CITY OF DANA POINT

DEPARTMENT OF PUBLIC WORKS

July 31, 2009

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: Legal Comments on May 4, 2009 Draft State Board Order for File/Petition No. A-1780

Dear Ms. Townsend:

The City of Dana Point is providing comments on the State Water Resources Control Board's above-referenced proposed Order (SWRCB/OCC File A-1780) ("Order").

As represented by Rutan & Tucker, LLP, the City of Dana Point concurs with and is incorporating by reference all sections of the attached, *Legal Comments on May 4, 2009 Draft State Board Order for File/Petition No. A-1780* (letter), except Section I of the letter, entitled "The Incorporation of a TMDL into any Municipal NPDES Permit for the Region is Premature at this Time."

Issues addressed in the proposed Order (or raised in Petitioners' Petition but not addressed in the proposed Order) are potentially relevant to the future incorporation of TMDLs in the MS4 permits covering the County of Orange, which includes the City of Dana Point.

The City requests that these comments by reference be made a part of the administrative record in connection with this pending Petition, and ask that the Comments be forwarded on to the Chair and members of the State Board prior to the upcoming hearing scheduled for August 4, 2009.

Thank you for your attention to this matter. Please contact Lisa Zawaski at (949) 248-3584 if you have any questions on these comments.

Respectfully,

Brad Fowler, P.E.
Director of Public Works & Engineering Services
City of Dana Point

Enc: Legal Comments on May 4, 2009 Draft State Board Order for File/Petition No. A-1780 (w/o attachments, which are available upon request)

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July 30, 2009

VIA OVERNITE EXPRESS

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: Legal Comments on May 4, 2009 Draft State Board Order for File/Petition No. A-1780

Dear Ms. Townsend:

These legal comments are being submitted on behalf of the Cities of Downey and Signal Hill, and the ad hoc group of cities known as the Coalition for Practical Regulation[1] (hereafter collectively "Cities"), with respect to a Draft Order dated May 4, 2009 and proposed by the State Board in *In The Matter of the Petition of the County of Los Angeles and Los Angeles County Flood Control District*, SWRCB/OCC File No. A-1780 ("Petition"). The Cities are permittees under the existing municipal separate storm sewer system ("MS4") National Pollutant Discharge Elimination System ("NPDES") permit ("NPDES No. CAS004001") in issue, and have an interest in the outcome of this Petition, as the Cities may become subject to future total maximum daily loads ("TMDLs") to be referenced in either the existing Municipal NPDES permit, or in future Municipal NPDES permit(s) to be issued by the Regional Board. The Cities request that these comments be made a part of the administrative record in connection with this pending Petition, and ask that the Comments be forwarded on to the Chair and members of the State Board prior to the upcoming hearing scheduled for August 4, 2009.

[1] The Coalition for Practical Regulation also known as "CPR" is an ad hoc group of municipalities in Los Angeles County committed to obtaining clean water through cost-effective and reasonable storm water regulations, and consists of the following Cities: Arcadia, Artesia, Baldwin Park, Bell, Bell Gardens, Bellflower, Carson, Cerritos, Commerce, Covina, Diamond Bar, Downey, Gardena, Hawaiian Gardens, Industry, Irwindale, La Canada Flintridge, La Mirada, Lakewood, Lawndale, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pico Rivera, Pomona, Rancho Palos Verdes, Rosemead, Santa Fe Springs, San Gabriel, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Vernon, Walnut, West Covina, and Whittier.

The legal comments discussed herein are not intended to be a comprehensive discussion of all legal defects with the Draft Order, but address only the more significant defects the Cities believe exist with the Draft Order. In fact, the Cities believe there are other legal defects in the Draft Order which are not raised here, but which have been raised by the County Petitioners in their briefing on the issues. Based on the comments set forth herein, as well as the attached exhibits, and based on the previous exhibits and contentions made by the County Petitioners, the Cities respectfully request that the Draft Order not be issued, and that instead an Order be issued granting the Petition and providing for the issuance of relief consistent with the relief requested in the Petition and the comments below. The Draft Order should not be issued, in part, as a result of the following legal defects with such Order:

(1) Any incorporation of a TMDL into a Municipal NPDES permit for the Los Angeles Region is premature at this time, in light of the Orange County Superior Court's recent decision in *City of Arcadia v. State Board*, OCSC Case No. 06CC02974, Fourth Appellate District Case No. G041545 (the "*Arcadia* Case"). Given the decision in the *Arcadia* Case, no new TMDLs should be further developed and no existing TMDL should be incorporated into the operative Municipal NPDES permit or permits, until such time as the *Arcadia* Case has been finally resolved.

(2) The maximum extent practicable ("MEP") Standard under the Clean Water Act ("CWA" or "Act") applies to all "discharges of pollutants" "from" a municipal separate storm sewer system ("MS4"), regardless of whether the pollutants contained within the discharge arose from "storm water" or "non-storm water."

(3) The Draft Order improperly treats "dry weather" as "non-stormwater," ignoring the clear definition of the term "storm water" in the federal regulations, and thus improperly attempting to require strict compliance with the waste load allocations ("WLAs") in the TMDL, and going beyond the MEP standard provided for under federal law.

(4) Federal law and State policy do not require or even recommend compliance with TMDLs through the use of numeric limits, i.e., strict compliance with WLAs in a TMDL. Instead, both State and federal policy provide for compliance with TMDLs through the use of iterative MEP-compliant Best Management Practices ("BMPs"), and not through strict compliance with WLAs (which are a form of numeric effluent limits).

(5) Any amendment to an NPDES permit, whether incorporating a TMDL or otherwise, as confirmed by the California Supreme Court in the *City of Burbank v. State Board* ("*Burbank*") (2005) 35 Cal.4th 613, can only be adopted once the factors and considerations required under Water Code section 13241, as well as section 13000, have been met.

(6) Any TMDL incorporated into a municipal NPDES permit in a fashion that is not otherwise required by federal law, cannot be imposed unless the State first provides funding for this non-federal mandate, in accordance with the requirements of the California Constitution.

I. THE INCORPORATION OF A TMDL INTO ANY MUNICIPAL NPDES PERMIT FOR THE REGION IS PREMATURE AT THIS TIME.

Any incorporation of a TMDL into a Municipal NPDES permit for the Los Angeles Region is premature at this time in light of the Orange County Superior Court's recent decision in the *Arcadia* Case. The incorporation of a TMDL into a Municipal NPDES Permit is, in effect, the final step in the process of seeking to enforce Water Quality Standards ("Standards") as against storm water dischargers. (The term "storm water," hereafter "Stormwater," plainly includes "urban runoff" as discussed below.) As recognized by the Court of Appeal in *City of Arcadia v. State Board* (2006) 135 Cal.App.4th 1392, 1404, "[a] TMDL must be 'established' at a level necessary to implement the applicable water quality standards." (*Also see City of Arcadia v. EPA* (N.D. Cal. 2003) 265 F.Supp.2d 1142, 1145 ["each TMDL represents a goal that may be implemented by adjusting pollutant discharge requirements in individual NPDES Permits or establishing nonpoint source controls."].)

In the recent *Arcadia* Case, a number of the Cities successfully challenged the propriety of the Standards in the Basin Plan, and particularly the Water Boards' failure to conduct a Water Code section 13241/13000 analysis during the course of the 2004 Triennial Review, and to correct the improperly designated "potential" use designations in the Basin Plan. As discussed below, the Superior Court determined that the State and Regional Boards were required to conduct this 13241/13000 review in relation to Stormwater, and to make appropriate revisions to the Standards, including deleting the "potential" use designations.

Thus, any consideration of the incorporation of a TMDL into a Municipal NPDES Permit for the Los Angeles Region, should be delayed until such time as the propriety of the Standards upon which the TMDL is based, have been reviewed and revised in accordance with the Superior Court's determinations. Moreover, although the *Arcadia* Case is presently on appeal, at a minimum, in light of the significance of the Court's rulings that the "potential" use designations are improper and are to be replaced with other more appropriate use designations, and given that other changes to the Standards may be necessary once the review under Water Code sections 13241 and 13000 has been completed, any decision to attempt to enforce existing Standards through the incorporation of this bacteria TMDL or other TMDLs, into a Municipal NPDES Permit, should, at a minimum, be delayed until such time as the *Arcadia* Case has been finally decided. To proceed with the incorporation of the subject TMDL into the existing NPDES Permit, blindly, understanding that the Standards supporting the TMDL may be defective, and thus, that the TMDL itself may need to be revised, is arbitrary and capricious action that will only lead to further litigation.

In the *Arcadia* Case, with respect to the propriety of the Standards in the existing Basin Plan, as they are to be applied to Stormwater, in a Notice of Ruling/Decision dated March 13, 2008 (Exhibit "1," hereafter "Decision"), the Orange County Superior Court, the Honorable Thierry P. Colaw presiding, held, among other things, as follows:

> **The Standards cannot be applied to storm water without appropriate consideration of the 13241/13000 factors. There is no substantial evidence showing that the Boards considered the 13241/13000 factors before applying the Standards to storm water in the 1975 Plan Adoption, the 1994 Amendment, or the 2002 Bacteria Objective. . . . They must be considered in light of the impacts on the "dischargers" themselves. The evidence before the court shows that the Board did not intend that the Basin Plan of 1975 was to be applied to storm waters when it originally was adopted. The Respondents admit this. "[T]he regional board considered storm water to be essentially uncontrollable in 1975." [Citation.] This was confirmed by the State Board in a 1991 Order when it stated: "The Basin Plan specified requirements and controls for 'traditional' point sources, but storm water discharges were not covered . . . The Regional Board has not amended the portions of its Basin Plan relating to storm water and urban runoff since 1975. Therefore, we conclude that the Basin Plan does not address controls on such discharges, except for the few practices listed above. Clearly, the effluent limitations listed for other point sources are not meant to apply." [Citation.] There is no substantial evidence in the record to show that the Boards have ever analyzed the 13241/13000 factors as they relate to storm water.** (*See* Exhibit "1," Decision p. 5-6; bolding in original.)

Similarly the Superior Court found that the Water Boards' development of Standards based on mere "potential" uses, was inappropriate, holding:

> **Section 13241 does not use the word "potential" anywhere in the statute. It does describe the factors previously discussed and specifically states that a factor "to be considered" is "Past, present, and probably future beneficial uses of water." Water C. § 13241(a).**

* * *

> **The real problem is that basing Standards on "potential" uses is inconsistent with the clear and specific requirements in the law that Boards consider "probable future" uses. It is also inconsistent with section 13000 which requires that the Boards consider the "demands being made and to be made" on state waters. (Water C. § 13000 emphasis added.) The factors listed by the Legislature in 13241 were chosen for a reason. *Bonnell v. Medical Bd. Of California* (2003) 31 Cal.App.4th 1255, 1265 [courts will "not accord deference" to an interpretation which "is incorrect in light of the unambiguous language of the statute"]. Respondents have acted contrary to the law by applying the vague "potential" use designations to storm water.** (Exhibit "1," Decision, p. 5.)

Accordingly, the Cities respectfully request that the subject TMDL, and any other TMDLs, not be incorporated into the subject Municipal NPDES Permit, or any future Municipal NPDES Permits, until such time as a final decision has been rendered in the *Arcadia* Case, and if the Superior Court's decision is upheld, until such time as the Judgment and Writ of Mandate issued in that case, have been complied with. (*See* Exhibits "2" and "3" hereto, the Judgment and Writ of Mandate entered in the *Arcadia* Case by the Superior Court.)

II. THE DRAFT ORDER WRONGLY SEEKS TO AVOID APPLICATION OF THE MEP STANDARD BY IMPROPERLY TREATING "DRY WEATHER" AS "NON-STORM WATER"

A. The MEP standard Under the Clean Water Act Applies to All "Discharges of Pollutants" From the MS4, Regardless of Whether the Pollutants in the Discharge Arise from "Stormwater" or "Non-Stormwater."

It is clear from the plain language of the Clean Water Act that any attempt to exclude "dry weather" from the definition of "Stormwater," does not in any way result in the Boards having additional authority under State or federal law to impose strict "numeric effluent limits" on the County Petitioners or the Cities. To the contrary, the Clean Water Act expressly applies the MEP standard to all "pollutants" discharged from the MS4, whether they are classified as "non-stormwater" or "Storm water." Although "non-stormwater" is required to be "effectively prohibited" from entering ***"into"*** the MS4, the CWA clearly does not treat discharges ***"from"*** the MS4 any differently if the "pollutants" in issue arose as a result of a "Stormwater" versus a "non-stormwater" discharge. (33 U.S.C. § 1342(p)(3)(B). As such, if "dry weather" is improperly classified as "non-stormwater," such a definition does not in any way change how the

"pollutants" in the discharge are to be addressed. Instead, under the CWA, regardless of the nature of the discharge, *i.e.*, be it "Stormwater" or "non-stormwater," the MEP standard applies.

The language in the Act requires municipalities to "require controls to reduce the discharge of ***pollutants*** to the maximum extent practicable." The Act then applies the MEP standard to the "discharge of pollutants" from the MS4, not to the discharge of "Stormwater" or "non-stormwater" from the MS4. As such, the State Board's attempted classification of "dry-weather" as "non-stormwater," has no relevance to the issue of the types of "controls" required under the Act to address the "pollutants" in issue. Section 1342(p)(3)(B) of the Act entitled "Municipal Discharge" provides, in its entirety, as follows:

> Permits for discharges **from** municipal storm sewers –
>
> (i) may be issued on a system– or jurisdictional– wide basis;
>
> (ii) shall include a requirement to effectively prohibit **non-stormwater** discharges **into** the storm sewers; and
>
> (iii) shall require controls **to reduce the discharge of pollutants to the maximum extent practicable**, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. (33 U.S.C. § 1342(p)(3)(B).)

Moreover, this language has consistently been interpreted as allowing for a different set of requirements on "municipal" discharges, versus "industrial" or "traditional" dischargers, with federal law only requiring that the MEP standard be applied to "municipal" dischargers, and with a standard of strict compliance with numeric effluent limits to be applied to industrial dischargers. As the Ninth Circuit in *Defenders of Wildlife v. Brown* (*"Defenders"*) (9th Cir. 1999) 191 F.3d 1159, found "Congress required municipal storm-sewer dischargers 'to reduce the discharge of pollutants to the maximum extent practicable' finding that the Clean Water Act was "***not merely silent***" regarding requiring "municipal" dischargers to strictly comply with numeric limits, but in fact that the requirement for traditional industrial waste dischargers to strictly comply with the limits was "replaced" with an alternative requirement, i.e., "that ***municipal*** storm-sewer dischargers 'reduce the discharge ***of pollutants*** to the maximum extent practicable . . . in such circumstances, the statute unambiguously demonstrates that Congress did not require municipal storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C). (*Id* at 1165; emphasis added.)

Similarly, in *Building Industry Association of San Diego County v. State Water Resources Control Board* ("*BIA*") (2004) 124 Cal.App.4th 866, there as well the Appellate Court, relying upon the Ninth Circuit's holding in *Defenders*, agreed that "with respect to ***municipal*** stormwater discharges, Congress clarified that the EPA has the authority to fashion NPDES permit requirements to meet water quality standards without specific numeric effluent limits and instead to impose 'controls to reduce the discharger ***of pollutants*** to the maximum extent practicable.'" (*Id* at 874, emphasis added.)

The Court of Appeal in the *BIA* Case explained the reasoning for Congress' different treatment of Stormwater dischargers versus industrial waste dischargers when it stated that:

> Congress added the NPDES storm sewer requirements to strengthen the Clean Water Act and making its mandate correspond to the practical realities of municipal storm sewer regulation. As numerous commentators pointed out, although Congress was reacting to the **physical differences between municipal storm water runoff and other pollutant discharges** that made the 1972 legislation's blanket effluent limitations approach **impractical and administratively burdensome**, the primary points of the legislation was to address these administrative problems while giving the administrative bodies the tools to meet the fundamental goals of the Clean Water Act in the context of stormwater pollution. (*Id* at 884.)

The Draft Order, by attempting to impose numeric effluent limits on municipal dischargers, goes beyond what was required by Congress with the 1987 amendments to the CWA, and treats municipal dischargers in precisely the same manner as industrial waste dischargers. As discussed below, such a significant shift in policy is directly contrary to well-established State Board and US EPA policy.

In State Board Order No. 91-04 (Exhibit "4," hereto), the State Board addressed the propriety of the 1990 Municipal NPDES Permit for Los Angeles County, and particularly whether such permit, in order to be consistent with applicable State and federal law, was required to have included "numeric effluent limitations." In addition to the State Board's interchangeable use of the terms "storm water" and "urban runoff" when discussing the applicable standard to be applied under the Act (*see* discussion below), the State Board confirmed that the MEP standard applies to the ***"discharge of pollutants"*** from the MS4, and made no mention of the need to apply a different standard if the ***"discharge of pollutants"*** arose from "non-stormwater" rather than "storm water." To the contrary, the State Board recognized the MEP standard applied to "pollutants in runoff," irrespective of the source of the pollutants, finding as follows:

> [T]he applicable water quality standards are those established for the receiving waters of the **storm water discharges.** We further concluded there [in Order No. 91-03] that even if such effluent limitations are intended to require compliance with water quality standards, "best management practices" constitute legally acceptable effluent limitations. We find here, as we did in Order No. WQ 91-03, that the permit includes a comprehensive and stringent program for reducing **pollutants in storm water discharge,** and that it will implement the Basin Plan, including the protection of beneficial uses.
>
> * * *
>
> We find here also that the approach of the Regional Board, requiring the dischargers to implement **a program of best management practices** which will reduce **pollutants in runoff, prohibiting non-stormwater discharges,** is appropriate and proper. **We base our conclusion on the difficulty of establishing numeric effluent limitations which have a rational basis,** the lack of technology available to treat **storm water discharges** at the end of the pipe, the huge expense such treatment would entail, and the level of **pollutant reduction** which we anticipate from the Regional Board's regulatory program. (Exhibit "4," State Board Order No. 91-04, p. 16-17.)

This State Board Order, and others as discussed below, all show that although there are two requirements imposed upon municipalities under the CWA, one requiring that municipalities effectively prohibit "non-stormwater" "into" the MS4, and a second requiring municipalities to "reduce the discharge of pollutants to the maximum extent practicable," that the MEP standard applies to "pollutants in runoff" coming out of the MS4 system, regardless of whether such discharges are Stormwater or non-stormwater. The only difference in the requirements to be imposed upon the municipalities between Stormwater and non-stormwater, involve the need for municipalities to "effectively prohibit non-stormwater discharges into the" MS4.

The Draft Order wrongly seeks to limit the application of the MEP standard to wet weather discharges, and fails to acknowledge that any attempted application of "numeric limits" to a municipal discharger, goes beyond the requirement of federal law, thereby requiring an analysis of the Water Code sections 13241 and 13000 factors discussed below.

B. The Definition of "Stormwater" Includes "Dry Weather" Runoff.

The Draft Order improperly provides that: "The challenged permit provisions do not apply to storm water flows. U.S. EPA has previously rejected the notion that 'storm water,' as defined at 40 Code of Federal Regulations section 122.26(b)(13), includes dry weather flows." (Draft Order, p. 7.) Yet, the assertion that "dry weather" is something other than "storm water" is inaccurate and is directly controverted by the very regulations cited in the Draft Order. In addition, this purported finding that the term "storm water" does not include "dry weather," *i.e.*, "urban runoff," has already been rejected by the Superior Court in the *Arcadia* Case, and the fact that the definition of "storm water" includes "urban runoff," has also already been admitted to by the State and Regional Boards in the *Arcadia* Case, as well as by the NRDC, the Santa Monica Baykeeper and Heal the Bay. As such, any attempt to redefine the term "Stormwater" to exclude "dry weather," is contrary to law and should be rejected.

First, it is clear from the plain language of the regulations that the term "Stormwater" includes all forms of "urban runoff" in addition to precipitation events. Specifically, section 122.26(b)(13) reads as follows: "*Storm water* means storm water runoff, snow melt runoff, ***and surface runoff and drainage***." (40 C.F.R. § 122.26(b)(13); italics in original, bolding and underlining added.) This definition starts with the inclusion of "storm water" and "snow melt runoff," and is then further expanded to include not only "storm water" and "snow melt runoff," but also "surface runoff" and "drainage." The State and Regional Board's interpretation of this definition, as proposed in the Draft Order, is thus an attempt to read the terms "surface runoff" and "drainage" out of the regulations. Such an interpretation is contrary to the plain language of the regulation itself, and is contrary to law. (*See e.g., Astoria Federal Savings and Loan Ass'n v. Solimino* (1991) 501 U.S. 104, 112 ["[W]e construe statutes, where possible, ***so as to avoid rendering superfluous any parts thereof.***"]; *City of San Jose v. Superior Court* (1993) 5 Cal.4th 47, 55 ["We ordinarily reject interpretations that render particular terms of a statute as mere surplusage, ***instead giving every word some significance.***"]; *Ferraro v. Chadwick* (1990) 221 Cal.App.3d 86, 92 ["In construing the words of a statute . . . an interpretation ***which would render terms surplusage should be avoided***, and every word should be given some significance, ***leaving no part useless or devoid of meaning.***"]; *Brewer v. Patel* (1993) 20 Cal.App.4th 1017, 1022 [***"We are required to avoid an interpretation which renders any language of the regulation mere surplusage."***; and *Hart v. McLucas* (9th Cir. 1979) 535 F.2d 516, 519 [***"[I]n the construction of administrative regulations, as well as statutes, it is presumed that every phrase serves a legitimate purpose and, therefore, constructions which render regulatory provisions superfluous are to be avoided."***].)

Second, the Municipal NPDES Permit in question specifically defines "Storm water" consistent with the federal regulations as including "***surface runoff*** and drainage." (Permit [Order No. 01-182], p. 61.) Said Municipal NPDES Permit then defines the term "Runoff" as meaning "runoff including storm water ***and dry weather flows . . . .***" (*Id*, p. 60.) As such, by

defining "Storm water" to include "***surface runoff,***" and then defining "***Runoff***" specifically to include "***dry weather flows***," the Municipal NPDES Permit in issue itself expressly defines "Storm water" to include "dry weather." Any contention to the contrary is directly refuted by the plain language of the subject Permit.

Third, in the *Arcadia* Case, in its Decision, Judgment and Writ of Mandate, the Superior Court found that the term "Stormwater" was defined in the federal regulations to include not only "storm water" but also "urban runoff." (*See*, Decision, Exhibit "1" hereto, p. 1 [" . . . the Standards apply to storm water [*i.e.*, storm water and urban runoff]."]; Exhibit "2," Judgment in the *Arcadia* Case, p. 2, fn 2, [citing to 40 C.F.R. § 122.26(b)(13) and finding that: "Federal law defines 'storm water' to include urban runoff, *i.e.*, 'surface runoff and drainage'".]; and Exhibit "3," Writ of Mandate in the *Arcadia* Case, p. 2, n. 2 ["Federal law defines 'storm water' to include urban runoff, *i.e.*, 'surface runoff and drainage.'"].)

This interpretation of the term "storm water" as including "urban runoff," as found by the Court in the *Arcadia* Case, has not been challenged on appeal by the State or Regional Boards, and in fact, has been agreed to by both the State and Los Angeles Regional Boards, as well as by the Intervenors. Specifically, in the State and Regional Boards' Opening Appellate Brief in the *Arcadia* Case, they agreed that the term "Stormwater" is to include "urban runoff," where they stated as follows:

> **"Storm water," when discharged from a conveyance or pipe (such as a sewer system) is a "point source" discharge, but stormwater emanates from diffuse sources, including surface run-off following rain events (hence "storm water") and urban run-off."** (See Exhibit "5" hereto, which is a true and correct copy of the cited portion from the Water Boards' Opening Appellate Brief in the *Arcadia* Case; emphasis added.)

Thus, both the State and the Regional Boards, through their counsel of record in the *Arcadia* Case, have acknowledged that the term "Stormwater" includes not only "storm water" runoff from "rain events," but also other discharges from a storm sewer conveyance system, specifically including "urban runoff."

This definition of the term "Stormwater" as including "urban runoff," has also been accepted by the NRDC, the Santa Monica Baykeeper, and Heal the Bay (collectively, "Intervenors") in the Intervenor's Opening Brief in the *Arcadia* Case. In their Opening Brief, these Intervenors admit as follows:

> For ease of reference, throughout this brief, **the terms "urban runoff" and "stormwater" are used interchangeably to refer**

> **generally to the discharges from the municipal Dischargers' storm sewer systems.** The definition of "stormwater" includes "storm water runoff, snow melt runoff, and surface runoff and drainage." (40 C.F.R. § 122.26(b)(13).) (See Exhibit "6," hereto, which is a true and correct copy of the cited portion of the Intervenors' Opening Appellate Brief in the *Arcadia* Case; emphasis added.)

In sum, in light of the plain language of the federal regulation defining the term "Stormwater" to include "urban runoff," *i.e.,* "surface runoff" and "drainage," in addition to "storm water" and "snow melt," and given the clear language in the subject Municipal NPDES Permit itself, as well as the findings of the Superior Court in the *Arcadia* Case, and the admissions by the State and Regional Boards and the Intervenors in that case, it is clear that the term "Stormwater" as defined, includes "surface runoff and drainage," *i.e.,* it is clear that the term "Stormwater" includes "dry weather" runoff.

Fourth, beyond the plain language of the regulation and the parties' concurrence to the definition of "Stormwater" as including "urban runoff," prior orders of the State Board have also confirmed that the term "urban runoff" is included within the definition of "storm water." For example, in State Board Order No. 2001-15, the State Board regularly interchanges the terms "urban runoff" with "storm water," and discusses the "controls" to be imposed under the Clean Water Act as applying equally to both. In discussing the propriety of requiring strict compliance with water quality standards, and the applicability of the MEP standard, in Order No. 2001-15, the State Board asserted as follows:

> **Urban runoff** is causing and contributing to impacts on receiving waters throughout the state and impairing their beneficial uses. In order to protect beneficial uses and to achieve compliance with water quality objectives in our streams, rivers, lakes, and the ocean, we must look to controls on **urban runoff**. It is not enough simply to apply the technology-based standards of controlling discharges of pollutants to the MEP; where **urban runoff** is causing or contributing to exceedances of water quality standards, it is appropriate to require improvements to BMPs that address those exceedances.
>
> While we will continue to address water quality standards in municipal storm water permits, we also continue to believe that the iterative approach, which focuses on timely improvements of BMPs, is appropriate. **We will generally not require "strict compliance" with water quality standards through numeric**

> **effluent limits and we will continue to follow a iterative approach, which seeks compliance over time.** The iterative approach is protective of water quality, but at the same time considers the difficulties of achieving full compliance through BMPs that must be enforced through large and medium municipal storm sewer systems." (See Order 2001-15, Exhibit "7," hereto, p. 7-8; emphasis added.)

Moreover, at the urging of the petitioner in Order No. 2001-15, the State Board went so far as to modify the "Discharge Prohibition A.2" language, which was challenged by the Building Industry Association of San Diego County ("BIA"), because such Discharge Prohibition was not subject to the iterative process. The State Board found as follows in this regard: "The difficulty with this language, however, is that it is not modified by the iterative process. To clarify that this prohibition also must be complied with through the iterative process, Receiving Water Limitation C.2 must state that it is also applicable to Discharge Prohibition A.2. . . . Language clarifying that the iterative approach applies to that prohibition is also necessary." (Exhibit "7" State Board Order No. 2001-15, p. 9.)

The State Board further required that the Municipal NPDES permit challenged in that case be modified because the permit language was overly broad, as it sought to apply the MEP standard not only to discharges "from" MS4s, but also to discharges "into" MS4s, with the BIA claiming that it was inappropriate to require the treatment and control of discharges "prior to entry ***into*** the MS4," and with the State Board agreeing that such a regulation of discharges ***"into"*** the MS4 was inappropriate. [*Id* at 9 ["We find that the permit language is overly broad because it applies the MEP standard not only to discharges 'from' MS4s, but also to discharges "into' MS4s."].)

In State Board Order No. 91-04 (Exhibit "4") discussed above, the State Board specifically relied upon EPA's Stormwater Regulations, and finding that: "Storm water discharges, by ultimately flowing through a point source to receiving waters, are by nature more akin to non-point sources as they flow from diffuse sources over land surfaces." (Exhibit "4," p. 13-14.) The State Board then relied upon EPA's Preamble to the Storm Water Regulations, and quoted the following from the Regulation:

> "For the purpose of [national assessments of water quality], **urban runoff** was considered to be a diffuse source for non-point source pollution. From a legal standpoint, however, most **urban runoff** is discharged through conveyances such as separate storm sewers or other conveyances which are point sources under the [Clean Water Act]." 55 Fed.Reg. 47991. (Exhibit "4," State Board Order No. 91-04, p. 14; emphasis added.)

The State Board went on to conclude that the lack of any numeric objectives or numeric effluent limits in the challenged permit "will not in any way diminish the permit's enforceability or its ability to reduce ***pollutants in storm water discharges*** substantially. . . . In addition, the [Basin] Plan endorses the application of 'best management practices' rather than numeric limitations as a means of reducing the level of ***pollutants in storm water discharges***." (*Id* at 14, emphasis added.)

(*Also see* Storm Water Quality Panel Recommendations to the California State Water Resources Control Board – *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities*, June 19, 2008, p. 1 ["MS4 permits require that the discharge of pollutants be reduced to the maximum extent practicable (MEP)"], and p. 8 ["It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs ***and in particular urban dischargers***."] [Exhibit "8,"]; State Board Order No. 98-01, p. 12 ["***Storm water permits*** must achieve compliance with water quality standards, but they may do so by requiring implementation of BMPs in lieu of numeric water quality-based effluent limits."] [Exhibit "9"]; and State Board Order No. 2001-11, p. 3 ["In prior Orders this Board has explained the need for the ***municipal stormwater programs*** and the emphasis on BMPs in lieu of numeric effluent limitations."] [Exhibit "10"].)

In short, not only does the definition of "Stormwater" plainly include "non-stormwater" i.e., "surface runoff and drainage," furthermore, the Clean Water Act clearly applies the "MEP" standard to all "discharges of pollutants" from the MS4 system. As such, because the Draft Order wrongly seeks to apply a different standard to "dry weather" than to "wet weather," it should not be issued.

III. FEDERAL LAW AND STATE POLICY DO NOT REQUIRE OR EVEN RECOMMEND COMPLIANCE WITH TMDLS THROUGH THE USE OF NUMERIC LIMITS, I.E., STRICT COMPLIANCE WITH WLAs IN A TMDL.

At the time when either the subject TMDL or any other TMDL is being properly evaluated for purposes of inclusion in a Municipal NPDES Permit, the Water Boards must consider all applicable federal and State laws, as well as applicable policies governing whether and how a TMDL is best incorporated into a Municipal NPDES Permit.

Initially it must be recognized that existing federal law does ***not*** require that Stormwater dischargers strictly comply with WLAs forth in a TMDL, but instead only requires compliance with WLAs through the use of the MEP standard, and importantly, through the use of best management practices ("BMPs"). In fact, time and again the Courts, US EPA and the State Board have all recognized that Stormwater discharges are different from traditional point source discharges, and that Stormwater must be analyzed and treated as such in accordance with the requirements of the Clean Water Act.

For example, in *Building Industry Association of San Diego County v. State Water Resources Control Board* (2004) 124 Cal.App.4th 866, 874, the Appellate Court determined that "in 1987, Congress amended the Clean Water Act to add provisions that specifically concerned NPDES permit requirements for storm sewer discharges. [Citations.] In these amendments, enacted as part of the *Water Quality Act of 1987*, Congress distinguished between industrial and municipal storm water discharges. . . . With respect to *municipal* storm water discharges, Congress clarified that the EPA has the authority to fashion NPDES permit requirements to meet water quality standards without specific numeric effluent limits and instead to impose 'controls to reduce the discharge of pollutants to the maximum extent practicable.'" (*Id*, emphasis in original, citing 33 USC § 1342 (p)(3)(B)(iii) & *Defenders of Wildlife v. Browner ("Defenders")* (9th Cir. 1999) 191 F.3d 1159, 1163.)

In *Defenders, supra,* 191 F.3d 1159, relied upon by the *BIA* Court of Appeal, the Ninth Circuit similarly recognized the different approach taken by Congress when addressing storm water discharges versus industrial discharges, finding that "industrial discharges must comply strictly with state water-quality standards," with Congress choosing "not to include a similar provision for municipal storm-sewer discharges." (*Id* at 1165.) As the *Defenders* Court held, instead, "Congress required municipal storm-sewer dischargers 'to reduce the discharge of pollutants to the maximum extent practicable' . . . ." (*Id.*) The Ninth Circuit went on to find, after reviewing the relevant portions of the Clean Water Act, that "because 33 U.S.C. § 1342(p)(3)(B) *is not merely silent* regarding whether municipal discharges must comply with 33 U.S.C. § 1311," but instead Section 1342(p)(3)(B)(iii) "*replaces* the requirements of § 1311 with the requirement that municipal storm-sewer dischargers 'reduce the discharge of pollutants to the maximum extent practicable . . . . In such circumstances, the statue unambiguously demonstrates that Congress did not require municipal storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C)." (*Id* at 1165, emphasis in original.)

With respect to TMDLs specifically, that WLAs within a TMDL are not required under the Clean Water Act to be strictly met, was confirmed by U.S. EPA itself in a November 22, 2002 EPA Guidance Memorandum on "Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs." (Exhibit "11" hereto.) In the EPA Guidance Memorandum, EPA explained that for NPDES Permits regulating municipal storm water discharges, any water quality based effluent limit for such discharges, should be "***in the form of BMPs and that numeric limits will be used only in rare instances.***" (Exhibit "11," p. 6, emphasis added.) The EPA recommended that "***for NPDES-regulated municipal . . . dischargers effluent limits should be expressed as best management practices (BMPs), rather than as numeric effluent limits.***" (*Id* at p. 4.) EPA went on to expressly recognize the difficulties in regulating Stormwater discharges, explaining its policy as follows:

> **EPA's policy recognizes that because storm water discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare cases will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges. The variability in the system and minimal data generally available make it difficult to determine with precision or certainty actual and projected loadings for individual dischargers or groups of dischargers. Therefore, EPA believes that in these situations, permit limits typically can be expressed as BMPs, and that numeric limits will be used only in rare instances.** (EPA Guidance Memo, Exhibit "11," p. 4.)

As such, because EPA has expressly found, particularly when it comes to the incorporation of a TMDL into a Municipal NPDES Permit, "that numeric limits will be used only in rare instances," and because in this case, there is no evidence that this is a "rare instance" that would justify the inclusion of a numeric limit, any incorporation of the subject TMDL into the Municipal NPDES Permit in issue should be limited to the inclusion of MEP-complaint BMPs, and not "numeric limits."

In addition, the policy of the State of California is that strict numeric limits are ***not*** an appropriate means by which to implement the MEP standard under the Clean Water Act. The State's policy to apply the MEP standard through an iterative BMP process, and not through the use of strict numeric discharge limitations, is reflected in numerous prior orders and other documentation from the State Board. (*See*, e.g., State Board Order No. 91-04, p. 14 ["There are ***no numeric objectives*** or ***numeric effluent limits*** required at this time, either in the Basin Plan or any statewide plan that apply to storm water discharges." p. 14] Exhibit "4"]; State Board Order No. 96-13, p. 6 [***"federal laws does not require*** the [San Francisco Reg. Bd] to dictate the specific controls."] Exhibit "12"]; State Board Order No. 98-01, p. 12 ["Stormwater permits must achieve compliance with water quality standards, but they may do so by requiring implementation of BMPs ***in lieu of numeric water quality-based effluent limitations***."] Exhibit "7"]; State Board Order No. 2001-11, p. 3 ***["In prior Orders this Board has explained the need for the municipal storm water programs and the emphasis on BMPs in lieu of numeric effluent limitations."]*** Exhibit "10"]; State Board Order No. 2001-15, p. 8 ["While we continue to address water quality standards in municipal storm water permits, ***we also continue to believe that the iterative approach, which focuses on timely improvements of BMPs, is appropriate."***] Exhibit "7"]; State Board Order No. 2006-12, p. 17 [***"Federal regulations do not require numeric effluent limitations for discharges of stormwater***"] Exhibit "13"]; Stormwater Quality Panel Recommendations to The California State Water Resources Control Board – *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Stormwater Associated with*

Municipal, Industrial and Construction Activities, June 19, 2006, p. 8 ["***It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban dischargers.***"] [Exhibit "8"]; and an April 18, 2008 letter from the State Board's Chief Counsel to the Commission on State Mandates, p. 6 ["***Most NPDES Permits are largely comprised of numeric limitations for pollutants. . . . Stormwater permits, on the other hand, usually require dischargers to implement BMPs.***"] [Exhibit"14"].)

In short, neither State or federal law, nor State or federal policy, provide for the incorporation of WLAs as strict numeric limits into a municipal NPDES Permit. In fact, they provide for the contrary, and recognize that numeric limits should only be incorporated into a municipal NPDES Permit in "rare instances" with the State Board's Numeric Effluent Limits Panel concluding that "it is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban dischargers." (Exhibit "8," p. 8.)

IV. AS CONFIRMED BY THE CALIFORNIA SUPREME COURT IN *CITY OF BURBANK v. STATE BOARD* (2005) 35 CAL.4TH 613, ANY AMENDMENT TO AN NPDES PERMIT, WHETHER INCORPORATING A TMDL OR OTHERWISE, MAY ONLY BE ADOPTED ONCE THE FACTORS AND CONSIDERATIONS REQUIRED UNDER WATER CODE SECTION 13241, AS WELL AS 13000, HAVE BEEN MET.

As explained by the Court of Appeal in *BIA San Diego County v. State Board, supra,* 124 Cal.App.4th 866, 874, in the Clean Water Act, Congress distinguished between industrial and storm water discharges and clarified that with respect to municipal storm water discharges, "the EPA has the authority to fashion NPDES Permit requirements to meet storm water quality standards without specific numeric effluent limits . . . ." Accordingly, any attempt to proceed at this time and impose a permit term that requires strict compliance with a WLA, *i.e.*, a numeric effluent limit, is clearly a requirement that goes beyond what is compelled under federal law. As such, all aspects of State law must be adhered to before any such permit term may be adopted.

In *Burbank, supra,* 35 Cal.4th 613, the California Supreme Court held that to the extent the NPDES Permit provisions in that case were not compelled by federal law, that the Boards were required to consider their "economic" impacts on the dischargers themselves, with the Court finding that the Water Boards must analyze the ***"dischargers cost of compliance."*** (*Id* at 618.) The Supreme Court in *Burbank* also specifically interpreted the need to consider "economics" as requiring the consideration of the "cost of compliance" on the cities involved in that case. (*Id* at 625.)

Sections 13000 and 13241 of the Porter-Cologne Act clearly require a consideration of a series of factors in not only establishing water qualify policy and developing water quality standards, but also in developing applicable permit terms. (*See City of Burbank v. State Board,*

supra, 35 Cal.4th 613, 625 ["The plain language of *Sections 13263 and 13241* indicates the Legislature's intent in 1969, when these statutes were enacted, that a regional board consider the costs of compliance when setting effluent limitations in a waste water discharge permit."].) The goal of the Porter-Cologne Act is to "attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (Water Code § 13000; *see also Burbank*, 35 Cal.4th 613, 618.)

Accordingly, when establishing water quality objectives, the Water Boards must "ensure the reasonable protection of beneficial uses," recognizing that it "may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses." (Water Code § 13241.) Section 13241 thus compels the Boards to consider the following factors when developing NPDES Permit terms (*see Burbank*, 35 Cal.4th 613, 625):

> **(a) Past, present, and probable future beneficial uses of water.**
>
> **(b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.**
>
> **(c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.**
>
> **(d) Economic considerations.**
>
> **(e) The need for developing housing in the region.**
>
> **(f) The need to develop and use recycled water.**

In *U.S. v. State Board* (1986) 182 Cal.App.3d 82, the State Board issued revised water quality standards for salinity control because of changed circumstances which revealed new information about the adverse affects of salinity on the Sacramento–San Joaquin Delta ("Delta"). (*Id* at 115.) The State Board approved the revised standards with the understanding it would impose more stringent salinity controls in the future. In invalidating the revised standards, the Court recognized the importance of complying with the policies and factors set forth under Water Code sections 13000 and 13241, and emphasized section 13241's requirement of an analysis of "economics." The Court also stressed the importance of establishing water quality objectives which are "reasonable," and the need for adopting "reasonable standards consistent with overall State-wide interests":

> In formulating a water quality control plan, the Board is invested with wide authority "to attain the highest water quality **which is reasonable**, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, **economic and social, tangible and intangible.**" **(§ 13000.)** In fulfilling its statutory imperative, the Board **is required** to "establish such water quality objectives . . . as in its judgment will ensure the **reasonable protection** of beneficial uses . . ." **(§ 13241)**, a conceptual classification far-reaching in scope. (*Id* at 109-110, emphasis added.)
>
> * * *
>
> The Board's obligation is to attain the highest reasonable water quality "considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, *economic* and social, tangible and intangible." (§13000, italics added.) (*Id* at 116.)
>
> * * *
>
> In performing its dual role, including development of water quality objectives, **the Board is directed to consider** not only the availability of unappropriated water (§ 174) **but also all competing demands for water in determining what is a reasonable level** of water quality protection (§ 13000). In addition, **the Board must consider** . . . "[water] quality conditions that could **reasonably be achieved** through the coordinated control of *all* factors which affect water quality in the area." (*Id* at 118, emphasis added.)

Justice Brown in her concurring opinion in *Burbank* made several significant comments regarding the importance of considering "economics" in particular, and the Water Code section 13241 factors in general, when considering including numeric effluent limitations in an NPDES Permit. These comments are equally relevant today to the State Board's Draft Order:

> **Applying this federal-state statutory scheme, it appears that throughout this entire process, the Cities of Burbank and Los Angeles (Cities) were unable to have economic factors considered because the Los Angeles Regional Water Quality Control Board (Board) – the body responsible to enforce the**

> **statutory framework –failed to comply with its statutory mandate.**
>
> **For example, as the trial court found, the Board did not consider costs of compliance when it initially established its basin plan, and hence the water quality standards. The Board thus failed to abide by the statutory requirements set forth in Water Code section 13241 in establishing its basin plan. Moreover, the Cities claim that the initial narrative standards were so vague as to make a serious economic analysis impracticable. Because the Board does not allow the Cities to raise their economic factors in the permit approval stage, they are effectively precluded from doing so. As a result, the Board appears to be playing a game of "gotcha" by allowing the Cities to raise economic considerations when it is not practical, but precluding them when they have the ability to do so.** (*Id* at 632, J. Brown, concurring; emphasis added.)

Justice Brown went on to find that:

> **Accordingly, the Board has failed its duty to allow public discussion – including economic considerations – at the required intervals when making its determination of proper water quality standards.**
>
> **What is unclear is why this process should be viewed as a contest. State and local agencies are presumably on the same side. The costs will be paid by taxpayers and the Board should have as much interest as any other agency in fiscally responsible environmental solutions.** (*Id* at 632-33.)

The above-referenced statutory, regulatory and case authority all confirm, not only that municipal dischargers are to be treated differently than other industrial dischargers, but also that numeric limits should not be applied to any municipal discharger at this time. "It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban dischargers." (Numeric Limits Panel Report, Exhibit "8," p. 8.) Accordingly, strict compliance with WLAs in any TMDL, should not be required at this time, and to the extent a WLA is attempted to be incorporated into a Municipal NPDES Permit, and enforced as such through a means other than through the use of MEP-complaint BMPs, all applicable requirements of State law, including the analysis required under Water Code Sections 13241/13000, must be met.

V. ANY TMDL INCORPORATED INTO A MUNICIPAL NPDES PERMIT IN A FASHION THAT IS NOT OTHERWISE REQUIRED BY FEDERAL LAW, CANNOT BE IMPOSED UNLESS A STATE FIRST PROVIDES FUNDING FOR THIS NON-FEDERAL MANDATE, IN ACCORDANCE WITH THE REQUIREMENTS OF THE CALIFORNIA CONSTITUTION.

Finally, any new requirements in the existing NPDES Permit that goes beyond what is otherwise required under federal law, *e.g.*, forcing the County Petitioners to strictly comply with the WLAs, as opposed to requiring compliance with the WLAs through the use of MEP-complaint BMPs, and any other accompanying mandates that go beyond the requirements of federal law, can only be imposed where adequate funds have first been provided to comply with such mandates.

Article XIII B, Section 6 of the California Constitution prohibits the Legislature or any State agency from shifting the financial responsibility of carrying out governmental functions to local governmental entities. Article XIII B, Section 6 provides in relevant part as follows:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local governments for the cost of such program or increased level of service. . . .

This reimbursement requirement provides permanent protection for taxpayers from excessive taxation and requires discipline in tax spending at both state and local levels. (*County of Fresno v. State* (1991) 53 Cal.3d 482, 487.) Enacted as a part of Proposition 4 in 1979, it "***was intended to preclude the state from shifting financial responsibility to local entities that were ill equipped to handle the task***." (*Id.*)

Accordingly, because the State Board in the Draft Order proposes to require strict compliance with WLAs in a TMDL, a requirement that exceeds the requirements set forth in federal law, the State Board would be seeking to impose a new mandate upon municipalities that can only be adopted where necessary funding has first been provided. The incorporation of new permit requirements that are not mandated by federal law, and that go unfunded by the State, would violate Article XIII B, Section 6 of the California Constitution. (*See County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 914 ["We are not convinced that the obligations imposed by a permit issued by a Regional Water Board necessarily constitute federal mandates under all circumstances."].)

VI. CONCLUSION.

Based on the above comments as well as the attached exhibits, the Cities respectfully request that the State Board grant the Petition of the County Petitioners, and direct that the Los Angeles Regional Board comply with State and federal law and this Board's policies, before addressing the bacteria TMDL in the subject Municipal NPDES permit, and further, that this TMDL and any other TMDL not be included in any Municipal NPDES Permit for the Los Angeles Region, until the decision in the *Arcadia* Case has become final.

Sincerely,

RUTAN & TUCKER, LLP

Richard Montevideo

RM:clc
Enclosures
(1) Exhibit List
(2) Exhibits 1 - 14

LIST OF EXHIBITS IN SUPPORT OF RUTAN & TUCKER'S LEGAL COMMENTS ON MAY 4, 2009 DRAFT STATE BOARD ORDER FOR FILE/PETITION NO. A-1780

DESCRIPTION	EXHIBIT NO.
March 13, 2008 Decision of Superior Court in *Arcadia* Case	1
November 26, 2008 Judgment of Superior Court in *Arcadia* Case	2
November 10, 2008 Peremptory Writ of Mandate of Superior Court in *Arcadia* Case	3
State Board Order No. WQ 91-04	4
Cited portions of Appellant Water Boards' Opening Brief on Appeal in *Arcadia* Case filed June 11, 2009	5
Cited portions of Intervenors, NRDC, the Santa Monica Baykeeper and Heal the Bay's Opening Brief in *Arcadia* Case filed June 9, 2009	6
State Board Order No. WQ 2001-15	7
Storm Water Panel Recommendations to the California State Water Resources Control Board – *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities*, June 19, 2006	8
State Board Order No. WQ 98-01	9
State Board Order No. WQ 2000-11	10
November 22, 2002 EPA Guidance Memorandum on "Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs."	11
State Board Order No. WQ 96-13	12
State Board Order No. WQ 2006-0012	13
April 18, 2008 letter from the State Board's Chief Counsel to the Commission on State Mandates	14