the scope of the Clean Water Act." For example, the Clean Water Act requires that "Permits for discharges from municipal storm sewers […] 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." At section 402(p)(6), the Clean Water Act also requires MS4s "to be regulated to protect water quality […]" In addition, the municipal stormwater permitting approach described in the Preamble to the Phase II municipal stormwater federal regulations states: "today's rule specifies that the 'compliance target' for the design and implementation of municipal stormwater control programs is 'to reduce pollutants to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the CWA'."[1] Further, the Clean Water Act's overall objective to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.

All of the Order's requirements are designed to meet these Clean Water Act requirements and objectives. USEPA has reviewed the Order, and found in its November 3, 2011 comment letter: "The draft MS4 permit for Salinas is consistent with the statutory requirement to reduce pollutants in the discharges to the MEP. The specific requirements of the draft Salinas MS4 permit are well within the intent of MEP as set forth in the CWA."

Regarding the groundwater recharge and discharge requirement referenced in the comment, traditional stormwater management generally reduces baseflow and interflow to wetlands and surface waters, which can result in increased stormwater flows that cause instream erosion and discharges of sediment. In addition, following storm events, traditional stormwater management's reduction of baseflow and interflow to wetlands and surface waters can increase concentrations of pollutants in the receiving waters due to reduced dilution. Maintenance of groundwater recharge and discharge rates prevents these stormwater pollutant discharges and receiving water impacts and protects the chemical, physical, and biological integrity of the receiving waters. To meet the requirements and objectives of the Clean Water Act and prevent these impacts, the Order contains requirements for new development and redevelopment to maintain infiltration at pre-development levels. Similarly, the other requirements in this section are designed to protect receiving waters from impacts resulting from the City's stormwater management at new development and redevelopment sites. It is worth noting that these requirements enact the Joint Effort for Hydromodification Control, which the City is already participating in and has agreed to implement.

Addressing the Future Growth Area Specific Plan requirements referenced in the comment, USEPA states in its comment letter: "regarding planning requirements for areas of future growth, a regulatory basis for the permit requirements is 40 C.F.R. § 122.26(d)(2)(iv)(A)(2) which requires a program to reduce pollutants in discharges from areas of new development and significant redevelopment. The discussion of Findings 46, 47 and 48 in the fact sheet for the draft permit provides additional support for the requirements." Additionally, the Future Growth Area Specific Plan requirements seek to reduce impervious surfaces, which are well-

documented as a source of pollutants in stormwater (see Findings 47 – 50). Reduction of impervious surfaces is a common BMP well within the scope of the maximum extent practicable standard.

Regarding the pesticide, herbicide, and fertilizer requirements referenced in the comment, pesticides, herbicides, and fertilizers are common pollutants in urban runoff. Use of native plants in order to reduce reliance on pesticides, herbicides, and fertilizers is a common best management practice of integrated pest management. Requirements for implementation of common BMPs for common stormwater pollution problems are not outside the scope of the Clean Water Act and its maximum extent practicable standard. Federal NPDES regulation 122.26(d)(2)(iv)(A)(6) states that MS4s must implement a program to "reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer […]"

The Order does not use the terms *waters of the U.S.* and *waters of the State* interchangeably. The Order regulates the impact of stormwater on waters of the U.S.

Supplemental - 9
"Focus on feasibility rather than cost-effectiveness – In several key requirements, feasibility is the criterion for implementing a BMP: if it can be built or installed it must be implemented, regardless of whether the benefits justify the costs.

Cost-effectiveness in removing pollutants of concern to the waterway should be the criterion rather than technical feasibility which does not take costs into account. As currently structured, this requirement and other similar requirements in the permit will result in misdirected resources that provide theoretical controls but limited benefits to the water quality in the waterways in Salinas."

Staff Response to Comment City of Salinas Supplemental – 9
In general, where the Order requires implementation of a BMP "where feasible," it is because Central Coast Water Board staff has already determined the BMP to be effective and efficient in the majority of cases, but acknowledges that implementation of the BMP may not be feasible in rare cases. As such, Central Coast Water Board staff does not anticipate that the infrequent use of the term "where feasible" will result in ineffectiveness or inefficiencies.

Supplemental - 10
"A excessively detailed permit increases potential for violations – Recent court decisions have strictly interpreted permit conditions emphasizing that 'each permit term is simply enforced as written' (see the revised opinion by the U.S. 9th Circuit Court of Appeals regarding the LA County stormwater permit).

This permit includes hundreds of very specific individual requirements. The failure to implement any of these will apparently constitute a violation and subject the City to enforcement action or lawsuits by third parties.

Following are two typical examples of complex requirements from the Draft Permit provisions, both with a nebulous relationship to the management of stormwater, which expose the City to enforcement. In year 3 of the permit, the City's inspectors must identify in the Annual Report:

'(7) The average increase in Inspection Rating achieved through reinspection of low performing fast food restaurants and commercial retail centers, the results of the comparison

of this average increase with the average increase achieved in previous years, a description of BMP modifications the Permittee will implement to achieve an increasing trend over time in the degree of improvement achieved through reinspection of low performing fast food restaurants and commercial retail centers, and the schedule the Permittee will follow to implement the modifications;'

It is not even clear what this means, however, the permit will apparently be violated if this information is not included in the Annual Report. Similarly, by the end of year 3, Salinas must:

'…identify and map riparian vegetation and habitat associated with water bodies delineated per Section Q.3 (Water Body Identification), with the exception of Gabilan and Natividad Creeks, for which the Permittee shall identify and map riparian vegetation and habitat by the end of Year 2. In addition to maps, the Permittee shall collect and maintain information on riparian vegetation and habitat condition, including the following:

i) Existing riparian vegetation and habitat based on the following:
   (1) Aerial and ground-level photography of sufficient quality, detail, and scale to conduct this analysis;
   (2) Results of the rapid assessment of second and higher order streams conducted per Section Q.4.a.
   (3) General condition and quality of riparian vegetation and habitat expressed as good, fair, or poor on the basis of multiple factors, including, but not limited to the following:
      (a) Presence or absence of riparian vegetation
      (b) Canopy cover of low flow channel expressed in terms of shading (i.e., 1. Channel completely shaded at noon; 2. Most of the channel shaded most of the day; 3. Some of the channel shaded part of the day; 4. Very little of the channel shaded; 5. No shade);
      (c) … [etc.]'

Leaving aside the issue of staff or contractor effort to complete these tasks, the extreme detail could easily result in a task not being fully implemented and the City being exposed to enforcement, even if the City makes a reasonable effort to comply with the provision. The permit has numerous similar requirements that may be appropriate in research projects but which will divert staff and funding away from the core tasks of protecting water quality. Salinas will violate the permit if it does not complete one of these innumerable tasks through lack of funding or any other reason:

'Inability to secure financial or other resources shall not excuse violation with any provision of this Order.' *[Section R.1), page 123]"*

Staff Response to Comment City of Salinas Supplemental – 10

Inadequate detail in Order language can result in disagreement over the meaning of permit requirements and result in implementation of inadequate programs, and result in language that is ineffective because it is unenforceable (see Staff Response to Comment City of Salinas Supplemental – 4). This Order contains increased specificity compared to Order R3-2002-0135 to assist the City in complying with the requirements of this Order and demonstrate compliance. This need for clarity is demonstrated by the City's frequent requests for guidance or examples on how to comply with current Order requirements. Central Coast Water Board staff recognizes that increased exposure to enforcement is a result of more enforceable language, and this is in fact the purpose of such language.

Central Coast Water Board staff has clarified Order language in several places throughout this Order in response to specific comments.

Supplemental - 11

"Mandates to adopt ordinances, change laws, etc. – Numerous requirements in the permit require the City to change its laws and regulations, generally within a very short time frame (emphasis added):

- *Page 26:* 'Within 12 months of adoption of this Order, the Permittee shall develop and utilize its legal authority (e.g., municipal codes, ordinances, statutes, standards, specifications, permits, contracts, or other means) to enforce the reduction of dirt and other debris tracked onto streets.'
- *Page 77:* 'The Permittee shall modify, at a minimum, General Plans, Specific Plans, Zoning, Building Codes, and SWDS to control the impacts to watershed processes in existing urban areas and in new growth areas within the Permit coverage area.' [*apparently must be implemented within 3 months for future growth areas]*
- *Page 77:* '… Within 12 months of adoption of this Order, the Permittee shall complete each action item listed below …
  ii) The Permittee shall modify codes, regulations, standards, and/or specifications as applicable to fill identified gaps and remove identified impediments to effective implementation of parcel-scale development requirements.'
- *Page 77:* '… Within 12 months of adoption of this Order, the Permittee shall modify codes, regulations, standards, and/or specifications requiring project applicants to establish and maintain setbacks, for any new development or redevelopment, around waterbodies identified in Section Q.3 …'

While some of these changes will be necessary, the time frames must be achievable. In most cases, these changes will bring substantial cost increases to the businesses and citizens of Salinas. The changes will be controversial; in some cases they may not be adopted. The permittee should have 3 to 5 years to prepare, review, educated the public, and adopt changes in the municipal codes and related regulations when these changes are fully justified as essential to implement the stormwater program."

Staff Response to Comment City of Salinas Supplemental – 11

Central Coast Water Board staff recognizes that this Order requires modification of multiple codes and ordinances, and that such modifications involve a multi-step process. Municipal codes and ordinances that support and enable enforcement stormwater management actions to reduce pollutants to the MEP and protect water quality are necessary for an effective stormwater management program.

Central Coast Water Board staff has revised this Order to allow additional time for developing and utilizing legal authority to enforce the reduction of dirt tracked onto streets (see Staff Response to Comment City of Salinas Supplemental – 67) and for revising the SWDS (see Staff Response to Comment City of Salinas – Provision J.2.a). In addition, Central Coast Water Board staff extended deadlines contained in the Residential requirements in Provision G. The Residential provisions may require the City to modify their legal authority.

One of the primary objectives of this Order is to address potential water quality impacts resulting from development in the Future Growth Area. Central Coast Water Board staff is aware that planning has begun for development projects in this area. Therefore, Central Coast Water Board staff believes it is necessary that modifications to codes and ordinances related to development and redevelopment be completed according to the deadlines contained in this Order. Central Coast Water Board believes that these deadlines are reasonable and attainable.

For instance, the required modification cited in the comment's third bullet is aligned with deadlines included in the Joint Effort, which means that Phase II municipalities in the Central Coast Region are expected to make similar modifications in the same time frame. In addition, requirements for riparian setbacks contained in this Order are very similar to setback requirements already enforced by the City.

Supplemental - 12
"Needed support from the Water Boards and State Government – While many stormwater control activities are necessarily accomplished at the local level, some essential pollution prevention and other activities must be accomplished on a statewide basis, with the active involvement of the Water Boards.

*Permit Finding 33 states: '*Pollutants can be effectively reduced in stormwater runoff by the application of a combination of pollution prevention, source control, and treatment BMPs.' *For the most part, pollution prevention and source control within the jurisdiction of Salinas has already been implemented as part of maximum extent practicable (MEP) pollutant control. True source control which prevents many problem pollutants from being released into the environment is outside the ability of Salinas or any other MS4 to significantly influence. For example, the problem metals of copper, lead, and zinc come from automotive use and statewide initiatives could prevent them from ending up on roadways.[3] Pesticides, especially pyrethroids, result in much of the toxicity found in runoff; however, individual communities cannot control the licensing of these materials and have limited authority to impact their use.*

In the absence of statewide efforts, much of the control responsibility is left to the MS4 to provide "end of the pipe" treatment which is invariably expensive and only modestly effective.

A much better approach would be to address these pollutants via 'true' source control at the state level which would prevent them from being present in the watershed in the first place. Salinas does not have the authority to restrict pesticides, for example, but the state does. If MS4s have any possibility of complying with water quality standards, the Water Boards will have to also join the effort and work to prevent many of these harmful products from being used or from being using irresponsibly. Leaving all the responsibility to the 'downstream' MS4s is simply not practical and will never result in full compliance with water quality standards.

Another area where Water Board support is needed is in grant support. Many of the available bond monies are directed to Publicly Owned Treatment Works (POTWs) and sanitary sewer systems which already have dedicated funding systems. MS4s, however, have difficulty imposing fees because they are not exempted from Proposition 218 which significantly restricts the ability of MS4s to raise operating revenues. Unfortunately, a significant portion of grant money administered by the State Water Boards has not been forthcoming to MS4s."

Staff Response to Comment City of Salinas Supplemental – 12
By providing free and open access to its MS4, and conveying pollutants directly to receiving waters, the City enables water quality impairment by third parties. As such, the Clean Water Act holds the City responsible for reducing the discharge of pollutants from it MS4 to the MEP and

[3] *SB 346, for example, is expected to provide benefits in the future by reducing the presence of copper on roadways (~~Fact Sheet~~http://www.calpsc.org/assets/policies/SB346/CASQA%20Fact%20Sheet_SB346_2010.pdf). This will help address the pollutant in urban runoff that appears to most frequently exceeds standards. Copper is also difficult to treat using structural controls since approximately half the copper is dissolved.*

protecting water quality. That being said, Central Coast Water Board staff agrees that pollutants in stormwater runoff can be reduced most effectively through application of controls at a wide range of scales, including statewide initiatives, and notes the City's support of such initiatives. In fact, the State Water Boards and other State of California agencies are working to control pollutants in stormwater through a variety of efforts, including SB 346. The State Board also administers the Proposition 84 Storm Water Grant Program, through which $82 million dollars is available state-wide to provide funds to local public agencies for the reduction and prevention of stormwater contamination of rivers, lakes and streams, with a focus on LID practices and TMDL compliance. The City can learn more about this program through the following link: http://www.waterboards.ca.gov/water_issues/programs/grants_loans/prop84/index.shtml.

Central Coast Water Board staff recognizes that the City's task to control some pollutants is difficult due to the nature of the sources of the pollutants. As a result, the Order focuses on efforts that are within the City's control. For instance, the Order includes requirements for biotreatment systems for transportation projects. Biotreatment systems have been shown by CASQA and others as being effective at reducing metals from stormwater runoff from roads.

Supplemental - 13

"Page 1, Finding B.2. Jurisdiction. This Finding indicates that the permit applies to 'discharges of stormwater from storm drains and water bodies within its [Salinas] jurisdiction.' *NPDES stormwater permits can only apply to discharges from Municipal Separate Storm Sewer Systems (MS4), that is, the stormwater conveyance system.*

Recommendation: Remove the reference to discharges from water bodies. Clarify that the permit applies only to discharges from the MS4. It would also be very helpful to identify area waterways that are outside of Salinas' jurisdiction."

Staff Response to Comment City of Salinas Supplemental – 13

This finding is not in conflict with NPDES stormwater permits being issued for the stormwater conveyance system. The City's MS4 is the City's stormwater conveyance system. Some of the waterbodies in the Permit coverage area are part of City's MS4. See Staff Response to Comment City of Salinas Supplemental – 21. Central Coast Water Board staff modified Finding 2 to provide clarity.

Supplemental - 14

"Page 2, Finding C.9. Going beyond MEP. This Finding states:

> 'CWA section 402(p)(3)(B)(iii) requires MS4 operators to control pollution in stormwater to the "maximum extent practicable" (MEP). The Central Coast Water Board may use its discretion to impose other provisions beyond MEP, as it determines appropriate for the control of pollutants, including ensuring strict compliance with water quality standards. Requirements in this Order that are more explicit than the federal stormwater regulations are necessary to meet the MEP standard.'

The courts have found[4] *that state permitting authorities have the discretion to impose additional requirements to address water quality criteria; however, there is no basis for going beyond federal requirements to address the Clean Water Act's requirement for* maximum extent

[4] *See Defenders of Wildlife v. Browner, 191 F.3d 1159, 1165 (9th Cir. 1999.), posted ~~here~~http://caselaw.findlaw.com/us-9th-circuit/1367308.html.*

practicable *(MEP) pollutant removal. Adding to the Clean Water Act's MEP requirement is potentially a reimbursable state mandates (i.e., unfunded). (See Finding 16 which claims, without providing backup, that the permit is not an unfunded mandate).*

In addition, as discussed in later comments, the requirement, 'ensuring strict compliance with water quality standards' *is a condition that cannot currently be attained by municipal stormwater discharges. Cost-effective technology does not exist to fully control bacteria, metals, pesticides, etc. in stormwater. MS4s can make reasonable progress toward reducing the discharge of these pollutants; however, strict compliance is not possible.*

Recommendation: All permit-mandated 'provisions beyond MEP' *must be removed. This includes any* 'Requirements in this Order that are more explicit than the federal stormwater regulations are necessary to meet the MEP standard.'

In addition, rather than 'ensuring strict compliance with water quality standards,' *which is not attainable, the permit should provide for continued improvements in water quality using an iterative approach."*

Staff Response to Comment City of Salinas Supplemental – 14
While Finding C.9 notes that the Central Coast Water Board has the authority to require measures beyond the MEP standard in order to protect water quality and beneficial uses, the finding does not state the Central Coast Water Board has done so with the Order's requirements. Requiring compliance with receiving water limitations does not necessarily equate with requirements that go beyond the MEP standard.

In any case, receiving water limitations do not constitute an unfunded mandate. Receiving water limitations implement the Clean Water Act's requirement that "Permits for discharges from municipal storm sewers […] 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." Also, receiving water limitations are necessary to ensure Clean Water Act section 402(p)(6) is met, which requires MS4s "to be regulated to protect water quality […]" In addition, the receiving water limitations are consistent with the municipal stormwater permitting approach described in the Preamble to the Phase II municipal stormwater federal regulations, which states: "today's rule specifies that the 'compliance target' for the design and implementation of municipal stormwater control programs is 'to reduce pollutants to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the CWA'."[1] Further, receiving water limitations enact the Clean Water Act's overall objective to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.

For responses to the portion of this comment that address compliance with water quality standards, see Staff Responses to Comments City of Salinas Supplemental – 3, 15, 19, 20, and 34.

[1]64 Fed. Reg. 68753

Supplemental - 15
"Page 2, Finding C.11. Receiving Water Limitations and the Iterative Approach. This Finding states:

> 'The Receiving Water Limitations language specified in this Order is consistent with language [in] State Water Board Order No. 99-05, adopted on June 17, 1999. The Receiving Water Limitations in this Order require compliance with water quality standards, which for stormwater discharges is to be achieved through an iterative approach requiring the implementation of improved and better-tailored Best Management Practices (BMPs) over time. Compliance with receiving water limits based on applicable water quality standards is necessary to ensure that MS4 discharges will not cause or contribute to violations of water quality standards and the creation of conditions of pollution.'

The recently revised opinion (http://www.ca9.uscourts.gov/datastore/opinions/2011/07/13/10-56017.pdf) by the U.S. 9th Circuit Court of Appeals and the trial court opinion clarify that implementing the iterative approach for exceedances of water quality standards (WQS) does not protect an MS4 from an enforcement action. In other words, the permit's prohibition on exceeding standards is absolute. As discussed in more detail in later comments, this appears to place Salinas in a position if immediate non-compliance with no feasible BMPs available to ensure compliance.

We understand that the previous position[5] of the Water Boards appeared to indicate that permit provisions were not intended to specify immediate and strict compliance with water quality standards. Regardless of the Water Boards' intent, the NRDC vs. County of Los Angeles case now requires a different approach.

Recommendation: Modify this finding, in line with the 9th Circuit opinion, so that immediate compliance with water quality standards is not stated as the goal of the permit."

Staff Response to Comment City of Salinas Supplemental – 15

The U.S. 9th Circuit Court of Appeals' recent decision on the NRDC vs. County of Los Angeles case does not change the Water Boards' interpretation of the receiving water limitations language. The receiving water limitations language previously required and continues to require compliance with water quality standards in receiving waters. When water quality standards are not attained, the iterative process provides a framework for the City to return to compliance in collaboration with Central Coast Water Board staff. Provided the City implements a diligent good faith effort to return to compliance, Central Coast Water Board staff does not anticipate that enforcement will be necessary.

However, while Central Coast Water Board staff finds that cooperative responsive actions on the part of the City to address stormwater discharges that cause or contribute to violations of water quality standards are crucial in the assessment of enforcement options, less effective actions cannot be considered a shield from all enforcement in the event that water quality standards continue to be violated. If there is a lack of good faith effort on the part of the City to implement the iterative BMP process effectively, Central Coast Water Board staff maintains that the potential threat of enforcement is a necessary incentive to help ensure timely and adequate action by the City.

[5] *See SWRCB WQ Order 2001-15:* "In reviewing the language in this permit, and that in Board Order WQ 99-05, we point out that our language, similar to U.S. EPA' s permit language discussed in the Browner case, does not require strict compliance with water quality standards. Our language requires that storm water quality management plans be designed to achieve water quality standards. Compliance is to be achieved over time, through an iterative approach requiring improved BMPs." *Posted ~~here~~http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2001/wqo/wqo2001-15.pdf.*

Since the recent court decision does not change the Water Board's interpretation of the receiving water limitations language, alteration of Finding C.11 is not warranted. It is important to note that the receiving water limitations language in the Order is nearly identical to that in the City's current permit. Since the language and the interpretation of the language has not changed, the City's contention that it will be in a position of immediate non-compliance once the Order is adopted may indicate that it is presently out of compliance with its current permit.

Supplemental - 16
"Page 3, Finding C.15. 303(d) list. This Finding references the 2006 303(d) list.

Recommendation: This finding should also reference the current 2008/2010 list which was modified by USEPA on November 12, 2010 (posted ~~here~~http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml) and which will likely receive final approval in the near future."

Staff Response to Comment City of Salinas Supplemental – 16
Central Coast Water Board staff has revised the Order to reflect the 2010 303(d) list, which received final approval from USEPA on October 11, 2011.

Supplemental - 17
"Page 3, Finding C.16. Unfunded mandates. This Finding states:

> 'This Order does not constitute an unfunded local government mandate subject to subvention under Article XIIIB, section (6) of the California Constitution.'

The Commission on State Mandates determined[6] that many key requirements of the 2007 San Diego MS4 permit were reimbursable state mandates, meaning:

- *they exceed federal Clean Water Act requirements: they are solely based on State law*
- *they exceed requirements in the prior permit: they are new programs or expansions of prior programs, and*
- *the co-permittees have inadequate fee authority to fund them*

Consequently, the Commission determined that the State must either fund the cost of complying with the new mandates or suspend them.

Finding #9 for this Salinas permit indicates it also goes beyond Clean Water Act requirements: 'Requirements in this Order that are more explicit than the federal stormwater regulations are necessary to meet the MEP standard.' *Also, the new 9th Circuit Court interpretation of requirements to immediately comply with water quality standards effectively appears to identify discretionary provisions. In addition, this permit contains many more requirements and is much more prescriptive than the previous permit (Order No. 99-087). Salinas does not have fee authority adequate to support the new requirements.*

Recommendation: This finding does not appear correct and should be deleted unless the Board can adequately document that the numerous new provisions are not unfunded state mandates."

Staff Response to Comment City of Salinas Supplemental – 17

[6] *See Test Claim Proposed Statement of Decision for NPDES No. CAS0108758, posted ~~here~~http://www.csm.ca.gov/agendas/032610/item6.pdf.*

The requirements of the Order are not unfunded state mandates because they do not exceed federal law. The requirements are necessary to meet the federal Clean Water Act's requirement that "Permits for discharges from municipal storm sewers […] 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." The federal Clean Water Act and NPDES storm water regulations provide the Central Coast Water Board with adequate authority for all of the requirements found in the Order.

Permit writers have discretion to determine what pollution controls are appropriate, and therefore can include more detailed requirements than those specifically found in the federal NPDES storm water regulations. By including such requirements in the Order, Central Coast Water Board staff has not exceeded federal law, but instead has complied with the Clean Water Act. Central Coast Water Board staff's use of permit writer discretion and the inclusion of more detailed requirements in the Order is consistent with USEPA guidance. For example, the preamble to the Phase I NPDES storm water regulations states "this rule sets out permit application requirements that are sufficiently flexible to allow the development of site-specific permit conditions."[1] In addition, in its review of a City of Irving Texas NPDES municipal storm water permit, the USEPA Environmental Appeals Board stated that Congress "created the 'maximum extent practicable' ('MEP') standard and the requirement to 'effectively prohibit non-storm water discharges' into the MS4 in an effort to allow permit writers the flexibility necessary to tailor permits to the site-specific nature of MS4 discharges."[2] The Order, to be issued to implement a federal program, does not become an unfunded state mandate simply because Central Coast Water Board staff appropriately exercised its discretion in defining the particulars. Implementation of a federal program according to federal law and guidance does not constitute an unfunded state mandate.

USEPA agrees that the Order does not constitute an unfunded state mandate. In its November 3, 2011 letter commenting on the Order, USEPA states: "Because the draft permit incorporates federal stormwater requirements that are consistent with the MEP standard and federal regulations, EPA supports the conclusion of Finding 16 for the draft MS4 permit for Salinas which concludes that the draft permit does not constitute an unfunded local government mandate."

The Commission on State Mandates decision referred to in the comment is outdated. The Commission on State Mandates' approach for identifying unfunded mandates in municipal stormwater permits was recently overturned by the Superior Court of California, County of Los Angeles (State of California Department of Finance, et al vs. County of Los Angeles, et al), which stated: "Under the Commission's approach, a permit requirement that is merely practicable or easy (not even practicable to the maximum extent) would be a state mandate if the U.S. EPA failed to express the requirement as a regulation. Such an approach is clearly erroneous." As such, the Court found that the Los Angeles Water Board's use of permit requirements more specific than the federal regulations was appropriate and not an unfunded state mandate.

Finding 9 does not indicate that the Order's requirements go beyond the Clean Water Act. On the contrary, the finding clearly states that the requirements are necessary to meet the Clean Water Act's maximum extent practicable standard. Furthermore, Finding 9 is consistent with the Superior Court of California, County of Los Angeles' finding that specific requirements in

stormwater permits designed to meet the maximum extent practicable standard are not unfunded mandates.

The fact that the Order contains more requirements than the previous permit does not mean the Order constitutes an unfunded state mandate. In its recent decision, the Superior Court of California, County of Los Angeles found: "The U.S.EPA 'anticipates that stormwater management programs will evolve and mature over time.' 55 Fed. Reg. 48052. Thus, the permits for discharges from municipal separate storm sewer systems will be written to reflect changing conditions that result from program development and implementation and corresponding improvements in water quality. Id. Given that the federal regulatory scheme anticipates changing permit requirements, that these requirements have not yet been articulated does not mean that the requirement exceeds the 'maximum extent practicable' standard."

[1] 55 Fed. Reg. 48038.
[2] Environmental Appeals Board, USEPA. *NPDES Appeal No. 00-18; Order Denying Review.* 16 July 2001.

Supplemental - 18

"Page 3, Finding C.17. Non-stormwater discharges. This Finding address non-stormwater discharges:

> '…Any exempted discharges identified by the Permittee or the Central Coast Water Board Executive Officer as a source of pollutants are subsequently required to be addressed as illicit discharges through prohibition and incorporation into existing illicit discharge/illicit connection programs.'

The problem with this finding and the related permit provisions is that essentially all non-stormwater runoff and related discharges could be classified as illicit because they contain 'pollutants.' The term 'pollutants' is very broadly defined in Clean Water Act, Section 502(6):

> '(6) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.' *[several exceptions are included that are not pertinent to this discussion; definition posted ~~here~~http://codes.lp.findlaw.com/uscode/33/26/V/1362]*

Courts have indicated "That the definition of 'pollutant' is meant to leave out very little is confirmed by the statutory definition of 'pollution,' which means nothing less than the "man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water."[7] The State Water Board has also argued elsewhere that pollutant should not be narrowly defined.[8]

Elsewhere in the permit, Finding 26 states that 'The discharge of runoff from an MS4 is a "discharge of pollutants from a point source" into waters of the U.S…' *Thus any dry weather or*

[7] *See Sierra Club v. Cedar Point Oil Co., 73 F.3d 546, 566 (5th Cir. 1996), posted ~~here~~http://ftp.resource.org/courts.gov/c/F3/73/73.F3d.546.94-20461.95-20227.html.*
[8] *See State Water Board letter to USEPA of March 29, 2005 (posted ~~here~~http://www.swrcb.ca.gov/water_issues/programs/npdes/docs/aquatic/comments.pdf) and also the Board's letter of October 14, 2003 (~~here~~http://www.swrcb.ca.gov/water_issues/programs/npdes/docs/aquatic/attachment.pdf).*

other non-stormwater discharge by definition contains pollutants and must be addressed as illicit. This is clearly infeasible.

The Central Coast Water Board likely intended these requirements to focus on significant sources of pollutants likely to cause harm in the receiving waters and elsewhere the permit seems to focus on significant sources. However, as this finding is currently drafted virtually all exempted (non-stormwater) discharges and agricultural runoff into the stormwater conveyance system could be classified as being a "source of pollutants." The 9th Circuit Court has emphasized that each MS4 permit provision is simply enforced as written. As specified in this finding, Salinas is required to address these flows "as illicit discharges through prohibition and incorporation into existing illicit discharge/illicit connection programs." How does the Board expect Salinas to accomplish this requirement? Salinas cannot identify and prohibit all flows into the MS4 than contain pollutants, i.e., something other than pure water.

Recommendation: This finding and the related permit provisions need to be rewritten so that that the illicit discharge/illicit connection program can focus on a prioritized basis on the flows into the system that are major sources of harmful pollutants (see page 47, H. Illicit Discharge Detection and Elimination, which includes a prioritized approach). In other words, all sources of pollutants discharged into the system should not be prohibited regardless of whether they are likely to cause harm.

Additionally, exempted discharges should be defined as applying to the non-stormwater discharges listed in Discharge Prohibition A.5). Currently, the permit is not clear on this point. And, as discussed in later comments, the list of exempt discharges in Prohibition A.5 needs to be expanded."

Staff Response to Comment City of Salinas Supplemental – 18
Central Coast Water Board staff added "significant" before "source of pollutants" in Finding 17. Central Coast Water Board staff also added "significant" to Provision A.5 before "pollutant discharges".

The comment states the Order is not clear that non-stormwater discharges allowed by Provision A.5 are not illicit discharges. The definition contained in Attachment B of the Order states that illicit discharges are non-stormwater discharges except those authorized by Provision A of the Order (or another permit).

Supplemental - 19
"Page 3, Finding C.18 (part a). Findings in apparent conflict. Finding 18 contradicts Finding 11.

- *Finding 11 –* '….The Receiving Water Limitations in this Order require compliance with water quality standards, which for stormwater discharges is to be achieved through an iterative approach requiring the implementation of improved and better-tailored Best Management Practices (BMPs) over time.'
- *Finding 18 –* '…. Water quality standards must be complied with at all times, irrespective of the source and manner of discharge.'

Finding 11 specifies a gradual approach (iterative) of making improvements; Finding 18 requires immediate compliance which is simply not possible for urban runoff. This inconsistency is also reflected other permit provisions as will be noted in later comments.

Recommendation: Delete Finding 18. Urban runoff cannot comply with this requirement because of the levels of bacteria, metals, and other constituents remaining in runoff even with the application of MEP pollutant controls."

Staff Response to Comment City of Salinas Supplemental – 19

The findings are not inconsistent. Both findings state that the City must comply with receiving water quality standards. Finding 18 correctly points out that the City's stormwater discharges must not cause or contribute to violations of receiving water quality standards, and clarifies there is no safe harbor that shields the City from enforcement for violating receiving water quality standards. Finding 11 identifies that there is an iterative process for the City to follow if it is causing or contributing to a violation of water quality standards; however, Finding 11 does not state the City would be in compliance with the Order while it is implementing the iterative process.

The City does not support its statement that it cannot comply with water quality standards. Water quality standards in municipal stormwater permits are receiving water limits, as opposed to numeric effluent limits. As such, the City is only subject to water quality standards if it is causing or contributing to an impairment of a receiving water. When the City is not causing or contributing to a receiving water impairment, the City must meet the MEP standard. Since many water bodies receive stormwater discharges and are not impaired, the City's claim that water quality standards cannot be attained for stormwater discharges is presumptuous. Further, even in situations where municipal stormwater has been documented as causing or contributing to violations of water quality standards, modeling has shown that strategic implementation of BMPs can be reasonably expected to result in water quality standard compliance. An example can be found in the Los Angeles area municipalities' efforts to comply with the TMDL for Bacterial Indicator Densities in Ballona Creek, Ballona Estuary, and Sepulveda Channel.[1]

[1] City of Beverly Hills, et al. *Total Maximum Daily Load for Bacterial Indicator Densities in Ballona Creek, Ballona Estuary, and Sepulveda Channel Implementation Plan – Draft.* 30 November 2009. Web. 23 November 2011 <http://www.ci.la.ca.us/san/wpd/siteorg/program/TMDLs/BCBacterialmpPlanSections.pdf>.

Supplemental - 20

"Page 3, Finding C.18 (part b). Immediate compliance with water quality standards. This Finding states:

> '…. Water quality standards must be complied with at all times, irrespective of the source and manner of discharge.'

As discussed in other comments, it is not feasible for urban runoff to comply with water quality standards at the point of discharge. In addition, this broad statement is ambiguous. Where is the point of compliance? Is a mixing zone allowed or must the MS4 discharges comply at end-of-pipe? Which standards are applicable: for example, the California Toxics Rule includes both criteria maximum concentrations (acute) and the criteria continuous concentration (4-day chronic) values. Which applies? Are event mean concentrations to be used for the assessment or the highest instantaneous value detected? Where is compliance assessed for discharges from MS4 storm drains to waterways classified as both receiving waters and MS4s?

Recommendation: This sentence should be deleted because compliance is not possible and the mode of application of the applicable criteria has not been specified."

Staff Response to Comment City of Salinas Supplemental – 20

Attachment 2.d: City of Salinas Supplemental Comments Received on Draft Order No. R3-2012-0005 and Staff Response

Water quality standards in municipal stormwater permits are receiving water quality standards. The City cannot cause or contribute to a violation of water quality standards in receiving waters. Due to the wide range of discharge point and receiving water conditions, appropriate compliance assessment methods must be determined on a case by case basis. However, staff does not anticipate using single instantaneous end of pipe samples as the sole basis for enforcement. The Central Coast Water Board's *Water Quality Control Plan, Central Coast Region* specifies applicable water quality standards through direct incorporation into the document or by reference to other applicable plans and policies, such as the California Toxics Rule. For water bodies that are both receiving waters and MS4s (due to the City's alteration and management of the water body for stormwater conveyance purposes), receiving water quality standards apply throughout the water body, due to the water body's condition as a receiving water. The City's use of the water body as an MS4 does not negate the water body's beneficial uses or water quality objectives.

Supplemental - 21

"Page 3, Finding C.19. MS4s identified as being concurrently natural waterways - This Finding states in part:

> '….Urban streams used in this manner are part of the Permittee's MS4 regardless of whether they are natural, man-made, or partially modified features. In these cases, the urban stream is both a MS4 and a receiving water.'

The Salinas system is similar to the LA County system in that the receiving water is also an MS4. In the LA County case, samples from the mass monitoring stations in the Los Angeles River were indicative of water quality in both the MS4 and the receiving water. Thus an exceedance in the LA River was evidence of an exceedance in both the MS4 and the receiving water and an apparent violation of the permit.

For Salinas, samples from the Reclamation Ditch[9] (and possibly the other waterways) will potentially represent both the MS4 and the receiving water. Extensive data indicates that these Salinas-area waterways exceed standards. In Finding 24, the permit notes that the Reclamation Ditch is listed as impaired for about 14 parameters. The other area waterways are also listed for multiple pollutants or parameters.

Stormwater runoff typically exceeds standards at the point of discharge. The standards, however, are applicable in the receiving water. In some cases, dilution takes place in the receiving water and an exceedance in runoff would not translate into an exceedance in the receiving water. These discharges will typically cause exceedances of water quality standards in the receiving water when only limited dilution is available, or not allowed, and also in effluent dependent waters (EDW).

Designation of receiving waters as MS4s makes the determination of compliance very difficult. A related issue is the question of which agency is responsible for which waterway as Monterey County Water Resources Agency is generally responsible for the Reclamation Ditch.

Recommendation: Natural waterways should not be classified as MS4s; alternatively the Reclamation Ditch, which does not appear to be a natural waterway, should possibly be

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[9] As noted in other comments, the Salinas Reclamation Ditch identified in this permit apparently has different names in other documents: "Salinas Reclamation Canal" in the Central Coast Basin Plan (~~here~~http://www.swrcb.ca.gov/rwqcb3/publications_forms/publications/basin_plan/index.shtml); "Reclamation Ditch" (Water Resources Agency) and "Salinas Reclamation Channel" in other documents.

designated as only an MS4, not a receiving water. The dual designation makes compliance determination very confusing. Also, Carr Lake which is farmed and functions as a detention basis should not be considered a receiving water."

Staff Response to Comment City of Salinas Supplemental – 21
Central Coast Water Board staff has revised the Order to remove language identifying the Reclamation Ditch as part of the City's MS4, as the Reclamation Ditch is owned and operated by the Monterey County Water Resources Agency.

The definition of MS4 contained in federal regulations includes manmade channels which convey stormwater. Gabilan, Natividad, and Santa Rita Creeks have all been modified by human activity for the purpose of conveying stormwater. Therefore, where these creeks are within the Permit coverage area and are operated by the City for conveying stormwater runoff from lands within the Permit coverage area, the creeks are part of the City's MS4.

Central Coast Water Board staff agrees that Water Quality Standards (WQS) apply to receiving waters, not to stormwater discharges. Therefore a stormwater discharge containing a pollutant in a concentration exceeding the concentration associated with the WQS for that pollutant is not presumed to constitute an exceedance of the WQS for that pollutant. The question of whether the City's stormwater discharges cause or contribute to an exceedance of a WQS must be resolved on a case-by-case basis through analysis of relevant stormwater discharge and receiving water quality data.

The Draft Order does not hold the City responsible for discharges into its MS4s that are also receiving waters, when the discharges originate outside the Permit Coverage Area. Likewise, the Draft Order does not hold the City responsible for discharges of return flows and stormwater from agricultural lands that enter its MS4.

Supplemental - 22
"Page 4, Finding 20. Treatment in MS4s/Water of the US & State. This Finding states:

> 'Runoff treatment and/or mitigation must occur prior to the discharge of runoff into receiving waters. Treatment BMPs must not be constructed in waters of the U.S. or State unless the runoff flows are sufficiently pretreated to protect the values and functions of the water body.'

This finding appear confusing—how do requirements to protect values and functions relate to requirements addressed elsewhere to protect water quality standards. If the Reclamation Ditch is also an MS4, are treatment facilities precluded prior to its discharge into the Old Salinas River? There is a potential to use Carr Lake as a multi-objective water quality, flood control and recreational facility ~~(here)~~(http://ecoviz.csumb.edu/wiki/index.php/Conversion_of_Carr_Lake_to_a_Multi-Use_Park). Provision L.2.a infers that retrofit BMPs in waters of the U.S. are acceptable.

Recommendation: Please clarify. Also note that some controls such as netting to capture floatable debris must necessarily be deployed in the receiving water. Wording in the permit should promote the potential use of Carr Lake for water quality objectives, and not be potentially interpretable as restricting the concept."

Staff Response to Comment City of Salinas Supplemental – 22
In accordance with 40 CFR 131.10(a), the Central Coast Water Board has established beneficial uses of water bodies in the Salinas area. These beneficial uses are listed in the

Basin Plan. The City is required to protect these beneficial uses as part of the federal regulation to protect water quality. Treatment of urban stormwater runoff is not a beneficial use. As a result, the City may not use receiving waters as treatment venues for its stormwater discharges, since allowing stormwater polluted runoff to enter receiving waters prior to treatment to the MEP will result in degradation of the water body and potential exceedances of water quality standards, from the discharge point to the point of dissipation, infiltration, or treatment. As a result, the City must reduce pollutants in its discharges to the MEP prior to discharge to receiving waters.

Finding 20 does not prohibit activities which improve beneficial uses in receiving waters, but those activities cannot be solely relied upon to comply with the Order's requirements. The City must also reduce pollutants in its stormwater to the MEP prior to discharge to the receiving water. In the case of runoff from existing developed areas, such actions may present the most effective means of protecting and restoring beneficial uses. The Order encourages the City to implement measures to restore and maintain watershed processes impacted by stormwater management to protect water quality and beneficial uses. However, if such measures involve modifications to water bodies, they will require separate review and approval by Central Coast Water Board staff.

While, it is not the intent of the Order to either promote or not promote the potential use of Carr Lake to achieve water quality objectives, activities that improve beneficial uses of Carr Lake are not precluded by the Order. Such uses of Carr Lake must comply with the requirements of the Order and other regulations and will be evaluated on a case-by-case basis.

Supplemental - 23

"Page 4, Finding 22. Runoff from industrial and construction activities. This Finding includes the statement:

> '….NPDES municipal regulations require the municipal Permittee develop and implement measures to address runoff from industrial and construction activities. Those measures may require the implementation of additional BMPs than are required under individual or the statewide General Permits for activities subject to both State and local regulation.'

This appears to indicate that Salinas will be responsible for implementing BMPs for construction and industrial discharges. While Salinas does have responsibility for oversight of these separately-permitted activities, it is not feasible for Salinas to provide additional runoff control BMPs or to identify and specify controls beyond those required by the State's general or individual permits issued to these facilities.

Recommendation: Revise to clearly state appropriate and feasible requirements for the City."

Staff Response to Comment City of Salinas Supplemental – 23

The requirements contained in the commercial/industrial and construction provisions of the Order are clear that the City must require the implementation of BMPs. The provisions do not require the City to implement BMPs themselves. See Provisions K.3, K.3, and F.2. of the Order.

The City is required to have an effective program for commercial/industrial and construction regardless of the requirements of the General Industrial Permit and the General Construction Permit. It is possible that the City, in order to have an effective program, will need to require the implementation of BMPs that are additional to the requirements of the General Industrial Permit

and the General Construction Permit. However, staff anticipates that requirements consistent with those of the General Industrial Permit and General Construction Permit will be effective and adequate.

Supplemental - 24

"Page 4, Finding 23(a). Reclamation Ditch. This Finding refers to the main drainage canal through the City as the 'Salinas Reclamation Ditch.' This name is not appropriate because it implies it belongs to the City of Salinas. Monterey County Water Resources Agency (MCWRA) refers to it as 'Reclamation Ditch No. 1665,' or more simply, the 'Reclamation Ditch.' USGS mapping identifies the ditch leaving Carr Lake as the 'Main Canal.'[10]

Recommendation: In that the Reclamation Ditch originates and terminates outside of the City and is not a City-owned facility even with the City Limits, the Permit should reference it in the same manner as MCWRA."

Staff Response to Comment City of Salinas Supplemental – 24

Central Coast Water Board staff has changed "Salinas Reclamation Ditch" to "Reclamation Ditch" in the Order.

Supplemental - 25

"Page 4, Finding 23(b). Carr Lake. This Finding states, in part:

> 'Carr Lake is often dry and is utilized for farming, but also functions as a stormwater retention basin …'

Carr Lake functions as a detention basin, not a retention basin. It has a gravity outlet at its low point that consists of a double 8' x 8' culvert and a 3' diameter low flow pipe.

Recommendation: Please correct the reference and description. Also, what is the relationship of Carr Lake with respect to the regulated MS4? Another question is which waterways with Carr Lake as a terminus are 'waters of the U.S.'"

Staff Response to Comment City of Salinas Supplemental – 25

Central Coast Water Board staff has revised Finding 23 to read, "Carr Lake … functions to detain stormwater flows."

Natividad Creek and Gabilan Creek are tributary to the Waters of the U.S. and are therefore Waters of the U.S. themselves. The Order does not treat Carr Lake as a Water separate and distinct from these creeks because currently Carr Lake is a seasonal and temporary feature formed when local and upstream flows exceed the capacity of the creeks and the culvert. These floodwaters ultimately return to the creeks and thence to the Reclamation Ditch. Therefore the Order does not consider Carr Lake as terminus of any waterways.

Supplemental - 26

"Page 4, Finding 23(c). Salinas River. This Finding should describe the management of the Salinas River. During spring and summer, MCWRA regulates flows into the Salinas River to

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[10] *We also note that the Board refers to the Ditch as the "Salinas Reclamation Canal" in the Central Coast Basin Plan (~~here~~http://www.swrcb.ca.gov/rwqcb3/publications_forms/publications/basin_plan/index.shtml). We request that the Board refer to the Ditch in the permit and the Basin Plan by the MWCRA designation to avoid confusion.*

maximize groundwater recharge and generally prevent discharge to the ocean. During low flow conditions, the Salinas River drains through a small connection into the Old Salinas River. Once there are significant flows in the Salinas River, the mouth is breached and the River flows directly to Monterey Bay, not through the Old Salinas River. During major flood conditions, such as occurred in 1995, some flows from the Salinas River spilled into the Reclamation Ditch.

In addition, the statement, 'The Old Salinas River is an estuary that is often separated from the Pacific Ocean by a sand bar' *is not correct because the Old Salinas River is always separated from the Pacific Ocean; it is the Salinas River's connection to the Pacific Ocean that varies.*

Recommendation: Modify to include a full and accurate description of the River's management."

Staff Response to Comment City of Salinas Supplemental – 26
Central Coast Water Board staff has removed the sentence referring to the Old Salinas River as an estuary separated from the Pacific Ocean by a sand bar, and has revised Finding 23 to read: "The Salinas River, like Espinosa and Tembladero Sloughs, discharges to the Old Salinas River during low-flow periods and directly to Monterey Bay during high flows.

Supplemental - 27
"Page 6, Finding 29. Stormwater Management Program Goals. Regarding the Stormwater Management Program, this finding states in part:

> 'The Permittee can satisfy the requirements through effective implementation of a Stormwater Management Program.'

This is simply not the case. No reasonably available BMPs within a Stormwater Management Program can ensure that the discharge complies with all water quality standards. For example, no BMPs exist that can provide the disinfection needed for all discharges to meet the bacteria standards for body contact recreation (REC 1) in the receiving waters nor can available BMPs provide removal of dissolved copper so that standards can be consistently complied with.

Recommendation: Revise the Draft Permit to make the statement true by eliminating all provisions that cannot be shown to be practicable measures that can be implemented as part of a Stormwater Management Program."

Staff Response to Comment City of Salinas Supplemental – 27
Water quality standards in municipal stormwater permits are receiving water limits, as opposed to numeric effluent limits (see Staff Response to Comment City of Salinas – 19). It is not true that every water body that receives urban runoff is impaired.

The City's recommendation suggests this Order contains provisions that are not practicable measures that can be implemented as part of a stormwater management program. The City does not support this suggestion. Central Coast Water Board staff infers from other comments submitted by the City that the provisions considered impracticable by the City have to do with water quality standards and receiving water limitations. For discussion of these topics, see Staff Response to Comment City of Salinas Supplemental – 3, 15, 19, and 20.

Supplemental - 28
"Page 6, Finding 30. ***Presumptive BMPs****. This finding states in part:*

> 'This Order incorporates presumptive BMPs to reduce pollutants in stormwater discharges to the MEP. These BMPs include erosion control, sediment control, …[etc.] …These BMPs have been required on the basis of the state of the science of municipal stormwater management and the Central Coast Water Board's experience regulating municipal stormwater management programs. The BMPs identified in this Order are technically feasible, practicable, and cost-effective.'

On this basis, the permit has been loaded with very prescriptive BMPs. These BMPs have been dictated by the Regional Water Board rather than selected by Salinas as part of its stormwater management plan. However, this approach is counter to USEPA regulations and guidance which does not define the BMPs constituting MEP. It is also counter to the State Board's description of MEP:[11]

> *'MEP requires permittees to choose effective BMPs, and to reject applicable BMPs only where other effective BMPs will serve the same purpose, the BMPs would not be technically feasible, or the cost would be prohibitive.'*

By taking away the discretion of Salinas to select the most cost-effective BMPs, the Draft Permit greatly increases costs with no commensurate benefits to water quality.

Recommendation: This statement should be removed as well as the prescribed BMPs in the permit."

Staff Response to Comment City of Salinas Supplemental – 28
See Staff Response to Comment City of Salinas Supplemental – 4. Federal regulations require municipal stormwater permittees to implement BMPs that are effective, and allow permittees to reject only those BMPs which are technically infeasible, cost-prohibitive, or where alternative would be as effective. As cited in the comment, requirements contained in the Order are based on current science and the Central Coast Water Board's experience of what constitutes requirements that are technically feasible, practical, and economically efficient. The BMPs contained in the Order are currently being implemented by numerous Phase I municipalities throughout California and the United States, and therefore do not appear to be technically infeasible or cost-prohibitive. In addition, the Order contains language providing the City with flexibility to propose alternative BMPs which are as effective as the BMPs contained in the Order.

Supplemental - 29
"Page 6, Finding 30. Determination of Cost Effectiveness. As noted above, this finding states: 'The BMPs identified in this Order are technically feasible, practicable, and cost-effective.' *What is the difference between technically feasible and practicable? If it is a matter of cost, what amount determines if an option is practicable? Where is the information to justify calling the identified BMPs "cost-effective?" Can it be shown that the amount of funding that new and redevelopment projects are required to spend on water quality features is the best use of that money to achieve water quality objectives? Cost-effectiveness could be assessed, for example, on the basis of cost per pound of pollutant removed. The NPDES regulations and guidance use this approach for the development of the categorical standards for POTWs and industrial discharges.*

[11] From the LA SUSMP Order and quoted in *Frequently Asked Questions from Regulated Local Agencies* (~~here~~http://www.swrcb.ca.gov/resources/faqs/docs/regagencies.doc)

Recommendation: Cost-effectiveness and practicability need to be justified with reference to costs per pound of pollutant removed (or avoided) and total expenditures for the community in comparison with available funding. An unsupported statement of technically feasibility, practicability and cost-effectiveness is not adequate. Such statements are conclusory and should be removed unless backed-up with data."

Staff Response to Comment City of Salinas Supplemental – 29

Federal regulations provide that municipal stormwater permits must require municipalities to reduce pollutants in their stormwater discharges to the Maximum Extent Practicable (MEP). Thus SWRCB emphasizes technical feasibility in its interpretation of the MEP standard, but considers cost as a component.

> *There must be a serious attempt to comply, and practical solutions may not be lightly rejected. If, from the list of BMPs, a permittee chooses only a few of the least expensive methods, it is likely that MEP has not been met. On the other hand, if a permittee employs all applicable BMPs except those where it can show that they are not technically feasible in the locality, or whose cost would exceed any benefit to be derived, it would have met the standard. MEP requires permittees to choose effective BMPs, and to reject applicable BMPs only where other effective BMPs will serve the same purpose, the BMPs would not be technically feasible, or the cost would be prohibitive.*[1]

Central Coast Water Board staff recognizes there are costs associated with compliance with this Order, and that many communities and businesses are experiencing economic challenges (see Staff Response to Comment Steele – 1), and has taken steps to consider implementation costs (see Staff Response to Comment City of Salinas – 26).

Central Coast Water Board staff notes that the term "cost-effective" is a technical term meaning optimal results are produced for a given expenditure. While BMPs identified in this Order are designed to use resources efficiently, Central Coast Water Board staff did not conduct a cost-effectiveness analysis of Order provisions. Therefore Central Coast Water Board staff has replaced "cost-effective" with "designed to use resources efficiently" in Finding 30, Finding 74, and the Fact Sheet for Finding 75.

[1] State Water Resources Control Board Order WQ 2000-11, p. 20.

Supplemental - 30

"Page 6, Finding 31. New requirements. This finding states:

> 'As operator of the MS4, the Permittee cannot passively receive and discharge pollutants from third parties. By providing free and open access to an MS4 that conveys discharges to waters of the U.S., the Permittee essentially accepts responsibility for discharges into the MS4 that it does not prohibit or control. These discharges may cause or contribute to a condition of contamination or a violation of water quality standards.'

The Water Board has deemed most of the area waterways as MS4s. However, many of these waterways receive discharges that are outside of the jurisdiction of the City. For example, most agricultural discharges are exempt from permitting under the Clean Water Act and discharge into waterways that are regulated as MS4s in the Salinas area. The Water Board, of course, is attempting to provide some controls via the State Water Code, but the reality is that these flows often contribute a significant load of pollutants that the Board has not yet been able to control.

This Finding and later permit provisions specify that the City must control these discharges and in the case of agriculture, the discharges apparently must be prohibited since they are not on the list of exempt discharges (Prohibition A.5, page 15). How can the City ban or otherwise control these discharges, particularly the ones that occur outside City? Even within the City, how are agricultural and other problematic discharges supposed to be controlled? The Water Board is asking the City to exert controls that the Water Board itself is finding very difficult to implement.

Recommendation: Delete this finding which is meaningless in the context of the area MS4s and reality of controlling these discharges. Salinas does not accept "responsibility for discharges into the MS4 that it does not prohibit or control." This would appear to make Salinas responsible for discharges that occur many miles outside the City's jurisdiction. It also does not accept responsibility for discharges it does not have the legal ability to control.

Staff Response to Comment City of Salinas Supplemental – 30

The finding that the Permittee cannot passively receive and discharge pollutants from third parties is supported by federal regulations and consistent with the City's responsibility for discharges from its MS4: "The operators of regulated small MS4s cannot passively receive and discharge pollutants from third parties."[1] Central Coast Water Board staff believes that the central issue here is the definition of the City's MS4. The Order does not hold the City responsible for pollutants that are not discharged through its stormwater conveyance system (see Staff Response to Comment City of Salinas – Fact Sheet Finding 27 (1) and Staff Response to Comment City of Salinas – Finding 31). Also, Central Coast Water Board staff has revised the Order to remove language identifying the Reclamation Ditch as part of the City's MS4 (See Staff Response to Comment City of Salinas Supplemental – 21) and has clarified the City's responsibility for flows in Natividad, Gabilan, and Natividad Creeks in Staff Response to Comment City of Salinas – Finding 31. Finally, Central Coast Water Board staff has addressed the City's responsibility for discharges from agricultural by clarifying in Finding 31 that the City is not responsible for discharges from agricultural lands comprised solely of return flows and/or stormwater that enter its MS4. With the understanding provided by these Staff Responses to Comments, Central Coast Water Board staff does not believe Finding 31 constitutes a new requirement or one which places undue burden on the City. In addition, the language contained in Finding 31 is typical of Phase I permits throughout California and is taken largely from the federal NPDES Phase II stormwater regulations.

[1] 64 Fed. Reg. 68766

Supplemental - 31

"Page 7, Finding 35. Non-stormwater. This finding states, in part:

> '…are necessary for the Permittee to ensure that discharges of pollutants from its MS4 in stormwater are reduced to the MEP and that non-stormwater discharges are not occurring'

It is not technically feasible to prove that 'non-stormwater discharges are not occurring.' Also, as discussed in other comments, ensuring that non-stormwater discharges will cease is virtually impossible. This fact is partially recognized by the permit in the listing of the exempt non-stormwater discharges in Discharge Prohibition A.5.

Recommendation: Delete this finding."

Staff Response to Comment City of Salinas Supplemental – 31
Central Coast Water Board staff replaced "non-stormwater discharges" with "illicit discharges" (see for Attachment B of the Order for definition of illicit discharge) in Finding 35 of the Order to clarify the types of discharges this finding is referring to.

The Order does not require the City to prove that all non-stormwater discharges are not occurring. The Order also does not require the City to ensure that all non-stormwater discharges will cease. Central Coast Water Board staff modified the language of Finding 35 to provide clarity.

Supplemental - 32
"Page 7, Finding 36. New requirements. This finding states:

> 'New or modified requirements are necessary to improve the Permittee's efforts to reduce the discharge of pollutants in urban runoff to the MEP and achieve water quality standards.'

This statement is not supported by any data or reference to the current practices in Salinas. Please present any data showing that Salinas is not already implementing BMPs that provide pollutant control to the maximum extent practicable (MEP). In an era of declining public revenues, practicability will necessarily have a different cost basis.

Recommendation: This statement should be removed as well as the added-on BMPs in the permit. Switching from less effective to more effective BMPs within the same overall cost range is appropriate."

Staff Response to Comment City of Salinas Supplemental – 32
MEP is an evolving concept that changes over time as new information is gathered regarding the effectiveness of municipalities' (including the City's) stormwater programs. Similarly, water quality data is collected over time, increasing understanding of stormwater impacts on receiving water quality and beneficial uses. The Order's new requirements reflect the evolution of stormwater management and knowledge of receiving water conditions since 2005, as well as information obtained by Central Coast Water Board staff during audits and review of annual reports and the City's Report of Waste Discharge. Each new requirement in the Order is discussed and justified individually in the Fact Sheet. As such, modification of this finding is not necessary.

Supplemental - 33
"Page 7, Finding 37. Preventing pollutants. This finding states, in part:

> 'The Permittee is responsible for adoption and enforcement of ordinances and/or policies, implementation of identified BMPs needed to prevent or reduce pollutants in stormwater discharges....'

It is not clear what 'prevent or reduce' means. Is it a choice? It should be recognized that it is not technically feasible to prevent pollutants in stormwater. The Clean Water Act, subsequent court cases, and the actions by the State Water Boards have established that virtually any constituent in urban stormwater that is not water is a pollutant.

Recommendation: Clarify the terminology. At a minimum, 'prevent' should be deleted."

Staff Response to Comment City of Salinas Supplemental – 33

The language "prevent or reduce" means to prevent pollutants in stormwater discharges where possible, and reduce them where prevention is not possible. In cases where prevention of pollutants in stormwater discharges is technically feasible, mere reduction does not constitute MEP.

Supplemental - 34

"Page 7, Finding 38. Effective Stormwater Management Plan. This finding states, in part:

> 'This Order requires the Permittee to develop and implement an effective Stormwater Management Plan (SWMP) that demonstrates how the Permittee will comply with each requirement of this Order.'

It is reasonable to require the SWMP to demonstrate reasonable progress in improving water quality; it is not realistic to effectively require immediate compliance with each requirement in the order. Among other provisions that cannot be attained is the prohibition on exceedance of water quality standards. There is no possibility that the SWMP can demonstrate how the Reclamation Ditch and other area waterways will feasibly comply with water quality standards. The TMDLs for the problem pollutants on these waterways indentify implementation periods of many years. The SWMP cannot provide for immediate compliance or even from compliance within the permit term.

Recommendation: This statement should be modified to require reasonable progress in improving water quality."

Staff Response to Comment City of Salinas Supplemental – 34

The Order does not require immediate compliance with every requirement of the Order. Many requirements of the Order have accompanying extended timelines. Likewise, the Order does not require the City to demonstrate in the SWMP how the Reclamation Ditch and other waters will immediately comply with water quality standards. Rather, the Order requires that the City not cause or contribute to violations of receiving water quality standards. In situations where the City has information indicating it is causing or contributing to such violations, the City must design its SWMP to correct those violations. Section C of the Order provides a process for the City to follow in such cases in order to return to compliance. Provided the City implements a diligent good faith effort to return to compliance, Central Coast Water Board staff does not anticipate that enforcement will be necessary (see Staff Response to Comment City of Salinas Supplemental – 15 for further discussion).

Supplemental - 35

"Page 8, Finding 45. Greenhouses and Nurseries. This finding states:

> 'Runoff from greenhouses and nurseries has a high potential for water quality impairment. Heavy pesticide use and fertilizer use, coupled with an intensive irrigation regime and leaching used by many nurseries may result in a discharge of waste and poses significant threat of pollution to surface water and groundwater from pesticides.'

While this is true, Salinas has limited capabilities of addressing this source or the other sources in this set of findings. The Water Boards, however, and other state agencies do have the authority to issue waste discharge requirements (WDR) and to regulate pesticides to control these sources.

A related problem is that many of these sources enter the regulated waterways which are both a municipal stormwater system (MS4) and a receiving water (see Finding 19). These sources are

not exempt (i.e., not non-prohibited sources as identified in permit provision A.5) and therefore should not even be discharged to an MS4. However, many of these discharges enter the MS4 outside the jurisdiction of Salinas, and even within Salinas, preventing these discharges would be difficult.

Recommendation: This finding should explicitly recognize the limited ability of Salinas to address these sources and should describe the Water Boards' role in addressing this problem. Additionally, the Findings need to address and resolve the issue of non- stormwater discharges entering the MS4 that are not exempt (i.e., non-prohibited). See Discharge Prohibition A. 5) Non-Stormwater Discharges. This list does not include discharges from greenhouses and nurseries and other agricultural-related facilities. Presumably these are all prohibited discharges unless they have an NPDES permit (a WDR is not sufficient)."

Staff Response to Comment City of Salinas Supplemental – 35
Since greenhouses and nurseries are more closely related in their operation to commercial and industrial activity than agricultural activity, the City is required by the Order to include greenhouses and nurseries in their commercial and industrial inventory and require implementation of appropriate BMPs for these facilities. If the City has limited legal authority to address these types of facilities, the City is required to obtain the legal authority needed to effectively require implementation of appropriate BMPs for these facilities (and all other facilities contained in the commercial/industrial inventory). Central Coast Water Board can also issue WDRs for facilities as appropriate; however the City is responsible to regulate commercial and industrial facilities regardless of their coverage under an individual permit.

For a discussion on waterbodies that are both a MS4 and receiving water, see Staff Response to Comment City of Salinas Supplemental – 21 and Staff Response to Comment City of Salinas – Finding 31. In addition, see Staff Response to Comment City of Salinas Supplemental 30 for a discussion on the City's responsibility for agricultural discharges.

Central Coast Water Board staff has modified the language in Provision A.5 to clarify that irrigation water can be allowed under the Order. Greenhouses and nurseries within the Permit coverage area that discharge into the Permittee's MS4 are required by Provision F.1.b to be included in the City's Commercial and Industrial Inventory. The City will include these facilities in their assessment and prioritization and identify appropriate BMPs.

Supplemental - 36
"Page 9, Finding 51. Polishing BMPs. This finding states, in part: '…end-of-pipe BMPs are more effective when used as polishing BMPs.' *Some 'end of pipe systems' are effective for trash and coarse sediment removal. It is not clear what is inferred by 'polishing.'*

Recommendation: Please clarify 'polishing' and provide examples of these BMPs and their benefits."

Staff Response to Comment City of Salinas Supplemental – 36
The intent of the language in Finding 51 which states, "end-of-pipe BMPs are more effective when used as polishing BMPs, rather than the sole BMP to be implemented," is to explain that in general, stormwater management controls closer to the source designed to address specific pollutants, are typically more effective at removing pollutants, than dealing with diluted runoff containing a larger suite of pollutants at the perimeter of a site or offsite. See the Fact Sheet discussion for Finding 51 for further discussion on this topic. End-of-pipe BMPs can be effective

in providing a final cleanse, after pretreatment, prior to the discharge of stormwater. This is what is meant by end-of-pipe BMPs being appropriate when used as 'polishing BMPs'.

Supplemental - 37

"Page 9, Finding 59. Watershed management. This finding states, in part:

> 'Effective watershed based urban runoff management 1) actively reduces pollutant discharges and abates pollutant sources causing or contributing to watershed water quality problems, and 2) actively mimics natural watershed processes.'

How does 'Effective watershed-based urban runoff management' 'actively' mimic natural watershed processes? It may be better to state, "Effective watershed based urban runoff management 1) actively reduces pollutant discharges and abates pollutant sources causing or contributing to watershed water quality problems, and 2) promotes improvements that mimic natural watershed processes.

Recommendation: Modify as suggested."

Staff Response to Comment City of Salinas Supplemental – 37

Watershed processes are defined in the Order in Attachment B. An effective watershed-based urban runoff management program attempts to protect, maintain, and/or restore watershed processes affected by stormwater, actions to manage stormwater, and/or land uses that alter stormwater runoff patterns. Natural watershed processes are those that would occur in the absence of human disturbance. Because an undisturbed condition is generally unattainable in the built urban environment, the objective of watershed-based urban runoff management is to 'mimic' the natural processes, rather than replicate them. This is accomplished by first identifying the processes that would be expected to occur in undisturbed landscapes, then by managing for those processes through various management actions (e.g., runoff retention and infiltration, flow duration control, biological treatment). Central Coast Water Board staff finds minimal semantic difference between the Order language, "management…actively mimics," and the comment's suggested language, "management…promotes improvements that mimic…"

Supplemental - 38

"Page 11, Finding 62. Retrofits of existing development. While retrofits would be beneficial, they are very costly and generally not feasible without grants.

Recommendation: This finding and other retrofit-related permit provisions should explicitly acknowledge the need for supplemental external funding."

Staff Response to Comment City of Salinas Supplemental – 38

See Staff Response to City of Salinas Supplemental – 93.

Supplemental - 39

"Page 11, Finding 63. Community-Based Social Marketing (CBSM) education techniques. While possibly beneficial, these approaches are labor-intensive and costly, especially the pilot projects and other related CBSM requirements. Does the Board have examples of where MS4s have successfully implemented these programs?

Recommendation: Unless these approaches can be accomplished within the current budget and have been demonstrated as being more cost-effective than current approaches, they should not be mandated by the permit. Delete."

Attachment 2.d: City of Salinas Supplemental Comments Received on Draft Order No. R3-2012-0005 and Staff Response

Staff Response to Comment City of Salinas Supplemental – 39

The City has not been able to demonstrate that their existing public education program is effective. The Order requires the City to measurably increase the knowledge and measurably change the behavior of target audiences. This approach is consistent with the CASQA Effectiveness Assessment Guidance (developed for municipalities in California). The CASQA Effectiveness Assessment Guidance provides for four levels of effectiveness. The lowest level is Level 1 – Documenting Activities (e.g., number of impressions, number of brochures distributed), followed by Level 2 – Raising Awareness (e.g., percent of general public who know the difference between sewer and storm drain), Level 3 – Changing Behavior (e.g., percent of general public who have modified their daily activities to protect water quality and the percent of businesses in compliance and implementing and maintaining BMPs), and Level 4 – Reducing Loads from Sources. The City has been implementing their current public education program for several years and they haven't been able to demonstrate their program is being effective beyond Level 1 – Documenting Activities.[1]

The Order requires the City to implement pilot projects so that the City can be cost effective in their approach. This way, the City can determine what works at a small scale before making the investment in a larger project.

For comment suggesting the requirements should only exist if they can be accomplished within the current budget, see Fact Sheet VI discussion on MEP. The idea of only implementing actions that cost the same as current actions goes against the MEP concept. The municipality cannot chose the least expensive approach if that approach does not meet the MEP standard. The comment also suggests the program needs to be as cost effective as the City's current actions. The City's current actions have not demonstrated to be effective. Its not appropriate to compare the costs of an effective program with the City's current program.

The City of San Diego has implemented successful community based social marketing pilot projects at the La Jolla Shores Business District and at Dog Beach in Ocean Beach.

[1]CASQA. *California Stormwater Quality Association Municipal Stormwater Program Effectiveness Assessment Guidance*, May 2007.

Supplemental - 40

"Page 13, Finding 70. Program effectiveness assessment (1). Finding 70 states:

> 'The Permittee needs more guidance on how to demonstrate protection of water quality, identify program modifications, and assess of the results of program modifications through program effectiveness assessment.'

This is awkwardly stated and also unsupported. It is very difficult, if not impossible, to fully assess any stormwater program and demonstrate with any assurance that water quality is being protected to the extent possible. Salinas implements the standard BMPs that have become generally accepted as providing MEP pollutant control. In all MS4s, however, runoff exceeds standards at the point of discharge and no MS4 that we are aware of has been able to demonstrate that water quality is fully protected (except perhaps in rare cases, such as the full diversion of runoff away from waterways).

Recommendation: Consider revising and provide supporting information regarding how additional demonstrations and assessment would actually benefit water quality. Extensive

record-keeping does not necessarily correlate with improvements in the receiving water and this proposed permit includes a very burdensome set of reporting requirements."

Staff Response to Comment City of Salinas Supplemental – 40
CASQA has developed a system for assessing municipal stormwater program effectiveness at multiple levels, including Level 1 – Documenting Activities, Level 2 – Raising Awareness, Level 3 – Changing Behavior, Level 4 – Reducing Loads from Sources, Level 5 – Improving Runoff Quality, and Level 6 – Protecting Water Quality. To date, the City has used primarily Level 1 assessments. Such assessments indicate implementation of BMPs, but do not indicate whether implementation has made a tangible difference in water quality. The City has also argued that Level 6 assessments are infeasible without a comprehensive monitoring program that identifies the contribution of each source (i.e., City, agriculture, other municipalities) to receiving water quality issues. The Monitoring, Effectiveness Assessment, and Program Improvement requirements included in the Order are designed to provide the City with tools to conduct effectiveness assessments related to Levels 2, 3, 4, and 5. These assessments will provide tangible information about the results of the City's stormwater management activities that do not depend on demonstrating receiving water quality improvements (Level 6). In addition, by focusing on long-term trends, the receiving water monitoring requirements contained in the Order will provide information that can be used to conduct Level 6 assessments over time.

Central Coast Water Board staff agrees that record-keeping does not correlate with improvements in receiving water quality. However, some record-keeping is necessary when conducting effectiveness assessment and demonstrating tangible results. The record-keeping requirements contained in the Order were selected on the basis of Central Coast Water Board staff's analysis of the information the City needs to record, track, and report in order to effectively conduct effectiveness assessments corresponding to all six CASQA Levels. The Order contains flexibility language allowing the City to propose other approaches that can achieve the same objective.

Supplemental - 41
"Page 12 &13, Findings 70 & 71. Program effectiveness assessment (2). Finding 70 states:

> 'The program effectiveness assessment requirements contained in the Order are designed to help the Permittee demonstrate the effectiveness of its program at protecting water quality and beneficial uses.'

Finding 71 states:

> 'Program effectiveness assessment requirements contained in this Order (including General and Focused BMP Assessment, Pollutant Load and Water Quality Stressor Quantification, Action Levels, Stormwater Discharge Quality Monitoring, and Receiving Water Monitoring)…. They are also designed to provide information that can be used to substitute prescriptive requirements for SWMP activities with more flexible performance-based requirements in future permit terms.'

The assessment requirements could potentially be useful in a much larger program but present a significant administrative and financial burden for a small community and a relatively small stormwater system. Ideally, the State Water Boards would assess specific BMPs in special studies at several MS4s to determine their cost-effectiveness and then make this information available for all. Making each MS4 implement these measures is impractical and not cost-effective.

Recommendation: Reduce these requirements to a level appropriate for a relatively small MS4 program and within the financial capabilities of this community. Additionally, the lack of assessment is not an adequate justification for a heavily prescriptive permit."

Staff Response to Comment City of Salinas Supplemental – 41
See Staff Response to Comment City of Salinas Supplemental – 40. Federal regulations require the City to demonstrate the effectiveness of its program at reducing pollutants in its stormwater discharges to the MEP and protecting water quality. The Monitoring, Effectiveness Assessment, and Program Improvement requirements included in the Order are designed to provide the City with tools to conduct effectiveness assessments capable of such demonstration. Central Coast Water Board staff limited the requirements to assessments capable of yielding the most useful information, and considered the resource cost to the City of conducting the assessments. Finally, the Order contains flexibility language allowing the City to propose other approaches that can achieve the same objective.

Supplemental - 42
"Page 13, Finding 75. Action levels. Although these are called action levels, they appear connected to mandatory corrective measures and thus are effectively effluent limits. Requirements on page 106 require action at not only the sites showing exceedances but also other urban catchments where the pollutant sources are likely to be present:

> '(4) Identify and implement additional BMPs, as necessary, in all applicable urban catchment(s) where the sources are likely to be present, that reduce the discharge of pollutant(s) from priority pollutant sources to the MEP.'

A true action level would trigger an investigation but corrective measures may not always be appropriate.

Recommendation: This finding, as well as the Action Level provisions in the permit (P.3) should use action levels as the basis for a more in-depth investigation of possible problems, not the basis for mandated implementation of additional controls regardless of need."

Staff Response to Comment City of Salinas Supplemental – 42
See discussion in Fact Sheet P.7 for an explanation of action levels and the distinction between action levels and effluent limits. Whereas exceedance of an effluent limit would require the City to take necessary actions to reduce pollutant discharges to achieve the effluent limit, exceedance of an Action Level in the Order requires the City to take necessary actions to reduce pollutant discharges to the MEP. This is consistent with federal municipal stormwater regulations which require owners of MS4s to reduce pollutant discharges to the MEP. The Action Levels in the Order function to notify the City when its stormwater actions may need improvement in order to achieve the MEP standard. The Action Levels in the Order are set at levels that can reasonably be assumed to indicate "bad actor" urban catchments, an approach which is consistent with guidance developed for the State Board (see footnote 16 in Fact Sheet P). As a result, exceedance of an Action Limit in the Order is likely indication that program improvements are needed to achieve the MEP standard. Central Coast Water Board staff agrees that corrective measures may not always be appropriate. Therefore the Order requires the City to identify potential pollutant sources and evaluate the effectiveness of BMPs at reducing pollutant discharges to the MEP. The Order requires the City to make program improvements, not regardless of need, but when this evaluation indicates that existing BMPs are not reducing pollutant discharges to the MEP.

Attachment 2.d: City of Salinas Supplemental Comments Received on Draft Order No. R3-2012-0005 and Staff Response

Central Coast Water Board staff has modified the Action Level for fecal coliform in the Order. The original Action Level was derived from the wasteload allocation for municipal stormwater discharges identified in the lower Salinas River Fecal Coliform TMDL. The modified fecal coliform Action Level is based on the 90th percentile of data contained in the National Stormwater Quality Database, to be consistent with other Action Levels.

Supplemental - 43

"Page 13, Finding 76. Legal authority. This finding states:

> 'Therefore, the Permittee, to the fullest extent of its jurisdiction, must designate, require, and enforce BMPs to control discharges of pollutants into its MS4, and ~~to~~ establish, maintain, and enforce adequate legal authority to effectively control pollutant discharges into its MS4.' *[strikeout added]*

The MS4 includes the Reclamation Ditch and other urban waterways. How is Salinas (or any MS4 for that matter) going to enforce BMPs on discharges into these waterways from agricultural sources? It would seem that MS4s cannot enforce (prevent or otherwise control) discharges into waterways that are also MS4s when these discharges occur outside of their jurisdiction. Enforcement with the City is also problematic.

Recommendation: Revise this statement and also provision S. Legal Authority (page 124) and other related references to legal authority to address the limitations on enforcing BMPs on agricultural and other discharges."

Staff Response to Comment City of Salinas Supplemental – 43

Central Coast Water Board staff has revised the Order to remove language identifying the Reclamation Ditch as part of the City's MS4 (see Staff Response to Comment City of Salinas Supplemental – 21).

See Staff Response to Comment City of Salinas Supplemental – 21 for discussion of urban creeks within the Permit coverage area being part of the City's MS4. For discharges to MS4s that are also receiving waters, the City is responsible for discharges from lands within the Permit coverage area, with the exception of discharges from agricultural lands that are not comprised solely of return flows and/or stormwater. Finding 31 has been modified to clarify the City is not responsible for discharges of return flows and stormwater from agricultural lands that enter its MS4.

Supplemental - 44

"Pages 13 & 14, Finding 77. Watershed Characterization. This finding identifies the need for additional watershed characterization. While such characterization would be useful, realistically, the extensive characterization specified in the permit cannot be funded.

Recommendation: Delete."

Staff Response to Comment City of Salinas Supplemental – 44

Central Coast Water Board staff has identified the minimum information requirements for the City to build a foundation for watershed-based stormwater management. The requirements rely to the extent possible on available information resources, minimizing the need for the City to engage in costly data acquisition and analysis. The requirements build on the City's existing information to extent possible, including existing urban watershed delineations, existing storm drain system maps, existing meteorological data, and existing information on riparian vegetation

and habitat. In the few cases where the Order requires new information to be acquired (e.g., impervious cover, stream condition assessment), Central Coast Water Board staff have identified efficient methods for doing so.

Supplemental - 45

"Page 15, Discharge Prohibition A.1. Pollution, contamination, or nuisance. This provision states:

'1) Discharges into and from the MS4 in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance (as defined in section 13050 of the California Water Code in Waters of the State of California or Waters of the U.S. are prohibited.'

The Water Code states (~~here~~http://law.onecle.com/california/water/13050.html):

'k) Contamination" means an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. "Contamination" includes any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.

l) (1) Pollution" means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:
(A) The waters for beneficial uses.
(B) Facilities which serve these beneficial uses.
(2) "Pollution" may include "contamination."

m) Nuisance" means anything which meets all of the following requirements:
(1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
(2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
(3) Occurs during, or as a result of, the treatment or disposal of wastes.'

Although this standard permit provision is not often invoked, it could be argued that the widespread water quality problems in the Reclamation Ditch and other area waterways meet one or more of these definitions. As a consequence, Salinas could be placed in a position of immediate non-compliance with the permit. Additionally, Salinas would have not any feasible method of coming into compliance within a reasonable period.

Recommendation: This provision should be modified to require reasonable further progress in addressing identified conditions of pollution, contamination, or nuisance."

Staff Response to Comment City of Salinas Supplemental – 45

The Reclamation Ditch is not part of the City's MS4 and therefore this provision does not apply to discharges from the Reclamation Ditch. The provision does apply to discharges to the Reclamation Ditch from the City's MS4.

The City is only responsible for discharges to and from their MS4. This provision does not apply to upstream discharges. See Staff Response to Comment City of Salinas Supplemental – 21 and Staff Response to Comment City of Salinas – Finding 31. Also see the footnote added by Central Coast Water Board staff to Provision A.

Attachment 2.d: City of Salinas Supplemental Comments Received on Draft Order No. R3-2012-0005 and Staff Response

This provision is contained in the City's existing Order No. R3-2004-0135, is a standard provision in MS4 permits, and is consistent with the Central Coast Basin Plan. The City being in violation of this provision under its existing Order or the new Order does not justify removing the provision. In cases where the City is in violation of this provision, the City is required to come into compliance. See Staff Response to Comment City of Salinas Supplemental – 71.

Supplemental - 46

"Page 15, Discharge Prohibition A.2. Reference to Prohibitions in other Water Plans. This provision states:

'2) Discharges of waste that are prohibited by the Statewide Water Quality Control Plans or the Water Quality Control Plan, Central Coast Region (Basin Plan) are prohibited.'

It is necessary to carefully review these other prohibitions that are included by reference in the proposed permit. Chapter 5, Section IV, of the Central Coast Basin Plan (~~here~~http://www.swrcb.ca.gov/rwqcb3/publications_forms/publications/basin_plan/chapter_5/chapter5.shtml#_Toc4928765) includes an extensive list of prohibitions. Many of these prohibitions are problematic for the discharge of urban runoff:

- ***Hazard to aquatic life*** *(IV.A)* **–** 'Waste discharges shall not contain materials in concentrations which are hazardous to human, plant, animal, or aquatic life.' *Does a discharge exceeding objectives for bacteria or chemical constituents constitute a hazard under this provision?*
- ***Temperature*** *(IV.A)* – 'Discharge of elevated temperature wastes into COLD intrastate waters is prohibited where it may cause the natural temperature of the receiving water to exceed limits specified in Chapter Three, Water Quality Objectives.' *Chapter 3 specifies:* 'At no time or place shall the temperature be increased by more than 5^{o}F above natural receiving water temperature.' *Does this apply when the receiving water is also an MS4? Does this apply to the Reclamation Ditch? Urban runoff in the summer is often much warmer that receiving waters. Due to flow regulation, flows in the Salinas River are not typically natural and the City's contribution is not significant at high flows. Does the Board have any data available indicating whether compliance is or is not an issue?*
- ***Toxics violating objectives*** *(IV.A.1)* **-** *Requirement to not discharge toxic pollutants that violate the toxicity objectives. The pyrethroids common in urban and agricultural runoff typically exhibit very high toxicity to test organisms. Do such discharges violate this prohibition? The related prohibition for violating 'Objectives for All Inland Surface Waters, Enclosed Bays, and Estuaries' is also of concern.*
- ***Proposition 65 (using lead as an example)*** *(IV.A.1)* – 'Discharge of toxic or hazardous material that violates: … or 2) Proposition 65 limitations for municipal/domestic water supply waters is prohibited.' *These requirements appear normally to pertain to businesses; however, the Basin Plan and this permit may extend their applicability to an MS4 (clarification needed from the Board). In 1987, the State officially listed lead as a chemical known to cause reproductive toxicity. Does this mean that no lead can be discharged in any amount? The Proposition 65 Safe Harbor Level (~~here~~http://oehha.ca.gov/prop65/pdf/Sept2011Status.pdf) for lead is 15 ug/day (oral) for carcinogens and 0.5 ug/day (oral) for reproductive toxicity. Lead is typically present in highway runoff in the range of 1 to 2,600 ug/L with a median value of 12.7 ug/L.*[12] *Urban runoff concentrations are likely similar. How does the Board evaluate the concentrations per liter in the runoff data in relation to the consumption per day safe harbor values? What*

[12] *Discharge Characterization Study Report*, Table 3-2 page 27, posted ~~here~~http://www.dot.ca.gov/hq/env/stormwater/pdf/CTSW-RT-03-065.pdf.

concentration of lead in the discharge would cause a violation of the Proposition 65 requirements? How does the Board make this compliance assessment?

- ***Toxic substances*** *(IV.B)* – 'Wastes discharged to surface waters shall be essentially free of toxic substances, grease, oil, and phenolic compounds.' *Does 'essentially free' mean non-detectable? Does the Board use some other threshold? Obviously, MS4 discharges of urban runoff are not 'essentially free' of toxic substances, grease, and oil. While efforts can be and are being made to reduce the concentrations of these substances, Salinas, or any other MS4, may not be able to provide for immediate or even future compliance with this prohibition.*
- ***Inland impoundments*** *(IV.B)* – 'Waste discharges to the following inland waters are prohibited: 1. All surface freshwater impoundments and their immediate tributaries…' *As stated in Finding 26, MS4 runoff contains waste. Would this prohibition include Carr Lake and its tributaries? If so, compliance is not possible with major re-engineering of the whole stormwater system.*
- ***Ocean Plan applicability*** *– Statewide plans are also referenced in this permit prohibition. The permit indicates that the Reclamation Ditch is an MS4. Who has responsibility for the discharge from this MS4 where it enters a non-MS4 water of the US? Where is this discharge location where these waterways cease to be an MS4 and becomes just a receiving water? If this point is the Ocean, then the Ocean Plan prohibitions must also be considered.*
- ***Other*** *– The examples above are not inclusive: other prohibitions in the Basin Plan and other statewide plans may also have to be considered.*

Recommendation: Delete this prohibition unless it is possible to demonstrate that the MS4 discharges will not unavoidably violate these referenced prohibitions. Applying Basin Plan and other water quality standards to MS4 permits is discretionary with the states and should only occur when it is appropriate and supports efforts to improve water quality. The blanket imposition of requirements that cannot be complied with does not help water quality."

Staff Response to Comment City of Salinas Supplemental – 46
The prohibitions contained in the Central Coast Basin Plan apply throughout the Central Coast Region (including Salinas) regardless of whether or not the Order specifically states they apply. If the City has comments on the language in the Basin Plan, they should provide them to the Central Coast Water Board during the tri-annual reviews of the Basin Plan.

Supplemental - 47
"Page 15, Discharge Prohibition A.3. Violation of Water Quality Standards. This Prohibition states:

'Discharges from MS4s that cause or contribute to the violation of water quality standards are prohibited.'

This prohibition is absolute—no reference is made as part of this prohibition to an iterative process or other method for bringing discharges into compliance. Thus any and all exceedances of water quality standards appear to be permit violations subject to enforcement and penalties.

Permit provision C. Receiving Water Limitations, subpart 3 specifies the standard iterative approach of reporting exceedances and improving BMPs. In the past, the wording in provision C.3 was considered by many MS4s (and possibly the Regional Boards) to present a shield against enforcement: if the MS4 was implementing the iterative process when exceedances

were detected then it remained in compliance with the permit. However, as discussed earlier, the recent 9th Circuit Court of Appeals decision in NRDC vs. Los Angeles County Flood Control District, July 13, 2011, and the preceding trial court opinion emphasized that an iterative process such as the one established in Limitation C.3 simply specify the means of coming into compliance and do not undo the clearly stated requirement that discharges not cause or contribute to an exceedance of standards.[13]

The Los Angeles Regional Board's amicus brief also emphasizes that the prohibition stands alone and the iterative process is not a shield:[14]

> 'Nothing in the language of the [Los Angeles County] Permit supports the argument that by simply trying to meet water quality standards, or by waiting for an enforcement action, a permittee is shielded from its permit violations.'

Also:

> 'Nothing within the Permit allows compliance with one part to render the other meaningless or unenforceable. Similarly, nothing in Part 2.3's iterative process makes Parts 2.1 and 2.2 otherwise unenforceable.'

The Salinas system is similar to the LA County system in that the receiving water is also an MS4. In the LA County case, samples from the mass monitoring stations in the Los Angeles River were indicative of water quality in both the MS4 and the receiving water. For Salinas, samples from Reclamation Ditch (and possibly the other waterways) will potentially similarly represent both the MS4 and the receiving water. Extensive data indicates that these Salinas-area waterways exceed standards. In Finding 24, the permit notes that the Reclamation Ditch is listed as impaired for about 14 parameters. The other area waterways are also listed for multiple pollutants or parameters.

Thus this prohibition, and possibly several other prohibitions, appear to place Salinas in a position of non-compliance with no clear pathway for coming into compliance because of the infeasibility of controlling and reducing all the problem pollutants so that exceedances do not occur.

These exceedances resulting from urban runoff are not unique. Exceedances of standards by urban runoff have been well documented since USEPA completed research studies in the early 1980s as part of the Nationwide Urban Runoff Program (~~NURP~~http://www.epa.gov/npdes/pubs/sw_nurp_vol_1_finalreport.pdf).

This prohibition also raises several other critical issues:

- *At what point are the receiving waters no longer MS4s? The Reclamation Ditch discharges to the Tembladero Slough. Tembladero Slough along with the Salinas River, which also receives Salinas's runoff, discharges to the Old Salinas River (under low flow conditions). The Old Salinas River is an estuary that may discharge directly to the Pacific Ocean or possibly enters other sloughs which are part of an estuary system. This is a very complex system and assessing compliance in such a system is equally complex and will require clarification from the Water Board.*

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[13] The revised opinion by the U.S. 9th Circuit Court of Appeals regarding the LA County stormwater permit is posted ~~here~~http://www.ca9.uscourts.gov/datastore/opinions/2011/07/13/10-56017.pdf.

[14] The LA Water Board's amicus brief is apparently not posted but should be available from the LA Board. Natural Resources Defense Council, Inc., Plaintiffs and Appellants, v. County of Los Angeles, et al., Defendants and Appellees. Case 10-56017

- *How is cause or contribute defined. For example, is a discharge containing concentrations above standards end-of-pipe (i.e., pre-discharge) contributing to an exceedance when the receiving water is listed as impaired (303(d) list) for the same substance?*
- *Where is the point of compliance? Would compliance with standards for a stormwater discharge be evaluated in the receiving water immediately adjacent to the discharge or possibly downstream? In other words, would a designated mixing zone be available for the discharge?*
- *Which agencies are responsible for which waterways? Is Salinas responsible only for discharges into the Reclamation Ditch which is operated by a different agency?*

The prohibition establishes a very difficult requirement but then does not provide any details on how compliance will be determined.

Recommendation: This prohibition should be deleted or transformed into a permit requirement to make reasonable further progress in improving water quality. See the General Comment that addresses compliance and presents an alternative approach. As noted previously, applying water quality standards in MS4 permits is discretionary with the states and the Water Boards have considerable discretion on how to address these standards."

Staff Response to Comment City of Salinas Supplemental – 47
Regarding the issue of compliance with receiving water limitations, see Staff Responses to Comments City of Salinas Supplemental – 3, 15, 19, and 20.

As discussed in Staff Response to Comment City of Salinas – Finding 31, Central Coast Water Board staff does not intend for the City to be responsible for discharges into receiving waters upstream of its jurisdiction. Sections A, B, and C have been modified for further clarification.

A receiving water that is also part of the City's MS4 ceases being part of the City's MS4 when it leaves the City's jurisdiction.

Due to the wide range of discharge and receiving water conditions, determination whether a discharge is causing or contributing to a violation of a receiving water quality standard will be determined on a case by case basis. The example provided in the City's comment, where both a discharge and the receiving water exceed water quality objectives, could indicate the discharge is causing or contributing to a violation of receiving water quality standards, depending on sampling locations and timing. Central Coast Water Board staff plans to use the monitoring stations identified in the Order to assess compliance.

Supplemental - 48
"Page 15, Discharge Prohibition A.5. Non-stormwater discharges. This Prohibition states:

'The following categories of non-stormwater discharges are not prohibited provided any pollutant discharges are identified and appropriate control measures to minimize the impacts of such discharges are implemented:
a) Diverted stream flows;
b) Rising ground waters;
…[etc.]'

These presumably are the exempt (from prohibition) discharges referenced in Finding 17. This prohibition raises several issues:

- ***Scope*** *- Although the intent is to focus on elevated or toxic levels of pollutants, the term pollutant is very broadly defined and includes essentially any constituent present due to human activity. (See comment on Finding 17). Consequently, this prohibition appears to mandate that Salinas sample and characterize all constituents (i.e., pollutants) in the non-stormwater discharged to the MS4. For example, flows from riparian habitats will contain low levels of bacteria, nutrients, and other constituents, other than pure water, however, in most cases it would not be a worthwhile expenditure of program funds to characterize these constituents (pollutants).*

  Other examples include rising groundwaters and groundwater infiltration which are ubiquitous in stormwater collection systems. Individually, these sources are difficult to find and monitor. They are even more difficult to exclude from the system. Treatment after they are in the system means retrofitting structural treatment facilities which is usually very costly. This permit prohibition creates what is virtually an impossible task regarding identification of flows with pollutants. It is also impossible for Salinas to implement or require the implementation of "appropriate control measures" in all cases. Salinas can focus its non-stormwater program toward finding and mitigating the major problems—as it is currently doing—however, it cannot complete the very broad-based requirements in this prohibition.
- ***Other discharges not on the list*** *– The non-stormwater discharges on the list are exempt from the general prohibition on the discharge of non-stormwater to the MS4. Other—non-listed—discharges must be effectively prohibited (see Finding 17). However, many of these non-listed (i.e., non-exempt) discharges into the MS4 occur as discussed elsewhere in the permit. For example, Provision F.1) b) [permit pages 36 & 37], describes* 'Agricultural and livestock operations within the Permit coverage area that discharge into the Permittee's MS4,' 'Golf courses, parks, and other recreational areas/facilities; and (5) Nurseries and greenhouses.'

  By not including these on the list, the permit prohibits them. By addressing them elsewhere in the permit, the Board is acknowledging that, in reality, they cannot be effectively prohibited. The worst non-stormwater discharges can be addressed by the stormwater program in an incremental manner, but all these non-exempt discharges cannot be removed from the system.

Recommendation: This problem is difficult to address, however, the current prohibition places Salinas in non-compliance and is unacceptable. Prohibition A.7 provides a procedure for addressing these discharges; however A.7 likely does not remove the independent enforceability of Prohibition A.5 (based on NRDC vs. County of LA).

For some problem discharges, the Water Board may be able to issue NPDES permits and regulate these sources directly. The list could also be expanded so that the non-listed sources are not prohibited. The prohibition needs to be modified to require the stormwater program to develop a prioritized approach for correcting the most significant problems. This prohibition is somewhat duplicative of A.7 and could be deleted with the prioritized approach being added to A.7."

Staff Response to Comment City of Salinas Supplemental – 48

The discharge prohibitions contained in Provision A.5 is already contained in the City's existing Order No. R3-2004-0135 and is a standard provision in MS4 permits. This provision, to date, has not been interpreted to mandate that a must permittee sample and characterize all constituents in the non-stormwater discharged to the MS4 as the comment suggests. Central

Coast Water Board staff has added "significant" in front of "pollutants" to the language of the Order to provide clarity.

The comment states it would be impossible for the City to implement "appropriate control measures in all cases". The language of the Provision states "…appropriate control measures to minimize the impacts of such discharges are implemented…" The provision doesn't say that the City must implement control measures for every non-stormwater discharge identified in Provision A.5. If the non-stormwater is not causing an impact to water quality or Beneficial Uses, then there aren't "appropriate control measures" that need to be implemented. Central Coast Water Board staff have modified the language of the Order to provide clarity.

Irrigation water has been added to the non-stormwater discharges in Provision A.5.

Non-stormwater discharges that are not listed in Provision A.5 are prohibited by the Order.

Central Coast Water Board staff has not deleted Provision A.5 as suggested by the comment. Provision A.7 is not duplicative of A.5. Provision A.7 provides additional detail on City's required actions if a discharge in A.5 is identified as a potential significant source of pollutants.

Supplemental - 49

"Pages 15 &16, Discharge Prohibition A.7. Non-stormwater discharges corrective measures. This Finding states:

'When a non-stormwater discharge category listed above is identified by the Permittee or the Central Coast Water Board Executive Officer as a potential significant source of pollutants to Waters of the U.S. or physically interconnected MS4, or poses a threat to beneficial uses, the Permittee shall either:

a) Prohibit, via ordinance or other method, the discharge category from entering the Permittee's MS4; or
b) Not prohibit the discharge category and implement, or require the responsible parties to implement, BMPs that will reduce pollutants to the MEP; and
c) Submit the each item listed below to the Central Coast Water Board within 90-days upon identification of such discharge category.
    i) The non-stormwater discharge category listed above that the Permittee elects not to prohibit.
    ii) The BMPs for each discharge category listed above that the Permittee will implement, or require the responsible parties to implement, to prevent or reduce pollutants to the MEP. The Central Coast Water Board Executive officer may require changes to the proposed BMPs.'

This finding has the benefit of providing a mode of action for problem non-stormwater sources that are on the list and also focuses on significant sources of pollutants. The following should be addressed however:

- *In some cases, in category b), a discharge category may not have any reasonably cost-effective BMPs. For example, if groundwater infiltration carries significant sources of pollutants, then the only BMPs may be to retrofit a lining in the storm drain or to implement a groundwater remediation program. Both options are costly and would likely require external funding, or at least an extended implementation period.*
- *The second and more important problem is that this prohibition does not address the many non-listed discharges such as those mentioned in other parts of the permit (greenhouse, agriculture, industrial, etc.) as discussed in the previous comment.*

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Recommendation: The list should be expanded to include a catch-all category that includes all the other non-stormwater discharges into the system in addition to a requirement for a prioritized approach for addressing these other discharges."

Staff Response to Comment City of Salinas Supplemental – 49
Central Coast Water Board staff have added irrigation water to Provision A.5. Industrial non-stormwater flows are prohibited by the Order.

The comment suggests that a discharge category may not have any cost-effective BMPs. The City has the choice to how to comply with Provision A.7. The City can prohibit the discharge or not prohibit the discharge and implement BMPs. The Order specifies that the City only has to reduce pollutants to the MEP.

Supplemental - 50
"Page 16, Discharge Prohibition A.8. Incidental Runoff. This Prohibition states:

'Discharges of Incidental Runoff shall be controlled. The Permittee shall require parties responsible for Incidental Runoff to implement each requirement listed below to control the Incidental Runoff.

a) Detect leaks…[etc.]'

This permit provision is confusing in that it appears to address the non-listed discharges that are prohibited by A.5 and A.7. It may be a good objective, however, it is apparently in conflict with these other prohibitions that allow only stormwater and the limited list of exempted discharges shown in A.5 and enforcement is not practical as written. It is not practicable for the City to patrol for broken sprinkler heads, nor monitor the volume discharged from broken sprinkler heads that happen to be observed. It may be reasonable to require new development to install moisture sensing irrigation controllers, and to try to educate people to turn off their sprinklers when it is raining. A.8.e is an unachievable absolute requirement.

Recommendation: This provision should be revised to indicate what actually needs to be accomplished to be in compliance. For example, the permit could state that the City needs to develop and implement a plan reduce discharges of incidental runoff. Alternatively, the permit could include practicable prescriptive measures such as education materials about landscape irrigation and requiring City staff to inform owners of observed leaks. This provision should be relocated to Section H because it should not be considered a discharge prohibition."

Staff Response to Comment City of Salinas Supplemental – 50
Central Coast Water Board staff have deleted "or application" from the incidental runoff definition in Attachment B of the Order to provide clarity. Central Coast Water Board staff have modified the language in Provision A.8 to provide the City more flexibility in how it reduces incidental runoff.

Supplemental - 51
"Page 16, Discharge Prohibition A.9. Additional prohibition for non-storm water runoff. This Prohibition states:

'Non-storm water discharge runoff that is not Incidental Runoff is prohibited, unless otherwise specified in Section A.5. Incidental Runoff may be regulated by waste discharge requirements or, where necessary, waste discharge requirements that serve as a NPDES permit.'

This prohibition is really part of A.5) [exempt or non-prohibited discharges] and has the same problems. In addition, it modifies A.8) [incidental runoff] by apparently requiring this incidental runoff to have WDRs or NPDES permits (it is unclear what 'may be regulated' means in this context).

Recommendation: Delete."

Staff Response to Comment City of Salinas Supplemental – 51
Central Coast Water Board staff deleted Provision A.9 because it is redundant with Provision A.5.

Supplemental - 52
"Page 16, Effluent Limitations B.2. Hazardous substances. This limitation states:

'Stormwater discharges regulated by this Order shall not contain a hazardous substance in amounts equal to or in excess of a reportable quantity listed in 40 CFR Part 117 or 40 CFR Part 302.'

Recommendation: Please clarify the time interval involved: per day, per storm?"

Staff Response to Comment City of Salinas Supplemental – 52
40 CFR Part 117.21 and 40 CFR Part 302.6 specify that the reportable quantity listed are for any 24-hour period.

Supplemental - 53
"Page 16, Receiving Water Limitations C.1. Additional prohibition for exceeding water quality standards. This limitation states:

'Discharges from the MS4 that cause or contribute to the violation of water quality standards contained in a Statewide Water Quality Control Plan, the California Toxics Rule, or the Basin Plan are prohibited.'

This limitation is actually a prohibition and very similar to Discharge Prohibition A.3: 'Discharges from MS4s that cause or contribute to the violation of water quality standards.' *It is not clear why this prohibition needs to be repeated here. The comments and recommendation for A.3 apply equally to C.*

Recommendation: Delete."

Staff Response to Comment City of Salinas Supplemental – 53
Central Coast Water Board staff notes the comment that the City finds Provisions A.3 and C.1 to be redundant. Central Coast Water Board staff has not deleted Provision C.1 to contain all of the receiving water limitations language in one section.

See Staff Response to Comment City of Salinas Supplemental – 47 for comments on Provision A.3.

Supplemental - 54
"Page 16, Receiving Water Limitations C.2. Additional prohibition related to pollution, contamination, or nuisance. This limitation states:

'Discharges from the MS4 shall not cause or contribute to a condition of pollution, contamination, or nuisance in receiving waters.'

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This limitation is very similar to Discharge Prohibition A.1 and the comments and recommendation for A.1 apply here.

Recommendation: Delete."

Staff Response to Comment City of Salinas Supplemental – 54
Central Coast Water Board staff notes the comment that the City finds Provisions A.1 and C.2 to be redundant. Central Coast Water Board staff has not deleted Provision C.2 to contain all of the receiving water limitations language in one section.

See Staff Response to Comment City of Salinas Supplemental – 45 for comments on Provision A.1.

Supplemental - 55
"Pages 16 &17, Receiving Water Limitations C.3. Stormwater Management Program and the Iterative Approach. This limitation states:

> 'The Permittee shall comply with all of the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations through timely implementation of control measures/BMPs and other actions to reduce pollutants in the discharges in accordance with the requirements of this Order, including any modifications. The Permittee's Stormwater Management Program shall be designed to achieve compliance with all Discharge Prohibitions, Effluent Limitations and Receiving Water Limitations. If violation(s) of water quality standards persist notwithstanding implementation of the requirements of this Order, the Permittee shall assure compliance with all of the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations by implementing each of the items listed below.' *[emphasis added]*

This limitation incorporates the 'iterative approach' for addressing receiving water limitations that has been standard in MS4 permits for the last decade (see Finding 11). However, in view of the 9th Circuit Court of Appeals opinion regarding the LA County stormwater permit, this provision now has limited utility. MS4s and at least some Regional Boards assumed—incorrectly as it turns out—that implementing improved BMPs over time is what is required to be in compliance:

> 'The Receiving Water Limitations in this Order require compliance with water quality standards, which for stormwater discharges is to be achieved through an iterative approach requiring the implementation of improved and better-tailored Best Management Practices (BMPs) over time.' *(from Finding 11)*

This Limitation has the following problems:

- *Does not provide a pathway for compliance - Implementing better BMPs over time does not maintain an MS4 permittee in compliance contrary to the implication of Finding 11 because the prohibitions are independently enforced and require immediate compliance.*
- *Unrealistic requirement for stormwater program - It is not possible to design a stormwater management program to achieve compliance with the standards and related requirements. For example, programs do not provide for disinfection for each outfall or remove dissolved copper or comprehensively address all the refractory pollutants and parameters such as pesticides, dioxins, temperature, pH, etc.*
- *Sets up an endless cycle triggered by each sampling effort* – 'If violation(s) of water quality standards persist notwithstanding implementation of the requirements…' *Violations are ongoing and will be ongoing for years. The TMDLs assume this with their lengthy implementation periods. This permit limitation establishes a "do-loop" that never ends of*

reporting, identifying better BMPs, getting approval, and implementation that is triggered at each monitoring session. This process will be potentially triggered by every storm.

Recommendation: As noted previously, this and many of the other prohibitions, and limitations should be modified into a single permit requirement to make reasonable further progress in improving water quality. See the General Comment that addresses compliance and presents an alternative approach."

Staff Response to Comment City of Salinas Supplemental – 55

The iterative approach described in Section C.3 is not in conflict with requirements to comply with receiving water limitations or the decision of the U.S. 9th Circuit Court of Appeals' recent decision on the NRDC vs. County of Los Angeles case (see the first paragraph of Staff Response to Comment City of Salinas Supplemental – 19 and the first paragraph of Staff Response to Comment City of Salinas Supplemental – 19).

Therefore the language in Section C.3 provides a pathway for compliance. When water quality standards are not attained, the iterative process provides a framework for the City to return to compliance in collaboration with Central Coast Water Board staff. Modeling has shown that strategic implementation of BMPs can be reasonably expected to result in water quality standard compliance even in situations where municipal stormwater has been documented as causing or contributing to violations of water quality standards. In addition, Central Coast Water Board staff finds that cooperative responsive actions on the part of the City to address stormwater discharges that cause or contribute to violations of water quality standards are crucial in the assessment of enforcement options. Provided the City implements a diligent good faith effort to return to compliance, Central Coast Water Board staff does not anticipate that enforcement will be necessary. It is true, however, that the iterative approach by itself may not be adequate to achieve compliance. Less effective actions cannot be considered a shield from all enforcement in the event that water quality standards continue to be violated. If there is a lack of good faith effort on the part of the City to implement the iterative BMP process effectively, Central Coast Water Board staff maintains that the potential threat of enforcement is a necessary incentive to help ensure timely and adequate action by the City.

The City's stated that 1) it is not possible for stormwater management programs to comply with water quality standards; and 2) the iterative approach combined with receiving water limitations results in an endless cycle seem based on confusion between water quality standards and effluent limits. See the second paragraph of Staff Response to Comment City of Salinas Supplemental – 19.

Therefore, as variously stated in Staff Response to Comment City of Salinas – 3, 15, 19, 20, and 34, provisions, prohibitions, and limitations in this Order are not in conflict, and a "single requirement to make reasonable further progress" would not inconsistent with State Board WQ Order WQ 99-05 and the U.S. 9th Circuit Court of Appeals.

Supplemental - 56

"Page 17, Receiving Water Limitations C.4. BMP effectiveness. This limitation states:

'4) The Permittee shall include in each Annual Report the effectiveness of BMPs in reducing violation(s) of water quality standards. The Central Coast Water Board Executive Officer may direct implementation of additional BMPs if there are continuing or recurring violation(s) of the same receiving water limitation.'

The reporting of BMP effectiveness is achievable; however, the statement of the EO requesting additional BMPs does not make sense in a situation of inevitable continuing or recurring violations.

Recommendation: Delete the sentence addressing recurring violations."

Staff Response to Comment City of Salinas Supplemental – 56
The provision is intended to give the Executive Officer the authority to require the City to implement more effective BMPs if the City has continuing or recurring violation(s) of the same receiving water limitation. The City should be implementing effective BMPs to address the receiving water limitations, however if the City fails to correct the issue and the same violation continues or reoccurs, the Executive Officer can require the City to implement more effective BMPs.

Supplemental - 57
"Page 17, General Requirements D.1. Permit modifications. This limitation states, in part:

> 'Comply with all of the requirements of this Order, …, and any amendments or modifications to those plans, reports, and other documents as required by the Central Coast Water Board or Central Coast Water Board Executive Officer.'

This implies the Board or the E.O. can modify this permit without following the usual procedures for permit adoption or reissuance.

Recommendation: This section is generally duplicative of other permit provisions and should be deleted."

Staff Response to Comment City of Salinas Supplemental – 57
The provision does not allow the Executive Officer to modify the Order. The provision allows the Executive Officer to require amendments or modifications to plans, reports and other documents. See Staff Response to Comment City of Salinas – Provision C.3.c for a discussion on Executive Officer authority.

Supplemental - 58
"Page 17, General Requirements D.2. Permit Coverage Area and MS4 responsibilities.

Recommendation: This section or perhaps some other section should address the responsibly for the various MS4s, especially those which are also receiving waters within the City of Salinas and continue to identify compliance responsibilities in the system until the final discharge location."

Staff Response to Comment City of Salinas Supplemental – 58
Other MS4s to which the comment may be referring include those owned and operated by the Monterey County Water Resources Agency (including the Reclamation Ditch) and by municipalities upstream and downstream of the City. It is not the purpose of the Order to identify the responsibilities of these other MS4 operators, but to identify the City's responsibilities as owner and operator of its MS4.

Supplemental - 59
"Page 18, General Requirements D.3.a. Stormwater Management Plan and Information Management Systems. The specific components required for the SWMP and Information

Management Plan are excessively prescriptive and go far beyond the capabilities of a small community with constrained finances.

Recommendation: Remove the prescriptive details; leave the selection of BMPs and the management approach to the City."

Staff Response to Comment City of Salinas Supplemental – 59
For responses to the information management comments, see Staff Response to Comment City of Salinas – Provision F.11.a.ii and Staff Response to Comment City of Salinas – Provision D.3.b.

For responses to the prescriptive comments, see Staff Response to Comment City of Salinas Supplemental – 4.

For the SWMP, many of the specific components required by the Order are already required under existing Order No. R3-2004-0135 and are incorporated in the City's SWMP. The Order often provides the City with more flexibility than found in the SWMP under existing Order No. R3-2004-0135. The Order also provides the City the flexibility to make updates to the SWMP without having to obtain Central Coast Water Board Executive Officer Approval. In addition, it is worth noting that in its comments the City frequently requests specific direction on how to comply with requirements that incorporate flexibility. Detailed requirements provide the level of specificity the City often requests.

Supplemental - 60
"Page 18, General Requirements D. 3.b and 3.c. Information Management Systems. Section 3)b) states:

> 'The Permittee shall develop an information management system to track compliance with the requirements of this Order, including, but not limited to the information management system requirements specified in Sections of this Order.'

The portion of this statement, 'but not limited to the information management system requirements specified in Sections of this Order' *make this requirement too vague and should be deleted. The requirements for information management that are prescribed in the sections of the Draft Permit are already excessive. For example, pothole repairs and mowing activities need to be inventoried according to E.1.e.*

Recommendation: Delete, ', including, but not limited to the information management system requirements specified in Sections of this Order.'"

Staff Response to Comment City of Salinas Supplemental – 60
For responses to the information management comments, see Staff Response to Comment City of Salinas – Provision F.11.a.ii and Staff Response to Comment City of Salinas – Provision D.3.b.

Individual pothole repair and mowing activities are not required to be inventoried. Provision E.1.e.x has been added to clarify that only the general maintenance category must be inventoried.

Central Coast Water Board staff did not delete "but not limited to" in the Order as suggested by the comment. The City is required to document compliance with the requirements of the Order.

If information needed to document compliance with the requirements of the Order is not specified by one of the information management sections of the Order, the City is still responsible to track that information. The City must determine if any other information needs to be tracked.

Supplemental - 61

"Page 18, General Requirements D.5. Recordkeeping. This provision states:

'The Permittee must keep records to document and demonstrate compliance with each requirement of this Order (including records specified by this Order and not specified by this order)…'

These requirements are onerous and will require the redirection of limited staff and resources to recordkeeping

Recommendation: Require records for only key problem components, not every requirement."

Staff Response to Comment City of Salinas Supplemental – 61

For responses to the information management comments, see Staff Response to Comment City of Salinas – Provision F.11.a.ii and Staff Response to Comment City of Salinas – Provision D.3.b.

Supplemental - 62

"Page 18, General Requirements D.6. Immediate Implementation. This provision states:

'All plans, reports, and subsequent amendments submitted in compliance with this Order shall be implemented immediately (or as otherwise specified). All submittals by the Permittee shall be adequate to implement the requirements of this Order.'

This permit is heavily 'front-loaded' in that an excessive number of individual tasks are specified for the first year (109 individual tasks) and second year. It is simply infeasible to develop all of these individual programs and instantaneously implement them. It is not clear in the second sentence how submittals implement the requirements of the Order.

Recommendation: Delete the requirement for immediate implementation. The City should determine when it will have adequate resources to begin implementation for the new tasks incorporated in this permit. The schedule should be part of the City-development management plan, not detailed in the permit. The second sentence should be revised to appropriately address submittal requirements."

Staff Response to Comment City of Salinas Supplemental – 62

See Staff Response to Comment City of Salinas Supplemental – 6.

Central Coast Water Board staff modified General Provision D.6.

Supplemental - 63

"Pages 19 – 35, Section on Municipal Maintenance E. This section comprises 16 pages and includes the following subparts:

1) *Inventory*
2) *Municipal Facilities, Maintenance Operations, and Events Assessment*
3) *Minimum BMPs for Municipal Facilities, Maintenance Operations, and Events*
4) *High Priority Municipal Facilities, Maintenance Operations, and Events*

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5) MS4 System Operation and Maintenance
6) Street Sweeping and Cleaning
7) Maintenance of Structural BMP Verification
8) Inspections of Municipal Facilities, Maintenance Operations, and Events
9) New Flood Management Projects
10) Information Management
11) Coordination With Monterey County Water Resources Agency
12) Salinas River Outfall
13) Training
14) Staff Not Employed by the Permittee
15) Reporting

This section represents a major shift away from allowing Salinas to design and implement a program appropriate for the City to a program completely dictated and based on an ideal program that is not appropriate in many details. We question whether any community anywhere has been able to implement all these requirements.

Dictating a rigid set of requirements that are not based on real experience has a high probability of directing stormwater program efforts toward activities with limited or no benefits. To address the most significant threats to water quality, Salinas needs the flexibility to modify its program as it develops experience with the BMPs.

Several examples of inappropriate and excessively costly requirements are identified in later comments.

Recommendation: This section needs to be reduced significantly—most of these tasks are simply way beyond the financial and management capability of a small community. In addition, flexibility needs to be returned to Salinas to structure its program in a manner that addresses the major water quality problems in a cost-effective manner."

Staff Response to Comment City of Salinas Supplemental – 63
For responses to the prescriptive comment, see Staff Response to Comment City of Salinas Supplemental – 4. The municipal maintenance sections in the Order are consistent with the USEPA MS4 Permit Guidance, which contains the following sections: Municipal Facility and Control Inventory; Facility Assessment; Development of Facility-Specific Stormwater Management SOPs and Implementation of Facility Stormwater Controls; Storm Sewer System Maintenance Activities (including MS4 catch basin maintenance, Municipal activities and operations, Street Sweeping and Cleaning, and Maintenance of municipally-owned and/or maintained structural stormwater controls); Flood Management, Pesticide, Herbicide, and Fertilizer Application and Management; Training and Education; Contractor Requirements and Oversight.[1] Provisions E.11 and E.12 are components specific to Salinas.

Many of the components of the municipal maintenance section are similar to the requirements of the City's existing Order No. R3-2004-0135. The requirements are not rigid and follow the concept of inventory followed by assessment followed by implementation. This allows the City to determine where the highest priority areas are to focus their municipal maintenance activities. The Order allows the City the flexibility to continue to modify their program as they continue to gain experience with BMPs.

Central Coast Water Board staff have modified some of the language in Provision E in response to other specific comments. See Staff Response to Comment City of Salinas – Provision E.1 through Staff Response to Comment City of Salinas – Provision E.15.d.

[1] USEPA. *MS4 Permit Improvement Guide. EPA 833-R-10-001,* 14 April 2010. Web. 16 August 2011.

Supplemental - 64

"Page 19, Municipal Maintenance E.1. This section states:

'Inventory – Within 12 months of adoption of this Order, the Permittee shall develop and maintain a comprehensive municipal inventory. At a minimum, the Permittee shall update the inventory each year. The inventory shall, at a minimum, include each item listed below.

a) The MS4 system including, but not limited to, the following:

i) MS4 collection system and all conveyances; …'

Following is an exhaustive list of 26 categories ranging from 'each outfall to receiving waters' to 'Public swimming pools', to 'Outdoor festivals, parades, farmers markets, and street fairs' to 'pothole repair.' As noted in prior comments, while having some of this information could potentially be helpful, we question the cost-effectiveness of the effort and expense to collect all this information. To develop a useful inventory, it would be necessary to understand how the information will be used so that the information can be extracted in an appropriate format. How should mowing and vegetation removal and planting be inventoried? Furthermore, section Q.2.b.v requires mapping of known connections over 8 inches in diameter while E.1.a.i requires all conveyances to be inventoried regardless of size and currently available documentation. Though it may be appropriate to require BMPs to be applied to frequent municipal maintenance activities, it is not practicable to inventory all of the activities. The BMPs should be developed, staff performing the work should be trained and a reasonable number of activities should be observed to ensure that the BMPs are being employed and are effective.

Recommendation: This list should be significantly reduced to include only those items essential for the ongoing management of the program. Additionally, the deadline needs to be extended. The ultimate inventory should be a long-term goal as resources permit and its benefit can be assessed. Specifically:

- *E.1.a should be revised to state,* 'The MS4 system including known connections over 8 inches in diameter, inlets and outfalls.'
- *E.1.b should be deleted because the concept of identifying High Priority Private Development is not appropriate.*
- *E.1.d.viii should be revised to delete,* 'and similar buildings.'
- *E.1.e.i through E.1.e.vii should be deleted."*

Staff Response to Comment City of Salinas Supplemental – 64

For responses to the comments on Provision E.1.a, see Staff Response to Comment City of Salinas – Provision E.1.a.i.

The inventory will be used by the City to perform the assessment required by Provision E.2 (which will enable the City to prioritize the inventory) and to develop/update the minimum BMPs for those facilities, operations, and events. As the comment suggests, the City should keep in mind how the information will be used so that the information can be extracted in an appropriate format. The inventory should contain enough information for the City to perform the assessment and develop/update BMPs for the inventoried facilities, operations, and events.

As described in Staff Response to Comment City of Salinas – Provision E.1.e, the inventory for municipal operations will be for the general activity, not for the specific implementation of the general activity.

The Order is consistent with the comment that suggests "The BMPs should be developed, staff performing the work should be trained and a reasonable number of activities should be observed to ensure that the BMPs are being employed and are effective". The inspection requirements of Provision E.8 states "For Maintenance Operations that are occurring in multiple locations simultaneously, the weekly visual observations do not need to occur at every location but can be weekly rotating spot checks of some operations such that all crews are observed frequently".

Central Coast Water Board Staff has not deleted Provision E.1.b. See Staff Response to Comment City of Salinas – Provision G.5.a for the purpose of requirements for High Priority Private Development.

Central Coast Water Board Staff has not deleted Provision E.1.d.viii. See Staff Response to Comment City of Salinas – Provision E.1.d.viii. The inventory list is not intended to be exhaustive and if there are other similar buildings owned or operated by the City that have a similar potential threat to water quality, the City must add them to the inventory.

Central Coast Water Board Staff has not deleted Provisions E.1.e.i through E.1.e.vii. Municipal maintenance operations and events have the potential to be significant threats to water quality. Central Coast Water Board Staff has modified language in Provisions E.1, E.3, E.4, and E.8 to provide clarity to the requirements for the inventory, BMPs, and inspections of facilities, operations, and events. For an explanation of these modifications, see Staff Response to Comment City of Salinas – Provision E.1.a.i, Staff Response to Comment City of Salinas – Provision E.1.a.ii, Staff Response to Comment City of Salinas – Provision E.1.a.iii, Staff Response to Comment City of Salinas – Provision E.1.d, Staff Response to Comment City of Salinas – Provision E.1.d.viii, Staff Response to Comment City of Salinas – Provision E.1.e, Staff Response to Comment City of Salinas – Provision E.1.e.viii, Staff Response to Comment City of Salinas – Provision E.3.e, Staff Response to Comment City of Salinas – Provisions Section E.3.f, Staff Response to Comment City of Salinas – Provision E.3.i, Staff Response to Comment City of Salinas – Provision E.3.i.iii, Staff Response to Comment City of Salinas – Provision E.3.j, and Staff Response to Comment City of Salinas – Provision E.8.a.

The comment suggests the deadline be extended for the development of the municipal inventory. The City is not starting an inventory from scratch under this Order. The City has been required under existing Order No. R3-2004-0135 to have already developed a municipal inventory that contains many of the items listed in Provision E.1. During the first 12 months after Order adoption, the City will be updating its current inventory.

Supplemental - 65

"Pages 23 & 24, Municipal Maintenance E.5.a.i - vi. Catch basins. These provisions in subsection a) establish a very prescriptive procedure for managing catch basins which is not based on any evidence or reference to other sites to indicate that it is appropriate or would benefit water quality. This is an example of the type of detailed BMP imposed by this permit, but which has not been tested, and that may not make sense in Salinas. In addition, because it is part of the permit it would be very difficult to change. For example, if some catch basins (those found to be 60% full at one inspection) turn out to not require inspections twice per year,

then the permit would have to be taken back to the Board for a reissuance to change this frequency.

Some catch basins may need to be inspected more than twice per year, some less. A much better program would allow Salinas to develop it own inspection schedule, based on ongoing experience, and the specific self-cleaning catch basins in the City, and which could be modified as necessary based on program experience.

Incidentally, standard catch basins within the City do not have sumps below the outlet pipe invert. Requiring all sediment and debris to be removed would mean that the City would presumably be in violation if one grain of sand remains after cleaning. Any sediment would be within 12 inches of the outlet pipe invert. Similarly, missing a single inspection would constitute a permit violation and subject Salinas to enforcement even if the missed inspection was completely unnecessary.

The City's Clean Water Program already provides for storm drain and open channel maintenance prior to winter rains.

Recommendation: The Salinas standard is for inlets to be self cleaning. Delete this entire section and related requirements in other parts of the permit."

Staff Response to Comment City of Salinas Supplemental – 65
Central Coast Water Board staff has modified the language in Provision E.5 to reflect the City's catch basin standard that has the outlet pipe at the bottom of the catch basin. For an explanation of the changes, see Staff Response to Comment City of Salinas – Provision E.5.a through Staff Response to Comment City of Salinas – Provision E.5.b.

Supplemental - 66
"Pages 24 - 26, Municipal Maintenance E.6. Street Sweeping and Cleaning. This section introduces very detailed requirements on how Salinas should operate its street sweeping program. Does the Board have any evidence of inadequacies in the current program that justify these extensive changes? Has the Board determined the costs of the proposed changes? Will the additional costs result in cost-effective reductions in the pollutants of concern?

These changes are very prescriptive and we ask where they come from. Does the Board have evidence that other communities have used this approach and have had it result in improvements to water quality?

Some of the requirements are wholly impractical. For example, provision 6.b specifies:

> 'The Permittee shall track the number of route miles swept and the volume of solids collected, normalized for moisture content, for each sweeping event for each route.'

Normalizing for moisture content would require lab sampling for every truck every day. Multiple samples would be needed for each truck to characterize the water content because of the heterogeneous nature of the debris collected from urban streets. This is an example of the many requirements which might be useful in a theoretical program with unlimited funding or as a special study but are simply impractical for the City to implement.

Recommendation: Delete subsection 6) Street Sweeping and Cleaning unless the Board can document significant problems with the existing program and can also document that the very prescriptive changes are likely to result in water quality improvements."

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Staff Response to Comment City of Salinas Supplemental – 66
Central Coast Water Board staff has revised street sweeping requirements. See Staff Response to Comment City of Salinas – Provision E.6.b, E.6.c, E.6.c.i, E.6.d.ii, and E.6.f.

Supplemental - 67
"Page 26, Municipal Maintenance E.6.j. Tracking of Dirt and Other Debris onto Streets. This subsection states:

> '…Within 12 months of adoption of this Order, the Permittee shall develop and implement effective BMPs to reduce the tracking of dirt and other debris onto streets, regardless of its source (e.g., construction sites, commercial operations, landscape operations, agricultural operations). Within 12 months of adoption of this Order, the Permittee shall develop and utilize its legal authority (e.g., municipal codes, ordinances, statutes, standards, specifications, permits, contracts, or other means) to enforce the reduction of dirt and other debris tracked onto streets.'

First, changing ordinances, statutes, etc., invariably take more than 12 months. Public notices, hearings, and other mandatory provisions take time even when the bodies adopting the changes are in uniform agreement. Changes will take even longer for these modifications which will be controversial. Some of these operations are covered by existing regulations. As the Board understands, imposing additional restrictions on agricultural operations may be controversial.

Secondly, the Board should include information to confirm that such changes can legally be made for agricultural operations.

Recommendation: Delete unless the Board has evidence that this is a significant problem and that the City has legal authority to address it."

Staff Response to Comment City of Salinas Supplemental – 67
The City of Salinas must be able to regulate the tracking of dirt and debris onto public streets, regardless of source, since streets are part of its MS4. See Staff Response to Comment City of Salinas – Provision E.6.j.

During the March 7, 2011 program evaluation, Central Coast Water Board staff found dirt and debris tracked onto City streets and found the City had the incorrect perception that the Agricultural Order (R3-2004-0117) limited the City's authority and therefore prohibited the City from addressing the issue. Central Coast Water Board staff added language to Fact Sheet E.8 that clarifies the Agricultural Order does not limit the City's authority to address the tracking of dirt and debris onto public streets. While discharges from agricultural lands comprised solely of return flows and stormwater are exempt from NPDES permitting, other agricultural-related discharges receive no such exemption.

The comment suggests that the City's process to obtain the legal authority to implement provisions of the Order will always take more than 12 months. Existing Order No. R3-2004-0135 required the City to obtain the legal authority to implement the provisions of the existing Order in 12 months. The City hasn't provided any information indicating that their process has changed such that obtaining the legal authority for a requirement has become longer since the adoption of existing Order No. R3-2004-0135. However, to provide the City with some flexibility in the timing of implementing BMPs and obtaining the legal authority for tracking of dirt and debris,

Central Coast Water Board staff modified the language in Provision E.6.j of the Order to extend this requirement from 12 months to 18 months.

Supplemental - 68

"Pages 26 & 27, E.7 Maintenance of Structural BMP Verification. An extraordinary amount of information and tracking is required by this set of requirements. By itself, this is a major program requiring substantial permanent staff, contractors (to develop assessment and tracking programs), and ongoing expenses. The Structural BMP Rapid Assessment is completely new and would a major effort by itself. Based apparently on work at Lake Tahoe, this 'methodology shall establish maintenance thresholds and benchmarks necessary to maintain BMP performance and generate a BMP RAM score for each BMP at each inspection.'

These requirements apply to all structural BMPs operated by Salinas and all private parties. As more and more BMPs are established over time, this will become a massive program. Based on Tahoe costs, has the Board estimated what new funds will be needed to implement this program and the expected increases in necessary funding as the number of BMPs grows?

Structural BMPs are defined in the permit as 'Physical structures used to manage flow and reduce pollutants in stormwater.' *This would presumably include every rain barrel, swale, diversion pipe, and other runoff control structure in the City.*

Recommendation: These requirements must be significantly reduced so that they can be implemented. New requirements should not be added unless they address an identified problem and do not result in a net increase in costs."

Staff Response to Comment City of Salinas Supplemental – 68

Without ongoing maintenance, structural stormwater BMPs may lose effectiveness over time at reducing pollutants and/or achieving hydrologic benefits. If the City currently maintains structural BMPs to retain their design effectiveness, or requires them to be so maintained by others, it is unlikely that the maintenance requirements contained in the Order will require a significant increase in resources. If, however, the City does not currently conduct or require this maintenance, the structural BMP maintenance requirements contained in this Order address a recognized problem. Unmaintained structural BMPs do not achieve the MEP standard.

The Structural BMP Rapid Assessment is a simple tool that is not likely to require a major implementation effort (see Staff Response to Comment City of Salinas - Provision E.7.e). In addition, Section E.7.a of this Order limits the scope of implementation of the requirements contained in Section E.7.

The City's statement that structural BMP maintenance requirements could potentially include "every rain barrel, swale, diversion pipe, and other runoff control structure in the City" is not supported by Section E.7.a of this Order, which clearly identifies the structural BMPs to which the requirements of E.7 apply.

Supplemental - 69

"Page 30, Municipal Maintenance E.10. Information Management. This sub-section requires Salinas within 12 months to implement an information management system to track the items in the Municipal Maintenance section. As before, the amount of information needed is voluminous and the cost-benefit of all of these information items is questionable. Also, the section uses the non-standard terminology, 'surface drainage feature' which is vague and should be clarified.

Attachment 2.d: City of Salinas Supplemental Comments Received on Draft Order No. R3-2012-0005 and Staff Response

Recommendation: Significantly reduce the number of items being implemented and allow 5 years for full implementation. Specifically:

- *Delete E.10.a.i.3.*
- *Delete E.10.a.ii and revise E.10.a.i to include all known inlets.*
- *Eliminate the non-standard terminology,* 'Surface Drainage Structure' *and replace with* 'open channels and ditches.'
- *Delete E.10.d.vi."*

Staff Response to Comment City of Salinas Supplemental – 69
For responses to information management comments, see Staff Response to Comment City of Salinas – Provision F.11.a.ii and Staff Response to Comment City of Salinas – Provision D.3.b. The City is currently required under existing Order No. R3-2004-0135 to be documenting their compliance and therefore should already have been tracking much of the required information in this Order. The comment suggests the City should be allowed to take 5 years to implement their information management. If the City does not continually track their compliance throughout the length of the Order, they won't be able to perform some of the fundamental actions of MS4 permits, including reporting and effectiveness assessment.

Central Coast Water Board staff modified the language in Provision E.10 to reflect the other changes in Provision E. These modifications included the deletion of Provision E.10.a.i.3 and Provision E.10.a.ii.

See Staff Response to Comment City of Salinas Supplemental – 96 in response to the Surface Drainage Structure comment.

Central Coast Water Board staff have not deleted Provision E.10.d.vi as suggested by the comment. The pesticide information kept under this provision is necessary to document compliance with Provision E.3.h.

Supplemental - 70
"Page 31, Municipal Maintenance E.11. Coordination With Monterey County Water Resources Agency. This section requires that the City collaborate with MCWRA and identify each MS4's roles and responsibilities. Though the City can offer to meet with MCWRA and discuss these issues, failure of MCWRA to collaborate with the City within the specified timeframe would cause the City to be out of compliance due to factors beyond the City's control.

Recommendation: Revise the provision to require the City to offer to meet with MCWRA (and the Board, if requested) to discuss ways to improve system water quality. The statement should not require actions by others for City to comply with the permit."

Staff Response to Comment City of Salinas Supplemental – 70
See Staff Response to Comment City of Salinas – Provision E.11.

Supplemental - 71
"Page 31, Municipal Maintenance E.12. Salinas River Outfall. This section requires a plan to be developed to decrease pollutant loads discharged from the outfall. Based on the absolute requirement of provision A.1, the groundwater intrusion (as discussed in paragraph 42 on page 56 of the Fact Sheet) must be eliminated and the City may be considered to be out-of-compliance with the permit until the condition is remedied. This section states that plan must be

submitted to the EO for approval. The Year 2 Annual Report (page 34) requires a summary of the progress on the Salinas River outfall plan. Development of the plan is required to be completed in Year 1. Implementation of the plan will likely require grant funding.

Recommendation: As previously indicated, the absolute provision of A.1 must be deleted and the permit should recognize that grant funding will likely be required to correct this deficiency."

Staff Response to Comment City of Salinas Supplemental – 71
Provision A.1 is contained in the City's existing Order No. R3-2004-0135 as Discharge Prohibition A.1. If the City will not be in compliance with the Order, then the City is out of compliance with existing Order No. R3-2004-0135. The Order directs the City to develop a plan for the outfall to correct a known water quality problem. The City has known about the water quality problem at the outfall for over five years,[1] and to date, has not demonstrated to Central Coast Water Board staff that they have improved water quality of this discharge.

See Staff Response to Comment City of Salinas Supplemental – 15 for a similar discussion on the City coming into compliance with violations of their existing Order and this Order.

[1]Central Coast Water Board September 8, 2006 Public Meeting, Item #14.

Supplemental - 72
"Pages 36 - 43, F. Commercial and Industrial. These provisions establish a major and significantly expanded program to regulate commercial and industrial facilities. We question the basis for re-directing staff and significantly increased expenditures toward this program. Does the Board have any information that these sources are higher priority than the other programs that make up the overall Salinas program? Do the new provisions represent a cost-effective expenditure of funds? These tasks appear to establish an generic "ideal" program, without any connection to what is occurring in Salinas

Recommendation: Reduce the number of items being implemented and allow 5 years rather than 12 months for full implementation. Increased costs need to be balanced with decreases elsewhere. F.1) should be revised to state that businesses that perform operations need to be inventoried, not the operations the businesses perform and that the inventory is limited to those businesses licensed by the Permitee. As a minimum, delete F.1.a.vii, F.1.c.ii., F.1.c.iii, F.1.c.xi."

Staff Response to Comment City of Salinas Supplemental – 72
See Staff Response to Comment City of Salinas – Provision F.1.b.xi. Central Coast Water Board staff have modified the Order to limit the number of inspections the City is required to perform and to limit the number of businesses inventoried.

The comment suggests that the City has interpreted "facilities and operations" to mean that each individual activity/operation that a business performs needs to be inventoried. "Operations" is included in the language of the Order because not all businesses have a "facility" (e.g., mobile operations). "Operations" in the Order is referring to the business, not the activity. Central Coast Water Board staff have added clarification to the language of the Order.

The comment suggests 5 years be provided for the City to implement the Commercial and Industrial program instead of 12 months. The Order requires the City to develop their inventory and start their inspections in 12 months and then continue to inspect 20% of their facilities each year. The City is not starting from scratch for this activity. The City is already required under

their existing Order No. R3-2004-0135 to have a commercial/industrial inventory and to be performing inspections. The City has 12 months to make the incremental revisions to these activities.

Supplemental - 73
"Page 36, F. 1. Commercial and Industrial Inventory. It is impossible to 'develop and maintain an updated inventory' *in 12 months. Additionally, the mandated components are simply too broad and appear to include virtually all commercial establishments in Salinas. Is it really necessary to include, for example,*

- *All eating or drinking establishments, including food markets*
- *Meat cutting, packing, and processing.*
- *Shopping malls, strip malls, big box stores, warehouse stores, and shopping centers*
- *Mobile pet services*
- *Animal and veterinary facilities;*

Many of these are not going to be significant sources of runoff.

Recommendation: Allow 5 years for this inventory to be completed. Limit the inventory to establishments likely to contribute a significant pollutant load to the MS4."

Staff Response to Comment City of Salinas Supplemental – 73
See Staff Response to Comment City of Salinas Supplemental – 72.

Supplemental - 74
"Page 38, F.2.b. Minimum BMPs. This provision states:

> 'Manage stormwater runoff and run-on. Divert, infiltrate, reuse, contain, or otherwise reduce stormwater runoff to prevent runoff of contaminated flows and divert run-on away from pollutant sources.'

This provision could potentially be interpreted as requiring retrofitting all commercial and industrial sites with structural flow reduction BMPs. It is not feasible for the City to require existing commercial and industrial facilities to implement structural retrofits. Changes to commercial and industrial storm water requirements for existing facilities should be addressed through the industrial stormwater permitting process, or will be addressed through the City's permit process when a business applies for a new license, or a building permit.

Recommendation: Delete, or revise to indicate that the provision only applies to where there is an identified risk of contamination that could pose a significant health hazard and is not intended to require structural BMP retrofitting of commercial and industrial facilities."

Staff Response to Comment City of Salinas Supplemental – 74
This provision is not intended to require structural BMP retrofitting of commercial and industrial facilities, but rather to expand upon F.2.a, by indicating that run-on and runoff should not come into contact with pollutant sources. Central Coast Water Board staff modified the language of Provision F.2.a and deleted F.2.b to provide clarification.

Supplemental - 75
"Page 39, F.4. Inspection of Industrial Facilities and Operations. This provision requires the City to implement a major program to inspect industrial facilities, including those covered by the General Industrial Permit and facilities covered by other NPDES permits. This is an intensive program including:

- *Determination of the Inspection Rating using the methodology described in Attachment G…*
- *Assessment of additional BMPs that must be required to reduce the discharge of pollutants to the MEP;*
- *Education on effective stormwater pollution prevention, as conditions warrant; and*
- *Identification of required corrective actions and verification that corrective actions have been implemented.*

In other words, the permit appears to require Salinas to take the responsibilities of the Water Boards and USEPA to implement these permits. This is inappropriate and also infeasible in that the City does not have funds to implement a major inspection and oversight program for industrial facilities.

Recommendation: Delete F.4, most of these functions are the responsibility of the State Water Boards and USEPA."

Staff Response to Comment City of Salinas Supplemental – 75

The comment recommends the deletion of the requirements to inspect commercial and industrial facilities and operations (Provision F.4) from the Order because the City believes inspections are the responsibility of the State Water Boards and USEPA. Central Coast Water Board Staff has not deleted the inspections requirements from the Order. See Staff Response to Comment City of Salinas – Provision F.4.c. In addition, the City is required by federal regulations (40 CFR 122.26(d)(2)(i)(B, C, E, and F), 40 CFR 122.26(d)(2)(iv), and 40 CFR 122.26(d)(2)(iv)(A)) to have a commercial and industrial program. Phase I MS4 regulations specify that several key elements be included in Phase I MS4 stormwater management programs including inspection of priority industrial and commercial facilities. The requirements of Provision F.4 are consistent with USEPA recommendations for Phase I permits.[1] The City is already performing inspections of commercial and industrial facilities under existing Order No. R3-2004-0135. This Order improves upon existing Order No. R3-2004-0135 by allowing the City to focus its inspections on higher priority sites.

[1] USEPA. *MS4 Permit Improvement Guide. EPA 833-R-10-001,* 14 April 2010. Web. 16 August 2011, pages 91 and 92.

Supplemental - 76

"Page 40, F.5. Facility Monitoring Data Reported under the General Industrial Permit. This provision requires the City to implement a new program to analyze the data produced by industrial facilities covered by the General Industrial Permit. This in-depth assessment is intended to be basis for a determination of the 'effectiveness of the Permittee's BMP designation, education, inspection, and enforcement activities.'

This would be a major effort and, regardless, should be primarily the responsibility of the Water Boards. The Water Boards have the expertise to assess the significance of the monitoring parameters, but Salinas does not. Salinas can provide some oversight of industrial facilities, but cannot implement an intensive research and regulatory program for facilities covered by the General Industrial Permit.

Recommendation: Delete F.4."

Staff Response to Comment City of Salinas Supplemental – 76

Attachment 2.d: City of Salinas Supplemental Comments Received on Draft Order No. R3-2012-0005 and Staff Response

Central Coast Water Board staff assumes the comment suggests deleting Provision F.5 and not F.4 based on the text of the comment. See Staff Response to Comment City of Salinas – Provision F.5.

Supplemental - 77

"Page 44, G. Residential. This provision identifies all residential areas as High Priority Residential Areas. This provision also establishes a major new program which must be implemented in 12 or 24 months depending on the tasks.

For example, Salinas must implement a residential household hazardous waste management program in coordination with the Salinas Valley Solid Waste Authority to include:

> '…educational activities, public information activities, and establishment of collection sites operated by the Permittee or a private entity. Curbside collection of household hazardous wastes is encouraged.'

Where is the funding for this supposed to come from? Can the Water Board provide examples of communities in California have been able to implement curbside collection of household hazardous wastes? Our understanding is that most or perhaps all communities have found such programs too expensive.

Recommendation: Delete G—Salinas can address identified residential problems, but implementing this intensive program cannot be done."

Staff Response to Comment City of Salinas Supplemental – 77

See Staff Response to Comment City of Salinas – Provision G.1.e. In addition, this provision does not identify all residential areas as High Priority Residential Areas. The High Priority Residential Areas will only be those residential areas tributary to a CWA section 303(d) listed impaired water body, where the area generates pollutants for which the water body is impaired.

The comment suggests that the City must implement a major new program including a residential household hazardous waste management program. These requirements do not represent a major new program. The requirements for household hazardous waste management are very similar to the requirements in existing Order No. R3-2004-0135.

The Order does not require curbside collection of household hazardous wastes.

Supplemental - 78

"Pages 47 - 53, H. Illicit Discharge Detection and Elimination. These provisions require a major expansion of existing efforts and also must generally be implemented in 12 months depending on the tasks.

Recommendation: Delete the new add-ons to the existing I/I program unless the Board can identify any shortcomings in the existing program that result in adverse impacts on water quality. This is yet another major expansion in workload necessitating many new personnel and additional funding with no evidence that is a significantly expanded program is needed to address the major water quality problems."

Staff Response to Comment City of Salinas Supplemental – 78

The requirements of Provision H are consistent with USEPA guidance for IDDE programs.[1] In addition, the City is already required under existing Order No. R3-2004-0135 to implement many requirements of this Order. See Staff Response to Comment City of Salinas – Provision H.1

through Staff Response to Comment City of Salinas – Provision H.14.c.xv.3 for responses to the City's comments on the IDDE requirements of the Order**.**

[1] USEPA. *MS4 Permit Improvement Guide. EPA 833-R-10-001,* 14 April 2010. Web. 16 August 2011.

Supplemental - 79
"Page 54, J. Parcel-Scale Development. The title of this section introduces terminology that is not in common usage, is not defined by the permit and is unnecessarily different than that used in other permits. The section is about New Development and Redevelopment.

Recommendation: Rename the section: 'New Development and Redevelopment.'"

Staff Response to Comment City of Salinas Supplemental – 79
See Staff Response to Comment City of Salinas – Provision J.

Supplemental - 80
"Pages 54 - 66, J. Parcel-Scale Development. These provisions modify and substantially expand the SWDS without showing that these extremely detailed requirements represent a cost-effective expenditure of funds. What problems has the Board seen in the current program that justify overhauling and expanding the current program? The details of this program should be left to Salinas—placing numerous highly prescriptive requirements in the permit removes all flexibility and greatly increases the potential that some, possibly minor, component will not be implemented resulting in a permit violation.

The provisions require multiple revisions to the SWDS with unrealistic timelines for completion. The City recognizes that there are shortcomings in the organization and content of the SWDS. These shortcomings are in-part due to the process that the Board used to initiate the preparation of the SWDS and that the numeric criteria were inserted by the Board after the rest of the document had been completed without regard to how the SWDS could be used to satisfy the numeric criteria, or even providing a demonstration that the criteria, which are significantly different than those adopted in other parts of the state, are feasible. Now, the Board is requiring the SWDS to be divided into Requirements and Guidance sections within 2 months, including incorporation of poorly defined 'uniformly distributed decentralized controls' *(J.4.e.i) and subdivided into Priority and Non-Priority Development Projects within 11 months and also to incorporate Final Treatment Numeric Requirements within that timeframe, even though the timeframe for adopting Final Treatment Numeric Requirements is not certain. It would be more cost effective and practicable for only one revision to the SWDS to be required and for this to be linked to the timeframe of adopting the Final Treatment Numeric Requirements.*

Recommendation: Allow Salinas to determine what means are acceptable to meet numeric requirements and submit it to the Board for review. In addition, the schedules must be extended. At least one year from the time Final Treatment Numeric Requirements are approved until these are fully implemented in revised SWDS should be provided."

Staff Response to Comment City of Salinas Supplemental – 80
See Staff Response to Comment City of Salinas – Provision J.2.a.

Supplemental - 81
"Page 55, J. Parcel-Scale Development 3.a. All new development and redevelopment projects (non-priority). This provision does not distinguish between requirements for new and

redevelopment projects. Less stringent requirements for redevelopment should be established to encourage redevelopment and practicable improvement of water quality over new development."

Staff Response to Comment City of Salinas Supplemental – 81
See Staff Response to Comment City of Salinas – Provision J.3.a

Supplemental - 82
"Page 55, J. Parcel-Scale Development 3.a.i. Source control BMPs including each item…(non-priority projects) Some of these requirements include the following:

'(2) Minimize impervious areas;
(3) Landscaping that minimizes irrigation and runoff, promotes surface infiltration, and minimizes the use of pesticides and fertilizers;
(4) Efficient irrigation systems;'

Absolutes, such as 'minimize impervious area' *and* 'landscaping that minimizes irrigation and runoff' *are not reasonable conditions. Only a self-retaining native vegetation feature meets these absolute conditions. Does this mean that the City must reject any landscaping plan that includes non-natives or includes irrigation?*

Recommendation: Delete vague requirements that rely on subjective decision-making and absolute requirements that cannot be achieved."

Staff Response to Comment City of Salinas Supplemental – 82
Provision J.3.a.i requires the City to require project applicants to include identified source control BMPs, where applicable. Central Coast Water Board staff included the qualifier, where applicable, understanding that the identified source control BMPs would not be applicable to every project. Such things as minimizing impervious areas is an effective way to minimize the amount of runoff generated on a site and therefore reduce the amount of stormwater required to manage. Requiring project applicants to minimize, to the extent practicable, impervious area on a site is reasonable. Certain plant types tend to grow better in certain environments without extra irrigation, after plant establishment, than others. These can be non-native or native plants. The intention of the landscape requirements is to use vegetation that has the least potential to result in runoff discharge during irrigation. The Order includes source control measures that are common to other California Phase I Permits.

Provision J.3.a.1 is based on requirements of the Los Angeles Water Board's Standard Urban Stormwater Mitigation Plans (SUSMPs). In a precedential decision, the State Board upheld the requirements and directed the Water Boards to implement similar requirements.[1]

Central Coast Water Board staff added language to Provision J.3.a.i.4 in the Order.

1 State Water Resources Control Board. *Memorandum: State Water Board Order WQ 2000-11: SUSMP*. 26 December 2000.

Supplemental - 83
"Page 55, J. Parcel-Scale Development 3.a.ii. At least two required: Porous Driveway, Downspout Routing, Amended Soils …(non-priority projects)

The requirements are prone to inconsistent implementation and effectiveness and may exceed the maximum extent practicable (MEP) requirements. For example, if it is proposed to replace an 8,000 square-foot building on a 25,000 square-foot commercial site, the pavement may not be proposed for replacement and the site may have no significant landscaped areas. Rain barrels would not provide benefit because there are not landscaped areas to receive the stored flows. It may be reasonable to discharge roof drains through planter boxes, but these may only treat and detain runoff as infiltration next to buildings is generally not feasible. Similarly, a city center project may have no driveways. A redevelopment project could propose to replace 9,000 square-feet of impervious are with 8,000 square-feet of impervious area and 1,000 square-feet of landscaping and yet still not meet this condition. The Draft Permit's emphasis on reuse through the installation of cisterns and rain barrels is overly prescriptive and does not consider realistic issues related to the high costs of installing, operating and maintaining these types of systems relative to the low benefit due to the features needing to be drained during periods when the water is not needed in order to provide capacity for subsequent rain events and the potential for the systems to already be full at the onset of significant storm events.

Simplified options for small projects to comply with permit provisions are a good idea, but the poorly defined options in the Draft Permit do not provide appropriate options.

Recommendation: Delete this requirement; a better option would be to take specific conditions into account to reduce runoff to the extent practicable using techniques appropriate for the specific site. Provisions need to be revised to be flexible enough so as to be feasible for any reasonable development or redevelopment project in a manner that encourages redevelopment while also improving water quality. Specific simplified options for Non-Priority Development Projects could be developed for inclusion into revised SWDS. Non-Priority Development Projects should also be allowed to demonstrate compliance with the numeric requirements for Priority Development Projects so as to ensure that requirements for Non-Priority Development Projects can never be interpreted as being more stringent than those for Priority Development Projects."

Staff Response to Comment City of Salinas Supplemental – 83
The Order requires the City to require small-scale projects to include at least two site design elements that are basic, effective techniques to reduce the amount of runoff and pollutants being discharged from the project site. Central Coast Water Board staff finds that these requirements present fewer technical challenges to implement than the Priority Development flow control and treatment requirements and offer water quality treatment benefits at a meaningful scale in the urban development context. Central Coast Water Board staff intentionally developed a succinct list of options, that staff considered viable options for most Non-Priority Development Projects, and that do not require extensive calculations. Therefore, the Order does not include numeric criteria for Non-Priority Development Projects and does not require Non-Priority Development Projects to adhere to the Priority Development Project treatment and flow control numeric criteria, detailed site design process, etc.

Central Coast Water Board staff modified Provision J.3.a.ii to provide more flexibility for some of the options.

Supplemental - 84
"Page 59, J. Parcel-Scale Development 4.f.i. Applicability Thresholds. This provision states:

'… The Permittee shall amend the Priority Development Project definition in the SWDS to specify the projects meeting the revised applicability criteria shall adhere to the final flow control requirements.'

Recommendation: Insert 'that' between 'specify' and 'the.'"

Staff Response to Comment City of Salinas Supplemental – 84
Central Coast Water Board staff added, 'that', to Provision J.4.f.i.

Supplemental - 85
"Page 59, J. Parcel-Scale Development 4.f..ii. Final Flow Control Numeric Requirements … (priority projects). This provision states:

'(2) Groundwater Recharge and Discharge – Maintain infiltration to support baseflow and interflow to wetlands and surface waters, and deep vertical infiltration to groundwater at pre-development levels;…
(5) Evapotranspiration – Maintain evapotranspiration volume and rate at predevelopment levels.'

This requirement will often be impossible to implement. Maintaining deep vertical infiltration to groundwater and evapotranspiration volume and rate at pre-development levels is not achievable by any means other than restoring all ground to pre-development compaction and vegetal conditions.

Similarly, maintaining channel (fluvial transport and deposition) processes within natural ranges when many other sources are impacting the waterway is not possible. Also, maintaining chemical attenuation through sequestration, degradation, and rate of chemical delivery to receiving waters at predevelopment levels is not feasible.

In addition, groundwater recharge is outside the scope of an NPDES permit.

Recommendation: The technology to return and verify that previously developed property has been converted to pre-development conditions in all aspects does not exist. The language clearly exceeds the MEP threshold. Meeting numeric criteria using LID principles to the extent practicable is all that should be required. Delete this provision."

Staff Response to Comment City of Salinas Supplemental – 85
The purpose of the Central Coast Water Board Joint Effort for Hydromodification Control is to develop landscape-specific post-construction numeric criteria for controlling stormwater runoff to maintain, protect and, where necessary, restore beneficial uses of waters affected by stormwater. The Order does not require projects to meet the pre-development condition in all situations. The requirements cited in the comment mirror those of the Joint Effort. The results of the Joint Effort will undergo their extensive public process. It is important to note that the City has already agreed to participate in and implement the Joint Effort.

See Staff Response to Comment Chamber – 5.

Central Coast Water Board staff modified the footnote in Provision J.4.f.ii to specify that the identification of the point in hydrologic history shall be determined based on the Central Coast Water Board Joint Effort for Hydromodification Control methodology.

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See Finding 46 which states that watershed processes affected by stormwater, actions to manage stormwater, and/or land uses that alter stormwater runoff patterns must be maintained and protected in order to support beneficial uses throughout the City's watersheds. The Fact Sheet for the Findings provides justification for Finding 46. See the justification for Finding 46 for more details on the nexus of groundwater recharge to surface water health.

Supplemental - 86

"Page 59, J. Parcel-Scale Development 4.f.iii. Modeling. This provision states:

> 'The Permittee shall require all projects greater than 10,000 square feet of impervious area to use a continuous simulation hydrologic computer model, such as USEPA's Hydrograph Simulation Program – Fortran (HSPF), to simulate the post development runoff (including the effect of proposed post-construction BMPs) and runoff at the point in hydrologic history prior to the development per Section J.4.b.i.2 (Site Condition Calculations), to demonstrate compliance with the final flow control requirements. The Permittee shall require the project applicant use a rainfall record of at least 30 years to populate the model.'

This provision is overly restrictive and may not be necessary to meet the Final Flow Control Requirements. It may be reasonable to include some simplified options in the SWDS for sizing certain BMPs to meet the Final Flow Control Requirements, similar to the Contra Costa County approach. The provision also presumes that long duration simulation will be necessary to satisfy criteria that have not yet been determined. The City does not object to requiring long duration simulations in some circumstances and has already provided applicants with the tools to do this based on the Bay Area Hydrology Model and a 30-year rainfall record appropriate for Salinas.

Recommendation: Replace this provision with one that states 'The Permittee shall require that Priority Development Projects include BMPs that are sized appropriately to meet the Final Flow Control Requirements. This may require long-duration simulation hydrologic analysis or other process that has been demonstrated to meet the forthcoming requirements.'"

Staff Response to Comment City of Salinas Supplemental – 86

See Staff Response to Comment City of Salinas – Provision J.4.f.iii.

The Order does not preclude developers from relying on continuous simulation analysis conducted by another entity at a larger scale that covers that area of the project, so long as the continuous simulation is consistent with the requirements in Provision J.4.f.iii.

Supplemental - 87

"Page 60, J. Parcel-Scale Development 4.g.i. Final Treatment Requirements - Applicability Thresholds (priority projects). This subpart states:

> '(1) All new development or redevelopment projects that create and/or replace 5,000 square feet or more of impervious and/or turf surface (collectively over the entire project site).'

Applying this requirement as stated would make impracticable some redevelopment projects that could provide a net benefit to water quality. Such projects should not be discouraged.

Recommendation: Modify this provision to allow Salinas to make changes as necessary to address site-specific conditions in order to provide achievable environmental benefits."

Staff Response to Comment City of Salinas Supplemental – 87

Attachment 2.d: City of Salinas Supplemental Comments Received on Draft Order No. R3-2012-0005 and Staff Response

See Staff Response to Comment City of Salinas – Provision J.3.a.

Supplemental - 88

"Page 61, J. Parcel-Scale Development 4.g.iii. Final Treatment Numeric Requirements (priority projects). This subpart states:

> '(2) A properly engineered and maintained biotreatment system may be used only if it is infeasible to implement harvesting and re-use, infiltration, and evapotranspiration at a project site.'

We object to this mandatory hierarchy of BMPs. Runoff, particularly during major storms is a natural process. Requiring re-use, infiltration, or evapotranspiration as the first priority regardless of local circumstances may in some situations be less natural that allowing runoff that has passed through a biotreatment system.

Additionally, how is "infeasible" defined? Harvesting and re-use may be technically feasible but may be not cost-effective or economically feasible. It could be interpreted that only green roof projects would meet this specification, although they would are not cost-effective, particularly for smaller facilities.

Recommendation: It may be reasonable to identify a preferred approach; however, the project designer and City need the flexibility to protect water quality in the most appropriate manner for the specific site. The provision should be revised to allow biotreatment or other systems that meet the Final Flow Control Requirements and water quality treatment requirements."

Staff Response to Comment City of Salinas Supplemental – 88

Central Coast Water Board staff modified Provision J.4.g.iii to permit a larger suite of BMPs for meeting the final treatment criteria, if an applicant demonstrates that LID BMPs are infeasible. Central Coast Water Board staff also modified Provision J.4.g.iii to provide more specifics about the infeasibility determination.

See Comment USEPA – 2 which supports the requirements in J.4.g.iii. Also, see Staff Response to Comment USEPA – 2 for more details about modifications to the Final Treatment Numeric Criteria.

Supplemental - 89

"Page 62, J. Parcel-Scale Development 4.h.i.1 Alternative Compliance Justification (priority projects). This subpart states:

> 'To utilize alternative compliance measures, the Permittee shall require the project applicant to demonstrate that compliance with the applicable requirements of this Section would be technically infeasible by submitting a site-specific hydrologic and/or design analysis conducted and endorsed by a registered professional engineer, geologist, architect, and/or landscape architect. Technical infeasibility may result from the examples listed below….'

Cost-effectiveness in removing pollutants of concern to the waterway should be the criterion rather than technical feasibility which does not take costs into account. As currently structured, this requirement and other similar requirements in the permit will result in mis-directed resources that provide theoretical controls but limited benefits to the water quality in the waterways in Salinas.

Recommendation: Change the focus of this requirement to cost-effectiveness in addressing the key pollutants of concern."

Staff Response to Comment City of Salinas Supplemental – 89
The purpose of the Order is to reduce the discharge of pollutants to the MEP and protect water quality. The Order requirements include measures to achieve this purpose. Central Coast Water Board staff is supportive of the requirements being met using cost-effective measures. However, cost effectiveness alone is not an adequate reason to trigger alternative compliance options in Provision J.

See Staff Response to Comment City of Salinas Supplemental – 9.

Supplemental - 90
"Pages 67 - 76, K. Construction Site Management. This part requires a major expansion of current responsibilities. It requires an in-depth construction management effort that we doubt has been implemented by any MS4 or Regional Board in the state. Salinas does have oversight responsibilities along with the Central Coast Board for construction projects, however, this in-depth and intensive program if far beyond the capability of any MS4.

One example of the intensive oversight that is now mandated:

'Frequency - The Permittee shall inspect all active construction sites within the Permit coverage area a minimum of once a month during the rainy season to ensure compliance with local ordinances and this Order. During the remainder of the year, the Permittee shall inspect all active construction sites a minimum of once every other month.'

For High Priority sites, Salinas will have to inspect:

' …a minimum of once a week during the rainy season and within 48 hours after a ½-inch rain event.'

Each inspection is a major effort and will create a significant workload including:

'i) Review the applicable source control and erosion and sediment control plans and conduct a thorough site inspection to determine if adequate BMPs have been selected, and if the BMPs have been installed, implemented, and maintained according to the plan;
ii) Require corrective actions for sites where adequate and effective BMPs have not been installed and maintained;
iii) Assess compliance with the Permittee's ordinances, permits, or other requirements, and this Order, including the implementation and maintenance of designated minimum BMPs;
iv) Assess the appropriateness of BMPs and their effectiveness;
v) Visually observe and record non-stormwater discharges, potential illicit connections, and potential pollutants in runoff;
vi) Provide education and outreach on stormwater pollution control BMPs, as needed;
vii) Use the Enforcement Response Plan to ensure corrective actions are implemented and sites come into compliance; and
viii) Provide a written or electronic inspection report generated from findings in the field.'

High Priority sites have additional reporting requirements. In addition, the program comes with very detailed information management, training, and reporting requirements.

Recommendation: This, like many of new and expanded programs, needs to be cut back to better focus on identified problems. Salinas cannot assume all the regulatory functions for the Construction General Permit in lieu of the Water Boards. Added tasks with major cost requirements need to be balanced by reductions elsewhere. Current construction site management practices should be maintained. Additional construction site management should only be required if it is determined that significant deficiencies in construction site runoff water quality persist with the implementation of the provisions of the new statewide construction stormwater permit over the next five years."

Staff Response to Comment City of Salinas Supplemental – 90

The comment states that the frequency of inspections required by the Order is an example of "intensive oversight ". The Order requires the City to inspect all active construction sites within the Permit coverage area once a month during the rainy season and once every other month during the remainder of the year. The Order requires the City to inspect high priority sites once a week during the rainy season and within 48 hours after a ½-inch rain event. These inspection frequency requirements are a reduction to the frequencies the City reports to be currently implementing. During the March 2011 program evaluation, the City reported to be performing stormwater inspections at all construction sites once a week during the rainy season.

The comment states that each inspection is a "major effort" and will "create a significant workload" and provides a list of examples in i) through viii) that will create a "significant workload". The list of items provided in the comment are actions the City should already be doing under existing Order No. R3-2004-0135. During the March 2011 program evaluation, City staff told Central Coast Water Board staff they were currently implementing the majority of the items sited in the comment.

The requirements of the City's construction program are independent of the Construction General Permit. See Staff Response to Comment City of Salinas – Provision K.13.b.x.3.

Supplemental - 91

"Pages 77 - 85, L. Development Planning and Stormwater Retrofits. This part requires a major expansion of current responsibilities. Again, the need for these increased expenditures and prescriptive requirements has not been shown. The retrofit requirements are completely unrealistic in the current fiscal situation.

Recommendation: Remove any requirements that decrease the flexibility of Salinas to focus on the problems found in Salinas. Also, remove any new requirements that are not essential to address problems that are not being currently addressed. As before increased costs must be balanced by reductions in other tasks."

Staff Response to Comment City of Salinas Supplemental – 91

Central Coast Water Board staff is aware of significant land areas zoned in the City of Salinas for future development. To ensure these future developments maintain and restore watershed processes impacted by stormwater management to protect water quality and beneficial uses, Central Coast Water Board staff finds the conditions outlined in this Provision must be implemented as soon as possible.

See Staff response to Comment City of Salinas Supplemental – 93.

Attachment 2.d: City of Salinas Supplemental Comments Received on Draft Order No. R3-2012-0005 and Staff Response

See Staff Response to Comment Steele – 1.

Supplemental - 92

"Page 77, L.1. Planning and Building Document Updates. L.1.a.i.). This section states:

'The Permittee shall require run-off volume calculations used in design of infrastructure (e.g., stormwater conveyance systems, regional flood management facilities) to be based on managing rainfall at the source using distributed decentralized controls that use LID design principles as described in Section L.1.a.i.1 (Site Layout) and L.1.a.i.2 (LID Principles).'

Methods appropriate for design of flood management facilities should be determined by those responsible for the level of protection that these facilities provide. That is, the City and/or Monterey County Water Resources Agency should make these determinations, not the Board.

Recommendation: Delete."

Staff Response to Comment City of Salinas Supplemental – 92

Stormwater conveyance systems and flood management facilities are used to convey and manage stormwater runoff. It is appropriate to address the design of these features in the Order, because this infrastructure is conveying stormwater and the infrastructure design can result in impacts to water quality and beneficial uses of receiving waters. Central Coast Water Board staff's intention is not to compromise public safety; rather, the intention is to include LID as part of stormwater infrastructure and regional flood management facilities to protect water quality and beneficial uses. Managing smaller storms at the source, and using more natural systems for conveying runoff from larger events offsite, are examples of design strategies that can be used to achieve the goals of Provision L.1.a.i.

Supplemental - 93

Page 81, L.1. Planning and Building Document Updates. L.1.e.ii.7, 10-13. CEQA Process Update. These provisions are:

'ii) Update the Permittee's CEQA checklist to include each question listed below:

(7) Could the proposed project alter the natural ranges of sediment supply and transport to receiving waters? …

(10) Could the proposed project have a potentially significant adverse impact on groundwater quality or quantity?

(11) Could the proposed project result in decreased baseflow quantities to receiving surface waterbodies?

(12) Could the proposed project cause or contribute to an exceedance of applicable surface or groundwater receiving water quality objectives or degradation of beneficial uses?

(13) Does the proposed project remove and/or alter the function of floodplain area?'

Checklist item (7) is not appropriate because the sediment supply and transport in receiving waters may not be in a natural range. For the Reclamation Ditch, sediment transport would not be in a natural range because the Ditch is not natural.

Checklist item (10) is outside of the scope of the MS4 Permit and it effectively duplicates existing items.

Checklist item (11) may not be feasible to evaluate and is not relevant to the receiving waters of Salinas.

Attachment 2.d: City of Salinas Supplemental Comments Received on Draft Order No. R3-2012-0005 and Staff Response

Checklist item (12) is partially outside of the scope of the MS4 Permit and it effectively duplicates existing items.

Checklist item (13) does not refer to a definable floodplain and does not consider whether changes would be considered to be adverse.

Recommendations: Delete items (7) and (10) through (12). Revise item (13) to, 'Does the proposed project adversely impact the hydrologic or water quality function of the 100-year floodplain.'"

Staff Response to Comment City of Salinas Supplemental – 93
See Staff Response to Comment Chamber – 5.

See Finding 46 which states that watershed processes affected by stormwater, actions to manage stormwater, and/or land uses that alter stormwater runoff patterns must be maintained and protected in order to support beneficial uses throughout the City's watersheds. The Fact Sheet for the Findings provides justification for Finding 46. Checklist items 7, 10, 11, and 12 focus on impacts to watershed processes affected by stormwater, actions to manage stormwater, and/or land uses that alter stormwater runoff patterns.

Central Coast Water Board staff deleted Checklist item 10 in Provision L.1.e.ii, because staff finds that other checklist items adequately cover the issues included in item 10.

Central Coast Water Board staff made the recommended change to Checklist item 13 in Provision L.1.e.ii.

Supplemental - 94
"Page 82, L.2. Retrofit Existing Development. This is another in a long series of new or greatly expanded programs that cannot be implemented. This subpart states:

> *'… The Permittee shall develop and implement procedures to retrofit existing development with the purpose of restoring degraded watershed processes affected by urban stormwater discharges.'*

Retrofits in currently existing infrastructure are extremely expensive and have not been accomplished in other MS4s except for minor pilot projects, usually funded by grants. Additionally, grant funds are unlikely to be readily available since the majority of funds appear to be directed to POTWs and sanitary sewer collection systems.

The planning components of this task are extensive and will require consider staff time that is very unlikely to have any benefit during this permit cycle. One example:

'iv) The Permittee shall develop numeric performance goals to demonstrate how retrofit projects are expected to reduce pollutant loads and/or restore watershed processes. Each project shall provide benefits to watershed processes equivalent to the benefits generated by a project meeting its associated performance goals as listed in Table H.1 in Attachment H – Qualifying Retrofit Projects.'

As part of the Long-Term Retrofit Plan, Salinas is required to develop (among many other tasks):

'An implementation plan that identifies a minimum of five projects the City will implement. Each project shall have performance goals and a schedule to complete the project within 5 years of Long-Term Retrofit Plan completion.'

In other words, Salinas must commit to building 5 retrofit projects after completion of the long-term plan whether it has funding or not. Not building these projects would be a permit violation.

An additional problem is that these requirements go far beyond what is required by the Clean Water Act. USEPA is just beginning to address development programs as part of MEP. Retrofits as part of MEP have not even been considered as far as we know.

Recommendation: Delete this section; if grant funding with Water Board support became available, Salinas could consider a pilot project but a program of the magnitude included in this sub-section is completely unrealistic."

Staff Response to Comment City of Salinas Supplemental – 94
See Comment USEPA -6.

The Order does not require the City to conduct any retrofits during the term of the Order. The Order requires the City to develop a Long-Term Retrofit Plan within 5 years of adoption of the Order. The Order specifies the plan must include a minimum of 5 projects the City will implement within 5 years of plan completion. Central Coast Water Board staff finds it reasonable that the City has at least 5 years to line up funds for the retrofit projects. The Order requires the City to develop 5 options for retrofit projects, in the case that a project applicant opts to pay an in-lieu fee as an alternative compliance option per Provision J. The Order requires the City to complete 60 percent design of at least one qualifying retrofit project from the list of 5 candidates.

See the Fact Sheet for Provision L for further justification and background on the retrofit requirements.

Supplemental - 95
"Pages 86 - 89, M. Public Education and Public Involvement. This is a major program expansion without any justification that the new requirements are cost-effective or address identified problems with the current program.

Recommendation: Delete any modifications which add to the existing and do not address known problems with the current program."

Staff Response to Comment City of Salinas Supplemental – 95
See Staff Response to Comment City of Salinas Supplemental – 39.

Supplemental - 96
"Pages 90 - 92. N. Trash Load Reduction. Another new program, potentially duplicative of the TMDL, and for which funding is not available.

Recommendation: Delete this section – trash should be addressed as required by the TMDL. If it is not deleted, the meaning of 'surface drainage feature' must be defined. It could potentially be interpreted as any surface from which runoff could convey trash or debris."

Staff Response to Comment City of Salinas Supplemental – 96
Central Coast Water Board staff does not currently have a trash TMDL in development for any water body in the Salinas River Watershed. While there is a statewide effort underway to address trash, it is unlikely to affect the City's program during the period of this Order. The need for trash reduction measures has been demonstrated by Central Coast Ambient Monitoring Program personnel's observation of conditions in the Permittee's receiving waters.

Section N does not contain the term, "surface drainage feature;" Central Coast Water Board staff assumes the comment refers to the term "surface drainage structure." Central Coast Water Board staff does not believe the term "surface drainage structure" can be interpreted as "any surface from which runoff could convey trash or debris," since a drainage structure is a device constructed for the purpose of conveying stormwater. Central Coast Water Board staff has added the following definition to Section N: "'Surface drainage structure' means 1) any surface device constructed to convey stormwater that is owned or operated by the Permittee (with the exception of streets, gutters, inlets, catch basins, and outfalls), such as basins, structural BMPs, culverts, trash/debris screens, and pump stations; and 2) any surface feature within the MS4 where trash or debris may collect."

Supplemental - 97
"Pages 93 – 94 O. Total Maximum Daily Loads. TMDLs are implemented via NPDES permits; however, this section adds requirements that go beyond the TMDLs. TMDLs typically include adaptive management measures. The TMDL may change but the permit or required plans would then potentially have TMDL requirements that would not be correspondingly easy to adjust.

Recommendation: Simply require implementation of the TMDL, the rest of the material in this section is redundant and potentially in conflict with the TMDLs."

Staff Response to Comment City of Salinas Supplemental – 97
USEPA's definition for a TMDL is, "A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that load among the various sources of that pollutant. Pollutant sources are characterized as either point sources that receive a wasteload allocation, or nonpoint sources that receive a load allocation." TMDLs identify the problem and the end target; however, TMDLs do not specify the path for meeting the target in detail. The Central Coast Water Board relies on other regulatory mechanisms to require TMDL implementation. The Central Coast Water Board is using the Order to require the City to develop Wasteload Allocation Attainment Plans for current and future TMDLs where the City is listed as a responsible party. Central Coast Water Board stormwater staff collaborated with Central Coast Water Board staff who author TMDLs, while writing the TMDL requirements in the Order, to ensure the Order requirements will align with future TMDLs where the where the City is listed as a responsible party.

See Comment USEPA – 3.

Supplemental - 98
"Pages 95 –119. P. Monitoring, Effectiveness Assessment, and Program Improvement. This is a massive effort, and again, very prescriptive. And, as before, many tasks have to be implemented in the near term, e.g., quantifying annual Urban Subwatershed pollutant loads within 12 months for:
(a) Sediment;

(b) Fecal coliform bacteria;
(c) Total nitrogen;
(d) Copper;
(e) Lead;
(f) Zinc; and
(g) Additional pollutants as identified by the Permittee in consultation with the Central Coast Water Board.

The Action Levels listed in Table P.2 on page 105 become, in effect quasi effluent limits, since responses are mandated. The permit states that:

> 'This Order does not regulate natural sources and conveyances of constituents listed in Table P.2. To be relieved of the required actions for exceedances, the Permittee shall demonstrate that the likely and expected cause of the Stormwater Discharge Action Level exceedance is not anthropogenic in nature.'

The problem, of course, is how to distinguish natural sources of turbidity and fecal coliform, for example, from anthropogenic sources.

Recommendation: Delete. This information would be nice to have; however, the effort needed to collect it is massive and costly and is a lower priority need. These provisions do not address identified problems and will not necessarily result in improved water quality."

Staff Response to Comment City of Salinas Supplemental – 98

See Staff Response to Comment City of Salinas Supplemental – 40 and Staff Response to Comment City of Salinas Supplemental – 41 for discussion of the scope of Monitoring, Effectiveness Assessment, and Program Improvement requirements.

The pollutant load quantification methodology contained in the Order is actually a simple, readily available spreadsheet model. To estimate pollutant load generation, the City need only input the acreage of each land use and the average annual rainfall into the model. Most municipal planning departments have these acreages readily available. The Order also requires the City to estimate pollutant load reductions achieved by BMPs. The model contained in the Order has built-in typical pollutant reduction values derived from the National Stormwater Quality Database for most non-structural BMPs. For structural BMPs, the Permit requires that the City include load reductions only from structural BMPs designed to achieve a quantitative stormwater pollutant-reduction objective. To the extent the City has such BMPs, the design effectiveness should already be known and need only be input into the model. Therefore Central Coast Water Board staff believes that Pollutant Load Quantification should not involve a massive effort. Quantifying pollutant loads in the first year serves two objectives which can result in improved water quality. First, it provides a baseline the City can use for comparison to determine progress made at reducing pollutant loads within the term of the Order. Second, it provides information the City can use to identify pollutants and/or Urban Subwatersheds for priority actions during the term of the Order.

See Staff Response to Comment City of Salinas Supplemental – 42 for discussion of Action Levels versus effluent limits. Since Action Levels in the Order are applied to stormwater discharges from the City's Urban Catchments, the influence of natural sources will likely be insignificant. The Order contains the statement quoted in the comment so that the City will not be held responsible for Action Level exceedances for which the City can demonstrate natural

sources are the likely and expected cause. Action Levels can result in improved water quality by indicating where the City's BMPs may need improvement.

Supplemental - 99

"Pages 108-109. P.4 and P.5 Stormwater Discharge Quality Monitoring and 5) Receiving Water Monitoring. The permit requires both effluent and receiving water monitoring. These will constitute a significant burden in terms of staff requirements for pulling the samples and for the costs of analysis and for the assessment of results. These requirements greatly exceed the monitoring in the recent Washington DC permit issued by USEPA. The Washington DC permit (~~here~~http://www.epa.gov/reg3wapd/pdf/pdf_npdes/Wastewater/DC/DCMS4permit2011.pdf) has monitoring required for 6 outfalls. The Salinas permit requires monitoring from 16 outfalls plus the discharge to the Salinas River. The Salinas permit also appears to have much more monitoring than the draft Small MS4 permit being developed by the State Board."

Comment Table A-3 - Receiving Water and Discharge (Effluent) Monitoring

Parameter	*Salinas*			*Washington DC [5]*		*CA Small MS4 [5]*
	Receiving Water	*Discharge*		*Receiving Water*	*Discharge*	*Receiving Water only*
	Table D.4	*Table D.3* to Salinas River	*Table D.2* Catch-ments	*Narrative - see [3]*	*(Table 4)*	*(Table B)*
WATER COLUMN						
Physical Parameters and General Chemistry						
Flow	X					
pH	X	X	X			X
Electrical Conductivity	X	X	X			X
Dissolved Oxygen	X					X
Temperature	X	X	X			X
Turbidity (NTU)	X	X	X			
Total Dissolved Solids	X					
Total Suspended Solids	X				X	
Nutrients						
Total Nitrogen (calc.)	X				X (measured)	X
Nitrate + Nitrite (as N)	X	X	X			X (NO3)
Total Ammonia	X	X				X
Unionized Ammonia (calc)	X	X				
Total Phosphorus (as P)	X				X	X
Soluble Orthophosphate	X	X				X
Zinc	X	X	X		X	
Copper	X	X	X		X	
Fecal Coliform	X	X	X		X (*E. coli*)	X (& *E. coli*)
Total Coliform	X	X				
Algae cover, Floating Mats, Percent coverage	X					
Algae cover, Attached, Percent coverage	X					
Water Column Toxicity Test						
Algae -Selenastrum capricornutum, 4 day	X					
Water Flea – Cerio-daphnia dubia (7-day chronic)	X					
Fathead Minnow – Pime-phales promelas (7-day chronic)	X					
Toxicity Identification Eval.	X					
Pesticides and Herbicides						
Diuron	X					
Glyphosate	X					
Simazine	X					
Carbaryl	X					
Malathion	X					

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Parameter	*Salinas*			*Washington DC [5]*		*CA Small MS4 [5]*
	Receiving Water	***Discharge***		***Receiving Water***	***Discharge***	***Receiving Water only***
	Table D.4	***Table D.3*** to Salinas River	***Table D.2*** Catch-ments	*Narrative - see [3]*	*(Table 4)*	*(Table B)*
2,4-D	**X**					
Triclopyr	**X**					
Dicamba	**X**					
Metals						
Arsenic (total)	**X**					
Cadmium (total)	**X**				**X**	
Copper (total) [1]	**X**					
Lead (total)	**X**					
Nickel (total)	**X**					
Zinc [1]	**X**				**X**	
Other						
Total Phenolic Compounds	**X**					
SEDIMENT SAMPLING						
Benthic Invertebrate & Assoc. Physical Habitat Assessment	**X**			**X** *[see 3]*		**X** *[see 4]*
Sediment Toxicity - Hyalella azteca 10-day	**X**					**X** *[see 4]*
Sediment Chemistry						**X** *[see 4]*
Pyrethroid Pesticides in Sediment [2]						
Gamma-cyhalothrin	**X**	**X** (effluent)	**X** (effluent)			
Lambda-cyhalothrin	**X**	**X** (effluent)	**X** (effluent)			
Bifenthrin	**X**	**X** (effluent)	**X** (effluent)			
Beta-cyfluthrin	**X**	**X** (effluent)				
Cyfluthrin	**X**	**X** (effluent)	**X** (effluent)			
Esfenvalerate	**X**	**X** (effluent)				
Permethrin	**X**	**X** (effluent)				
Cypermethrin	**X**	**X** (effluent)	**X** (effluent)			
Danitol	**X**					
Fenvalerate	**X**	**X** (effluent)				
Fluvalinate	**X**					
Other Parameters in Sediment						
Sediment Grain Size Analysis	**X**					
Total Organic Carbon	**X**					

1. For Salinas receiving water, copper and zinc are specified twice in different programs (monthly grab and dry season/wet season concurrent with toxicity)

2. The Salinas pyrethroid receiving water monitoring is for sediment; for discharges, it is effluent.

3. ***Wash. D.C. permit***: Evaluate the health of the receiving waters, to include biological and physical indicators such as macro-invertebrates and geomorphologic factors. Number of samples, frequencies and locations must be adequate to ensure data are statistically significant and interpretable for long-term trend purposes (not variation among individual years or seasons)

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4. ***Proposed CA Small MS4 permit***: Biological Assessment (includes Physical Habitat Assessment and General Water Quality Parameters [dissolved oxygen, temperature, conductivity, and pH]). The same general location must be used to collect benthic community, sediment chemistry, and sediment toxicity samples.

5. Washington DC permit (~~here~~http://www.epa.gov/reg3wapd/pdf/pdf_npdes/Wastewater/DC/DCMS4permit2011.pdf); Proposed California Small MS4 permit (~~here~~http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/phsii2011/draft_order.pdf)

Staff Response to Comment City of Salinas Supplemental – 99

The comment appears to be based on a misunderstanding of the Order. The Order requires Stormwater Discharge Quality Monitoring at 5 locations, including the discharge to the Salinas River, and requires Receiving Water Monitoring at 1 location. This can be compared to Order No. R3-2004-0135 (the City's current Order), which requires monitoring at a total of 8 locations. While this indicates that the monitoring requirements of the Order do not actually appear to exceed those of the Washington D.C. permit, such comparisons have only limited value. Each municipal stormwater permit must be tailored to the needs and conditions of the permittee and the watershed, so that an in-depth analysis of the needs, conditions, and objectives of the Washington D.C. permit would be needed before an appropriate comparison of permit requirements could be made. Central Coast Water Board Staff believes the resource cost of implementing the monitoring requirements will be similar to that of implementing the requirements of Order No. R3-2004-0135.

The Monitoring, Effectiveness Assessment, and Program Improvement requirements are designed to provide a range of information about the effectiveness of the City's stormwater management program (see discussion in Fact Sheet Section XII.P.5). The requirements blend multiple assessment levels (receiving water monitoring, stormwater discharge monitoring, and focused BMP effectiveness measures) in a manner designed to provide the most useful information in an efficient way. The Draft Order requirements constitute a change from requirements in existing Order R3-2004-0135 in that they place greater emphasis on stormwater discharge monitoring and measurable BMP effectiveness assessment than receiving water monitoring. Central Coast Water Board staff based this change in part on a review of monitoring requirements and results under existing Order No. R3-2004-0135. This review indicated that the City has not been able to demonstrate, on the basis of receiving water quality monitoring, the magnitude or extent of pollutant reduction or water quality improvements resulting from the City's stormwater management actions.

Central Coast Water Board staff received this and other comments from the City regarding the scope and cost of the monitoring program, which the City has clarified and expanded through subsequent telephone conversations and email correspondence. Central Coast Water Board staff has reduced the frequency of receiving water monitoring from 12 monitoring events per year to nine monitoring events per year, with the reduction occurring during the dry season. The City indicated, and Central Coast Water Board staff concurs, that it is reasonable to reduce the City's responsibility for receiving water quality trend monitoring during the term of the Draft Order for the following reasons: 1) the reduced frequency will still provide significantly more information on receiving water quality trends than monitoring requirements under existing Order R3-2004-0135, which requires monitoring at this site only twice per year; 2) flow in the Reclamation Ditch during the dry season is predominately runoff from agricultural lands; and 3) the other dischargers to the Reclamation Ditch do not share responsibility for monitoring at the site in questions (though agricultural dischargers enrolled under the Agricultural Order cooperatively monitor the City's receiving waters upstream of the City). While this modification reduces the amount of information gained through Receiving Water Monitoring, it does not

reduce the amount of information gained through stormwater discharge monitoring or focused BMP effectiveness assessment. In addition, the City will still be able to use Receiving Water Monitoring data to determine receiving water quality trends and to correlate the data with monthly monitoring conducted by the Agricultural Program in Gabilan Creek, Natividad Creek, and the Reclamation Ditch upstream of the City. In general, the monitoring and effectiveness assessment requirements contained in the Draft Order, including the modification described in this response, provide better information about the effectiveness of the City's stormwater management actions than is provided by requirements contained in the existing Order No. R3-2004-0135, while still providing long-term trend information.

The comment also suggests that the monitoring requirements of the Order should be comparable to those of the State Phase II permit. However, monitoring has been a requirement of Phase I permits since their inception, and has been a requirement of the City's stormwater program since 1999, while water quality monitoring will be a new program requirement for Phase II municipalities.

Supplemental - 100

"[Fact Sheet,] General. The Fact Sheet should be revised to be concise, accurate and relevant to the Permit Provisions. Unsupported statements that cannot be proven as fact should be removed, and facts that are not relevant to the understanding of the Permit Provisions should also be removed. In some cases, additional reference and clarification may be necessary. But, overall, the amount of information in the Fact Sheet should be reduced because it is part of the permit and the permit is too long for it to be practicable. Extraneous information in the entire Fact Sheet should be removed because there are too many irrelevant references and non-pertinent discussions and which obscure important points."

Staff Response to Comment City of Salinas Supplemental – 100

See Staff Response to Comment City of Salinas Supplemental – 105. Central Coast Water Board staff has made modifications and corrections to the Fact Sheet where warranted and in response to specific comments.

Supplemental - 101

"[Fact Sheet,] Page 4. IV. Background, A.1.e. Groundwater Recharge. This section states:

> 'Groundwater is the source for most of the urban and agricultural water needs in the Salinas River Valley. …At present, ground water recharge is accomplished primarily through infiltration through the bed of the Salinas River. …Streams and permeable upland portions of the City of Salinas were historically source areas for groundwater recharge. Urbanization has altered the hydrologic regime however, reducing recharge through the construction of impermeable surfaces and the alteration of surface water bodies (e.g., wetlands) and conveyances (e.g., creeks).'

This section infers that the development of the City has had a significant impact groundwater quality and recharge and seawater intrusion. However, the recharge that takes place from the regulated flows in the Salinas River is nearly entirely upstream from the City and the recharge potential from most of the City is limited by shallow clay layers that cause perched groundwater conditions. This section appears to be present to support Permit Provision J.4.f.ii.2, 'Maintain infiltration to support baseflow and interflow to wetlands and surface waters, and deep vertical infiltration to groundwater at pre-development levels.' *However, it does not consider the significant impacts of agricultural practices and water supply management on surface and*

groundwater conditions. Considering all of the factors involved, how does development in Salinas really have a potentially significant impact on groundwater?

Recommendation: Delete unless the true significance urbanization over the agricultural lands surrounding Salinas on groundwater can be demonstrated."

Staff Response to Comment City of Salinas Supplemental - 101
See Staff Response to Comment Chamber – 5.

Not all groundwater recharge through the Salinas River occurs upstream of the City, and the Salinas Valley Water Project proposes additional groundwater recharge facilities downstream of the City.

While the extent of impact to groundwater recharge resulting from development in the City is not entirely known, impervious surfaces associated with development generally impede groundwater recharge significantly. For instance, runoff coefficients associated with most urban land uses are significantly higher than runoff coefficients for farmland, including farmland consisting of clay soils. Therefore it is reasonable to assume that development in the City has had some impact on groundwater recharge.

Provision J.4.f.ii requires the City to use methodology developed through the Joint Effort to derive and apply post-construction numeric criteria for controlling stormwater runoff to maintain, protect and, where necessary, restore beneficial uses of waters affected by stormwater. The Joint Effort is specifically designed to identify the watershed processes impacted by stormwater management that are critical to water quality and beneficial use protection. Joint Effort requirements to maintain groundwater recharge rates will be consistent with the importance of groundwater recharge as a watershed process in the City and with the need to maintain recharge rates to protect water quality and beneficial uses.

The Order does not require projects to meet the pre-development condition in all situations. Central Coast Water Board staff modified the footnote in Provision J.4.f.ii to specify that the identification of the point in hydrologic history shall be determined based on the Central Coast Water Board Joint Effort for Hydromodification Control methodology. (See Staff Response to Comment City of Salinas Supplemental – 85.)

Central Coast Water Board staff has replaced the last two sentences in Fact Sheet IV.A.2.e with the following language: "Urbanization has altered groundwater recharge regimes through the construction of impermeable surfaces."

Supplemental - 102
"[Fact Sheet,] Page 5. IV. Background, A.3.b. Agriculture. Control most of agricultural practices are beyond authority of the City and most of the agricultural areas with runoff toward the City are not within the City.

Recommendation: Delete sections that are not within the City capacity to regulate."

Staff Response to Comment City of Salinas Supplemental – 102
The purpose of the Fact Sheet discussion is to describe the watershed context of the Order. As many City comments affirm, agriculture is a significant factor in the Salinas River and Reclamation Ditch watersheds. In addition, agricultural related discharges not entirely

comprised of return flows and stormwater may enter the City's MS4 (See Staff Response to Comment City of Salinas – Fact Sheet Finding 44). Therefore discussion of agricultural lands and issues is relevant to the Order.

Supplemental - 103

"[Fact Sheet,] Page 7. IV. Background, A.4.b. Water Quality Issues. This section states:

> 'While Carr Lake is a naturally-occurring flood water control feature, its function within the watershed has been impacted by agricultural and development practices. Development has encroached on the area, reducing its retention capacity. In addition, channelization of Natividad and Gabilan Creeks has disconnected these creeks from their floodplains to a degree, and routes lower flows through Carr Lake without retaining them. Filling of wetland areas and removal of wetland vegetation has also reduced Carr Lake's capacity to retain, infiltrate, and evapotranspire runoff. As a result of these changes, the downstream watershed has experienced a reduction of these benefits.'

However, Carr Lake is not natural occurring in its current state and it is not evident that development has reduced its retention (or detention) capacity. Almost all impacts to the historic function of Carr Lake can be attributed to agricultural practices and the construction of the Reclamation Ditch.

Then this section states:

> 'An emphasis of this Order is on acquiring an understanding of important watershed processes to inform development and stormwater management decisions, and identifying measures for protecting and restoring watershed processes that the Permittee will implement in subsequent permit terms.'

The basic historic watershed processes are already relatively well understood and these processes have been significantly impacted by modifications to the watershed for farming and the related construction of the Reclamation Ditch. The Draft Permit requires a significant amount of effort for Watershed Characterization. However, this effort will not provide any clear surface water quality benefit over the otherwise required practices of incorporating LID features and meeting numeric criteria.

Long term regional programs that may include constructed wetlands in Carr Lake and stream corridor enhancements have great potential to improve beneficial uses of the waterways. However, these improvements do not require the detailed assessments required by the Draft Permit Provisions in Section Q.

Recommendation: Revise to include facts, not conjecture, and ensure that effort expended in collecting data will have significant water quality benefit."

Staff Response to Comment City of Salinas Supplemental – 103

According to the *Reclamation Ditch Watershed Assessment and Management Strategy Final Report* prepared for the Monterey County Water Resources Agency,[1] Carr Lake has functioned historically as a natural basin receiving local runoff. The lake drained slowly to Tembladero Slough through a string of similar small ponds. Reclamation projects completed by 1920 increased the capacity of the drainage channel, draining a portion of Carr Lake and decreasing its size. Comparison of current aerial photographs with historic maps indicates that urban development has encroached on the historic boundaries of Carr Lake to some extent. The purpose of the discussion in the Fact Sheet is to show that local watershed conditions have

been impacted by a variety of factors, including agricultural and urban development. It is not the purpose of the Fact Sheet to imply that urban development, in general, or the City of Salinas, in particular, are solely or primarily responsible for these impacts. The words "to some extent" have been added to the Fact Sheet, and Central Coast Water Board staff believes that, with this change, the discussion accurately represents watershed conditions.

See Staff Response to Comment Chamber – 5. Also see the Fact Sheet for Provision Q (Watershed Characterization) and the Fact Sheet introduction for justification about the Watershed Characterization requirements.

The Order includes requirements to begin the long-term process of watershed-based stormwater management. Watershed-based stormwater management is an iterative step forward and is necessary to more realistically assure compliance with water quality standards and protection of beneficial uses over time. Watershed-based stormwater management is necessary to prevent and restore permanent adverse impacts to receiving waters caused by alteration of watershed processes resulting from conventional stormwater management and development planning. These impacts are difficult, if not impossible, to reverse once they occur. The Order requires the initial step in this process, Watershed Characterization.

The process of Watershed Characterization is the identification and understanding of receiving water, urban infrastructure, and landscape conditions that affect how stormwater runoff interacts with watershed processes. The purpose of the Watershed Characterization is to help guide stormwater management decisions. By delineating the Urban Subwatersheds throughout the permit coverage area, then collecting and managing information as indicated in all the Order Provisions on the basis of these subwatersheds, the City will establish the foundation for watershed-based stormwater management. At the conclusion of the term of the Order, the City is required to conduct an analysis to determine necessary improvements to its stormwater management and development planning so that future stormwater management decisions and development practices maintain and restore watershed processes as necessary to protect water quality and beneficial uses. The City will rate its Urban Subwatersheds relative to the risk of impact and alteration of watershed processes which are impacted by stormwater management, and then develop measurable goals for improving program implementation. These program improvements will be the foundation of a watershed-based approach to stormwater management in the subsequent Order.

[1] Watershed Institute. *Final Report: Monterey County Water Resources Agency—Reclamation Ditch Watershed Assessment and Management Strategy.* Prepared for the Monterey County Water Resources Agency Board of Directors. Web (http://www.mcwra.co.monterey.ca.us/Agency_data/RecDitchFinal/RecDitchFinal.htm).

Supplemental - 104

"[Fact Sheet,] Page 17. V. Economic Issues. This section contains numerous references to costs and studies that are not relevant to conditions in the City of Salinas. It also includes cost estimates that are not realistic. It is important to consider the costs of the specific permit requirements that will be adopted, the value of implementing the specific provisions and the mechanisms available to fund implementation to ensure that requirements are feasible.

Recommendation: This section should be revised to only include information that is specifically relevant to conditions in, and requirements for, the City of Salinas."

Staff Response to Comment City of Salinas Supplemental – 104

The City does not provide support for the statement that cost studies cited and cost estimates contained in Fact Sheet Section V are not relevant to conditions in the City of Salinas. In addition, the City does not identify which costs are unrealistic, why they are unrealistic, and how they could be made more realistic. The costs and cost estimates contained in Fact Sheet Section V consist of general data intended to provide general information municipal stormwater program costs. The cited studies reviewed stormwater program implementation costs for a variety of municipalities in various locations in order to provide a range of data that could reasonably be expected to cover program costs for most Phase I municipalities. The requirements contained in the Order can be compared with requirements contained in other Phase I municipal stormwater permits to produce a general estimate of the cost of implementing this Order. Other cost data contained in Fact Sheet Section V is derived from the Center for Watershed Protection, a nationally-recognized resource on issues related to municipal stormwater. The City has not shown that these general data and cost ranges are uniquely inapplicable to conditions in the City and its watersheds. Central Coast Water Board staff has requested, for comparison, reliable cost estimates from the City, with the basis for the estimates, but has not received all of this information. Therefore, while Central Coast Water Board staff recognizes the cost information contained in Fact Sheet Section V is not precise or specifically tailored to the City's watersheds, Central Coast Water Board staff does not believe the information is unrealistic or irrelevant to conditions in the City. Central Coast Water Board staff relies upon generalized cost data, because of the difficulty of using data reported by municipalities. Each municipality reports costs in a different way, lumping and splitting cost categories using varying methods. Also, many municipalities include costs that are not partially or wholly attributable to stormwater management. Due to the difficulties of using municipal data to estimate costs, Central Coast Water Board staff has relied upon the best available information; studies coordinated by the State Board and studies relied upon by USEPA in writing the federal stormwater regulations.

Supplemental - 105

"[Fact Sheet,] Page 24. VII. Legal Authority. 40 CFR 124.8(a), – Federal NPDES regulations 40 CFR 124.8(a) provides that 'a fact sheet shall be prepared for every draft permit for a […] NPDES facility […]. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit.' *This Fact Sheet has been made a part of the Administrative Record.*

Recommendation: Revise the Fact Sheet to 'briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit.' As written, it is exhaustive and not entirely fact based."

Staff Response to Comment City of Salinas Supplemental – 105

Central Coast Water Board staff has revised the Fact Sheet where comments indicated it contained nonfactual material. The Fact Sheet is required by federal regulations to include, among other elements, a "summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions." Central Coast Water Board staff does not believe that the regulations intend that brevity in Fact Sheet preparation should come at the expense of comprehensiveness, and prepared the Fact Sheet to provide the required basis as briefly as possible. The Fact Sheet is intended as a supporting document, providing the basis for provisions and as a reference where the Order contains material for which the reader requires further background or explanation. Central Coast Water Board staff finds that a comprehensive Fact Sheet that fully supports the Order's requirements is preferable to brief

Fact Sheet that does not support the requirements. Therefore Central Coast Water Board staff does not believe that the Fact Sheet would be improved by making it more brief.

Supplemental - 106
"[Fact Sheet,] Page 48. E. Implementation. General. 30. This statement references, '…voluminous research conducted by USEPA, California Association of Stormwater Quality (CASQA), and others provides information on the technical feasibility, effectiveness, and cost of stormwater management BMPs. ... While more quantitative information is needed about the effectiveness of some of these BMPs at achieving tangible results in receiving water conditions, this body of knowledge provides an initial approximation of what constitutes MEP, and is incorporated as such by this Order.' *Only specific requirements should be included in the Order, not general references to an undefined body of information that may or may not be relevant to the conditions in Salinas.*

Recommendation: Delete references to information that has not been shown to be factual relative to conditions in the City of Salinas because it is not feasible for the City to vet all research to determine what should and what should not be part of the Order."

Staff Response to Comment City of Salinas Supplemental – 106
Finding 30 states that the Order includes BMPs required on the basis of the state of the science of stormwater management and of the Central Coast Water Board's experience regulating municipal stormwater management programs. Where this Order identifies specific BMPs, the Fact Sheet support the BMP requirements, and the City is required to implement the BMPs without needing to research the BMPs to determine whether they should be part of this Order, unless the City chooses to do so in order to propose an alternative that is equivalent to a BMP contained in this Order. Where this Order provides flexibility to choose between alternatives identified in the Order, Central Coast Water Board staff has ensured that all of the alternatives are based on the science and Central Coast Water Board's experience, and are relevant to conditions in Salinas. This flexibility is included in this Order to allow the City to implement BMPs that best-suited to conditions in the City. See also Staff Response to Comment City of Salinas Supplemental – 4.

Supplemental - 107
"[Fact Sheet,] Page 59. E. Implementation. Parcel-Scale Development. 46. The first paragraph of this section quotes an NRC reference, 'The NRC states, "Although the role of urban stormwater in degrading the nation's waters has been recognized for decades, reducing that role has been notoriously difficult. …Wherever grasslands and forest are replaced by urban development in general, and impervious surfaces in particular, the movement of water across the landscape is radically altered. Nearly all of the associated problems result from one underlying cause: loss of the water-retaining function of the soil and vegetation in the urban landscape."' *Anticipated future development within the City of Salinas involves the conversion of agricultural lands to urban lands and this conversion has distinctly different implications that are not represented by the information in the Fact Sheet.*

The third paragraph states, 'To effectively protect beneficial uses, it is necessary to maintain and restore all the watershed processes that can be affected by: stormwater, actions to manage stormwater, and/or land uses that alter stormwater runoff patterns. These watershed processes include the following: surface runoff, groundwater recharge and discharge, sediment processes, chemical processes, and evapotranspiration.' *It is not feasible to restore all the watershed processes, nor is it necessary to meet the requirements of the CWA.*

Attachment 2.d: City of Salinas Supplemental Comments Received on Draft Order No. R3-2012-0005 and Staff Response

The last paragraph on page 59 is redundant with the first paragraph on page 61.

The second paragraph on page 61 refers to a study in the Piedmont region of North Carolina. Due to numerous hydrologic dissimilarities, it is unlikely that the results have any bearing to determining appropriate permit provisions for the City of Salinas.

The fourth paragraph on page 61 quotes an NRC study, 'Changes to channel morphology are among the most common and readily visible effects of urban development on natural stream systems. The actions of deforestation, channelization, and paving of the uplands can produce tremendous changes in the delivery of water and sediment into the channel network. In channel reaches that are alluvial, the responses are commonly rapid and often dramatic… The clearest single determinant of urban channel change is the alteration of the hydrologic response of an urban watershed, notably the increase in stream-flow discharges… If the increase in sediment transport caused by the shift in the runoff regime is not matched by the sediment supply, channel bed entrenchment and bank erosion and collapse lead to a deeper, wider channel form.' *This discussion of channel geomorphology is not relevant to the drainage system in the vicinity of Salinas where the natural system involved sediment being deposited upstream from Carr Lake and the man-made channels within and downstream from Salinas being intentionally maintained devoid of vegetation for flood control and other purposes.*

Recommendation: This section should be entirely re-written to be based entirely in facts relative to local conditions."

Staff Response to Comment City of Salinas Supplemental – 107
See Staff Response to Comment Chamber – 5.

Central Coast Water Board staff recognizes that the majority of future development in the in the City and the Future Growth Area will occur on lands currently under agricultural uses. While the runoff characteristics of agricultural land differ from those of forest and grassland, they also frequently differ greatly from the runoff characteristics of urban lands. This is particularly true in the case of smaller storms with more frequent return periods, which are the primary concern of parcel-scale development requirements in this Order. In addition, pollutants generated by urban development are the same whether the pre-urban condition was forest, grassland, or agriculture. Therefore the findings and conclusion of the cited study—that the runoff-altering characteristics of urban development affects the water-retaining function of the ground—is relevant to the City's conditions.

This Order does not suggest that the City is required to wholly restore all watershed processes. Instead, this Order requires the City regulate new development and redevelopment activities in a way that maintains and restores watershed processes impacted by stormwater management to protect water quality and beneficial uses. In addition, this Order contains limited requirements for the City to implement procedures to retrofit existing development with the purpose of restoring degraded watershed processes affected by urban stormwater discharges. The requirements that are contained in this Order are designed to meet Clean Water Act requirements and objectives (see Staff Response to Comment City of Salinas Supplemental – 8).

The last paragraph on page 59 of the Fact Sheet is a general statement of watershed processes that are typically affected by urban development, and the first paragraph on page 61 is part of a

quote from a study which supports the general statements in the last paragraph on page 59. Therefore it is reasonable for these two paragraphs to overlap.

As stated in the Fact Sheet, the Piedmont study compared runoff characteristics between developed and undeveloped parcels. The developed parcel was a large residential subdivision, and the undeveloped parcel consisted of forest and agricultural fields. The study found that baseflow as percentage of overall discharge from the two parcels was approximately zero compared with 25 percent for the undeveloped area. Baseflow refers to rainfall that soaks into the ground and flows through the soil to water bodies. Therefore the conclusion of the study is that urban development greatly reduces baseflow by increasing impervious surfaces, which prevents rainfall from percolating into the ground. The City has raised two points in this and other comments related to the City's contention that this conclusion is not relevant to hydrologic conditions in the City. First, the City has noted that development activity in the City converts agricultural land rather than forest or grassland. However, the undeveloped parcel in the Piedmont study consisted partially of agricultural fields. In addition, where soils permit percolation, agricultural lands have capacity to provide baseflow, even though this capacity is generally lower than that of forest or grassland. It is also important to note that the point of the study is not primarily that undeveloped land produces baseflow, but that urban development significantly reduces baseflow. Therefore, to the extent that baseflow is a natural or pre-development watershed process in the City, this study indicates that urban development will significantly affect this process. The Fact Sheet does not assume that baseflow is a significant watershed process in the City. The Central Coast Water Board Joint Effort for Hydromodification Control will provide information about dominant watershed processes. Second, the City has commented that soils in the City do not percolate significantly, the implication being that baseflow is not likely to be a significant watershed process in undeveloped land, and therefore urban development will not significantly impact baseflow. However, this Order only requires the City to maintain or restore baseflow to the extent that it is characteristic of watersheds in the City.

The NRC study cited in the fourth paragraph on page 61 of the Fact Sheet is relevant to the drainage system in the vicinity of the City. The study cites the effects on channel morphology of increased runoff from developed lands caused by increasing impervious surfaces. Central Coast Water Board staff recognizes that receiving water channels in the vicinity of the City have been historically modified from their natural condition. However, these existing channels have achieved a degree of equilibrium with runoff conditions which has the potential to become unbalanced when runoff conditions are altered by urban development. Also, in the future the City may restore degraded waterways within the City's watersheds. The Central Coast Water Board Joint Effort for Hydromodification Control may assess existing and potential conditions, in some situations, when determining appropriate requirements for new development and redevelopment. Increased impervious areas produce increased runoff, which results in increased flow rates and velocities in receiving waters. Increased velocity, in turn, alters sediment transport characteristics, potentially resulting in greater erosion leading to channel bed entrenchment and bank erosion and collapse, leading to deeper and wider channel forms and impacts to beneficial uses and water quality.

Supplemental - 108

"[Fact Sheet,] Page 64. E. Implementation. Parcel-Scale Development. 47. This section states: 'Natural vegetated pervious ground cover is converted to impervious surfaces such as paved highways, streets, and parking lots, and rooftops. Natural vegetated soil can both absorb rainwater and remove pollutants, providing an effective natural purification process.' *The permit should focus on what happens when agricultural lands are converted to urban lands and what*

happens when urban lands redevelop. These are the predominant processing that are and will be occurring in and around Salinas. Extensive references to natural conditions do not provide a relevant basis for the permit.

The last paragraph on page 66 references conditions within Las Vegas wash. These conditions are not relevant to conditions within and downstream from the City of Salinas.

The City recognizes that urbanization increases runoff rates, particularly from the more frequent events; and due to the arid climate, the first flush of runoff has relatively high concentrations of pollutant loads. The City also recognizes that LID and implementing appropriate numeric criteria are reasonable measures to mitigate for development impacts. It is not appropriate to reference general or irrelevant information to support this.

Recommendation: Remove references that are not relevant to conditions in Salinas."

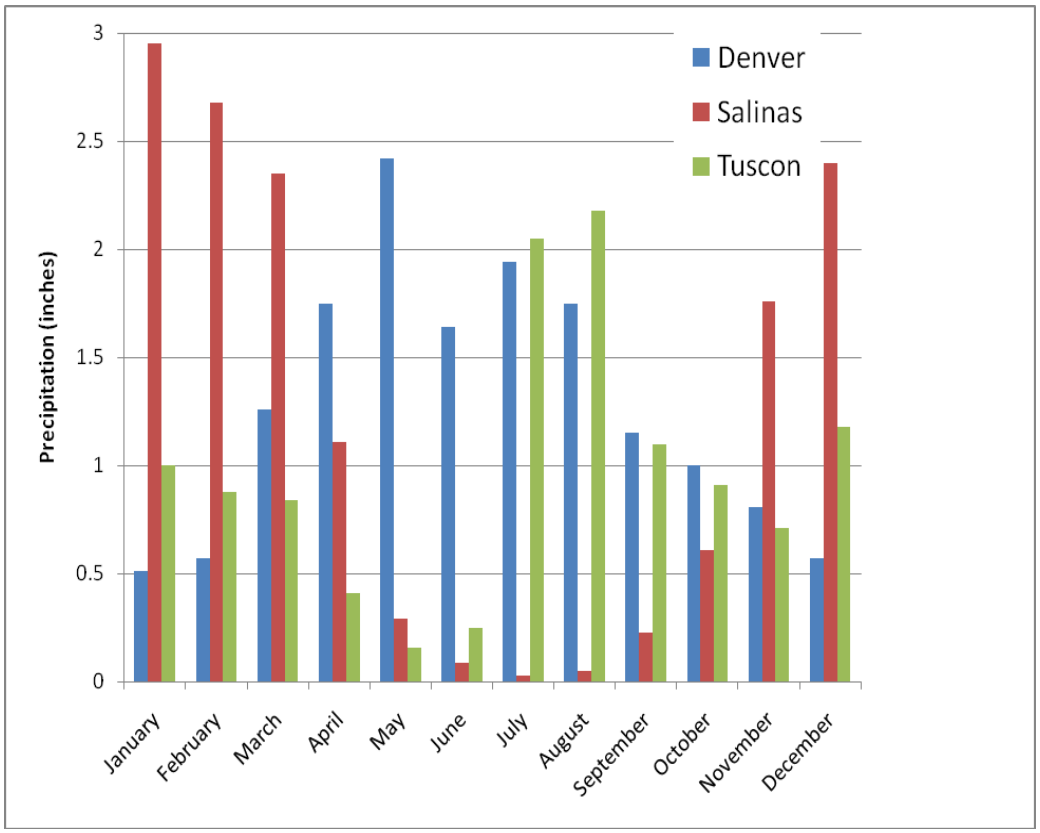
Staff Response to Comment City of Salinas Supplemental – 108
See Staff Response to Comment City of Salinas – Finding 27 (1) and the first paragraph of Staff Response to Comment City of Salinas Supplemental – 107. See Staff Response to Comment Chamber – 5.

The City does not provide information to support its contention that conditions in Las Vegas Wash are not relevant to conditions in and downstream of the City of Salinas. The cited study found that there are synergistic effects of increased volume, velocity, rate, and duration of runoff due to urban development as these effects accumulate as one moves downstream in a watershed, and that these synergistic effects are greater in arid watersheds. The City is in an arid watershed (see Staff Response to Comment City of Salinas – Fact Sheet Finding 27 (3)) large enough for such synergistic effects to occur in downstream waters, which include sensitive aquatic habitats (e.g., Monterey Bay National Marine Sanctuary and Salinas River National Wildlife Refuge). The possibility that the Las Vegas wash has more wetland area downstream than the City has in its watershed does not negate the findings of the study.

Supplemental - 109
"[Fact Sheet,] Page 68. E. Implementation. Parcel-Scale Development. 50. The third paragraph on page 68 states: 'As an alternative to redirection of stormwater to functional landscape, rain gutter flows can be directed into rain barrels or cisterns for later use in irrigating lawns and gardens. The benefits of urban area rainwater harvesting can be huge, providing supplemental water for many local uses, such as irrigating a vegetable garden and surrounding landscape, which also leaves more treated water in the municipal water supply to help cities through times of drought or other shortages.' *In practice, in areas with climates similar to Salinas, cisterns are not an economical means to meet runoff reduction requirements and cannot be used to provide a reliable source of municipal water supply. As stated in the USEPA guide, Green Infrastructure in Arid and Semi-Arid Climates,* 'A 2007 study prepared for the Colorado Water Conservation Board, for instance, found that a 5,000-gallon cistern paired with waterwise landscaping could provide 50% of the irrigation demand for a 7,000-square-foot lot in Douglas County, CO.1 The cost of these systems, however, increases significantly with storage volume—particularly for underground storage construction. In sizing rainwater harvesting systems, site owners must balance the multiple benefits of stormwater retention and water conservation against the costs of construction.' *In actuality, the unit cost per cubic foot stored decreases as the size of the system increase; however, the yield for irrigation water supply depends on whether the stored volume can be retained until there is an irrigation need, or whether it needs to be emptied in*

advance of the next rainfall event. The following chart illustrates average monthly precipitation in Denver, Salinas and Tuscon (because examples of rain harvesting in Denver and Tuscon were included in the USEPA's guide).

Chart – Average Monthly Precipitation Comparison



It is evident that the typical timing of rainfall relative to irrigation demand makes it more challenging to apply rainwater harvesting principles in Salinas than in many other areas. The cost per unit volume of storage is too high, and the need to evacuate the storage so that it is available to mitigate for subsequent runoff, even when there is little or no irrigation demand, is too great to make cisterns practicable in Salinas. To state that the benefits can be huge is a significant exaggeration.

The last paragraph on page 69 states, '… and the City of Portland, Oregon requires the onsite infiltration of the runoff volume from a 10-year, 24-hour design storm.' *Where is this stated in the City of Portland's requirements and do conditions that cause this requirement correlate to conditions in the City of Salinas?*

Recommendation: Unless the Board can provide a fully supported technical and economic analysis to support the cost effectiveness of rainwater harvesting, text that states that the benefits are huge and text that identifies cisterns as being a preferred mitigation measure should be deleted. Requirements from other jurisdictions should only be used where these is a clear correlation to conditions in Salinas. Requirements for Philadelphia and Portland should

only be referenced if there is a clear correlation to Salinas, and then the reference should be appropriately explained and cited."

Staff Response to Comment City of Salinas Supplemental – 109
The Order includes rainwater harvesting as an option for meeting the treatment and flow control requirements. However, the Order does not prescribe that rainwater harvesting has to be the means of compliance. The Order provides flexibility to project applicants to choose from a suite of LID BMPs as the first means of compliance for meeting the numeric requirements in Provision J. It is ultimately up to the applicant to work with the City to propose BMPs that make sense for a particular site. Central Coast Water Board staff finds that it is appropriate to provide examples of rainwater harvesting studies provided around the nation, even if these are not directly representative of Salinas. The Fact Sheet references the location of different rainwater harvesting studies, so Central Coast Water Board staff finds that the Order includes accurate information.

Central Coast Water Board staff changed the word, 'huge', to 'noticeable', in the Fact Sheet for Finding 50.

Supplemental - 110
"[Fact Sheet,]Page 72. E. Implementation. Development Planning and Stormwater Retrofits. 58. The second paragraph on page 72 states: 'Another strategy is redeveloping already degraded sites such as abandoned shopping centers or underutilized parking lots. In this case, the net increase in discharges from developed sites would likely be zero, and it would likely decrease, depending on the on-site infiltration practices used. Also, by allowing or encouraging denser development, less land is converted overall, and less total impervious area created.' *The City whole-heartedly embraces this concept. The problem is that the Permit Provisions (Section J) lumps new and redevelopment into the same category without providing a reasonable process for allowing or encouraging denser development.*

Recommendation: Revise the Permit Provisions to be consistent with this concept."

Staff Response to Comment City of Salinas Supplemental – 110
See Staff Response to Comment City of Salinas – Provision J.3.a.