COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
http://dpw.lacounty.gov

GAIL FARBER, Director

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE
REFER TO FILE: WM-9

November 13, 2012

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

Dear Ms. Townsend:

COMMENT LETTER – RECEIVING WATER LIMITATIONS LANGUAGE WORKSHOP

Thank you for the opportunity to provide comments on the Municipal Stormwater Permits Receiving Water Limitations Language. On behalf of the County of Los Angeles and the Los Angeles County Flood Control District, enclosed are our comments.

We look forward to your consideration of these comments. If you have any questions, please contact me at (626) 458-4300 or ghildeb@dpw.lacounty.gov or your staff may contact Ms. Angela George at (626) 458-4325 or ageorge@dpw.lacounty.gov.

Very truly yours,

GAIL FARBER
Director of Public Works

Gary Hildebrand

GARY HILDEBRAND
Assistant Deputy Director
Watershed Management Division

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COMMENTS OF THE COUNTY OF LOS ANGELES AND THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT CONCERNING RECEIVING WATER LIMITATIONS LANGUAGE IN MUNICIPAL STORMWATER PERMITS

I. Introduction

The County of Los Angeles (County) and the Los Angeles County Flood Control District (LACFCD) are pleased to submit these comments for consideration by the State Water Resources Control Board (State Board) at its workshop on November 20, 2012 on the receiving water limitations (RWL) language for municipal stormwater permits throughout the state. The State Board has indicated that the purpose of the workshop is to hear stakeholder concerns with the current RWL language in light of the decision of the United States Court of Appeals for the Ninth Circuit in *NRDC v. County of Los Angeles* 673 F.3d 880 (9th Cir. 2011), *cert granted,* __ U.S. __ (June 25, 2012) and to solicit recommendations on whether to modify this language.

The County and the LACFCD believe that reform of the current RWL language is needed for two principal reasons. First, the RWL language, as interpreted by the Ninth Circuit, is inconsistent with the State Board's previously expressed intent that MS4 permittee compliance with water quality standards (WQS) is "to be achieved over time, through an iterative approach requiring improved BMPs . . ." State Board Order No. WQ 2001-15 at 7. Second, and as important, the current RWL language as interpreted by the Ninth Circuit does not reflect current approaches to stormwater management and, as a result, poses an obstacle to achievement of WQS in receiving waters.

II. The RWL Language Should be Revised Both to Reflect the State Board's Intent for Iterative Compliance and to Reflect Current Approaches to Stormwater Management, Including Watershed Management Plans and Multi-benefit Projects

A. The State Board Has Consistently Intended that Compliance with WQS is to be Attained through an Iterative Process

The State Board, in precedential orders going back 20 years, has consistently stated that municipal stormwater permittees must attain WQS through an iterative process, and not through immediate compliance with such standards. This intent was expressed in Order No. WQ 2001-15, in which the Board stated that "our language, similar to U.S. EPA's permit language discussed in the *Browner* case, does not require strict compliance with water quality standards." Order No. WQ 2001-15 at 7. This order refers to the decision of the Ninth Circuit in *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, 1165, in which the court held that the Clean Water Act did *not require* municipal stormwater permittees to achieve compliance with WQS.

The County and LACFCD respectfully disagree with the State Board's Issue Paper's characterization of the request for RWL language reform as seeking a "safe harbor." Over the past decade, municipal stormwater permits have become extensively detailed.

For example, the new Phase I MS4 permit for watersheds in Los Angeles County exceeds 100 single-line pages, not including its more than 400 pages of attachments. The permit contains detailed minimum control measures, watershed managements programs, TMDL incorporation provisions, monitoring requirements and other standard provisions. Each one of these items is a compliance requirement, violation of which constitutes a violation of the permit. Other Phase I MS4 permits are similarly detailed.

Clarification that a permittee is not in violation of the RWL provisions if it is in good-faith compliance with the iterative process does not relieve a permittee from any obligation under the permit. Instead, the iterative process is a tool or mechanism through which a permittee addresses water quality exceedances and eventually achieves compliance with those standards. It *does not* relieve permittees of their obligation to comply with any specific provision of the permit.

If the RWL language is not revised, however, then, under the Ninth Circuit's interpretation of that language, the permit will contain terms with which it is impossible to comply. In that case the permit would be unlawful; the State Board cannot require municipalities to comply with terms that are impossible to comply with. Moreover, as will be discussed next, requiring permittees to attempt to strictly comply with WQS and other RWL requirements impedes the ability of permittees to comply with the innovative and rigorous watershed management programs now being incorporated into Ms4 permits.

B. The Regulatory Environment and State of Stormwater Permits Has Evolved Since 1999, and RWL Language Should Promote Current Regulatory Approaches

1. The Regulatory Environment Has Evolved Since 1999

The State Board adopted the current RWL language in 1999. *Own Motion Review of Petition of Environmental Health Coalition,* SWRCB Order WQ 99-05. At that time, the state of knowledge regarding stormwater pollution controls was rudimentary. In 1999, few, if any, TMDLs had been adopted and none was incorporated into stormwater permits. Municipalities were implementing only their first or second term stormwater permits; the efficacy of BMPs was largely unknown, though there was a supposition that pollutants in urban runoff could be addressed on a pollutant by pollutant basis through individual BMPs.

The state of knowledge regarding urban runoff control has greatly matured since 1999. There is now a robust TMDL program throughout the state, with many TMDLs being incorporated into MS4 permits. For example, the current municipal stormwater permit for watershed in Los Angeles County, adopted on November 8, 2012, incorporates 33 TMDLs; the 2001 permit contained only two. Now the focus is on programs like low impact development (LID) and green infrastructure that seek to reduce the contaminants reaching receiving waters by reducing the urban runoff itself. MS4 permits now contain "action levels" that trigger source investigations and program

revisions. There is a renewed emphasis on planning and programs performed on a watershed-level, instead of at each permittee's jurisdictional level. There is now also an emphasis on multi-benefit projects that not only address water quality but also treat stormwater as a water resource, as well as providing non-water quality benefits such as recreation or green space.

2. The RWL Language Should be Revised to Encourage Watershed Management Planning and Multi-Benefit Projects

It is now recognized that municipalities should focus on LID and green infrastructure programs as a significant element of their stormwater programs. It is also recognized that stormwater programs should address stormwater quality on a watershed-wide rather than jurisdiction by jurisdiction basis, which can result in more effective and less costly programs. Finally, there is also a growing recognition of the value of multi-benefit projects which treat stormwater as a resource. These multi-benefit projects are designed to provide not only water quality but also water conservation benefits, while providing other benefits such as additional recreation areas or open space. These multi-benefit projects also have the benefit of possibly leveraging funds from other programs.

These watershed-wide planning and multi-benefit projects represent the future of stormwater management. In a recent policy memorandum, U.S. EPA specifically encouraged the adoption of such approaches in municipal stormwater permits. *See* Stoner and Giles, Integrated Municipal Stormwater and Wastewater Planning Approach Framework, June 5, 2012, pp 6-7.

The RWL language, as well as the other parts of a municipal stormwater permit, should therefore reflect the new approach to stormwater management. The current language, however, as interpreted by the Ninth Circuit, does not. Under the Ninth Circuit's interpretation, an MS4 permittee is required to address any pollutant that is causing an exceedance of WQS as soon as an exceedance is detected. This requires the permittee to take immediate action with respect to that exceedance rather than to undertake long term planning or implementing larger projects that will address multiple pollutants and have multiple benefits. Requiring immediate compliance with WQS, however, discourages a permittee from planning on a watershed-wide basis or prioritizing its control efforts.

For example, a permittee might design a multi-benefit project, such as a park, that collects stormwater from an urbanized area and allows that water to infiltrate and replenish groundwater utilizing natural filtration processes. This type of project has the benefit of reducing the quantity of stormwater flow and addressing multiple pollutants instead of one specific pollutant. Such projects could help to attain TMDL waste load allocations earlier than more traditional BMP-based TMDL compliance approaches.

Multi-benefit projects, however, take significant time to design, permit and build. Depending on the size of the project, over five years could pass from initiation to completion. The MS4 permit must give the permittee both the time and the incentive to develop such projects. If a permittee, instead, must expend its resources responding to each individual exceedance, the permittee will have neither the resources to plan a multi-benefit project nor the incentive to do so.

The RWL language, as well as other permit provisions, should also encourage watershed plans that allow prioritization of a permittee's efforts. The current RWL language, as interpreted by the Ninth Circuit, treats all pollutants equally. This has the undesired effect of potentially requiring permittees to direct their efforts towards those pollutants that are of lesser, rather than greater, concern in the watershed.

The pollutants of greatest concern are presumably those pollutants for which TMDLs have been adopted or are scheduled to be adopted. Those TMDLs also recognize that immediate compliance with waste load allocations is not possible and permittees are given a time period in which to meet WLAs. Pollutants for which there are no TMDLs presumably are of lesser concern. Yet under the Ninth Circuit's interpretation, immediate compliance with all WQS is required. The same result would be true under Alternatives 1 through 4 identified by the Issue Paper, because none of these alternatives contains a full iterative process for compliance for non-TMDL pollutants during both wet and dry weather. As a result, a permittee must immediately expend resources on those pollutants that are not the subject of a TMDL or otherwise be subject to potential fines and penalties. As a policy matter, this is the exact opposite of the priority that should be given to exceedances under a well managed and cost-effective stormwater program.

Accordingly, the County and the LACFCD propose that the RWL language be revised to give permittees the option to comply with RWL provisions through the development and implementation of watershed management programs that will encourage permittees to include multi-benefit regional projects as part of the watershed-wide planning process. As long as a MS4 permittee is in compliance with the requirements for development and implementation of those programs, the permittee would be considered in compliance with the receiving water limitations provisions.

In sum, revision to the RWL language is vital if the State Water Board or regional boards want to encourage watershed-wide or multi-benefit programs. If a permittee must risk being found in violation of RWLs while designing or implementing multi-benefit projects, it will have no incentive to pursue such projects, especially where funding may be impacted.

Reform of the RWL language also needs to apply to both wet and dry weather discharges. The time and funds needed to implement watershed-wide planning and multi-benefit projects is not dependent on whether the exceedances occur during wet versus dry weather. A permittee could be required to divert just as many resources and

therefore will have just as much of a disincentive to pursue long-term watershed and multi-benefit projects for discharges in dry as in wet weather.

III. Other Reasons Why RWL Language Reform is Essential

A. Liability Should Not Attach to Conditions Beyond the Control of the MS4 Permittee

The nature of an MS4 – which includes elements ranging from city streets and gutters, to catch basins, to underground pipes to open channels – is to capture and efficiently remove stormwater and urban runoff so that it does not pose a threat to the lives and property of citizens. In Los Angeles County for example, the storm drain system has been designed to handle storm flows arising from extremely variable weather conditions (where rain often arrives only during a few months, sometimes in large and intense Pacific Ocean storms) as well as topographical conditions (mountainous terrain that discharges fast-moving flows to a coastal plain).

In no case can MS4 operators "turn a valve" to reduce flow or address pollutant loadings. The MS4 must be designed to handle water quickly and efficiently, whenever and however it flows. The MS4 operator also cannot control the source of pollutants discharged into the MS4 or the receiving water. In Los Angeles County, for example, there are over 1,600 industrial NPDES permittees discharging into the Los Angeles, San Gabriel and Santa Clara Rivers and Malibu Creek. *NRDC,* 673 F.3d at 889-90.

Further, most of the flow in the Los Angeles River during dry weather conditions is from non-MS4 sources, including from several large publicly owned treatment works. Evidence generated during the *NRDC* litigation indicates that permits covering nearly 100 of these dischargers, including permits covering large POTWs, allowed the discharge of pollutants at concentrations *greater* than water quality standards. Attached as Exhibit A excerpts of the Expert Report of Robert Collacott filed in the *NRDC* case, which identifies such discharges in various watersheds. Because of these discharges, which are legal and authorized by the regional board, the MS4 permittees have essentially no more control over compliance with WQS in dry weather than they would have during wet weather conditions.

Sources of other pollutants are also beyond the legal or physical control of the MS4 operator. For example, it has been determined that a major cause of copper contamination in MS4 discharges is from the copper released onto streets from brake pads. (This finding led to the passage of S.B. 346 in 2010). MS4 operators cannot ban copper in brake pads; at the same time, they should not face liability for the presence of that copper in their MS4 discharges. Unfortunately, under the RWL language as interpreted by the Ninth Circuit, such liability could follow.

Similarly, despite public education efforts and the active illicit connection/illicit discharge programs conducted under MS4 permits, nothing can be done by the municipality to guarantee that there will be no accidental or intentional disposal of wastes into the MS4

system or the receiving waters, a disposal which could be as simple, and seemingly innocent, as the failure of a pet owner to pick up animal waste on a city street. And, no amount of public education or IC/ID programs can address the introduction of bacteria from wildlife which is abundant in California urban areas, including birds, rodents and coyotes, or naturally occurring pollutants, such as metals eroded from rocks and soils.

The State Board Issue Paper acknowledges that exceedances of water quality standards continue to exist, notwithstanding the maturation of the stormwater program. Issue Paper at 2. The State Board's own "Blue Ribbon Panel" concluded in 2006 that it was "not feasible" to set numeric effluent limit criteria for urban discharges. The Panel recommended that regional boards move to "Action Levels," designed to identify and address "bad actor" catchments. Such Action Levels, which have been incorporated in MS4 permits as Stormwater or Non-stormwater Action Levels (SALs and NALs), require permittees to address exceedances without subjecting a permittee to potential liability for failing to comply with the RWL language.

There is no reason to impose potential liability on a permittee based on conditions beyond the permittee's control. Yet that will be the result under the Ninth Circuit's decision. To avoid this result, the State Board should revise the RWL language to make clear that a permittee is not responsible for conditions in a receiving water over which the permittee has no control.

B. There is no Legal Requirement for this Board to Follow the Ninth Circuit's Interpretation

The Ninth Circuit's decision involves that court's interpretation of permit language, not the Clean Water Act. The court (in our view incorrectly) held that the provisions of Parts 2.1 and 2.2 of the LA County MS4 permit were to be read independently of the provisions of Parts 2.3 and 2.4, even though Part 2.3 states that the "Permittees shall **comply with Part 2.1 and 2.2 through timely implementation of control measures and other actions** to reduce pollutants in the discharges in accordance with the SQMP and its components and other requirements of this Order . . . ." (Emphasis supplied.)

This language was described in a 2002 letter to the Los Angeles County MS4 permittees by the then-Chair of the Los Angeles Water Board, Francine Diamond, and in written testimony by the then-Executive Officer of the Los Angeles Water Board, Dennis Dickerson, *as not requiring immediate compliance with water quality standards, but instead as providing for the iterative process.* Excerpts of Ms. Diamond's letter and Mr. Dickerson's testimony are attached as Exhibits B-C.

1. The Ninth Circuit's *Browner d*ecision, interpreting the Clean Water Act, holds that municipal permittees are not required to comply with WQS; the *NRDC c*ase interpreted permit language, not the Act

The Clean Water Act provides, in relevant part, that permits governing MS4 dischargers "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)(iii). The *Browner* decision interpreted that language as not requiring MS4 permittees to achieve compliance with water quality standards. Under *Browner* and the plain language of the Act, the State Board has the discretion and ability to *not* require strict compliance with such standards. 191 F.3d at 1165-66.

Several State Board orders cited as authority in staff's Issue Paper, including Order Nos. 98-01 and 99-05, were issued based on the erroneous belief by U.S. EPA that municipal stormwater permittees were required to attain water quality standards. EPA held that belief before Browner; the *Browner* case rejected that position, as recognized by the State Board in Order No. WQ 2001-15.

2. MS4 permits issued by USEPA have not required strict compliance with WQS

U.S. EPA, in its role as permitting authority in states that lack NPDES permit authorization under the Clean Water Act, has *not* required strict compliance with numeric WQS. The most prominent example of a recent MS4 permit promulgated by U.S. EPA is that for the District of Columbia (DC Permit) (relevant portions of which are attached as Exhibit D), which was adopted in 2011.

Part 1.4 of the DC Permit contains the requirements relating to WQS. In relevant part, this part provides: "Compliance with the performance standards and provisions contained in Parts 2 through 8 of the permit shall constitute adequate progress towards compliance with DCWQS [water quality standards] and WLAs [established under TMDLs] for this permit term." The Permit Fact Sheet states the following with respect to that part:

> Comments on the language in Part 1.4 varied widely. Some commenters did not believe it was reasonable to require discharges to meet water quality standards. Other commenters believed this to be an unambiguous requirement of the Clean Water Act.
>
> Today's Final Permit is premised upon **EPA's longstanding view that the MS4 NPDES permit program is both an iterative and an adaptive management process for pollutant reduction and for achieving applicable water quality standard and/or total maximum daily load (TMDL) compliance.** *See generally,* "National Pollutant Discharge Elimination System Permit Application Regulations for Stormwater Discharges," 55 F.R. 47990 (Nov. 16, 1990).
>
> **EPA is aware that many permittees, especially those in highly urbanized areas such as the District, likely will be unable to attain all applicable water quality standards within one or more MS4 permit cycles.** Rather the attainment of applicable water quality standards **as an incremental process** is

> authorized under section 402(p)(3)(B)(iii) of the Clean Water Act, 33 U.S.C. § 1342(p)(3)(B)(iii), which requires an MS4 permit "to reduce the discharge of pollutants to the maximum extent practicable" (MEP) "and such other provisions" deemed appropriate to control pollutants in municipal stormwater discharges. **To be clear, the goal of EPA's stormwater program is attainment of applicable water quality standards, but Congress expected that many municipal stormwater dischargers would need several permit cycles to achieve that goal.**
>
> Specifically, the Agency expects that attainment of applicable water quality standards in waters to which the District's MS4 discharges, requires staged implementation and increasingly more stringent requirements over several permitting cycles. During each cycle, EPA will continue to review deliverables from the District to ensure that its activities constitute sufficient progress toward standards attainment. With each permit reissuance EPA will continue to increase stringency until such time as standards are met in all receiving waters. **Therefore today's Final Permit is clear that attainment of applicable water quality standards and consistency with the assumptions and requirements of any applicable WLA are requirements of the Permit, but, given the iterative nature of this requirement under CWA Section 402(p)(3)(B)(iii), the Final Permit is also clear that "compliance with all performance standards and provisions contained in the Final Permit shall constitute adequate progress toward compliance with DCWQS and WLAs for this permit term" (Section 1.4).**

DC Permit Fact Sheet, pages 5-6 (emphasis supplied) (relevant excerpts of which are attached as Exhibit E).

U.S. EPA is proposing clarifying changes to this language and to other sections of the permit as the result of a settlement with various parties. Those changes do not, however, require strict compliance with WQS, but rather compliance through the programs developed under the permit. It is clear that U.S. EPA, in its own permits, is not requiring immediate compliance with water quality standards under MS4 permits, but instead only requires adequate progress towards meeting those standards.

C. A Requirement for Immediate Compliance with RWL Requirements, by Itself, is not Protective of Water Quality; to the Contrary, it Impedes Permit Approaches Now Favored by Water Boards for MS4 Permittees

An issue that might be raised is whether changing the existing RWL language to one that properly acknowledges the iterative approach to RWL compliance could impair progress towards attainment of water quality standards. It will not.

First, as discussed above, as stated in the Issue Paper and as recognized by US EPA in adopting the DC Permit, compliance with WQS is not achievable at this time. Thus, including that requirement will not result in the achievement of WQS because the fact is

that compliance with WQS cannot be immediately achieved. Instead, any MS4 permits issued to permittees with the RWL language that, in effect, requires immediate compliance with all WQS only will result in those permittees being at risk of being charged with being in violation of that permit on the first day of the permit's issuance.

This was the experience of the County and the LACFCD in the *NRDC* litigation. That lawsuit sought to impose liability for exceedance of WQS recorded in the **very first year** of mass emission station monitoring in 2002-2003, barely a year after permit adoption and before many new programmatic elements in the permit were developed. *See* excerpts of First Amended Complaint, *NRDC v. County of Los Angeles,* attached as Exhibit F.

Second, as discussed in Section II.B above, requiring immediate compliance with WQS conflicts with the development of watershed-wide management plans and inhibits, rather than supports, the development of sophisticated watershed management plans, LID, green development initiatives and multi-benefit project approaches.

Third, immediate WQS compliance language also discourages the permittees from conducting proactive monitoring and source investigation, since such monitoring might disclose WQS exceedances. Monitoring is necessary, however, to determine the types, amounts and sources of pollutants being discharged into and from the MS4. Permittees will have no incentive to proactively monitor MS4 discharges or investigate sources if that monitoring or investigation might disclose exceedances of WQS that could subject the permittee to fines or penalties.

Finally, under the Clean Water Act, citizen plaintiffs that can establish liability are entitled to injunctive relief from the federal district court. 33 U.S.C. § 1365(a). The federal court is free to order such relief as it chooses, **and is not bound by the terms of a MS4 permit.** Thus, a court could order permittees to perform programs that are not required in the MS4 permit and which are not overseen by the water boards. This means that the effort to develop MS4 permits, which typically takes many months and thousands of person-hours of water board and permittee staff time, can be completely overturned and the state or regional board could lose control over the stormwater program. As stormwater permits become increasingly sophisticated and expensive, the consequences of this threat increase.

IV. Comments on Alternative Approaches

The Issue Paper sets forth five alternatives for consideration by the State Board. Alternative 1, no change in the current RWL language, is unacceptable because it imposes terms with which it is impossible to comply and fails to encourage watershed-wide planning programs and multi-benefit projects. Even if the water boards "exercise their enforcement discretion" to refrain from taking enforcement action against permittees, no such discretion is applicable to citizen suit plaintiffs, as shown by the *NRDC* case and similar actions brought against the Cities of Malibu and Stockton.

Alternative 2, which proposes to maintain the current RWL language but would add greater specification as to how the iterative process might be carried out, is also unacceptable because the MS4 Permittees still would have no viable means to ensure their compliance with the RWL language. While the County and the LACFCD do not object to RWL language that spells out clearly, and in achievable terms, the iterative process required when exceedances are recorded, such a change alone does not address the issues identified in this letter. Moreover, as the Issue Paper recognizes, improvements in the iterative process only "may dissuade" the water boards and the public from bringing enforcement actions. This is, unfortunately, a vain hope given the record of the citizen suit actions and does not provide the permittees sufficient protection against those actions.

Alternative 3, which proposes to provide an iterative process for compliance with the RWL only for pollutants being addressed by dischargers in compliance with an approved TMDL, is still insufficient. By failing to provide a viable means for compliance with the RWL for non-TMDL pollutants, this alternative would force permittees to redirect their efforts and resources away from the TMDL activities and toward those other pollutants due to the strict liability attached to exceedances. This would be a poor policy choice, as pollutants that are not subject to a TMDL generally have significantly less, or even no impact on beneficial uses in the receiving waters.

Alternative 4, which would exclude dry weather discharges from the iterative process to comply with RWL, is unacceptable as well. This alternative does not reflect the reality of urban runoff and the fact that exceedances of WQA routinely occur in dry as well as in wet weather. There is no reason to impose liability for exceedances during such conditions, for the following reasons:

a. During dry weather, other NPDES-permitted discharges continue and will flow into the receiving waters, as will pollutants generated by non-anthropogenic sources. Such discharges are beyond the control of the permittees. These discharges, even those from other permitted discharges, can cause exceedances. For example, the newly-adopted MS4 permit for watersheds in Los Angeles County allows non-stormwater discharges from POTWs that contain pollutants that exceed water quality standards, discharges from CERCLA cleanups that could contain pollutants that exceed water quality standards, discharges of potable and raw water from drinking water suppliers that likewise could exceed water quality standards, and street and sidewalk wash water, firefighting activities and natural flows that also could contain pollutants that exceed water quality standards. A MS4 permittee does not have control over these non-stormwater discharges.

b. Accidental or intentional illicit discharges into the MS4 during dry weather could also cause exceedances. Such discharges would potentially have an even greater impact on sampling, since they are not diluted by large volumes of stormwater. Such accidental or illicit discharges, while the subject of programmatic requirements under the MS4 permits, cannot be prevented or controlled by the permittees except to the extent that they can be cleaned up if promptly reported. However, if the discharge

has reached waters where compliance monitoring is being conducted, the exceedance will be recorded and, under the Ninth Circuit's interpretation, liability for civil penalties, injunctive relief and attorneys fees could attach.

c. The numerous exceptions to non-stormwater discharges into MS4s contained in MS4 permits, while appropriate given the nature of those discharges (i.e., irrigation runoff, public water agency discharges, etc.), can be the source of pollutants that may exceed WQS.

d. Enforcing strict water quality standard limits in dry or wet weather is counter-productive to the watershed planning-based MS4 permits currently being promulgated by many water boards. Such permits divert permittee attention and resources from watershed-basedas discussed above.

Alternative 5, which provides a comprehensive iterative process for all MS4 discharges, is the only viable alternative. In an era of limited budgets, the only and best way to make progress toward improving the quality receiving waters is to provide MS4 permittees the ability to prioritize their efforts, as set forth in the watershed management plan provisions contained in the most recent MS4 permits.

Additionally, a compliance alternative should be provided that allows permittees the time and ability to implement innovative multi-benefit programs favored by many in the environmental community. As previously discussed, such approaches cannot occur where immediate compliance with WQs is required.

V. Recommended Action

The County and the LACFCD recommend, with CASQA, CSAC and other municipal permittees across the state, that the State Board direct staff to develop revised RWL language that will provide for a truly iterative approach to compliance with RWLs and which will facilitate, not impede, MS4 permit programs that rely on watershed management planning and/or multi-benefit projects as compliance vehicles. Only Alternative 5, modified to also encourage watershed-wide plans and multi-benefit project, provides this approach.