



**Santa Clara Valley  
Urban Runoff  
Pollution Prevention Program**

Campbell • Cupertino • Los Altos • Los Altos Hills • Los Gatos • Milpitas • Monte Sereno • Mountain View • Palo Alto • San Jose •  
Santa Clara • Saratoga • Sunnyvale • Santa Clara County • Santa Clara Valley Water District

August 14, 2013

Via Email to: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov), [jbashaw@waterboards.ca.gov](mailto:jbashaw@waterboards.ca.gov) and  
[ewadhvani@waterboards.ca.gov](mailto:ewadhvani@waterboards.ca.gov)

Emel G. Wadhvani  
California State Water Resources Control Board  
Senior Staff Counsel  
P. O. Box 100  
Sacramento, CA 95812-0100

**Subject: SWRCB/OCC FILE A-2236(A) THROUGH (KK)  
COMMENTS IN RESPONSE TO QUESTIONS POSED BY THE STATE WATER  
RESOURCES CONTROL BOARD CONCERNING RECEIVING WATER  
LIMITATIONS AS ADDRESSED IN ORDER NO. R4-2012-0175 - WASTE DISCHARGE  
REQUIREMENTS FOR MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)  
DISCHARGES WITHIN THE LOS ANGELES COUNTY FLOOD CONTROL  
DISTRICT, INCLUDING THE COUNTY OF LOS ANGELES, AND THE  
INCORPORATED CITIES THEREIN, EXCEPT THE CITY OF LONG BEACH**

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The Santa Clara Valley Urban Runoff and Pollution Prevention Program (SCVURPPP)<sup>1</sup> appreciates the opportunity to provide comments to the State Water Resources Control Board (State Board) in response to the State Board's July 8, 2013 request for feedback on (1) whether the watershed management program/enhanced watershed management program (WMP/EWMP) alternative contained in the Los Angeles MS4 Permit is an appropriate approach to revising the receiving waters limitations (RWLs) in MS4 permits, and (2) what revisions to the WMP/EWMP alternative would make the approach a viable alternative for RWLs in MS4 permits.

First and foremost, SCVURPPP wishes to remind the State Board that it provided comments on the RWLs issue last November, principally through endorsing the analysis and suggestions submitted by the Bay Area Stormwater Management Agencies Association (BASMAA). BASMAA suggested, consistent with prior State Board precedent and policy as well as federal and state law, that the State Board reserve enforcement of the RWLs per se to the State and Regional Boards. The issues giving rise to utility of this approach have only become more compelling since last November, particularly in light of the decision the Ninth Circuit issued on remand in the *NRDC vs. County of Los Angeles, et al.* case last week. Therefore, as a complement to the two approaches to RWL implementation it endorses below, SCVURPPP implores

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<sup>1</sup> SCVURPPP is an association of thirteen cities and towns in the Santa Clara Valley, Santa Clara County, and the Santa Clara Valley Water District, all of which are covered under the San Francisco Bay Area Municipal Regional Stormwater NPDES Permit (MRP). The cities and towns are: Campbell, Cupertino, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, and Sunnyvale.

the State Board to adopt the state only enforcement approach to RWLs that BASMAA suggested last November.<sup>2</sup>

Second, since last November, SCVURPPP has reviewed the comments Dr. Thomas Mumley (of the California Regional Water Quality Control Board, San Francisco Bay Region) provided to the State Board on the RWLs issue in conjunction with last November's workshop. Dr. Mumley essentially suggested a hybrid, state and citizen enforceable water quality-based permit requirements approach as an alternative to direct enforcement of RWLs.<sup>3</sup> Because it builds on the MRP, which was developed around a similar concept, and complement's the approach BASMAA suggested concerning enforcement of RWLs per se, SCVURPPP believes that the approach Dr. Mumley previously suggested would be a preferable alternative to the WMP/EWMP contained in the Los Angeles MS4 Permit. It therefore asks the State Board to endorse Dr. Mumley's approach as an acceptable alternative to the Los Angeles WMP/EWMP approach to RWL implementation.

Third, SCVURPPP has also reviewed and is supportive of the comments and RWL-related language concurrently being submitted to the State Board by the California Stormwater Quality Association (CASQA).<sup>4</sup> CASQA's approach and suggested language essentially call on the State Board to recognize needed changes in, and alternatives to, the WMP and EWMP approaches contained in the Los Angeles MS4 Permit. More specifically, CASQA suggests that properly structured "strategic compliance programs" (whether build from the ground up or incrementally adapted from existing water quality priority-driven MS4 programs such as SCVURPPP's under the MRP) can serve as useful and pragmatic alternatives to the highly problematic potential of direct third party enforcement of RWLs.

Finally, SCVURPPP asks the State Board *not* to further consider imposing the particular WMP/EWMP approach contained in the LA MS4 Permit as mandatory precedent on all MS4s, including as a means to resolve the RWLs issue statewide. While *principles* of watershed management and water quality problem and resource prioritization should inform future MS4 permit requirements, including by defining those that may serve as an alternative to direct third party enforcement of RWLs, a "one-size fits all" approach to proceeding on such a basis relative to particular permit language (including the LA MS4 Permit's WMP/EWMP language) makes no sense given the diversity of the State and the historical evolution and varying status of development of the MS4 programs within it.

In fact, SCVURPPP has long been an advocate for, and pursued, a watershed management approach with respect to the implementation of its MS4 permit requirements. SCVURPPP was instrumental in working with the San Francisco Bay Area Regional Board and local environmental groups in creating the Santa Clara Valley Watershed Management Initiative (WMI) in the early 1990s. It has tailored its urban runoff program based on watershed management principles and Bay Area water quality priorities, identified pollutants of concern, and, more recently, TMDLs associated with stormwater discharges, ever since. Requiring SCVURPPP to reinvent or revise its well developed, EPA award-winning program, or directing the San Francisco Bay Area Regional Board to revise its approach to the MRP, based on whatever emerges relative to the Los Angeles MS4 Permit, could present a potentially huge and unproductive resource drain with little benefit as compared to simply allowing further progress to be made under the approaches BASMAA, Dr. Mumley, and CASQA have suggested.

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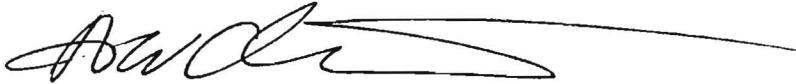
<sup>2</sup> A copy of BASMAA's comments accompanies this letter as Attachment A. An accompanying presentation of BASMAA's suggestions was presented to the State Board at its November 2012 workshop by the principal author of these comments, former State Board counsel, Elizabeth Miller Jennings.

<sup>3</sup> A copy of Dr. Mumley's prior comments accompanies this letter as Attachment B.

<sup>4</sup> SCVURPPP is not supportive of subsection E.5.d.v in CASQA's proposed RWLs language (its Attachment A) as written and, to the extent that subsection E.5.d is retained, believes that the final sentence of E.5.d.v needs to be extended to include the following additional language: "or otherwise controlled to the satisfaction of the regional water board."

SCVURPPP thanks the State Board in advance for its consideration of these comments and, particularly in light of the Ninth Circuit's decision last week, urges the State Board to take action on the RWLs issues with all deliberate speed this fall.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'AWO', with a long horizontal flourish extending to the right.

Adam W. Olivieri Dr.PH, P.E.  
Program Manager