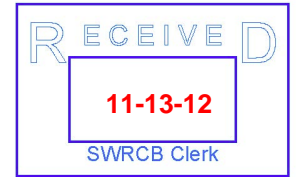




ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7  
100 NORTH CANYONS PARKWAY, LIVERMORE, CA 94551-9486 • PHONE (925) 454-5000

November 13, 2012



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

Sent via e-mail to: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Subject: *Comment Letter – Receiving Water Limitations Language Workshop*

Dear Ms. Townsend:

Zone 7 of the Alameda Flood Control and Water Conservation District (Zone 7 Water Agency) very much appreciates the opportunity to comment on the State Water Resources Control Board's (WRCB) issue paper concerning receiving water limitations language for municipal stormwater permits issued in California. We have reviewed the Issue Paper and material developed by WRCB staff in preparation for the November 20, 2012 workshop and compliment their thorough and thoughtful efforts. We now offer these comments for the Board and staff's further consideration.

As the result of the *NRDC vs. County of Los Angeles* decision by the Ninth Circuit and statements appearing in the fact sheets of several proposed MS4 permits since it was issued, we are very concerned about permit provisions related to contributions of municipal stormwater discharges to an exceedance of water quality standards. Unless the State Board directs changes in the precedent language to be used for them, we could face third party lawsuits due to such provisions regardless of the circumstances, magnitude, or duration of the event, its impact on human health or the environment, or their implementation of other program/BMP-specific requirements. We don't believe the State Board intended permittees to face potential third-party lawsuits due to such permit provisions where the municipalities have implemented the so-called "iterative process" in good faith.

While the issue of improving the iterative process language to make it function better is an important one to be considered at the workshop, preserving the intent behind its establishment (to avoid the potential diversion of resources from water quality improvement to third party litigation) is even more important to us. In this regard, if provisions which turn on the mere contribution of a stormwater discharge to an exceedance of water quality standards are to remain in California's MS4 permits, the State Board should at least make clear that the enforcement of these broad provisions is to be a matter of the State and Regional Board's discretion under the Water Code and reserved for unusual circumstances that warrant its exercise. We did not see this concept in the Issues Paper but believe the State Board should consider it. Alternative 5 captures this concept.

We believe that progress toward improvement of water quality will benefit substantially from permittees working collaboratively with Regional Board staff in implementing the iterative process in those cases where exceedances of water quality standards occur. We also believe that full safe harbor for permittees acting in good faith is necessary to implement any iterative process and therefore strongly urge the State Board to adopt Alternative 5 (see CASQA Proposal). Furthermore, as a member of the Bay Area Stormwater Management Agencies Association ("BASMAA"), we support BASMAA comments and urge the Board to amend prior MS4 language consistent with BASMAA's recommendations.

Sincerely yours,



G.F Duerig  
General Manager