

# county of ventura

Public Comment  
Draft Phase II Small MS4 General Permit  
Deadline: 7/23/12 by 12 noon

**PUBLIC WORKS AGENCY**  
**JEFF PRATT**  
Agency Director

July 23, 2012

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



Watershed Protection District  
Interim Director

Transportation Department  
David Fleisch, Director

Engineering Services Department  
Phil Nelson, Director

Water & Sanitation Department  
R. Reddy Pakala, Director

Central Services Department  
Janice Turner, Director

**Subject: COMMENTS ON THE SECOND DRAFT OF THE PHASE II SMALL MS4  
GENERAL PERMIT**

Dear Ms. Townsend:

The County of Ventura Public Works Agency (County) would like to take this opportunity to provide comments on the Second Draft Phase II Small MS4 General Permit (Draft Phase II Permit). The precedent-setting nature of some of the provisions is of concern to the County of Ventura. These concerns are enumerated in our comments below.

## GENERAL COMMENTS

### RECEIVING WATER LIMITATION LANGUAGE

The Receiving Water Limitations Provision (Provision D) of the Draft Phase II Permit was not substantially modified from the language contained in the current iteration of the Phase II Permit. We noted that this language is fairly standard throughout National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permits including the Ventura MS4 Permit No. CAS004002. The County, along with California Stormwater Quality Association (CASQA) and other NPDES MS4 Permittees believe that this status quo must change due to the recent Ninth Circuit Court of Appeals ruling (*Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.*) that a party whose discharge "causes or contributes" to an exceedance of a water quality standards is in violation of the permit, even if a party is implementing the iterative process in good faith. This ruling came about because the iterative process paragraph does not explicitly state that a party who was implementing the iterative process is not in violation of the permit.

Due to the timing and statewide nature of the Draft Phase II Permit, it will likely set a precedent for future NPDES MS4 permits, making it a critical change within the Receiving Water Limitations Provision. The Receiving Water Limitation language should be revised to allow MS4s to operate in good faith with the iterative process without fear of unwarranted third party action while still ensuring diligent progress in complying with water quality standards.



**Requested Action:** Revise the language in the Receiving Water Limitation Provision as provided in Exhibit 1.

#### **ALLOCABLE DISCHARGES**

The Draft Phase II Permit stipulates that small MS4s require responsible parties to control incidental runoff. As defined, incidental runoff includes unintended, minimal over-spray from sprinklers. Small MS4s must require responsible parties to detect and correct leaks within 72 hours, among other things. Phase I MS4 permits, including Ventura Permit, typically allow landscape irrigation as a conditional discharge. Conditions commonly require MS4s to conduct outreach to encourage water conservation and minimize overspray.

The County is concerned that as currently worded, the State Water Resources Control Board (SWRCB) is requiring municipalities to take on a “sprinkler police” enforcement role when such effort should be conducted by the water purveyor. Neither Phase I nor Phase II MS4s have the capacity to detect and enforce “minimal over-spray from sprinklers”.

**Requested Action:** Revise discharge prohibitions such that incidental runoff is a conditionally allowed discharge. Eliminate requirement that Small MS4s require parties responsible for incidental runoff to implement Section B.4.a-e. Instead, conditions for incidental runoff should be revised to reflect Phase I MS4 requirements to conduct outreach and education aimed at minimizing landscape irrigation runoff.

#### **DISCHARGES FROM CONSTRUCTION SITES AND INDUSTRIAL FACILITIES**

The Draft Phase II Permit requires small MS4 to effectively prohibit any discharges of material other than stormwater except as otherwise authorized by a separate NPDES permit. The NPDES Permits regulate, among others, discharges from construction sites (General Construction Permit No. CAS000002) and from industrial facilities (General Industrial Permit No. CAS000001). Under Part E.6.a “Legal Authority”, the Draft Phase II Permit stipulates that small MS4s require operators of construction sites and industrial facilities to minimize the discharge of pollutants to the MS4 through the installation, implementation, and maintenance of BMPs [Paragraph (f)]. Discharges currently regulated under the NPDES Permits and specifically exempt from the MS4 Permit’s Discharge Prohibitions should not be subject to redundant regulations under the MS4 Phase II Permit.

**Requested Action:** Remove reference to construction sites and industrial facilities from the Paragraph (f) under Part E.6.a “Legal Authority”, because discharges from those operations are regulated under NPDES General Permits.

#### **MAXIMUM EXTENT TECHNICALLY FEASIBLE**

The post-construction provision introduces a new term: maximum extent technically feasible (METF). The County is concerned about the precedent-setting potential of this term since it is intentionally different than maximum extent practicable (MEP) provision in the Federal Clean Water Act. The definition of MEP includes implementing “a variety of technically appropriate and economically feasible BMPs...” The use of METF implies that only technical infeasibility, and not economical aspects, can be taken into account. Federal requirements state that MS4 permits

must establish controls to the MEP. The SWRCB should not introduce a new term that is inconsistent with the federally established MEP standard.

**Requested Action:** Delete all references to “technically feasible” and replace with MEP.

#### **LOW IMPACT DEVELOPMENT APPLICABILITY THRESHOLDS**

The Draft Phase II Permit requires that Low Impact Development (LID) standards be applied to new development projects that create and/or replace 5,000 square feet of impervious surface and Road Projects that create 5,000 square feet or more of newly constructed contiguous impervious surface. This threshold is inconsistent and more stringent than many Phase I MS4 permits including Ventura MS4 Permit and Los Angeles tentative order. Both permits include post-construction standards applicable to new development projects equal to one acre or greater of disturbed area adding 10,000 square feet or more of impervious surface and street and road construction of 10,000 square feet or more of impervious surface area.

The lower threshold is inconsistent with Phase I MS4 Permit requirements and will likely translate to higher development costs for smaller projects and increased staff time for reviewing and inspecting smaller projects; the review and inspection fees will need to be adjusted to account for the increase in staff time.

**Requested Action:** Revise project thresholds from 5,000 square feet to 10,000 square feet of impervious surface area.

#### **PROGRAM EFFECTIVENESS ASSESSMENT: POLLUTANT LOAD QUANTIFICATION**

The Draft Phase II Permit requires small MS4s to quantify annual subwatershed pollutant loads using a simplified spreadsheet method for sediment, bacteria, total phosphorus, cadmium, chromium, copper, lead, nickel, zinc, and trash. Reductions associated with BMPs and other program elements must also be quantified.

This is a very time consuming exercise that is unlikely to result in useful or reliable information. Determining load quantification using a simple spreadsheet model, such as the Watershed Treatment Model, is limited in that it relies on many estimates and assumptions and cannot take into account storm size variability or the impact of back-to-back storms (e.g., pollutant loads that might not be reduced due to BMPs that bypass larger storm events). The result will be load estimates that have a large error bar associated with them. This information will still be available for public consumption via SMARTS and the future implications of this, while unknown, could leave MS4s vulnerable to third party action.

**Requested Action:** Eliminate requirement to quantify annual subwatershed pollutant loads, reductions associated with BMPs and other program elements.

## COUNTY OF VENTURA'S SPECIFIC COMMENTS

### TOTAL MAXIMUM DAILY LOADS (TMDLs)

A number of established TMDLs include waste load allocations (WLAs) assigned to Phase II MS4s. The Attachment G of the Draft Phase II Permit does not list all established TMDLs with WLAs assigned to a Phase II MS4s within the Region 4 Los Angeles Regional Water Quality Control Board (LARWQCB). In addition, Attachment G should align with Basin Plan Amendments (BPA) and established TMDL implementation plans. The MS4 NPDES Permits should be utilized as a compliance mechanism for TMDLs, but they should not supersede processes that are in-place to determine appropriate and effective measures to reduce pollutants of concern. Note however, the TMDL provision states that "compliance dates that have already passed are enforceable on the effective date of this General Permit..." We recognize that MS4s cannot retroactively comply with deadlines that have already passed. This is a challenging issue and a more constructive solution must be found instead of finding the municipality in non-compliance on Day 1 of an adopted order.

**Requested Action:** Update Attachment G to include established TMDLs within Region 4 - LARWQCB's jurisdiction with WLAs assigned to a small MS4s located within the County of Ventura as indicated in Attachment B (Non-Traditional Small MS4 Permittees) including:

- (a) Ventura River Estuary Trash TMDL,
- (b) Malibu Creek and Lagoon Bacteria TMDL,
- (c) Calleguas Creek Boron, Chloride, Sulfate, and Total Dissolved Solids TMDL,
- (d) Calleguas Creek Toxicity TMDL, and
- (e) Oxnard Drain 3 Pesticides, PCBs and Sediment Toxicity TMDL.

However, the Attachment G should not expand or go beyond requirements contained within Regional Board's Basin Plans and implementation plans. Eliminate language and dates that have already passed and instead, state that compliance dates which have already passed will be determined on a case-by-case basis.

### NEW DESIGNEES

Several Ventura County unincorporated areas are mistakenly listed as new Permittees in Attachment A (Traditional Small MS4 Designation and Monitoring Matrix) of the Draft Phase II Permit including: El Rio Census Designated Place (CDP), Mira Monte CDP, and Oak Park CDP. These existing unincorporated Ventura County communities are already regulated under the County's Phase I MS4 permit as stated on page 13 (section D.1) of the Ventura MS4 Permit: *"The area covered by this Order (R4-2010-0108 NPDES Permit No. CAS004002) includes all area within Ventura County boundaries and all area within each co-permittee's boundaries that drain into the MS4."* As shown in Exhibit 2, the El Rio CDP, Mira Monte CDP and Oak Park CDP are within unincorporated County of Ventura jurisdiction, and are currently subject to the Ventura MS4 permit.

New development and redevelopment projects within the El Rio CDP, Mira Monte CDP and Oak Park CDP areas are currently subject to the Low Impact Development requirements and thresholds listed in the Ventura MS4 permit, including the specific design criteria for new development and redevelopment to achieve a 5% Effective Impervious Area (EIA) post-construction condition. The inclusion of the El Rio CDP, Mira Monte CDP, and Oak Park CDP in the Phase II Permit, and requiring that new development and redevelopment in these portions of the unincorporated County comply with the different thresholds and post-construction design requirements listed in the draft Phase II permit creates duplicative and contradictory requirements for development projects within these areas.

Section E.12.e of the Draft Phase II Permit requires development of a Hydromodification Management Standard designed to reduce post-project runoff to not exceed the pre-project flow rate for the 5 year, 24-hour storm. The Ventura MS4 Permit contains different Hydromodification Control Criteria, for which the Ventura Countywide Stormwater Quality Management Program is currently developing a plan to address, as required by the Ventura MS4 permit. By including the El Rio CDP, Mira Monte CDP and Oak Park CDP in the Draft Phase II Permit, this may require redundant and contradictory hydromodification requirements for these areas which are currently included in the Ventura MS4 Hydromodification Control Criteria planning process.

Similarly, the El Rio CDP, Mira Monte CDP and Oak Park CDP areas are currently included in the IC/ID field screening, business inspection program, storm drain mapping, construction inspection, NPDES monitoring, public outreach, and other programs required by the Ventura MS4 permit for all of Ventura County unincorporated areas.

Attachment A of the Draft Phase II Permit (page 9) incorrectly notes the 2010 population of the El Rio CDP is 113, 374, and includes water quality monitoring commensurate with this incorrect population reference. The 2010 U.S. Census population count for the El Rio CDP is **7,198** (as shown in the 2010 U.S. Census fact sheet, Exhibit 3).

***Requested Action:***

Eliminate El Rio CDP, Mira Monte CDP, and Oak Park CDP from the list of designees in Attachment A since they are already covered under the Ventura Phase I MS4 Order No. R4-2010-0108, NPDES Permit No. CAS004002.

Note that the 2010 population for El Rio CDP listed on page 9 of Attachment A does not accurately reflect the 2010 U.S. Census population count of 7,198 (not 113,374 as listed in the Draft Phase II Permit).

Ms. Jeanine Townsend  
July 23, 2012  
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Thank you for your time to consider our comments and suggestions. If you have any additional questions or further clarification, please contact Ewelina Mutkowska at (805) 645-1382.

Sincerely,



Gerhardt Hubner  
Deputy Director

Attachments:

- Exhibit 1 CASQA Proposed Language for Receiving Water Limitation Provision
- Exhibit 2 Areas Subject to Ventura MS4 Permit Order No. R4-2010-0108
- Exhibit 3 El Rio CDP Quick Facts from the U.S. Census Bureau, 2010

cc: Ewelina Mutkowska, County Stormwater Program Manager



## California Stormwater Quality Association®

*Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation*

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February 21, 2012

Mr. Charles Hoppin, Chair  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

**Subject: Receiving Water Limitation Provision to Stormwater NPDES Permits**

Dear Mr. Hoppin:

As a follow up to our December 16, 2011 letter to you and a subsequent January 25, 2012 conference call with Vice-Chair Ms. Spivy-Weber and Chief Deputy Director Jonathan Bishop, the California Stormwater Quality Association (CASQA) has developed draft language for the receiving water limitation provision found in stormwater municipal NPDES permits issued in California. This provision, poses significant challenges to our members given the recent 9th Circuit Court of Appeals decision that calls into question the relevance of the iterative process as the basis for addressing the water quality issues presented by wet weather urban runoff. As we have expressed to you and other Board Members on various occasions, CASQA believes that the existing receiving water limitations provisions found in most municipal permits needs to be modified to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but also allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. To that end, we have drafted the attached language in an effort to capture that intent. We ask that the Board give careful consideration to this language, and adopt it as 'model' language for use statewide.

Thank you for your consideration and we look forward to working with you and your staff on this important matter.

Yours Truly,

Richard Boon, Chair  
California Stormwater Quality Association

cc: Frances Spivy-Weber, Vice-Chair – State Water Board  
Tam Doduc, Board Member – State Water Board  
Tom Howard, Executive Director – State Water Board  
Jonathan Bishop, Chief Deputy Director – State Water Board  
Alexis Strauss, Director – Water Division, EPA Region IX

## CASQA Proposal for Receiving Water Limitation Provision

### D. RECEIVING WATER LIMITATIONS

1. Except as provided in Parts D.3, D.4, and D.5 below, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Except as provided in Parts D.3, D.4 and D.5, discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause a condition of nuisance.
3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:
  - a. Submit a report to the State or Regional Water Board (as applicable) that:
    - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
    - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4 to help inform Regional or State Water Board efforts to address such sources).
    - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
    - iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.
    - v. Includes a methodology (ies) that will assess the effectiveness of the BMPs to address the exceedances.
    - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.



- b. Submit any modifications to the report required by the State or Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.
  - c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.
  - d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.
4. For Receiving Water Limitations associated with waterbody-pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant-specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.
5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.

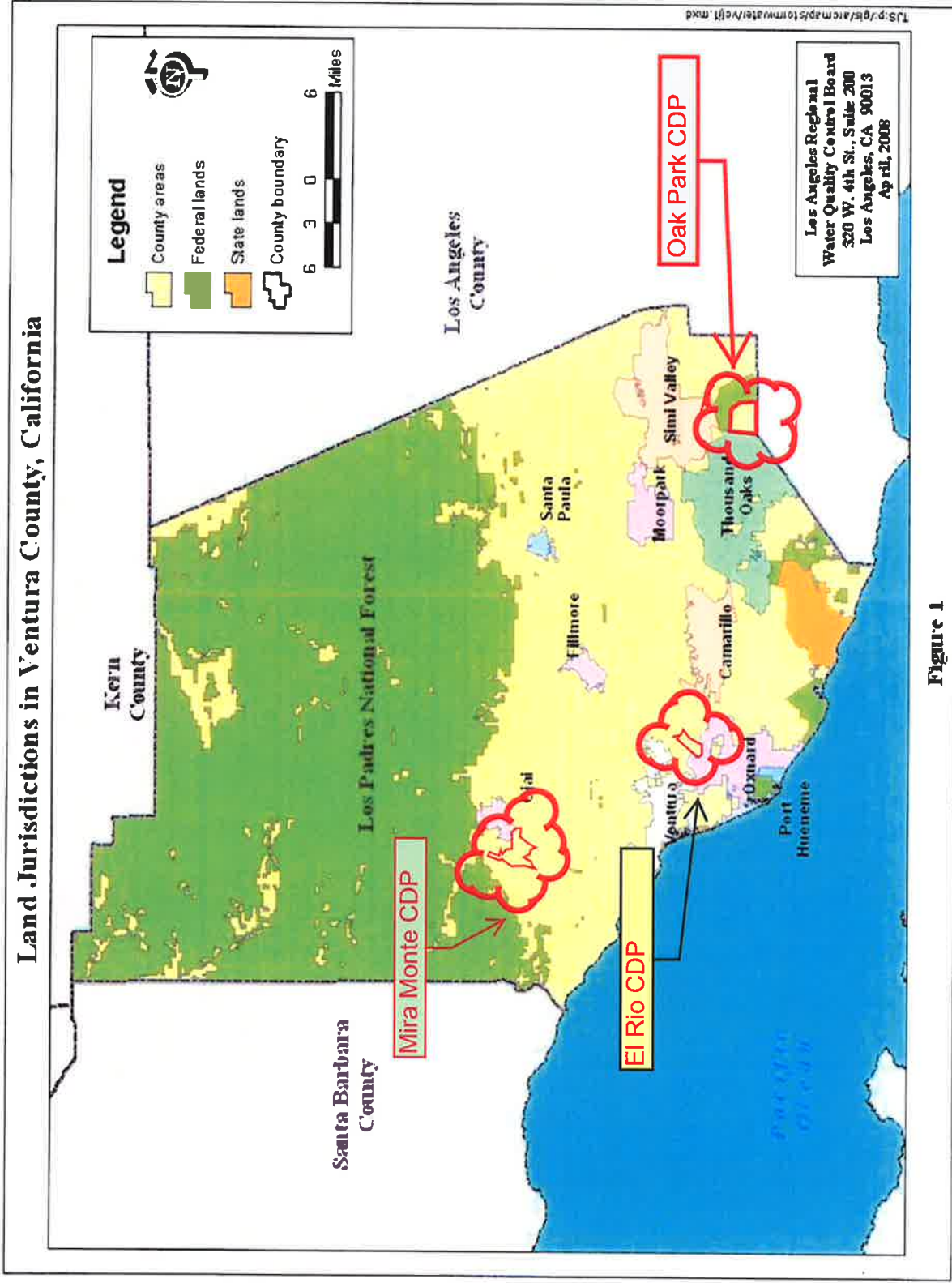


Figure 1

## State &amp; County QuickFacts

**El Rio CDP, California**

| <b>People QuickFacts</b>   | <b>El Rio CDP</b> | <b>California</b> |
|--|-------------------|-------------------|
| Population, 2011 estimate  | NA                | 37,691,912        |
| Population, 2010   | 7,198             | 37,253,956        |
| Population, percent change, 2000 to 2010                           | 16.2%             | 10.0%             |
| Population, 2000   | 6,193             | 33,871,648        |
| Persons under 5 years, percent, 2010                               | 8.7%              | 6.8%              |
| Persons under 18 years, percent, 2010                              | 30.0%             | 25.0%             |
| Persons 65 years and over, percent, 2010                           | 9.2%              | 11.4%             |
| Female persons, percent, 2010                                      | 48.3%             | 50.3%             |
| White persons, percent, 2010 (a)                                   | 48.6%             | 57.6%             |
| Black persons, percent, 2010 (a)                                   | 0.8%              | 6.2%              |
| American Indian and Alaska Native persons, percent, 2010 (a)       | 2.8%              | 1.0%              |
| Asian persons, percent, 2010 (a)                                   | 1.0%              | 13.0%             |
| Native Hawaiian and Other Pacific Islander, percent, 2010 (a)      | 0.3%              | 0.4%              |
| Persons reporting two or more races, percent, 2010                 | 4.4%              | 4.9%              |
| Persons of Hispanic or Latino origin, percent, 2010 (b)            | 86.0%             | 37.6%             |
| White persons not Hispanic, percent, 2010                          | 11.3%             | 40.1%             |
| Living in same house 1 year & over, 2006-2010                      | 94.5%             | 84.0%             |
| Foreign born persons, percent, 2006-2010                           | 34.5%             | 27.2%             |
| Language other than English spoken at home, pct age 5+, 2006-2010  | 70.4%             | 43.0%             |
| High school graduates, percent of persons age 25+, 2006-2010       | 47.3%             | 80.7%             |
| Bachelor's degree or higher, pct of persons age 25+, 2006-2010     | 3.8%              | 30.1%             |
| Mean travel time to work (minutes), workers age 16+, 2006-2010     | 19.6              | 26.9              |
| Housing units, 2010  | 1,700             | 13,680,081        |
| Homeownership rate, 2006-2010                                      | 70.2%             | 57.4%             |
| Housing units in multi-unit structures, percent, 2006-2010         | 6.6%              | 30.7%             |
| Median value of owner-occupied housing units, 2006-2010            | \$380,700         | \$458,500         |
| Households, 2006-2010  | 1,515             | 12,392,852        |
| Persons per household, 2006-2010                                   | 4.07              | 2.89              |
| Per capita money income in past 12 months (2010 dollars) 2006-2010 | \$15,420          | \$29,188          |
| Median household income 2006-2010                                  | \$54,534          | \$60,883          |
| Persons below poverty level, percent, 2006-2010                    | 20.8%             | 13.7%             |
| <b>Business QuickFacts</b>   | <b>El Rio CDP</b> | <b>California</b> |
| Total number of firms, 2007  | S                 | 3,425,510         |
| Black-owned firms, percent, 2007                                   | S                 | 4.0%              |

|   |   |       |
|---|---|-------|
| American Indian- and Alaska Native-owned firms, percent, 2007         | S | 1.3%  |
| Asian-owned firms, percent, 2007                                      | S | 14.9% |
| Native Hawaiian and Other Pacific Islander-owned firms, percent, 2007 | S | 0.3%  |
| Hispanic-owned firms, percent, 2007                                   | S | 16.5% |
| Women-owned firms, percent, 2007                                      | S | 30.3% |

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|  |        |             |
|--|--------|-------------|
| Manufacturers shipments, 2007 (\$1000)               | NA     | 491,372,092 |
| Merchant wholesaler sales, 2007 (\$1000)             | D      | 598,456,486 |
| Retail sales, 2007 (\$1000)                          | 17,502 | 455,032,270 |
| Retail sales per capita, 2007                        | NA     | \$12,561    |
| Accommodation and food services sales, 2007 (\$1000) | D      | 80,852,787  |

**Geography QuickFacts**

|                                 | <b>El Rio CDP</b> | <b>California</b> |
|---------------------------------|-------------------|-------------------|
| Land area in square miles, 2010 | 2.02              | 155,779.22        |
| Persons per square mile, 2010   | 3,556.3           | 239.1             |
| FIPS Code                       | 22370             | 06                |
| Counties                        |                   |                   |

Population estimates for counties will be available in April, 2012 and for cities in June, 2012.

(a) Includes persons reporting only one race.

(b) Hispanics may be of any race, so also are included in applicable race categories.

D: Suppressed to avoid disclosure of confidential information

F: Fewer than 100 firms

FN: Footnote on this item for this area in place of data

NA: Not available

S: Suppressed; does not meet publication standards

X: Not applicable

Z: Value greater than zero but less than half unit of measure shown

Source U.S. Census Bureau: State and County QuickFacts. Data derived from Population Estimates, American Community Survey, Census of Population and Housing, County Business Patterns, Economic Census, Survey of Business Owners, Building Permits, Consolidated Federal Funds Report, Census of Governments  
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