Department of Public Works

County of Butte

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

Subject: Comment Letter – Receiving Water Limitations Language Workshop

Dear Ms. Townsend:

Butte County appreciates the opportunity to provide comment on the issue of municipal stormwater permit receiving water limitations language, which is the subject of a State Water Board workshop to be held on November 20, 2012. Butte County urges the State Water Board to revise the current receiving water limitations language being used within most state issued stormwater NPDES permits. Revision to the language is necessary because of the way it has been interpreted in the 9th Circuit Court of Appeals decision in the 2011 Los Angeles County vs. NRDC case. Butte County is extremely concerned that should the State Water Board not modify the language, we will be vulnerable to third party law suits; such as has been the case with the City of Stockton.

Butte County has been actively implementing a stormwater quality program since 2003. To date we have spent tens of thousands of dollars in meeting our permit obligations. During this time, we have always understood the stormwater program to be one of iterative improvement whereby if receiving water issues are identified we would work in cooperation with our Regional Water Board to identify actions and opportunities for addressing those issues. In light of the court's decision, we are now extremely concerned that without intervention by the State Water Board to modify permit language, any known

water quality issues could lead us to a path of noncompliance and legal actions; regardless of our good faith efforts to address them.

We respectfully request the State Water Board reaffirm its policy to allow municipal permittees to comply with water quality standards over time by using best management practices supplemented by the iterative process, and revise the existing receiving water limitations language consistent with an "iterative process" approach. We believe the first step to developing revised language is to first develop guiding principles for the language. These guiding principles would work to align the receiving water limitations language with the Board's accepted iterative process policy, and as well provide assurance to the Board and interested third parties that agency actions to address water quality issues are effective and timely. We therefore support the guiding principles that are being suggested by the California Stormwater Quality Association. These include the following:

The receiving water limitations language must identify an iterative process that:

- Provides enough specificity and accountability so the Municipalities understand their responsibility.
- Acknowledges that all pollutants cannot be addressed equally.
    - Pollutants in stormwater discharges that are subject to TMDLs must be prioritized over pollutants that have sporadic and minimal impacts on receiving water. Similarly, the frequency and severity of the impact must be addressed in a prioritized manner.
    - Municipalities are under constant pressure to prioritize their resources, and to obtain the most "bang for the buck." This pressure is evident in practically all aspects of public service, from police to fire to the environment. Thus, a county cannot afford, financially or politically, to address all stormwater issues simultaneously.
- Guides regional board staff (and others) to assess whether the permittees are in good faith implementing the iterative process.
    - Given the wide diversity and complexity of pollutants, sources and BMPs, the process must provide a mechanism for the MS4 and the State to agree on a practical implementation plan to satisfy the Permit provision.
- Establish enough rigors to assure that progress will be made in addressing problematic discharges and protecting water quality.

The receiving water limitations language must provide permittees assurances that they are not subject to enforcement action and third party litigation if they, in good faith, actively implement the iterative process.

In closing, we believe that the State Water Board can address this untenable vulnerability that we are facing and we are greatly appreciative of your efforts to do so. Without your action to change the current language, agencies such as ours and others across the state will find themselves defending law suits as opposed to protecting and enhancing water quality.

Sincerely,

Mike Crump, Director

cc: CAO
Land Development Division