

**WORKSHOP ON DRAFT STATE WATER BOARD ORDER Re:  
2012 LOS ANGELES MS4 PERMIT--  
PRESENTATION OF 19 MUNICIPAL PETITIONERS**

By:

Hon. Mary Ann Lutz (Mayor, City of Monrovia)

John Hunter (John L. Hunter & Associates)

Norman A. Dupont, Esq. (Richards Watson Gershon)

# Overview of Comments

- (1) These 19 Permittees largely support the Draft Order's approval of the WMP/EWMP compliance process.
- (2) These Permittees Disagree With the Draft Order because it:
  - (a) Ignores the very high implementation costs to Permittees;
  - (b) Resets the goal of capturing stormwater from an up to 85% storm event;
  - (c) Imposes unintended liability in new wording on Compliance Requirements in Part VI.2.b. and removes WMP/EWMP compliance provisions for any extension of submittals of those plans.

# Background of Today's Presenters

- Hon. Mary Ann Lutz, Mayor of the City of Monrovia, a community of some 37,000 residents located in the San Gabriel Mountains and part of the Rio Hondo-San Gabriel River Watershed EWMP group.
- John L. Hunter, a consultant to many of the 19 municipal permittees, who will discuss the need for clear standards in the WMP/EMWP process.
- Norman A. Dupont, one of the legal counsel to the combined 19 petitioning cities.

# Presentation by Mr. John L. Hunter

- We appreciate the detailed work that the State Board and its Staff put into review of the 19 petitions our group filed after adoption of the 2012 MS4 permit
- The Watershed Approach has resulted in cities and agencies working towards developing Management Programs (WMPs and EWMPs) on a watershed and subwatershed basis



LOS CERRITOS CHANNEL  
WATERSHED GROUP

# The New Cooperative Watershed Approach

Bellflower  
Cerritos  
Downey  
Lakewood  
Long Beach  
Paramount  
Signal Hill  
Los Angeles County  
Flood Control District



# **SPECIFIC AMENDMENTS REQUESTED TO DRAFT ORDER**

- The 19 Petitioners ask for the following four specific changes to the Draft Order.

# Reasonable Assurance Analysis Should Not Be Automatically Triggered Every Six Years

Inserting a blanket requirement the RAAs be updated every 6 years [*Draft Order* p. 38] in Part VI.C.8 is not the best use of public resources.

- The MS4 Permits already have adaptive updates every two years, which will require permittees to propose modifications to improve the effectiveness of WMPs/EWMPs. [*Draft Order* p. 37].
- The MS4 Permit requires a greatly expanded monitoring program, the Coordinated Integrated Monitoring Program. The results of the monitoring, coupled with the adaptive management approach should suffice, at least for the anticipated life of this Permit.

## New Section VI.C.4.g:

“Safe harbor” during WMP/EWMP planning phase.

- Municipal Permittees appreciate the State Board’s recognition that extensions may be necessary under certain circumstances
- However, Municipal Permittees that obtain an extension should not be subject to numeric limits during that interim period. Otherwise, the very act of asking for an extension exposes Municipal Permittees to third party lawsuits at the very time when they are attempting to attain compliance.
- The hundreds of thousands of dollars that Municipal Permittees have invested thus far and the millions of dollars that Municipal Permittees have committed to invest in the WMPs/EWMPs is evidence that we are not taking stormwater quality and compliance with the MS4 Permit lightly. Real life practical impact: Spending money on defending third party lawsuits takes away funds that are earmarked for improving water quality via the WMPs/EWMPs



# Amendment No. 1

- Modify language in VI. C. 8(b) (i) to specify that permittees must submit a recommendation on a new RAA as part of the Report of Waste Discharge due before initiation of a new permit. [*Draft Order, p. 38*]
- Proposed new language for Part VI.C.8.(b)(i):

“ . . . In addition to adapting the Watershed Management Plan or EWMP every two years. . . Permittees must, **as part of the Report of Waste Discharge for the next permit term, submit an evaluation of the first Reasonable Assurance Analysis and propose whether or not to submit a revised RAA for the particular watershed. The Executive Officer of the Regional Board may order such a submittal as part of the permit renewal.**”

# Amendment No. 2:

## Option for Retention of Stormwater in 85% storm event

- Part VI.E.2.e.i of the Draft Order should be revised to allow for **full compliance** for those EWMP groups that expend funds to retain stormwater in their drainage basin for storms up to 85% of all expected storms. *[Draft Order pp. 43-44]*. This is consistent with the State Board's Cal Trans ORDER NO. 2012-0011-DWQ, NPDES NO. CAS000003 *[Final Order* at p. 34 (no follow-up monitoring required where eliminate 85% of flow), at pp. 38-39)].
- “(4) In drainage areas where Permittees are implementing an EWMP, (i) all non-storm water and (ii) all storm water runoff up to an including the volume equivalent to an 85<sup>th</sup> percentile, 24 hour event is retained for the drainage area tributary to the applicable receiving water, and the Permittee is implementing all requirement of the EWMP, including Parts VI.C. 7. and VI.C.8 of this Order. This provision (4) shall not apply to final trash WQBELS. [DELETE remaining sentences in Draft Order].”

# Amendment No. 3:

## Modify Compliance Language

- This Board added a new Section VI.B.2 (b), which imposes liability upon “joint discharges” absent certain limited defenses. [*Draft Order pp. 65-66*]
- This language should be modified to provide for a defense to discharges above receiving water limits, with a new subpart 2.b.iv (4) (iv):  
**“Demonstrate that the joint permittees are in current compliance with the design or implementation of a WMP or EWMP.”**

# Amendment No. 4:

## Extensions for WMP/EWMP Submittals

- Delete new language added to Section VI.C.4(g) of the Draft Order providing that an extension for submittal of a WMP or EWMP automatically exposes a co-permittee to strict numeric limits during the extension period. In addition, add new language to allow for other deadline extensions. [*Draft Order pp. 47-48*]
- We propose new language to Part VI.C.4.g.:

“Permittees may request an extension of the deadline for notification of intent to develop a Watershed Management Plan or EWMP, submission of a draft plan, and submission of a final plan. The extension is subject to approval by the Regional Board or the Executive Officer. Permittees that are granted an extension for any deadline for the development of the WMP/EWMP shall be deemed in compliance with the receiving water limitations pursuant to Part V.A. and applicable interim water quality-based effluent limitations in Part VI.E until the Permittee has submitted a final WMP/EWMP subject to Regional Board approval.”

# Retain Two Conclusions of the Draft Order as Stated

- (1) The 19 petitioners strongly support the Draft Order's analysis of both the anti-backsliding and anti-degradation policies as discussed at pages 17-29 of the *Draft Order*. Both policies are subject to review in light of new data, and the Regional Board has documented its conformity with new data.
- (2) Affirm the conclusion that the doctrine of collateral estoppel (or issue preclusion) is not necessary to determine the Receiving Water Limitation issue. One of the standard exceptions to application of issue preclusion is where public policy merits a different consideration. See ***Lucindo v. Superior Court*** 51 Cal. 3d 355 (1990) (declining to apply estoppel in light of public policy considerations).

# Conclusions

- The 19 Permittees have many other concerns, but wanted to focus on four specific amendments to the Draft Order.
- Further discussion of cost considerations and the legal basis therefore will be raised in the next panel including municipal co-permittees Duarte, Huntington Park, Pico Rivera, Pomona, and Signal Hill.
- We request that the Board carefully consider CASQA's presentation, particularly on the retention of storm water up to an 85% storm event within a drainage basin.