



BOARD OF SUPERVISORS  
**COUNTY OF HUMBOLDT**  
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November 9, 2012

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:

Humboldt County appreciates the opportunity to provide comment on the issue of receiving water limitations language in municipal stormwater permits, which is the subject of a State Water Board workshop to be held on November 20, 2012. Humboldt 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 was interpreted in the 2011 Los Angeles County vs. NRDC decision in the 9<sup>th</sup> Circuit Court of Appeals. Humboldt County is very concerned that if the State Water Board does not modify the language, we will be vulnerable to third-party lawsuits as has been the case for the City of Stockton.

In 2005 Humboldt County initiated the municipal stormwater program for the community of McKinleyville in response to the stormwater permitting requirements. The McKinleyville municipal stormwater program has been a joint effort among the county departments of Public Works, Environmental Health, and Community Development Services; McKinleyville Community Services District; North Coast Stormwater Coalition; and other stakeholder groups. The total costs and resources allocated to the stormwater program are hard to quantify because there are many cross-over activities with multiple benefits including improvement of stormwater quality. Spending specifically for the McKinleyville stormwater program has been roughly ten to fifteen thousand dollars per year out of the County General Fund. 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 develop 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 of allowing municipal permittees to comply with water quality standards over time by using best management practices supplemented by an 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 municipality 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.
- Establishes enough rigor to assure that progress will be made in addressing problematic discharges and protecting water quality.

The receiving water limitations language must provide assurances to permittees that they are not subject to enforcement action and third party litigation if they, in good faith, actively implement the iterative process. Humboldt County strongly supports clean water, and is concerned that limited local resources available to meet the requirements will need to be diverted from on-the-ground actions to legal defense.

In closing, we believe that the State Water Board can address the untenable vulnerability that we are facing, and 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 lawsuits as opposed to protecting and enhancing water quality.

Sincerely,

*Virginia Bass*

Virginia Bass, Chair  
Humboldt County Board of Supervisors

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cc: Tom Mattson, Public Works Department